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MULTICULTURALIST LIBERALISM AND HARMS TO WOMEN:
LOOKING THROUGH THE ISSUE OF “THE VEIL”

Anissa Hélie and Marie Ashe**

ABSTRACT

In response to recent mandates, prohibitions, or “choices” relating to veil-wearing by Muslim girls and women, this essay raises and responds to the question: “How should civil government treat culture- or religion-based claims of rights that clash with the norm of women’s equality?” – that question being a broadened reformulation of Susan Okin’s 1999 inquiry, “Is Multiculturalism Bad for Women?” The essay identifies social and political developments, as well as legal and theoretical developments – relating to women, religions, and governments – that have occurred in the 21st century and that demand that reformulation. Reviewing theories on the veiling controversies, and characterizing some as reflecting only partial visions, the essay embraces and argues for a re-shaped liberalism that is committedly and simultaneously feminist and anti-racist and secular.

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INTRODUCTION

This essay is the first in what will be a three-part set examining the interaction of liberal theory and practice with religious and cultural practices that challenge or contradict women’s interests in equality. Through a focus on recent controversies surrounding veil-wearing by Muslim girls and women, we raise and address the question: “*How should civil government treat culture- or religion-based claims of rights that clash with the norm of gender equality?*” Our question is a variation – a broadened formulation – of the inquiry posed by Susan Moller Okin in her essay of 1999, *Is Multiculturalism Bad for Women?*¹ We identify social and political developments, as well as legal and theoretical developments, that have occurred in the 21st century and that demand reformulation of Okin’s inquiry. Thus, we pose and address a question that is both larger and more urgent.

Okin’s “multiculturalism question” focused on how government should treat cultural or religious claims raised by *minority* cultural or religious groups.² Her formulation in 1999 reflected two phenomena that had become visible throughout the West during the preceding decade or so. The first of these was the ascendancy of “multiculturalism” in liberal theory and in liberal political practice. Responding in part to their own histories of racism, many Western liberal nations adopted policies of multiculturalism intended to be more accommodating (i.e. less assimilation-requiring than they had been in the past) with regard to both indigenous peoples and recently-arrived

¹ Susan Moller Okin, *Is Multiculturalism Bad for Women?*, in *IS MULTICULTURALISM BAD FOR WOMEN?* (Susan Moller Okin et al. eds., 1999). Okin asked, specifically: “What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states (however much they continue to violate it in their practices)?” *Id.* at 9.

² *Id.*

immigrants. This change instantiated – in practice and in theory – a “multiculturalist liberalism,” that is, a version of liberalism less critical of minority cultures and more ready to regard them as intrinsically valuable. The second phenomenon was a global “return” or “revival” of religion, with one manifestation of this multi-faceted development being an increased public awareness of the religious and cultural practices of newly-visible immigrant groups in Europe and in North America.

Okin explored the interaction of these phenomena. A development that particularly engaged her, which she saw as illustrative of both theoretical and practical inadequacies of multiculturalist-liberalism, was the accommodation of polygamy by the government of France over a period of twenty or more years. She documented the expansion of polygamy: “During the 1980s, the French government quietly permitted immigrant men to bring multiple wives into the country, to the point where an estimated 200,000 families in Paris are now polygamous”³ Okin asserted, confidently and unqualifiedly, that the toleration of polygamy harmed the interests of Muslim women affected by it: “[O]nce reporters finally got around to interviewing the wives, they discovered what the government could have learned years earlier: that the women affected by polygamy regarded it as an inescapable and barely tolerable institution in their African countries of origin, and an unbearable imposition in the French context.”⁴ And, she cited a failure of liberalism in practice: “On this issue, no politically effective opposition galvanized.”⁵

Okin’s claim was that the failure in practice had been fed by a failure in theory, by a weakening of liberalism’s formal commitment to gender equality attributable to its dalliance with multiculturalism. A misguided toleration supported by multiculturalist values, she perceived, had led liberalism to privileging the interests of minority religious and cultural groups over the equality of women. Okin therefore urged – against an uncritically multiculturalist turn – liberalism’s prioritizing of women’s equality, and its recommitment to the norm of gender equality.⁶

Writing in 2012, we find it necessary to broaden Okin’s question – and her critique of liberalism in practice and in theory – because of developments that have occurred in the years since her essay. The first of these has been the heightened focus on populations of Muslim heritage as problematic in both Europe and North America. The second has been the great expansion of the power of religious institutions inimical to women’s equality. These developments, together, have deepened the challenge to

³ *Id.* at 9.

⁴ *Id.* at 10.

⁵ *Id.*

⁶ *See id.* at 23-24.

liberal theory's critical capacities and moral/political commitments. Because of these trends, our focus will be broader than Okin's: our interest is not only in patriarchal *minority* religions but in *all* patriarchal religions whose practices conflict with women's equality. However, like her, we will begin our inquiry by examining a particular group; we focus specifically on developments in Muslim communities because these have particularly affected public debates and legal decisions in Western contexts.

The numerous and relevant changes affecting debates and law, that have occurred since 1999, have included attacks by radical Islamists on western targets:⁷ on New York City and Washington, D.C. on September 11, 2001; on subways in Madrid in March, 2004; and on London subways in July 2005. They have also included intensive reactions framed as retaliations to the 9/11 attacks, with wars prosecuted by the United States and its Western allies against Iraq and in Afghanistan. They have included incarceration – effectively without possibility of judicial review of Muslims characterized as “enemy combatants” (in Guantanamo, in prisons in the United States, and elsewhere), as well as massive and indiscriminate surveillance broadly targeting Muslims. They have included manifestations of racism against Muslims (“Islamophobia”⁸), evident in random attacks on Muslims or people perceived as Muslims; in discrimination against Muslims seeking to construct mosques in many areas; and in fears about “Sharia law” in areas where that law does not at all exist. They have included multiple prosecutions (often unsuccessful in the United States) of Muslim men alleged to be terrorists, and well-founded perceptions – and reactions to those perceptions – by Muslims who believe that they are experiencing systematic and discriminatory governmental harassment. They have included a globally-worsening economic reality in which employment

⁷ It should be noted that most of the people killed by Muslim extremists are other Muslims, or local people of various religions. A 2009 study of Arabic media sources by the Combating Terrorism Centre at West Point found that only 15% of all of the casualties of al-Qaeda between 2004 and 2008 were Westerners. Between 2006-2008, the most recent period the study examined, 98% of al-Qaeda's victims were inhabitants of Muslim majority countries. SCOTT HELFSTEIN ET AL., DEADLY VANGUARDS: A STUDY OF AL-QA'IDA'S VIOLENCE AGAINST MUSLIMS 2 (Dec. 2009), available at http://www.humansecuritygateway.com/documents/CTC_DeadlyVanguards_StudyOfAlQaidaViolenceAgainstMuslims.pdf.

⁸ As noted by Meredith Tax: “We must unpack the concept of ‘Islamophobia,’ which includes two main and very different meanings. In popular speech and the media, the term is used to mean discrimination, prejudice, hatred of, and violent attacks upon Muslims in the West; blanket police surveillance is often included in this usage. When used by Islamists, the term includes any criticism of their ideas or of Muslim texts, as well as invasions of ‘Muslim lands,’ which are attributed to a hatred of Islam rather than to geopolitical reasons like the desire to control territory, trade, or oil.” See MEREDITH TAX, DOUBLE BIND: THE MUSLIM RIGHT, THE ANGLO-AMERICAN LEFT, AND UNIVERSAL HUMAN RIGHTS (2012).

possibilities – even for the well-educated – have dramatically declined. All these developments have contributed to the heightening of racist and anti-immigration sentiments in Western contexts, and to the continuing failures of many Western nations to provide the meaningful social services that would elevate the position of migrants and citizens of Muslim heritage above their current second- or third-class status. Thus, the situation in which we now write is one that has worsened drastically since 1999.

Another change that has occurred is the increased visibility in Western areas of women wearing hijabs (often referenced as “headscarves”⁹) or other forms of veils that are understood to identify them as Muslims. Both Western and non-Western nations have introduced or intensified regulations of veil-wearing – often by laws mandating or prohibiting veil-wearing in particular public spaces. Media accounts of harm to women, occasioned by the wearing or not wearing of such garb, have proliferated in response to regulatory initiatives or changes. When Okin wrote in 1999, she saw French schoolgirls’ wearing of “headscarves” as a minor issue. No one today can possibly share that perception. As we will discuss, the Muslim veil – in its manifold variations – appears at the current time an always-already politically-charged symbol, one that (like the cross, the crucifix, the Star of David, or perhaps the swastika) cannot presently be neutral, regardless of the motive or intention of the individual wearer. This changed reality accounts for the structure of our inquiry here. We address the maximally-broad question about the degree to which legal-liberalism should tolerate or accommodate any religion-based practices that are hostile to women’s equality. And we approach that broad question through a lens focused particularly and specifically on the issues of whether (and where, and when) veil-wearing should be tolerated or accommodated.

Utilizing a compressed timeline, *Section I* presents some key events relating to Muslim veil-wearing that have occurred in recent years. It documents a 21st century global history of religio-political practices injurious to women and highly contradictory of women’s equality.

In *Section II*, we discuss theoretical contributions that are relevant to the general question of whether multiculturalist-liberalism is bad for women and that have focused particularly on the question of the Muslim veil. We consider, first, the contributions of writers (Joan Wallach Scott and Martha Nussbaum) who, while they identify as feminist, are more sympathetic to multiculturalism and to religious-group liberty than to women’s equality. We characterize their work as vision-impaired liberalism – because it is blind to the realities of increasing harms to women produced by the preferencing of religions – and we identify features of their work that render it so blind. We consider, secondly, writers (Leila Ahmed and Marnia

⁹ For discussion of terminology related to veiling, *see infra* Section I.

Lazreg) whose work we assess as partial and “monocular” in its relationship to multiculturalist-liberalism. We believe that they accurately discern and report on the real injuries that women suffer as a consequence of religiously imposed constraints on their liberty and equality. But we think that unfounded optimism – perhaps provoked in part by liberalism’s deep aversion to “intolerant” policies – leads each of them to close one eye and to fail to recognize that sometimes governmental action of a prohibitive kind may be needed to undo or to protect against harm to women. Finally, we also introduce in *Section II*, in translation from its French text, the very recent writing of Nadia Geerts. We characterize this writing as “binocular” in its critical perspectives – capable of extraordinarily broad as well as highly specific focus. We document Geerts’ insistent advocacy of liberalism’s re-commitment to protection of secular values, and its re-prioritizing of commitment to women’s equality in the face of any contending religion-based claim.

In *Section III*, we evaluate these theoretical contributions, finding particular strength in their historicizing and contextualizing moves. Building upon those perspectives, we urge a new direction in liberal theory, corrective of the turn taken in the last decades and available for reform of liberal-democratic shaping of the law. The liberalism we advocate is one that – released from the effect of cultural relativism and its indiscriminate endorsement of groups’ interests – will unequivocally support individual women’s equality and liberty. We propose that the necessary correction-of-course will require liberalism’s acknowledgment of its past and ongoing collusion with religious interests deeply inimical to women. The liberalism we advocate will respond to both the narrow and the broad questions we’ve explored. It will offer guidance for answering the specific question of the regulation of the veil, insisting that in the hierarchy of rights, women’s equality must *always* be preferred, relative to the conflicting rights-claims of *any* religious or cultural group. And it will urge that liberalism must re-commit to secularism as a condition of its effective advancement of feminism and of anti-racism.

I. FACTS AND LAW ABOUT “THE VEIL”

“The veil” has been examined from multiple perspectives (historical, anthropological, legal, etc.). Indeed it appears to have triggered as much obsession as “the harem”¹⁰ did in colonial times. Much recent academic

¹⁰ Western colonial writings, in both the English and French traditions, overwhelmingly depicted “the harem” as emblematic of the alleged inferior status of “Eastern women.” Throughout the eighteenth-, -nineteenth-, and early-twentieth centuries, colonial imagery carefully staged visuals emphasizing women’s seclusion or idleness, while Western scholars and travelers’ vivid depictions of the subjugation of ‘Oriental’ women long provided a core

work has focused on case studies linked to specific cultural or national settings.¹¹ We intend, however – in examining the broad question we identified in our *Introduction* – to reflect on a broader variety of socio-political contexts, and to consider how liberalism ought to respond to that worldwide phenomenon.

To provide a basis for examining the question of “the veil” from a more global perspective, a timeline of recent factual and legal developments is provided in this section. The timeline records facts reported in the media about veil-related events that occurred, across the globe, during the years 2004-2012. It highlights: mandates that women (and/or young girls) veil; demands asserting a “right to veil;” and, some policies and judicial responses elaborated in response to those mandates or demands.

The information gathered here illuminates the reality that trends toward increased veiling are affecting all regions of the world. The timeline shows the inadequacy of interpreting any veil-related story in isolation. Looking at them together discloses their linkages to one another, to a political and militant Islamism, and to the global revival of religious fundamentalisms in general.

Some preliminary comments:

First, we have included here information that concerns both women and girls, even though we are keenly aware that these two categories deserve to be examined separately. (Our reasons for doing so are more fully explained in *Section III*.)

Secondly, a note related to terminology: The media and most commentators typically refer to “the veil” without clarifying that the term refers to a wide range of dress codes, ranging from the hijab to the burqa to the sitar, etc. We recognize that these garments impact women in different ways and require different responses – yet we also squarely place the “headscarf” or the “scarf” in the category of “the veil” (unlike J. W. Scott who argues that the “headscarf” and the veil are not to be confused¹²). To some degree, our decision about terminological usage is affected by etymology: as the Chief Justice of Baluchistan High Court, Qazi Faez Isa, has explained in recent commentary: “Hijab is the Arabic word for ‘veil’ and may also be used to describe a screen, cover(ing), partition, division, mantle,

argument in favor of the West’s “civilizing mission”. MALEK ALLOULA, *THE COLONIAL HAREM* (Myra Godzich & Wlad Godzich trans., 1986); DALE F. EICKELMAN & JON W. ANDERSON, *NEW MEDIA IN THE MUSLIM WORLD: EMERGING PUBLIC SPHERE* 103 (2d ed. 2003); SARAH GRAHAM-BROWN, *IMAGES OF WOMEN: THE PORTRAYAL OF WOMEN IN PHOTOGRAPHY OF THE MIDDLE EAST 1860-1950* (1988).

¹¹ For a discussion of veiling in specific contexts, see *infra* Section II.

¹² See Joan W. Scott, *Symptomatic Politics: The Banning of Islamic Headscarves in French Public Schools*, 23 *FRENCH POL., CULTURE & SOC’Y* 106, 118 (2005).

curtain, drape or divider.”¹³ We therefore distance ourselves from the usage of highly innocuous terms such as headscarf, scarf, or “head coverings” primarily because we believe that those terms distract from or obscure the reality that the veil is intended to deliver non-innocuous messages: a visual distinction between males and females; a marking of the female body in public space; a sign of “modesty” (i.e. sexual unavailability); etc. While we distinguish wherever possible between hijab and more drastic forms of veiling, we do consider that all veils – whether they are used as screens, coverings, partitions, curtains, or clothing etc. – are intended and employed as physical demarcations of gender boundaries, in ways that accentuate gender differences and that are detrimental to women’s equality.

TIMELINE

2003/ SYRIA, EGYPT, JORDAN, QATAR

The doll “Fulla” quickly becomes the most popular among dolls designed to express “Muslim values.” Depending on the country, Fulla wears a full veil or a lighter hijab. A 2005 TV commercial introducing a new line of doll clothes reminds: “When you take Fulla out of the house, don’t forget her new spring abaya!”¹⁴ In 2010, a Fulla doll is “clad in a headscarf and a full length abaya, with the box proudly proclaiming “Fulla in her outdoor clothes.”¹⁵

2004/ MALAYSIA

The north-eastern state of Terengganu promulgates that “Muslim women will have to wear a headscarf drawn tightly about the face.” (No indication is given at this time that the “traditional loosely draped Malay headscarf will be banned.”)¹⁶

2004/ MALAYSIA

In the state of Terengganu, the main city of Kuala Terengganu – while

¹³ Justice Qazi Faez Isa notes that “[t]he word hijab appears seven times in the Quran” and that “[i]n none of the aforesaid seven verses the word hijab is used to indicate a dress code for a Muslim lady.” Qazi Faez Isa, *The Veil & Islam*, PAK. CHRISTIAN POST, <http://www.pakistanchristianpost.com/viewarticles.php?editorialid=1434> (last visited Nov. 25, 2012).

¹⁴ Katherine Zoepf, *Barbie Pushed Aside in Mideast Cultural Shift*, N.Y. TIMES (Sept. 22, 2005), http://www.nytimes.com/2005/09/21/world/africa/21iht-journal.html?_r=4.

¹⁵ Baher Ibrahim, *This Trend of Young Muslim Girls Wearing the Hijab Is Disturbing*, GUARDIAN (Nov. 23, 2010), <http://www.guardian.co.uk/commentisfree/belief/2010/nov/23/muslim-girls-wearing-hijab>.

¹⁶ Jonathan Kent, *Malaysian City Rules on Women*, BBC NEWS (Jan. 5, 2004), <http://news.bbc.co.uk/2/hi/asia-pacific/3368115.stm>.

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the Islamic Party of Malaysia (PAS) was in power - “imposed its own dress code for non-Muslim women working in the private sector.”¹⁷

2004/ FRANCE

A new law banning the display of “all ostentatious religious symbols” in public schools becomes effective.¹⁸

2004/ AUSTRALIA

The *hijab* is incorporated into the uniform of Victoria state police.¹⁹

March 2005/ ALGERIA

A Saudi pamphlet, initiated by the “Service of the donors of books” with headquarters in Ryad, is circulated in Algiers. Entitled “To the woman who has fallen into the spider’s web,” it attacks, among other targets, women who do not wear the *hijab*.²⁰

September 2005/ UK

The retailer IKEA agrees to offer to female Muslim staff in some of its stores a branded *hijab*.²¹

November 2005/ FRANCE (STRASBOURG)

The Grand Chamber of the European Court of Human Rights decides *Sahin v. Turkey*, upholding the Turkish governmental ban on the wearing of *hijab* by university students and faculty. The Court notes that the *hijab*

¹⁷ This measure also “bans anything that is considered moderately revealing clothing to sexy attires in public and private departments[.]” Note that the Salahuddin, a spokesman for PAS’ Youth section, clarified in a press statement the party’s take on individuals’ rights and duties: “The question of violating basic human rights does not arise when enforcing the compulsory rule of covering the *aurat* (parts of the body that should not be exposed according to Islamic belief)[.]” Salahuddin added that it was “not a matter of rights but of responsibility to adhere to rules set by Allah.” Kazi Mahmood, *Malaysian City Imposes Islamic Dress Code on Women*, ISLAM ONLINE (Jan. 10, 2004), <http://www.freerepublic.com/focus/f-news/1055499/posts>.

¹⁸ See *France’s Hijab Ban*, CBC NEWS (Sept. 7, 2004), <http://www.cbc.ca/news/background/islam/hijab.html>.

¹⁹ Lorna Edwards, *Making Hijab Part of Victoria Police Uniform*, THE AGE (Nov. 27, 2004), <http://www.theage.com.au/news/National/Making-hijab-part-of-Victoria-Police-uniform/2004/11/26/1101219743263.html?from=moreStories&oneclick=true>.

²⁰ The editorial of the Algerian daily *El Watan* states, “At the time our country is engaged in the debate about the Family Code, Saudis circulated a pamphlet . . . through [which they] continue to propagate obscurantism and archaism, doing so under the cover of religion.” Tayeb, *Que veulent les Saoudiens?*, EL WATAN (Mar. 14, 2005), available at <http://www.djazairress.com/fr/elwatan/15256>.

²¹ *Muslim Staff Given Branded Hijab*, BBC NEWS (Aug. 24, 2005), http://news.bbc.co.uk/2/hi/uk_news/england/london/4179930.stm.

carries political significance in Turkey and may require limitations to protect “rights and freedoms of others” and “maintenance of public order.” The Court relies particularly strongly on Turkish understandings of the importance of secularism and of gender equality.²²

June 2006/ UK

A medical student calls for the British Medical Association’s conference to allow Muslim women to wear a ‘theatre *hijab*’ in operation theatres. She also suggests “putting up screens to shield Muslim women from male colleagues when washing/cleansing before an operation.”²³

2006/ CHECHNYA

The Chechen government starts “demanding that female state workers wear headscarves.” A civil servant states: “I received a verbal warning that if I did not wear a headscarf, I would lose my job. I had to wear it the next day so as not to bring trouble on my head.”²⁴

2006/ UK

In *Begum v. Headteacher & Governors of Denbigh High School*, the House of Lords relies on European Court of Human Rights decision of *Sahin v. Turkey* (2005), and upholds the decision of school authorities not to admit a schoolgirl who sought to wear a *jilbab* (long black coat) to her high school (which already permitted hijab-wearing).²⁵

February 2008/ TURKEY

Turkey is “at odds over headscarf ban” and “Turkey’s ruling party, AKP, agreed with the MHP party to lift a decades-old ban on Islamic headscarves in universities.”²⁶ On February 7, 1998, the Turkish Parliament passed an amendment to Turkey’s Constitution allowing women to wear

²² See generally *Sahin v. Turk.*, App. No. 44774/98, 2005-XI Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956>.

²³ AYESHA SALMA KARIAPPER, WALKING A TIGHTROPE: WOMEN AND VEILING IN THE UNITED KINGDOM 73 (2009), available at <http://www.wluml.org/sites/wluml.org/files/Walking%20a%20Tightrope-v2i-Final-Web%20version.pdf>.

²⁴ *Chechnya, WOMEN’S UN REPORT NETWORK*, http://www.wunrn.com/news/2006/03_19_06/032006_chechnya_women.htm (last visited Jan. 31, 2013).

²⁵ See generally *R v. Headteacher and Governors of Denbigh High School*, [2006] UKHL 15 (appeal taken Eng.), available at <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060322/begum-1.htm>.

²⁶ Pelin Turgut, *Turkey at Odds over Headscarf Ban*, TIME (Feb. 8, 2008), <http://www.time.com/time/world/article/0,8599,1711292,00.html>.

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hijab in universities.²⁷

June 2008/ TURKEY

The Constitutional Court of Turkey annuls the amendment intended by Parliament to end the headscarf ban, on grounds that removing the ban contradicted founding principles of secularism expressed in the Turkish Constitution. The Constitutional Court's decision is not appealable.²⁸

2009/ UK

The Metropolitan Police in London agrees to offer the *hijab* as an option for "Muslim women serving in the force."²⁹

2009/ SUDAN

Lubna Ahmed Al Hussein, a Sudanese citizen, is prosecuted for wearing trousers and sentenced to 40 lashes in July 2009 (Article 152 of Sudanese criminal code prohibits "dressing indecently"). According to the director of police, in 2008 in Khartoum State alone, 43,000 women were arrested for clothing offences.³⁰

2009/ FRANCE (STRASBOURG)

The European Court of Human Rights, *Fifth Section*, decides *Dogru v. France*, upholding policy adopted in French lycee that had prohibited hijab-wearing in gym class.³¹

2009/ KYRGYZSTAN

Women journalists are no longer allowed to enter the press club without headscarves. Also, the president issues paintball guns to gangs of young men, to shoot at women who are not covered in the streets.³²

²⁷ See Mehran Derakhshandeh, *Just a Headscarf?*, TEHRAN TIMES (Feb. 17, 2008), <http://www.mehrnews.ir/en/NewsDetail.aspx?newsID=639942>.

²⁸ See *Court Annuls Turkish Scarf Reform*, BBC NEWS (June 5, 2008), <http://news.bbc.co.uk/1/hi/world/europe/7438348.stm>.

²⁹ See *Police Adopt Uniform Hijab*, THIS IS LEICESTERSHIRE (Jan. 31, 2009), <http://www.thisisleicestershire.co.uk/Police-adopt-uniform-hijab/story-12058583-detail/story.html>.

³⁰ Lubna Hussein, *When I Think of My Trial, I Pray My Fight Won't Be in Vain*, GUARDIAN (Sept. 3, 2009), <http://www.guardian.co.uk/commentisfree/2009/sep/04/sudan-woman-trousers-trial>.

³¹ See generally *Dogru v. France*, App. No. 27058/05, Eur. Ct. H. R. (2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90039>.

³² According to Nadia Azgikhina, Secretary of the Russia Union of Journalists in Moscow. Interview with Meredith Tax, in N.Y. (Sept. 17, 2010).

October 2009/ EGYPT

The leader of Al-Azhar University (the foremost Sunni authority) decides to “ban the niqab at the Islamic Institute’s schools and institutes.” The Minister of Higher Education follows suit, banning “students who wear the niqab from living in the university dorms.”³³

2010/ CHECHNYA

The Chechen government expands its “virtue campaign”: “Men in security-force vehicles assault women who are not ‘covered enough’ – i.e. who didn’t wear headscarves, long dresses, long sleeves – with paintball guns.”³⁴ While men violently enforce the compulsory dress code, propaganda ensures that women get the message:

Dear Sisters! We want to remind you that, in accordance with the rules and customs of Islam, every Chechen woman is **OBLIGED TO WEAR A HEADSCARF**. Are you not disgusted when you hear the indecent ‘compliments’ and proposals that are addressed to you because you have dressed so provocatively and have not covered your head? **THINK ABOUT IT!!!** Today we have sprayed you with paint, but this is only a **WARNING!!! DON’T COMPEL US TO HAVE RECOURSE TO MORE PERSUASIVE MEASURES!!!**”³⁵

March 2010/ CANADA (QUEBEC)

Quebec National Assembly considers enactment of “niqab ban” specifying that persons seeking governmental services must show their faces during the delivery of services.³⁶

April 2010/ KYRGYZSTAN

Makhmud Aripov, imam of the Nabijon Haji Mosque in Osh, states: “Wearing a hijab secures a woman’s chastity, and a lack of hijabs results in divorces. A mother wearing a hijab serves an example for her daughter,

³³ See *Al Azhar Bans the Niquab*, GULF BLOG (Oct. 10, 2009), <http://thegulfblog.com/tag/al-azhar/>.

³⁴ *Urgent Action Fund, Annual Report 2010*, URGENT ACTION FUND FOR WOMEN’S HUM. RTS. 6 (2010), available at http://urgentactionfund.org/wp-content/uploads/downloads/2012/06/UAF_Annual_Report_Web_2010.pdf. See generally *You Dress According to Their Rules: Enforcement of an Islamic Dress Code for Women in Chechnya*, HUM. RTS. WATCH (Mar. 10, 2011), available at <http://www.hrw.org/sites/default/files/reports/chechnya0311webwcover.pdf>.

³⁵ Tanya Lokshina, *Chechnya: Choked by Headscarves*, OPENDEMOCRACY (Sept. 27, 2010), <http://www.opendemocracy.net/tanya-lokshina/chechnya-choked-by-headscarves>.

³⁶ See *Quebec Bans Niqab from Government Services*, CANADIAN PRESS (Mar. 24, 2009), <http://www.thestar.com/news/canada/article/784657--quebec-ans-niq>.

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which will help secure her honour.”³⁷

October 2010/ UK

Three private schools for girls aged 11-18 (in Lancaster, Leicester and London) “introduced a compulsory veil policy” to be worn by students on their way to and from school. Pupils are required to wear a uniform comprised of “the black *Burka* and *Niqab*” (Madani website) or the “Black *Jubbah* [smock-like outer garment] and *dopatta* [shawl], as well as *purdah* [veil]. Scarves are strictly not permitted” (Jamea Al Kauthar website), or “the headscarf and *habaya* for all pupils, and *niqab* for girls attending the secondary years” (Jameah Girls Academy website).³⁸

2010/ INDONESIA (ACEH)

Two local “Sharia-inspired laws” regulate female dress code and “association between members of the opposite sex” in Aceh province. “While the law requires men to cover their body between the knee and the navel, Muslim women must cover the entire body, except for hands, feet, and face . . . Further, women constitute the overwhelming majority of those reprimanded by the Sharia police.”³⁹

2010/ INDIA (KOLKATA)

The Deoband seminary, “the most powerful Islamic seminary in South Asia,” issues a fatwa ruling that “it is unlawful for women to work or interact with men if they do not wear veils.” Muslim community leaders and women’s groups protest the edict.⁴⁰

2010/ SRI LANKA (EASTERN REGION)

The rising influence of Wahhabism (often imported by overseas workers back from Saudi Arabia) leads to increasing veiling practices in the

³⁷ *Islamic Veil and Fundamentalism Are Back in Bishkek*, ASIANEWS (Apr. 30, 2010), <http://www.asianews.it/news-en/Islamic-veil-and-fundamentalism-are-back-in-Bishkek-18289.html>.

³⁸ David Barrett, *British Schools Where Girls Must Wear the Islamic Veil*, TELEGRAPH (Oct. 2, 2010), <http://www.telegraph.co.uk/education/educationnews/8038820/British-schools-where-girls-must-wear-the-Islamic-veil.html>.

³⁹ *Indonesia: Local Sharia Laws Violate Rights in Aceh*, HUM. RTS. WATCH (Dec. 1, 2010), <http://www.hrw.org/news/2010/11/29/indonesia-local-sharia-laws-violate-rights-aceh>; see also HUM. RTS. WATCH, POLICING MORALITY: ABUSES IN THE APPLICATION OF SHARIA IN ACEH, INDONESIA 5 (Dec. 2010), available at <http://www.hrw.org/sites/default/files/reports/indonesia1210WebVersionToPost.pdf>.

⁴⁰ Established in 1867, the Darul Uloom Deoband seminary follows the conservative Hanafi school of thought. Shaikh Azizur Rahman, *Indian Protest at Muftis’ Ban on Women at Work*, THE NAT’L (May 21, 2010), <http://www.thenational.ae/news/worldwide/south-asia/indian-protest-at-muftis-ban-on-women-at-work?pageCount=0>.

east of the country: “In recent years local women have come under growing pressure from conservatives. They are now urged to cover their faces in public, something that had not previously been the cultural practice there.”⁴¹

2010/ SRI LANKA (COLOMBO)

Female students report being pressured to veil on Colombo University’s compounds: male peers want them to conform to the ideal of a “good Muslim woman” arguing that they must “represent the community.”⁴²

April 2010/ BELGIUM

By unanimous vote in Belgium’s lower house of Parliament, the Belgian Chamber of Representatives “passed a nationwide ban prohibiting women from wearing full-face Islamic veils in public places, the first move of its kind in Western Europe.” The measure remains to be voted on by the Senate.⁴³

October 2010/ FRANCE

France’s statute banning public wearing of “clothing designed to conceal the face” is approved by French Constitutional Council.⁴⁴

October 2010/ BIN LADEN

Bin Laden threatens France, which plans to ban full face veils in public spaces, stating: “If you unjustly thought that it is in your right to prevent free Muslim women from wearing the face veil, is it not our right to expel your invading men and cut necks?”⁴⁵

December 2010/ TURKEY

Despite the Constitutional Court ruling of 2008, most Turkish universities now permit students to wear hijab.⁴⁶

⁴¹ Swaminathan Natarajan, *Sri Lanka Police Investigate Attack on Teenage Girls*, BBC NEWS (Jun. 28, 2011), <http://www.bbc.co.uk/news/world-south-asia-13948979>.

⁴² Interview with Neloufer De Mel, Professor, University of Colombo, in N.Y. (Oct. 20, 2010).

⁴³ Edward Cody, *Belgian Lawmakers Vote to Ban Full-face Veils in Public*, WASH. POST (Apr. 30, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/29/AR2010042904504.html>.

⁴⁴ See *French Burqa Ban Clears Last Legal Obstacle*, CNN (Oct. 7, 2010), <http://www.cnn.com/2010/WORLD/europe/10/07/france.burqa.ban/index.html>.

⁴⁵ *Bin Laden in Warning to France*, AL JAZEERA (Oct. 27, 2010), <http://www.aljazeera.com/news/europe/2010/10/2010102710253569309.html>.

⁴⁶ See Jonathan Head, *Quiet End to Turkey’s Headscarf Ban*, BBC NEWS (Dec. 31, 2010), <http://www.bbc.co.uk/news/world-europe-11880622>.

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December 11, 2010/ AZERBAIJAN

Azerbaijan's Education Minister issues a reminder that "girls should comply with official rules on school uniforms, which forbid the wearing of the hijab . . . Hundreds of people" protest in response.⁴⁷

March 10, 2011/ CHECHNYA

"Men believed to be law enforcement officials" *impose dress codes through* "acts of violence, harassment, and threats to intimidate [women] into wearing a headscarf or dressing more 'modestly,' in long skirts and sleeves to cover their limbs."⁴⁸

March 2011/ TUNISIA

The "Defense Committee of Veiled Women in Tunisia" demands that the Minister of Interior overturn a 1993 decree stipulating that women seeking identification papers need to provide pictures showing their eyes and hair: "We will follow this issue closely and ensure that all parties responsible for such reprehensible actions face consequences."⁴⁹

April 2011/ EGYPT

The Supreme Administrative Court in Cairo "upheld a decision to ban the wearing of the niqab – the full covering except eyes – in examinations at universities."⁵⁰

July 2011/ BELGIUM

"A law has come into force in Belgium banning women from wearing the full Islamic veil in public."⁵¹

⁴⁷ *Azerbaijan Police Break Up Pro-hijab Rally*, RADIO FREE EUR. RADIO LIBERTY (Dec. 11, 2010), http://www.rferl.org/content/azerbaijan_police_break_up_hijab_rally/2245260.html.

⁴⁸ *Russia: Chechnya Enforcing Islamic Dress Code*, HUM. RTS. WATCH (Mar. 10, 2011), <http://www.hrw.org/en/news/2011/03/10/russia-chechnya-enforcing-islamic-dress-code>; see Lejla Medanhodzic & Masum Momaya, *Paintball Guns and "Islamic" Decrees Police Chechnya's Women*, AWID (Jan. 21, 2011), <http://secure1.awid.org/eng/Issues-and-Analysis/Library/Paintball-Guns-and-Islamic-Decrees-Police-Chechnya-s-Women>.

⁴⁹ The Defense Committee of Veiled Women in Tunisia, *Tunisian Ministry of the Interior Affairs Refuses Photos with the Veil in ID Cards*, ASSABILONLINE (Mar. 3, 2011), http://www.assabilonline.org/index.php?option=com_content&task=view&id=10404&Itemid=55.

⁵⁰ Mohamed Abdel Salam, *Egypt Court Upholds Niqab Ban*, BIKYA MASR (Apr. 24, 2011), <http://www.bikyamasr.com/33023/egypt-court-upholds-niqab-ban/>.

⁵¹ *Belgian Ban on Full Veils Comes Into Force*, BBC NEWS (July 23, 2011), <http://www.bbc.co.uk/news/world-europe-14261921>.

July 2011/ ALGERIA

New modalities regarding identification documents are introduced, stipulating that “the woman is not asked to remove her scarf while her picture is being taken for her ID card or passport.” A woman “is not required to show her ears or hair” but must leave “the face appear in its entirety, including eyes and mouth.”⁵²

December 2011/ CANADA

Supreme Court of Canada hears arguments about whether woman may testify against defendant in a criminal prosecution while wearing niqab.⁵³

March 2012/ AUSTRALIA / NEW SOUTH WALES

In the State of New South Wales, new rules establish that Muslim women “will be required to show their faces when they have documents witnessed under new identity check laws.” The rules were drawn up after the successful appeal by a veiled Muslim woman of her criminal conviction. She had been convicted on a charge of falsely accusing a police officer of trying to remove her burqa during a random breath test). The conviction was overturned when she claimed that because the woman who had made the accusation had been wearing a burqa, the prosecution could not possibly have proven her identity.⁵⁴

April 2012/ TURKEY

Nicolas Bratza, the President of the European Court of Human Rights, visiting Turkey “for ceremonies marking the 50th anniversary of the establishment of the [Turkish] Constitutional Court,” is reported to have said that the Court may “revise” its ruling in *Sahin v. Turkey*.⁵⁵

⁵² Note that the Algerian daily *Le Matin, Algiers*, qualifies these new modalities as “government’s step back”, given that previously, Algerian women could not wear a scarf in photos taken for the purpose of national ID card or passport. *Photo de femme voilée sur le passeport: le gouvernement recule*, LE MATIN DZ (July 9, 2011), available at <http://www.lematindz.net/news/4772-photo-de-femme-voilee-sur-le-passeport-le-gouvernement-recule.html>.

⁵³ *Niqab Case Goes to Canada’s Top Court*, CBC NEWS (Dec. 8, 2011), <http://www.cbc.ca/news/canada/story/2011/12/08/niqab-supreme-court.html>.

⁵⁴ Alison Rourke, *Australian Muslim Women Must Show Faces for Identity Checks Under New Law*, GUARDIAN (Mar. 5, 2010), <http://www.guardian.co.uk/world/2012/mar/05/australian-muslim-women-identity-checks>.

⁵⁵ *See Student Becomes First Veiled Woman to Take Oath in Parliament*, TODAY’S ZAMAN (Apr. 27, 2012), http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=278822.

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May 2012/ EGYPT

In areas of Greater Cairo, Muslim and Christian women who “do not cover their hair or who wear mid-sleeved clothing are met with insults, spitting and in some cases physical abuse (. . .) Prominent Bishop Bishoy recently declared that Christian women ‘should follow the example of their Muslim sisters and dress more modestly’. Throughout Egypt, “many Coptic women have been told ‘Our Lady Mariam [St Mary] used to wear a *tarha*, why can’t you follow her example and cover up?’”⁵⁶

July 1, 2012/ MOROCCO

The Center for Woman’s Equality launches a campaign against the veiling of young girls aged 3-10 year-old, describing it as a major form of child abuse: “Young girls are forced into wearing a headscarf by parents who tell them it will protect them from harassment or ensure they don’t go to hell.”⁵⁷

July 2012/ EGYPT

The first TV channel “completely operated by women wearing the full face veil (niqab),” *Mariya*, is launched, airing for six hours daily. If the channel cannot find a niqabi expert on a given issue, *Mariya* will give their guests two options: “either to wear the niqab temporarily during the programme, or have their faces blurred out while the programme is being broadcast.”⁵⁸

May 2012/ PAKISTAN (NWFP)

A member of the provincial assembly of the NWFP has introduced a resolution requiring that wearing a veil should be made compulsory for every girl above 12 years of age.⁵⁹

⁵⁶ Note that Coptic Christians in Egypt account for roughly 12% of the population, and that Bishoy is “one of the nominees for the papal seat of the Coptic Orthodox Church.” Mariz Tadros, *Egypt’s Women Have Had Enough of Being Told to Cover Up*, *GUARDIAN* (May 29, 2012), <http://www.guardian.co.uk/commentisfree/2012/may/29/egypt-women-cover-up-coptic?INTCMP=SRCH>.

⁵⁷ The campaign’s slogan is “So that girls won’t live in eternal darkness.” Manal Wahbi, *Campaign Against Veiling Young Girls Launched in Morocco*, *AL ARABIYA* (July 1, 2012), <http://english.alarabiya.net/articles/2012/07/01/223803.html>.

⁵⁸ *New Egyptian TV Channel to Only Feature Fully Face-veiled Women*, *MUSLIM WOMEN NEWS*, <http://www.muslimwomennews.com/n.php?nid=6918> (last visited Nov. 25, 2012).

⁵⁹ Isa, *supra* note 13.

August 2012/ TUNISIA

Two athletes, medalists at the 2012 London Olympics, are the target of a violent campaign on social networks affiliated with Islamist circles. Female runner Habiba Ghribi's⁶⁰ sport gear is denounced as "indecent" and "too revealing." She is accused of having "shamed Tunisian women" and there are calls to strip her of her Tunisian citizenship.⁶¹

II. THEORISTS OF VEILING

The facts and law outlined above identify a background against which we will consider the contributions of several theorists who have turned their attention to intersections between religion, women, and law, specifically as those have recently become visible in connection with Muslim women's veiling practices. We provide overviews of the contributions recently offered by these authors, preliminary to considering the value of their work for the project of a political liberalism capable of addressing 21st century realities.

A. Blind Multiculturalism: Martha Nussbaum and Joan Wallach Scott

Okin addressed only summarily what she called the "headscarf controversy" that had been prominently alive in France for more than a decade prior to her writing, because she saw it as minor in comparison to the polygamy problem. Further, she was not particularly concerned with the "official concern over head scarves." She summarized:

In the late 1980s. . . a sharp public controversy erupted in France about whether Maghrebin girls could attend school wearing the traditional Muslim head scarves regarded as proper attire for post-pubescent young women. Staunch defenders of secular education lined up with some feminists and far-right nationalists against the practice; much of the Old Left supported the multiculturalist demands for flexibility and respect for diversity, accusing opponents of racism or cultural imperialism. At the very same time, however, the public was virtually silent about a problem of vastly greater importance to many French Arab and African immigrant women: polygamy.

Any suspicion that official concern about head scarves was

⁶⁰ A photograph of victorious Olympic runner Ghribi is accessible at *Des islamistes menacent des athlètes des JO*, 20 MINUTES (Aug. 14, 2012), <http://www.20min.ch/ro/news/monde/story/Des-islamistes-menacent-des-athletes-des-JO-28414758>.

⁶¹ See *Eyes on Tunisia*, AL JAZEERA (Aug. 15, 2012), <http://stream.aljazeera.com/story/eyes-tunisia-0022316>.

motivated by an impulse toward gender equality is belied by the easy adoption of a permissive policy on polygamy, despite the burdens this practice imposes on women and the warnings disseminated by women from the relevant cultures.⁶²

Among the respondents to Okin's essay was American philosopher Martha Nussbaum. In her essay, *A Plea for Difficulty*, Nussbaum characterized Okin's approach as too "easy," criticizing what she saw as Okin's inadequate appreciation of the positive value of religion and her overestimation of the value of "human autonomy."⁶³

Nussbaum acknowledges that there is something problematic about a government's treating preferentially only certain "conceptions of the good" that it characterizes as "religions," while dis-prefering other moral commitments that it characterizes as "secular" (philosophical understandings, for example). She elides this problem, however, noting simply her acceptance that: ". . . from a practical political standpoint it seems likely that we have two choices only: either to give religious free exercise special protection, or to give nobody any special protection."⁶⁴ Her own choice is to favor "our traditional stance of giving religion special deference, on the grounds that minority religions have been especially vulnerable in all societies and are consequently in need of this special protection."⁶⁵

Nussbaum raises the question: "Does sex discrimination all by itself supply the state with a compelling interest in legal change, or only discrimination that denies women certain fundamental rights?" This, she observes, is "the most difficult issue the political liberal has to face."⁶⁶ Her proposal for resolution of the difficulty involves an embrace of what – in a misreading – she defines as the approach embodied in the federal statute enacted by the United States Congress in 1993, the Religious Freedom Restoration Act (RFRA).⁶⁷ That statute, which Nussbaum urges political liberals to endorse, does, as she recognizes, provide maximal protection for "religious liberty." Nussbaum errs, however, in reading that protection as extending to "religious groups," as the statutory language clearly protects the religious liberty of "individuals" rather than that of groups. Thus, in her endorsement of RFRA, Nussbaum is effectively urging liberalism's embrace

⁶² Okin, *supra* note 1, at 9-10.

⁶³ Martha C. Nussbaum, *A Plea for Difficulty*, in *IS MULTICULTURALISM BAD FOR WOMEN?* 105, 105-14 (Susan Moller Okin et al. eds., 1999).

⁶⁴ *Id.* at 111.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb-2000bb4 (1993). This act's applicability to federal law was upheld in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

of a religious-group protection even more extraordinarily heightened than the protection actually provided by that statute.

To appreciate Nussbaum's readiness to compromise women's interests, let us accept her misreading of RFRA as if it were accurate. From her perspective, RFRA permits substantial burdening of religion (i.e., of institutionalized religions or of religious groups) only when government can prove both that a "compelling interest" justifies the burdening and that no less-restrictive alternative form of regulation is available to government. The protection of liberty afforded religions by this "compelling interest" requirement contrasts strikingly with the far more limited protection of women's liberty interests in American law. Neither any Federal statute nor the U.S. Constitution delivers protection of women's liberty at the same high level as the protection afforded to religions by RFRA. Thus, while Nussbaum expresses concern for women's "fundamental rights," that concern is transparently belied by her endorsement of a Constitutional and statutory scheme within which, during the years prior to her writing, the U.S. Supreme Court had repudiated its earlier recognition that women have a "fundamental right" to abortion, and had refused to maintain its earlier-applied "compelling interest" standard to regulation of abortion.⁶⁸

What exactly does Nussbaum think should happen when religious liberty claims conflict with women's interests in equality? Nussbaum will not unequivocally criticize governmental preferencing of patriarchal religions that oppose both female autonomy and equality. Touching on the issue of polygamy that had so distressed Susan Okin, Nussbaum makes clear that her own RFRA-based analysis of polygamy will be more complex than Okin's approach, less confident that polygamy should be broadly condemned by liberalism in order to protect women's equality. Nussbaum will, instead, give great weight to the religious interests asserted to support polygamy. Governmental prohibition of polygamy may amount to a "substantial burdening" of religious freedom by an insufficiently justified government – depending on context, she notes.⁶⁹

Nussbaum's readiness to prefer religions' interests to women's is evident in this writing of 1999, and it prefigures the position that she would later adopt in her examination of the veil controversy. For now, it should be noted that her comments failed to engage with the legal and political contextual realities surrounding conflicts between "religious rights" claims and "women's equality" claims. Her highly abstract approach was naïve and incomplete in its rendering of legal doctrine. Nussbaum showed no awareness at all, for example, of the degree to which RFRA had sought to privilege religious persons far beyond what had ever been required by the

⁶⁸ Nussbaum, *supra* note 63, at 112.

⁶⁹ *Id.* at 141, n.5.

Free Exercise of the U.S. Constitution.⁷⁰ She made no mention, either, of the extraordinary “accommodations” that had been delivered to religious organizations in the decade prior to her writing, through Supreme Court interpretations of the Establishment Clause that had significantly altered the church-state balance in the United States. Nussbaum ignored the extensive empowerment of religions that was well underway by 1999, and the negative implications of that empowerment with regard to women’s interests.⁷¹

In 2007, several years after Nussbaum had responded to Okin, Joan Wallach Scott’s *The Politics of the Veil*, offered a book-length treatment of the French schoolgirls veiling controversy.⁷² Scott intended this work to be understood as making propositions about democratic political structures and about liberalism in general. She identified the implications of her specific focus: “[T]he case of the French headscarf law is not just a local story. It allows us to think more broadly about the terms on which democratic polities (including our own) are organized, and to analyze critically the ways in which the idea of a ‘clash of civilizations’ undermines the very democracy it is meant to promote.”⁷³ In light of her asserted interest in thinking broadly and critically, it is somewhat surprising that Scott’s book makes no reference whatsoever to Okin’s earlier engagement with French politics relating to Muslim practices and their meanings for women, or to Okin’s earlier challenges to multiculturalist-liberalism. Likewise, Scott makes no reference to Nussbaum. Had she engaged explicitly with these predecessors, however, Scott would definitely have located herself in Nussbaum’s camp rather than in Okin’s.

Scott’s writing usefully and chronologically documents much of the history of the French “headscarf” controversy (as Scott references it and as it came to be characterized in media coverage). Her account records developments at three stages.

Looking first at events of 1989, Scott records the expulsion of three veil-wearing girls by the principal of their middle-school (acting to enforce *laïcité*, the particularly secularist French approach to separation of church and state), and the rejection of that interpretation of *laïcité* a month later, by the highest administrative court in France, the Conseil d’Etat. The Conseil

⁷⁰ For further discussion of the effect of RFRA, see Marie Ashe, *Women’s Wrongs, Religions’ Rights: Women, Free Exercise, and Establishment in American Law*, 21 TEMP. POL. & CIV. RTS. L. REV. 163, 201 (2011). For an account of the effects and implications of recent state-law versions of RFRA, see Marci Hamilton, *The New Wave of Extreme State Religious Freedom Restoration Act (RFRA) Legislation: Why It’s Dangerous*, FINDLAW (Oct. 14, 2010), <http://writ.lp.findlaw.com/hamilton/20101014.html>.

⁷¹ For a discussion of this virtual revolution in doctrine, see generally Ashe, *supra* note 70, at 201-02.

⁷² JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* (2007).

⁷³ *Id.* at 182.

took the position that the wearing of the hijab by students in public schools did not necessarily violate the principle of *laïcité*, and that before expelling students on the basis of religious dress, local school authorities would have to decide on a case-by-case basis whether the particular attire was “ostentatious or polemical,” and whether the dress involved “pressure, provocation, proselytism, or propaganda.”⁷⁴ Scott also documents the extremely unfavorable social conditions in which many North African immigrants and their children were living in France in the 1980s and into the 21st-century. She makes clear that her analysis will highlight the racism that – historically, and into the 21st-century – characterized France’s treatment of its Muslim citizens – a racism that she saw as having motivated the move for a hijab ban. (While she notes the fact that “45 percent of Muslims polled at the time agreed that the hijab should not be worn in school”⁷⁵ Scott gives no particular weight to that observation.)

The action of the Conseil quieted the controversy for a few years, but a second stage of the hijab controversy occurred in 1994, following the elections that brought rightist politicians into office, when a decree of the Ministry of Education specified that all “ostentatious” forms of religious dress would be barred in all schools. Dress would be seen as “ostentatious” if it “introduce[d] difference and discrimination into an educational community”⁷⁶ Following the policy’s announcement, sixty-nine girls wearing hijabs were expelled from their public schools.

Intense public controversy followed the announcement of the hijab ban. Scott notes that while ban-supporters occupied the full range of the political spectrum, they were unified in their perception of a connection between ongoing events in France and “the violent civil war then raging in Algeria.”⁷⁷ They were similarly unified in their belief that: “One could not tolerate the expression of a religiosity that was itself inherently intolerant and oppressive.”⁷⁸ She provides very limited detail, however, about the specific events in France that prompted this “linkage,” and she provides no detail about the contemporaneous 1990s Algerian civil war during which Islamist radicals waged a terror campaign against civilians opposed to their theocratic project, targeting women very particularly, with veiling-mandates that were harshly enforced.

The third state of the controversy, as reported by Scott, occurred in 2003, when (incident to the heightening of security measures in Western nations after September 2001) then-President Jacques Chirac appointed the

⁷⁴ *Id.* at 24-25.

⁷⁵ *Id.* at 26.

⁷⁶ *Id.* at 27.

⁷⁷ *Id.*

⁷⁸ *Id.*

Stasi Commission to examine the question of whether a national law should be enacted to prohibit the wearing in schools of any garb signifying religious affiliation. In December 2003, the Stasi Commission recommended legislation that would have addressed numerous issues relating to discrimination against France's Muslim population. The recommendations included: prohibiting all "conspicuous" signs of religious affiliation in public schools; teaching the history and philosophy of religions in schools; establishing a national Islamic Studies school; increasing numbers of Muslim chaplains in French hospitals and prisons; providing alternatives to pork on menus in schools, prisons, and hospital cafeterias; and, recognizing Yom Kippur and Aid-El-Kebir as national holidays."⁷⁹ In fact, the only Commission recommendation accepted by President Chirac and subsequently enacted into law – in 2004 – was the prohibition of wearing "conspicuous" signs of religious affiliation in public schools.

Most of Scott's book is devoted to her interpretation of the intensification of regulation that occurred between 1989 and 2004. She argues that the regulation is directly traceable to the racism that characterized the French history of occupation in Northern Africa, and that lingers as a legacy of that shameful history. Scott develops this argument by reviewing the history of French colonialism in Northern Africa – an imperialist project in which the official assimilation policy toward the indigenous population (Arab as well as Berber) was characterized by certain colonials as a "civilizing mission"; and by others as a mission impossible because of the Arabs' alleged "difference" from the French. She tracks a history of French insistence on difference, and of racist segregation of Arabs and Berbers through the 19th century and through the first half of the 20th century.⁸⁰

Scott's study includes an exploration of the complexity of meanings carried by Muslim women's veils during the colonizing period, during the 20th century, and at the present time. (Indeed, Scott presents this complexity so effectively, making very clear the *necessarily political* meanings of the veil, that her bottom-line opposition to the ban is less than fully intelligible.) Invoking interpretative work concerning representations of North African Muslims by Europeans, she documents the prominence of Muslim women's veils in the imaginations of French colonialists in the 19th and early 20th centuries.⁸¹ But she emphasizes particularly the differing *political* meanings that the veil carried for both French and Algerians during the Algerian War of 1954-1962.

Scott proposes that the veil "was first associated with dangerous

⁷⁹ *Id.* at 34.

⁸⁰ *Id.* at 53.

⁸¹ *Id.* at 56-61. For representative images see ALLOULA, *supra* note 10.

militancy” during the Algerian War because of its association with the pro-independence National Liberation Front and because of its usefulness for the concealment and transport of weapons and bombs by militant Algerian women and men. For the French, it had a simple and political meaning during that war period: it signified danger and threat. For the Algerians, on the other hand, the veil carried multiple meanings. Scott sums up:

If the veil had one symbolic meaning for defenders of French rule, it had several conflicting meanings for the resisters. It was, to be sure, a refusal of French appropriation of the country, a way of insisting on an independent identity for Algerians. But many of the leaders of the nationalist-socialist revolution also thought of themselves as modernizers. For them to the veil was a sign of backwardness that must eventually be overcome—but on Algerian, not French, terms. In addition, the veil became a useful instrument in the war against the French, permitting the clandestine transport of arms and bombs by militants of both sexes.⁸²

With the conclusion of the Algerian War, the veil took on more complicated meanings:

For the French, it continued to stand for the backwardness of Algeria, but it was also a sign of the frustration, even the humiliation, of France. It was the piece of cloth that represented the antithesis of the *tricolore*, and the failure of the civilizing mission. Immediately after the war, for the new leadership of the Algerian nation, the veil became a contested sign of the future direction of the country . . . [T]he tension has continued in different forms to the present day, when a secular military government supported by France has managed for the moment at least to subdue a powerful challenge, which erupted into civil war in the 1990s, from Islamists (with external support from Saudi Arabia and elsewhere), among whose goals is veiling the women of Algeria.”⁸³

In her contextualizing of the controversy over the hijab in French schools, Scott records an important sociological reality that she calls the “massification” of education in France.⁸⁴ An expectation of nearly universal

⁸² SCOTT, *supra* note 72, at 62-63; see SCOTT, *supra* note 72, at 63-67 (referencing FRANTZ FANON, *A DYING COLONIALISM* (Haakar Chevalier trans., 1965)). For additional information about Fanon’s understandings of the veil, see generally Rita A. Faulkner, *Assia Djebar, Frantz Fanon, Women, Veils, and Land*, 70 *WORLD LITERATURE TODAY* 847 (1996).

⁸³ SCOTT, *supra* note 72, at 66-67.

⁸⁴ *Id.* at 108 (invoking the work of education sociologist François Dubet).

lycée (high school) attendance developed in France in the 1970s. The extension of education to the masses produced drastic overcrowding in French schools and was accompanied by reduced state support of national education. It also introduced great challenges for teachers. As “youth culture” entered the schools after 1968, and replaced the relative uniformity and rigidity of the earlier lycées, teachers encountered discipline problems that resulted in a heightened sense of inadequacy – especially in schools located in poorer districts. Thus, the teachers’ unions in France strongly supported the hijab ban, seeing it as something that would likely reduce conflict among students by eliminating religious-identifiers that might occasion conflict in schools.⁸⁵

While Scott reports on both the socially-divisive symbolizing power of the hijab and the reality of deep social conflict about it, her own political analysis is limited to an insistence that the ban was motivated by French racism. She pays little attention to the 1990s “bloody decade” in Algeria, when about 130,000 people lost their lives, mostly at the hands of Islamic armed groups who had issued warnings that women and girls should veil or face death. She does not mention the fact that, as Muslim fundamentalists were facing state repression, a number of them obtained political asylum in Europe (notably in Britain, Germany, and France) and imported their dress code diktats among French religious and ethnic minorities, hence fueling the spread of hijabs. She notes, but gives little attention to the support of the ban within the French Muslim population. Moreover, she elides the Stasi Commission’s having been influenced by French girls of Muslim heritage who reported that they would prefer not to wear the headscarf, but felt required to do so because of pressure from their parents or brothers.⁸⁶ While she records the rise of right-wing politics in France during the relevant period, rather than accurately characterizing the ban campaign as something used by racist right-wing politicians, she characterizes it as having been motivated by racism. Scott’s political analysis is one-dimensional. Her work expresses a disabled liberal vision – one focused and lingering on racism alone.⁸⁷ While venturing to engage with “the politics of the veil,” Scott

⁸⁵ *Id.* at 113-15.

⁸⁶ Cf. Karima Bennoune, *The Law of the Republic Versus the ‘Law of the Brothers’: A Story of France’s Law Banning Religious Symbols in Public Schools*, in HUMAN RIGHTS ADVOCACY STORIES 156, 162 (Deena Hurwitz et al. eds., 2009) (identifying numerous supporters of the law “from across the political spectrum [including] principled champions of secularism, leftwing anti-fundamentalists and progressive women’s rights campaigners....”) [hereinafter Bennoune, *Law of the Republic*]; SCOTT, *supra* note 72, at 66-67.

⁸⁷ Pertinent here are the reports by Karima Bennoune of comments made by Algerian feminists and secularists or their allies, whom Bennoune interviewed, contradicting Scott’s perception of racism. Bennoune reports that “Favret-Saada acerbically notes: ‘[T]he Islamists are happy to meet Europeans who are so naïve . . . and talk only about [religious]

entirely failed to attend to the threat that many French Muslims discerned as they took in the reality of an Algerian Islamist movement whose agenda – like that of fundamentalist religions’ movements across the globe – included control of women by mandatory veiling. Thus, Scott’s analysis of the “politics of the veil” is disappointingly naïve.

During 2010, both Martha Nussbaum and Joan Wallach Scott had occasion to further articulate their positions about veiling. In her essay, *Veiled Threats?*,⁸⁸ Nussbaum remained abstractedly non-political. Reviewing European legislative decisions to ban or not-to-ban burqas and/or hijab, Nussbaum urged “accommodations” of religions. Focusing on the burqa, she identified five interests that are sometimes asserted to justify bans: interests in security; interests in supporting transparency and reciprocity in relations between citizens; interests in avoiding objectification of women; interests in protecting women against coercions; and public health interests. Nussbaum concluded, highly summarily, that “[a]ll five arguments⁸⁹ are discriminatory.”⁹⁰

In August 2010, Scott commented on the French burqa ban that had been enacted during the prior month. “What is it about covered women that so draws the ire and fear of so many, some western feminists included?,”⁹¹ she asked, feigning guilelessness and as if the answer were not obvious. Extrapolating from hijab to burqa, and reiterating her earlier themes, Scott refused to confront the entirely justified “ire and fear of so many” That ire and fear affected Susan Okin: ire and fear not only about Islamist and other religious fundamentalisms, but also ire and fear provoked by the ruthless practice of multiculturalist-liberalism. A few months earlier Scott

discrimination.’ Bennoune, *Law of the Republic*, *supra* note 86, at 169 (quoting interview with Jeanne Favret-Saada, in Marseille, France (June 11, 2007)). Zazi Sadou opines that ‘those who see [the French law] only as racism do not understand the fundamentalists and the pro-veil campaign. Hence, they understand the veil only as a cultural sign, but not as an ideological uniform.’ It is perhaps logical that this political matrix is more visible to critics of Muslim heritage than to Western liberals and human rights advocates. *Id.* (quoting interview with Zazi Sadou, in Marseille, France (June 11, 2007)). As Mimouna Hadjam explains: ‘We didn’t discover Islamic fundamentalism on September 11, 2001. We have been living with it for 20 years.’” *Id.* (quoting interview with Mimouna Hadjam, in Paris, France (June 12, 2007)).

⁸⁸ Martha Nussbaum, *Veiled Threats?*, N.Y. TIMES (July 11, 2010), <http://opinionator.blogs.nytimes.com/2010/07/11/veiled-threats/>.

⁸⁹ Nussbaum appears to have forgotten that the Stasi Commission report justified its recommendations to ban the veil in schools by stating: “[T]he question is no longer one of freedom of conscience but one of public order.” For a summary of the Stasi Commission’s main conclusions see *Extraits du Rapport de la Commission STASI sur la laïcité*, 8 PYRAMIDES 107, ¶ 81 (2004), available at <http://pyramides.revues.org/381>.

⁹⁰ *Id.*

⁹¹ Joan Wallach Scott, *France’s Ban on the Islamic Veil Has Little To Do With Female Emancipation*, GUARDIAN (Aug. 26, 2010), <http://www.guardian.co.uk/law/2010/aug/26/france-ban-islamic-veil/>.

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had herself made crystal-clear the implications of that practice.

On April 8, 2010, the controversial European Muslim Tariq Ramadan made his first public appearance in the United States. Reporting on the panel discussion in New York City in which Ramadan had participated,⁹² Peter Schmidt noted:

[W]hen the discussion turned to the longstanding controversy over Mr. Ramadan's refusal to call for an outright ban on the stoning of Muslim women for adultery and [his] insistence that there should instead be a moratorium on stoning in general while Muslim jurists discuss whether it should continue. . . [his] fellow panelist, Joan Wallach Scott, a professor of social science at the Institute for Advanced Study. . . who identified herself as a feminist, said, "I actually think that his solution to the problem is not a bad one," because an end to stoning cannot be imposed on the Muslim world by the West.⁹³

What could more strongly express the uselessness of multiculturalist-liberalism? Scott forgets something perhaps entirely obvious, certainly well-understood by numerous women's rights advocates in Muslim countries: that it is neither racist nor imperialist to condemn, with no reservation, the stoning of women.

B. Liberal Monocular-ism: Leila Ahmed and Marnia Lazreg

While disappointed in the lack of historicism in the writings of Scott and Nussbaum, we do not have that complaint about Leila Ahmed's latest book.⁹⁴ Ahmed, who has previously produced groundbreaking work on women and Islam, sets to carefully map out "how and why the veiling revolution occurred, and what the appeal, methods, and driving forces of the Islamist movement were,"⁹⁵ focusing on the "veil's resurgence" in the Egyptian context since the 1950s. She demonstrates that case studies focused on a single society are critical for informing readers about the sociological, political, and social undercurrents that shape each national context.

Echoing here Scott's understanding that "the case of the French

⁹² Peter Schmidt, *Tariq Ramadan Gets the American Debate He Says He Craved*, CHRONICLE OF HIGHER EDUC. (Apr. 9, 2010), <http://chronicle.com/article/Tariq-Ramadan-Gets-the/65011>.

⁹³ *Id.*; see *Panel Discussion on Secularism, Islam, and Democracy with Tariq Ramadan, Dalia Mogahed, George Packer, Joan Wallach Scott, and Jacob Weisberg*, CSPAN-2 (Apr. 18, 2012), <http://www.booktv.org> (for Joan Scott's comments regarding the stoning issue, see segment 48:00-49:32).

⁹⁴ LEILA AHMED, *A QUIET REVOLUTION: THE VEIL'S RESURGENCE FROM THE MIDDLE EAST TO AMERICA* (2011).

⁹⁵ *Id.* at 229.

headscarf is not just a local story,”⁹⁶ Ahmed is aware that localized developments often contribute to shaping a broader reality. Ahmed’s new book attends not only to how the Muslim Brotherhood has successfully promoted the veil in Egypt, but also to how the Brotherhood has influenced and shaped debates about, and practices of, veiling in the North American context. Ahmed provides a detailed account of Egyptian Islamists’ efforts to export not only their preferred dress codes but also their particular model of Islam, and the implications that these efforts have had globally, and, particularly, in the United States.

Ahmed discusses the political project behind the Muslim Brotherhood’s unremitting promotion of dress codes for women over several decades. The Brotherhood’s goal has been to promote “the Islamist form of religious belief and practice – along with its visual accompaniment, the hijab and Muslim dress for women.”⁹⁷ As Ahmed attests, the primacy of the religious over the public sphere was clearly established in Egypt by the early 1990s, with the veil – as a visual marker of the Brotherhood’s success – having spread from its initial “forceful appearance” in the 1970s, to its “acceptance across the majority of Egyptian society. . . by the end of the 1990s.”⁹⁸ Referencing Linda Herrera’s work,⁹⁹ Ahmed notes that “for girls and women, the hijab and the teachings of conservative forms of Islam (that is, the practices of Islamism) had become the normative, expected, and even desired practice for many.”¹⁰⁰ We are troubled by Ahmed’s apparent conflation of tenets of “Islamism” (that is, beliefs and commitments of fundamentalist extremists sometimes designated as the “Muslim religious right”) and “conservative” approaches to religion. We dispute her suggestion that endorsing culturally- or socially-conservative views is equivalent to supporting the religious far-right.¹⁰¹ And, as we will further explain, this is not the only slippage we find in Ahmed’s book.

⁹⁶ SCOTT, *supra* note 72, at 182.

⁹⁷ AHMED, *supra* note 94, at 155.

⁹⁸ *Id.* at 11.

⁹⁹ *Id.* at 147 (citing Linda Herrera, *Islamization and Education in Egypt: Between Politics, Culture, and the Market*, in MODERNIZING ISLAM: RELIGION IN THE PUBLIC SPHERE IN EUROPE AND THE MIDDLE EAST (John L. Esposito and François Burgat eds., 2003)).

¹⁰⁰ AHMED, *supra* note 94, at 147.

¹⁰¹ Ahmed is not the only voice conflating conservative beliefs with beliefs and practices promoted by the Muslim religious right. Yet, we wish to point out that many norms imposed by fundamentalist politico-religious forces do violate the norms followed by traditional, conservative people. For example, the systematic destruction in the summer 2012 of Sufi shrines by militants associated with the extremist group Ansar Dine in Northern Mali, in Timbuktu in particular, is a case in point where century-old traditional worship sites are targeted as sacrilegious. See *Ansar Dine Islamists destroy ‘legendary’ Timbuktu mosque*, FRANCE 24 (Mar. 7, 2012), <http://www.france24.com/en/20120702-mali-timbuktu-unesco-heritage-site-ansar-dine-islamists-destroy-legendary-mosque>.

Throughout the Muslim world – with Egypt being no exception – generations of Muslim scholars have thoroughly debated the contested issue of whether veiling is mandatory in Islam. But, in keeping with Islamist beliefs, the Muslim Brotherhood squarely defines veil-wearing as the expression of a religious obligation. In fact, the not-so-innocent correlations that equate Muslim women with veiled women, and veiled women with piety and religious devotion – and that dominate current public perceptions in the West as well as in many Muslim-majority countries – actually attest to the success of Islamist rhetoric.¹⁰² Ahmed shows that the Muslim Brotherhood relied on potent arguments and used a variety of strategies to achieve the “profound and pervasive transformation in the norms and practices of Islam”¹⁰³ that it has accomplished. The Brotherhood’s campaign to “deliberately, actively, and systematically”¹⁰⁴ promote “the veil” has included a combination of theological justification and peer pressure. Ahmed notes that “activists enthusiastically set out to ‘educate their uninformed peers’ about the proper practice of Islam and their proper duties as Muslims,”¹⁰⁵ and that their proselytizing was made more potent by personal connections. Relying on fieldwork of Carrie Rosefsky Wickham,¹⁰⁶ Ahmed quotes Wickham’s report of the account given by an “Islamist woman” whom she had interviewed: “We buy the *khimar* for those who can’t afford it, or one of us gets the material and another one sews it. When a woman is ready to make the decision [to veil], we try to get things ready very quickly, before she changes her mind.”¹⁰⁷

Ahmed concludes: “Peer pressure and gentle albeit insidiously powerful coercion toward social conformity and the acceptance of ‘correct’ religious practice (‘Isn’t it proper, following the path of the Prophet?’) clearly were all brought into play in the process of Islamists *da’wa*¹⁰⁸ and outreach in regard

¹⁰² As Ahmed notes, many Americans and Europeans “assume [that] wearing the hijab is just what devout, observant Muslims do” – while, at least at the onset of her research on the veil’s resurgence, in her own eyes and in the eyes of her close colleague (a “well-known feminist of Muslim background”), “the hijab’s presence meant not just piety – for we both knew many women in our home societies who were deeply devout yet never wore hijab. Rather, to us, it plainly signaled the presence of Islamism.” AHMED, *supra* note 94, at 3.

¹⁰³ *Id.* at 147.

¹⁰⁴ *Id.* at 151.

¹⁰⁵ *Id.* at 3 (quoting CARRIE ROSEFSKY WICKHAM, MOBILIZING ISLAM: RELIGION, ACTIVISM, AND POLITICAL CHANGE IN EGYPT 15, 125-27 (2002)).

¹⁰⁶ WICKHAM, *supra* note 105, at 125-27.

¹⁰⁷ *Khimar* refers to a garment “covering hair, neck, and torso.” AHMED, *supra* note 94, at 152; WICKHAM, *supra* note 105, at 125-27.

¹⁰⁸ To perform *da’wa* is to awaken others to Islam. Progressive Muslims may engage in *da’wa* (for example through interfaith engagement, publications, etc.) but simply consider it as an added virtue, while it is a perceived obligation for Islamists; one of the ways through which one proselytizes in Islamist networks is charity work. WICKHAM, *supra* note 105, at 150.

to Islamic dress.”¹⁰⁹

The reference to “gentle. . . coercion” seems to eclipse the less “gentle” means used at times by Islamists, although Ahmed does allude to the “growing atmosphere of repression” in Egypt when the “legal system was used by Islamist lawyers to, in effect, harass and persecute people who did not share [their] views”¹¹⁰ and to the “violence that began to tear at the country in the early 1990s.” In such a polarized environment (and at a time when death threats were issued by Islamists against personalities and prominent intellectuals¹¹¹), it is clear that Islamist proponents of the veil were often resorting to non-“gentle” means to convince girls and women to adopt their version of an “Islamic dress.” Further, Ahmed admits that even in the US context of the early 2000s, this seemingly “gentle” social pressure could amount to a rather pressuring atmosphere – as she recalls: “When I first attended an ISNA¹¹² convention I had found it *impossibly uncomfortable* not to wear a scarf myself, since every other female there seemingly was covered.”¹¹³

Ahmed’s references to “Islamic dress” throughout most of her the book could suggest that she had uncritically endorsed the Muslim Brotherhood’s views that there exists an “Islamic” dress code distinct, perhaps, from a Christian dress code, a Jewish dress code, or a secular dress code. These references might induce readers to believe that because fundamentalist extremists have fashioned an “*Islamist*” dress code (mandated by/deemed necessary in their selective interpretation of scriptures), this particular dress code is in effect “*Islamic*” (as mandated by Islam¹¹⁴). But Ahmed does point

¹⁰⁹ AHMED, *supra* note 94, at 152-53.

¹¹⁰ Attempts by Islamists to impose religiously-justified censorship in Egypt have included repeated efforts to ban the *Thousand and One Nights* in the 1980s and as late as 2010. See generally AHMED, *supra* note 94, at 143-45. Even more recently, Islamist lawyers sued several prominent artists (writers, actors and film directors) accusing them of defaming Islam. *Egypt to Ban Classic “1001 Nights”?*, CARNAL NATION (Jan. 11, 2013), <http://carnalnation.com/content/54647/4/egypt-ban-classic-1001-nights>; Mohamed Abul Soud & Fathyia el-Dakhakhni, *Lawyers Call for Ban on “1001 Nights”*, EGYPT INDEPENDENT (Apr. 22 2010), <http://www.egyptindependent.com/news/lawyers-call-ban-1001-nights>; see *Egypt Prosecutor Dismisses ‘Arabian Nights’ Ban*, AFP (June 8, 2010), <http://www.google.com/hostednews/afp/article/ALeqM5hoEUiVate2OxeGdnQzGAL1yoLsk>; see also Ati Metwaly, *Islamists on Art*, MAJALLA (Apr. 26, 2012), <http://www.majalla.com/eng/2012/04/article55231343>.

¹¹¹ AHMED, *supra* note 94, at 4, 142-44.

¹¹² “ISNA” is the acronym for Islamic Society of North America. ISLAMIC SOC’Y OF N. AM., <http://www.isna.net/> (last visited Nov. 25, 2012).

¹¹³ AHMED, *supra* note 94, at 247.

¹¹⁴ For a concise summary of the references to “Hijab” in the Qu’ran and the ensuing debate about whether veiling is religiously-required, see Isa, *supra* note 13. Scholars and theologians who have argued that veiling is not a religious requirement include Pakistani-American Riffat Hassan. See Riffat Hassan, *The Quran on the Issue of Modesty*, EXPRESS

out that the type of so-called “religious clothing” promoted by the Brotherhood and other Islamist groups in Egypt relied, in fact, on what we would term an “invention of tradition.” The popularizing of such a “Muslim uniform” has in fact meant that the range of traditional indigenous dress styles for women has narrowed over the last couple of decades – from Egypt to the USA, as well as across the world.¹¹⁵ Further, the spreading of the veil fulfills:

the vision and the world that Islamists were tirelessly working to bring into being . . . ‘First, Islam will spread through the neighborhoods, and then to Egyptian society as a whole, and then to the Egyptian state, and then to other Muslim countries, and then to countries in which Muslims were formerly rulers, and then to other parts of the world, including Europe and the United States.’¹¹⁶

The exponential success of the veil, which Ahmed documents, is undoubtedly linked to the multiplicity of claims employed by activists (including veil-wearing women as well as preachers), who rely on arguments ranging from theological justifications to anti-imperialist rhetoric,¹¹⁷ and who adopt strategies that boost the generational divide by fueling younger Muslim women with a sense of empowerment toward their elders (because young women now feel they know *the* proper way of Islam).¹¹⁸

Further, the success of the veil’s resurgence is linked to the tenacity of

TRIBUNE (July 13, 2010), <http://tribune.com.pk/story/27362/the-qurn-on-the-issue-of-modesty/>.

¹¹⁵ See Anissa Hélie, *Problematizing “Autonomy” and “Tradition” with Regard to Veiling*, 10 SANTA CLARA J. INT’L L. 106-20 (2013); see also *WLUML Exhibition: Dress Codes & Modes*, WOMEN LIVING UNDER MUSLIM LAWS (Jan. 19, 2010), <http://www.wluml.org/node/5598> (documenting the fading geographical and historical diversity of female clothing across Muslim contexts).

¹¹⁶ AHMED, *supra* note 94, at 154.

¹¹⁷ The anti-Western imperialism rhetoric (not a specifically Egyptian discourse by any means) has been consistently employed by Islamists. For example, in the mid-1970s when the responses given by Williams’ Egyptian interviewees suggest that “adopting the hijab sometimes at least connoted a turning away from and even an outright rejection of the West and of its ways.” AHMED, *supra* note 94, at 88 (citing John Alden Williams, *Veiling in Egypt as a Political and Social Phenomenon*, in *ISLAM AND DEVELOPMENT, RELIGION AND SOCIO-POLITICAL CHANGE* (John L. Esposito ed., 1980)); see also AHMED, *supra* note 94, at 85-89. The same anti-Western imperialism rhetoric is at play in early 21st century America, as Ahmed attests, who attends Friday prayers at a local mosque and hears a sermon eulogizing Al-Banna. Al-Banna, the founder of the Muslim Brotherhood was praised “in particular for his stand against Western imperialism.” Ahmed notes: “the preacher delivered his address in the vehement Arabic anti-imperialist rhetoric familiar to me from my youth. I had not heard such speech since I left Egypt” [in the late 1960s]. *Id.* at 6.

¹¹⁸ See AHMED, *supra* note 94, at 150-51.

advocates who enforce their message through social networks of Islamists. These networks are the backbone of the “Islamic Awakening.”¹¹⁹ They have indeed proven to be extremely efficient in their proselytizing across Muslim societies and in Diaspora communities (in part because these networks offer tangible benefits to many Muslim communities’ members – including, as Ahmed notes, pro-bono legal services, matrimonial match-making; and other services. But we find Ahmed’s tone surprisingly uncritical when, borrowing from Wickham, she affords legitimacy to the claim that “activism and a sense of obligation and responsibility to reform and improve society” are “defining features” of Islamist activists.¹²⁰ Endorsing the views popularized by other academics such as Azza Karam (who suggests that “an Islamist must be committed to active engagement in the quest for a more Islamic and just society”¹²¹), Ahmed seems to agree with the assertion that Islamists strive to embody “the Islamist core commitment to activism in pursuit of social justice.”¹²² What is problematic here is not so much the recognition that Islamists – in Egypt or the USA or elsewhere – are committed activists, but rather the reference to an activism seemingly devoid of political meaning and stripped of its theocratic agenda.¹²³ To refer to a “social justice” project geared toward “reforming” and “improving” society without further qualifying, for example, the gendered implications of an Islamist version of “social justice” – or its implications for those deemed unorthodox – seems perplexing.

Shifting her attention to North America, Ahmed devotes the second section of her book to Muslims in the United States. She reports on the first waves of immigration; on Islam’s appeal to African-Americans since the 1970s;¹²⁴ on the rise of Islamist activism since the 1960s; and, on anti-Muslim racism and the impact of government “anti-terrorism” measures on peaceful citizens of Muslim heritage post-9/11.¹²⁵ Her contribution is particularly important here in that she underscores the importance of

¹¹⁹ *Id.* at 9 (explaining terminology).

¹²⁰ *Id.* at 148.

¹²¹ *Id.* at 9 (quoting AZZA KARAM, *TRANSNATIONAL POLITICAL ISLAM: RELIGION, IDEOLOGY AND POWER* 5-7 (2004)).

¹²² AHMED, *supra* note 94, at 281-82.

¹²³ In fact, as *Women Living Under Muslim Laws* has highlighted, Islamist projects are far from pursuing an innocuous “social justice” agenda: at their core, Islamists’ “main target is the internal democratic opposition to their theocratic project and to their project of controlling all aspects of society in the name of religion, including education, the legal system, youth services, etc.” *WLUML Statement to the World Social Forum – Appeal Against Fundamentalisms*, WOMEN LIVING UNDER MUSLIM LAW (Jan. 21, 2005), <http://www.wluml.org/node/1850>.

¹²⁴ See AHMED, *supra* note 94, at 171-75.

¹²⁵ *Id.* at 193-96.

transnational funding in the development of modern jihadism, as she tracks “the growing presence of the hijab in America . . . along with that of Islamism, and what their trajectories might be in America and the West.”¹²⁶

The general public often underestimates the links between some local or national organizations that purport to simply uphold the “traditional values” of their respective Muslim cultures and Islamist organizations worldwide – but Ahmed highlights those linkages. She documents how “Islamist forces [including] the Muslim Brotherhood, the Muslim World League, and the Jamaat-i Islami have played key roles in establishing mosques . . . and in establishing major and enormously influential Muslim organizations” in the US and globally since the 1950s and 1960s.¹²⁷ She insists particularly on the influence of “the Arab Gulf states,” identifying “Saudi Arabia and Kuwait [as] major donors and supporters of Islamist organizations”¹²⁸ in the United States, especially until the first Gulf War of 1990-1991.¹²⁹ By doing this, Ahmed makes accessible to a wide audience the knowledge (already familiar to some researchers and democratic advocates) that Islamist movements are part of a transnational political project that is backed up, conceptually and financially, by one of the most conservative strands of Islam, Wahhabism (which originated from Saudi Arabia). Ahmed especially underscores the role of geo-politics, including the alliance between the USA and Saudi Arabia¹³⁰ since the 1980s. She summarizes:

Following the Soviet Union’s invasion of Afghanistan in 1979, the United States and Saudi Arabia joined forces, out of their shared hatred for the Soviet Union and its “godless empire,” to defeat communism in Afghanistan. Saudi Arabia encouraged its youth to go to Afghanistan to fight the jihad against the Soviet Union. In Washington, the Reagan Administration had elevated Wahhabism to the status of liberation theology—one that would free the region of communism.¹³¹ The jihadists, dubbed “freedom fighters,” were “trained and equipped by the CIA and

¹²⁶ *Id.* at 197.

¹²⁷ *Id.* at 155.

¹²⁸ *Id.* at 188.

¹²⁹ *Id.* at 187-89.

¹³⁰ It should be noted that even if the political will existed in the US, it would be hard to undo those ties when Saudi Arabia is one of the main creditors of the U.S. (“Oil producers” collectively – including Saudi Arabia and Kuwait lo are collectively ranked 4th among U.S creditors.). See *Report on Foreign Portfolio Holdings of U.S. Securities of Treasury Securities*, U.S. DEP’T OF THE TREASURY (Nov. 16, 2012), <http://www.treasury.gov/resource-center/data-chart-center/tic/Documents/mfh.txt>.

¹³¹ AHMED, *supra* note 94, at 177 (quoting GILLES KEPPEL, *THE WAR FOR MUSLIM MINDS* 154 (2004)).

supported by petro-dollars from the Arabian Peninsula.’¹³²
 Islamist activists traveled internationally to preach and recruit for the jihad. They became the ‘beneficiaries of America’s tolerance for anti-communists of any stripe,’ and they circulated and recruited freely, including among Muslims in America. Altogether, the U.S.’s pursuit of such policies would have the effect . . . of turning the United States into an ‘Islamist haven.’¹³³

Ahmed argues that the American Muslim Student Association (MSA, set up in 1963) and the Islamic Society of North America (ISNA, established by the MSA in 1981) benefited from “international Islamist links and . . . networks,” in particular the emergent Muslim World League, whose “objective was unambiguously that of promoting, supporting and Islamism worldwide.”¹³⁴ Along with another Islamist organization, the Council on American-Islamic Relations (CAIR, formed in 1994), these groups are most vocal and they have convinced successive U.S. Administrations to accept them as the “voice of Muslims.” Ahmed notes that this dangerous trend – i.e. mistaking Islamists for Muslims, hence giving legitimacy to extremely conservative and far-right religious institutions or individuals – has been criticized by non-Islamist American Muslim communities. During the 1990s, strong criticisms appeared, focused on “the way in which the dominant Muslim American organizations were laying claim to be speaking for all Muslims when in fact they were not.”¹³⁵

With regard to dress codes, Ahmed notes, ISNA and CAIR are unequivocal:

[T]he veil as a religious requirement is absolutely and undeviatingly present in the Islam as they represent it. Both organizations, for example, typically refer to the hijab as the “religiously mandated covering for Muslim women,” and in their publications – magazines, pamphlets, books – women invariably are shown wearing hijab. The importance of hijab was the message that ISNA taught to the young in their schools, kindergartens, summer camps, and training camps.¹³⁶

Supporting her conclusion that “women’s dress and hijab” are “foundational. . . to the Islamist message,”¹³⁷ Ahmed notes statements made

¹³² AHMED, *supra* note 94, at 177 (quoting GILLES KEPEL, THE ROOTS OF RADICAL ISLAM 14 (2005)).

¹³³ AHMED, *supra* note 94, at 177 (quoting KEPEL, *supra* note 131, at 156).

¹³⁴ *Id.* at 160-61.

¹³⁵ *Id.* at 185.

¹³⁶ *Id.* at 169.

¹³⁷ *Id.*

by Zainab al-Ghazali in an interview in 1985. Al-Ghazali, the woman most prominently associated with the Muslim Brotherhood, had founded the Muslim Women's Association in the 1930s, had spent six years in prison during the Nassar regime, and for decades was central in work with the Brotherhood's educational activities.¹³⁸ Al-Ghazali appeared for the interview in white robes and "with only her face, hands, and sandal-clad feet uncovered." She told the interviewer: "If you don't go back to your religion and dress as I do, you'll go to hell. Even if you're a good Muslim and you pray and do what is right, if you dress the way you do all your good deeds will be canceled out."¹³⁹

Given Leila Ahmed's documentation of both the hijacking of power already achieved by these Islamist organizations and their emphasis that non-observance of the hijab will lead believers to hell, it is surprising to read – in *Part Two* of her book – Ahmed's tone of optimism about "the emergence of a new and dynamic Islamist feminism."¹⁴⁰ Her attitude strikes us as overly optimistic, given that many of the new "Islamist feminists" to whom she refers are grounded in ISNA and CAIR. We continue to be extremely suspicious of any suggestion that Islamism, as a political movement whose "foundational" belief relies on gender inequality and the subjugation of women, can be merged with feminist aspirations. It seems to us naïve that Ahmed can forget her own warning that: "In my own experience, Muslim religious authorities, by definition ensconced in power, do not listen. Rather, they ignore, silence, or attempt to crush criticisms of Islamic views and practices no matter how justified or ethically grounded."¹⁴¹

In spite of this experience, Ahmed reports that during the last decade, and post- 9/11/2001 she came to feel that "we were now apparently in a new time in America, as new space seemed to be opening up for fruitful and collaborative exchanges between American Muslim religious authorities [dominated by Islamists] – now that Muslims found themselves an embattled minority needing the support of others – and people speaking from other American ethical traditions, religious and non-religious."¹⁴² To support her assessment, she notes for example the "quite palpable" changes she observed in more recent ISNA conventions, where increased numbers of non-Muslim

¹³⁸ See *id.* at 109-13 (referencing Zaynab al-Ghazali, *From Days of My Life Chapter 2*, in PRINCETON READINGS IN ISLAMIST THOUGHT 276, 283-90 (Roxanne L. Euben & Muhammad Qasim Zaman eds., 2009)).

¹³⁹ AHMED, *supra* note 94, at 113 (citing to Kristin Helmore, *Islam and Women: An Egyptian Speaks Out*, CHRISTIAN SCI. MONITOR (Nov. 26, 1985), <http://www.csmonitor.com/1985/1126/ozena.html>).

¹⁴⁰ AHMED, *supra* note 94, at 190.

¹⁴¹ *Id.* at 204.

¹⁴² *Id.*

speakers were welcomed,¹⁴³ where more controversial topics were addressed (e.g., sexual orientation), and where the “sense of male dominance and of gender hierarchy as a foundational value that was ostentatiously and unapologetically asserted” was now “eroding and being challenged.”¹⁴⁴

We feel that the major shortcoming of Ahmed’s otherwise informative and thorough research is that it evades the critical question of whether feminists can achieve meaningful and lasting changes when working “from within” institutions that are deeply patriarchal and opposed to gender equality. Further, she appears to willfully dismiss the fact (documented in other contexts) that, beyond “ignoring, silencing or crushing” dissent, Islamist organizations can also *co-opt* dissenters within their communities or dissenters’ frameworks of choice. Our concern is not merely hypothetical. Islamist organizations have been actively working to co-opt human rights discourse and have had some success in their efforts.¹⁴⁵

To support her affirmation that change is on the way, Ahmed relies on individual profiles of women, including dynamic Islamist advocates, and on what she has learned through having attended ISNA open meetings over several years. She first reminds us that “the veil’s meanings are not fixed or static across histories and societies.”¹⁴⁶ This is true enough – except that it never seems to turn out, ultimately, to be in the interests of women. Ahmed then takes an additional step – perhaps a step too far – asserting that: “Somehow with the rise of Islamism – and quite possibly because activist women and wearers of the hijab became directly involved in generating the meanings of the hijab – the hijab’s meanings began to break loose from the older, historically bounded moorings.”¹⁴⁷

We remain more inclined toward the skepticism initially expressed by Ahmed:

Early in my research, I could not fathom by what process of transformation and reforging in the crucible of history the veil, widely viewed as the emblem of Islamic patriarchy and oppression, had come now to signal a call for gender justice (of

¹⁴³ *Id.* at 241-45.

¹⁴⁴ *Id.* at 248.

¹⁴⁵ Indeed a number of high profile Islamists have been assumed to be – or have even been presented as – human rights defenders by mainstream human rights organizations such as Amnesty International, Human Rights Watch or the Center for Constitutional Rights in New York. For criticism of the collusion of human rights advocates and Islamists, and the risk involved in legitimizing Islamists, see Meredith Tax, *Women and Islam: An Exchange with Kenneth Roth of Human Rights Watch*, N.Y. REV. OF BOOKS (Mar. 22, 2012), <http://www.nybooks.com/articles/archives/2012/mar/22/women-islam-exchange-kenneth-roth-human-rights/>.

¹⁴⁶ AHMED, *supra* note 94, at 212.

¹⁴⁷ *Id.*

all things) and a call for equality for minorities.¹⁴⁸

We cannot join her in her view that the veil has simply become a “fashion statement” or that it has “emerged today in America as an emblem of a call for justice, and even for gender-justice.”¹⁴⁹ While it may be seen as such by individual wearers, this does not negate its profoundly political meaning. The belief that one can “break free of historically bounded meanings”¹⁵⁰ may be ascribed to individuals and their motives. But there is little reason to imagine that it can interrupt the well-funded and powerfully Islamist project that Ahmed has documented so well. We are disappointed by the narrowness of the political vision evident in Ahmed’s merely-passing observation concerning some veil-wearers’ characterizations of the hijab as a challenge to the sexism of their own Western societies. Ahmed notes – but does not at all probe the present political implications of – the reality that the veil could not possibly have such a challenging meaning “in Cairo or Karachi or Riyadh or Tehran.”¹⁵¹ Ultimately, we find Ahmed’s optimism to be misguided, unsupported and unconvincing.

Despite the solid findings that she records throughout her book, Ahmed appears to lose her way in the last section of the book. The tone of *Part Two* seems to us almost schizophrenically different from that of *Part One*. After having carefully documented the takeover of public debate in the U.S. by Islamists who are succeeding in portraying themselves – and their interpretation of Islam – as the authentic voice of the American Muslim community, Ahmed does acknowledge that “Islamist influence is in fact a common feature in the lives of probably the overwhelming majority of the most prominent American Muslim activists of our day.”¹⁵² At the same time, however, she appears unconcerned about continuing risks raised by that Islamist dominance – risks that include: in general, Islamists’ constructing their interpretation of Islam as *the* valid religious discourse in the U.S. public debate; and, in specific, Islamists’ dictating the meanings attached to and propagated by veiling.

In her attempt to encourage readers’ hopefulness that Islamists’ massive credentials in U.S. government, and in public debates, will be effectively countered, Ahmed relies heavily on anecdotes about individuals, particularly (though not only) on stories about veil-wearing women who rose to positions of leadership in the U.S.¹⁵³ While these individual stories powerfully

¹⁴⁸ *Id.* at 211.

¹⁴⁹ *Id.* at 8, 213.

¹⁵⁰ *Id.* at 119.

¹⁵¹ *Id.* at 213.

¹⁵² *Id.* at 253.

¹⁵³ Ahmed contrasts these women with their peers in Egypt where, she notes “Islamist women who do important work for the organization . . . continue to find themselves

underscore the fact that veil-wearing women can indeed be strong and assertive, we find it difficult to believe that individual “successes” and individuals’ narratives of empowerment necessarily predict advances at a collective level. In fact, many movements associated with the religious right have co-opted women. Such movements have sometimes responded to women’s demands for access to more leadership; sometimes they have endorsed or even promoted women’s political participation. But when these steps have been taken, they have never departed from the condition that women remain political tokens and that patriarchal gender norms persist.

Ahmed includes – in the range of “engaged Muslims” who make her hopeful – individual toe-the-line Islamists; members of the Muslim gay group Al-Fatiha; and feminist theologians. She apparently views all of these as examples as benefiting from an “Islamist heritage” grounded in commitment to “social justice.” But this seems to us highly unpersuasive – equivalent to a proposition that “liberation theology” dissidents and Vatican-based cardinals belong to a single “Catholic social activists” group. We consider it puzzling for example that Ahmed finds the experience of a lesbian woman of Iranian origin (pen name: Khalida Saed), her involvement in Al-Fatiha, and her endorsement of “progressive” Islam to “directly echo the Islamist understanding of Islam as centered on the quest for social justice and the activist commitment to working to bring this about.”¹⁵⁴ It seems that Ahmed does not sufficiently unpack the “social justice” project promoted by Islamism’s current incarnation in the USA – and it is surprising to see this after her having clearly characterized Islamism in the Egyptian contexts as a “particular and very political form of Islam.”¹⁵⁵

Further, Ahmed blurs significant political boundaries when she proposes that the whole cohort of 21st century “committed and activist American Muslims share a number of noteworthy traits”¹⁵⁶ – and when she points at “the Islamist heritage” as the common basis that “is in many ways implicit in some of the traits characteriz[ing] this generation of activists.”¹⁵⁷ She does try at times to distinguish the “more progressive and gender-conscious Islamic organizations”¹⁵⁸ from others who “carefully remain within the accepted bounds of orthodox belief.”¹⁵⁹ Puzzlingly, however, at the same time that Ahmed celebrates the “easy blending of American and

marginalized and unrecognized.” *Id.* at 257.

¹⁵⁴ *Id.* at 282 (referencing Khalida Saed, *On the Edge of Belonging*, in LIVING ISLAM OUT LOUD: AMERICAN MUSLIM WOMEN SPEAK 86, 92 (Saleemah Abdul-Ghafur ed., 2005)).

¹⁵⁵ *Id.* at 3.

¹⁵⁶ *Id.* at 285.

¹⁵⁷ *Id.* at 287.

¹⁵⁸ *Id.* at 276.

¹⁵⁹ *Id.* at 270.

Islamist ideals of activism and ethical commitments,”¹⁶⁰ she concludes that “it is after all Islamism specifically that valorized activism and activism explicitly undertaken as committed and visible Muslims in the cause of social justice as a fundamental religious obligation”¹⁶¹ – leaving us wondering whether she is intentionally erasing any legacy of a left-oriented activism among Muslim communities, or any legacy of the role that the notion of secularism played in anti-colonial struggles, in which many of the older generations of Muslim immigrants participated. Our feeling is that while Leila Ahmed casts a clear-eyed gaze on history, she closes at least one eye to that history when she asserts her expectations for the future.

Marnia Lazreg, in her recent publication, *Questioning the Veil*,¹⁶² engages with both the history of Muslim veiling and the question about how societies and laws should respond to the impasse in liberalism identified by Susan Okin. Lazreg expresses frustration with both bans (in France and in Turkey) and mandates (in Iran and Saudi Arabia) – relating to the wearing of various forms of Muslim veils. Criticizing both prohibitions and mandates, she elects to imagine a space within which women would be neither forbidden nor compelled with regard to their clothing, and to explore the political and ethical aspects of decision-making that women might undertake within that space. Along the “existential-philosophical” path that she tracks to her position of abstention from both mandates and bans, Larzeg offers multiple reasons – all of which are invocable by advocates of regulation or prohibition, and none of which reflect moral indecisiveness or cultural relativism – as to why women should not wear the veil. Lazreg provides resources for a liberalism interested in re-routing itself in order to escape the impasse produced by multiculturalist relativism.

Questioning the Veil is structured in the form of “open letters” to Muslim women, whom Lazreg defines as “women-who-wear-the-veil-because-they-think-it-is-a-religious-obligation-in-Islam”¹⁶³ or women considering adopting the practice of veiling. When she references “the veil,” she generally intends to designate the hijab.¹⁶⁴ Approaching the veil issue, Lazreg identifies her own Muslim family background and her pride in her heritage; her having grown up in colonized Algeria (where her mother, aunt, and grandmother all wore full-length veils); and, her lack of animus against Islam. She also identifies herself as a woman who “do[es] not and will not

¹⁶⁰ *Id.* at 235.

¹⁶¹ *Id.* at 287.

¹⁶² See MARNIA LAZREG, *QUESTIONING THE VEIL: OPEN LETTERS TO MUSLIM WOMEN* (2009).

¹⁶³ *Id.* at 12.

¹⁶⁴ *Id.* at 13.

wear a veil.”¹⁶⁵ Her purpose is to persuade Muslim women that wearing the veil is a very bad idea.

Introducing her work, Lazreg muses on the contributions to the issue of veiling – or, more precisely, the issue of re-veiling that has been underway since the 1970s – that have been made by other academics in her field of sociology. She has found this work inadequate, and she explains that it has disappointed her because it is uncritical; fails to give due weight to the realities of physical and psychological harm attached to veiling; and shirks the responsibility of attending to the broad range of Muslim women’s experiences – largely because of an excessive concern not to privilege “Westernization.” Because we want to locate Lazreg’s book relative to the predecessor contributions made by Okin, Scott, and Nussbaum, it will be useful to look carefully at the critique she formulates about the kind of work she herself will seek to avoid:

The reveiling trend coincided with an approach espoused by academic feminists that seeks to correct the notion that the veil is a sign of “oppression” but in reality makes oppression more intellectually acceptable. Although acknowledging that veiling may enforce gender inequality, this approach uncritically and apologetically foregrounds lower-middle-class women’s stated reasons for taking up veiling. Its proponents engage in various degrees of sophisticated theoretical hair-splitting in order to excavate the operative agency assumed to be lurking behind the veil, subverting its use, and turning it into a tool of empowerment. The implication is that the “oppressed” are not so oppressed after all; they have power. Faced with this newly discovered power frontier, the researcher does no more than study its manifestation. She finds power in a woman’s decision to veil herself, and the veil is hailed as securing a woman’s ability to work outside her home, or protecting her husband from experiencing jealousy. In bending over backward to “give women a voice,” adherents to this approach find it necessary to dismiss the reality of the women who object to veiling. These are routinely disposed of as being “elite,” “upper class,” and “Westernized.” Implicitly, apologists for veiling seek to disempower local women who have a different understanding of veiling from theirs and to delegitimize these women’s views while at the same time validating their own as those of dispassionate outsiders, intent upon discovering the truth of veiling or reveiling against the “Westernized” native . . . [This] represents, in effect, a new form of prejudice. [citations

¹⁶⁵ *Id.* at 10.

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omitted]¹⁶⁶

We hear in Larzeg's complaint, here, something analogous to Okin's complaint about the problems apparent in multiculturalist-liberalism's refusal to interrogate certain "others" (especially those who seem least "Westernized"). Like Okin, Larzeg complains about liberals who report only selectively on the contexts on which they report (in order, perhaps, to make their refraining-from-judgment less apparent and less shocking). The consequence of the non-judgmental apologetic method is harmful:

The hidden premise of the apologetic approach is that the veil is unquestionable because its wearers purportedly assume it to be so, and as long as they "choose" it, our task as researchers is to reveal its benefits for *them* . . . Furthermore, the academic sanctioning of the veil turns it into a fixture of the Muslim landscape instead of an evolving phenomenon.¹⁶⁷

She will introduce to discussion of the veil both pointed questions and rich account of history, refusing to become disabled by a discovery of "agency":

As a social scientist, I cannot deny women's agency or substitute mine for theirs on grounds that I am more equipped to make sense of their motivations than they are. By the same token, mystifying rationalizations are not necessarily expressions of false consciousness or [of] "agency." However, agency is not a free-floating capacity independent of the social framework within which it expresses itself; neither is it above questioning.¹⁶⁸

So, Lazreg reports, her work here will be one of "existential philosophy" – an effort that will also involve psychological investigation: "[V]eiling involves *me* as a woman who grew up with relatives, neighbors, and friends who wore, or still wear, a veil. Veiling is existentially familiar to me; it has been part of my life even though I do not and will not wear a veil."¹⁶⁹

At her point of departure, she notes that: "[I]n the Muslim world as well as in the 'West,' veiling has come to represent the essence of Islam, [and, therefore] little space has been made in which this practice could be examined outside the framework of religion, or for its potentially deleterious

¹⁶⁶ *Id.* at 6-7.

¹⁶⁷ *Id.* at 7.

¹⁶⁸ *Id.* at 9-10.

¹⁶⁹ *Id.* at 10.

psychological effects.”¹⁷⁰ Her project will include both her persuasive arguments that veiling is not religiously-required and that it does indeed produce negative psychological – as well as physical – effects. She will engage in “rational reflection” with her audience about these matters.¹⁷¹

Lazreg’s method of “rational reflection” in engagement with religious women proves more engaging than that term may seem to promise. It includes first-person narrative: some of that involving recollections of her childhood in Algeria; some of it reporting her interviews with Muslim women concerning their experiences through times of unveiling (1950s and 1960s) as well as through times of re-veiling (1970s to the present). She recollects what she has seen and heard about the physical and psychological experiences of being veiled – detailing the deprivations of sensory experience and the stunting of psychological development that are produced by partial isolation from an outside world of natural phenomena and of other human beings. Much of this “thick description” content is powerfully affecting.

Lazreg addresses separately and persuasively the claims that veil-wearing is a mandated act of modesty; that it protects women against sexual harassment; that it expresses “cultural identity;” and, that it is mandated as a matter of conviction and piety. Her commentary includes both Quranic interpretations and very practical common-sense observations.

Her concluding chapter/letter – *Why Women Should Not Wear the Veil*¹⁷² – develops a multi-faceted argument that particularly emphasizes the responsibilities that Muslim women have to history and to their co-religionist women throughout the world at the present moment. She insists that young women in Algiers, New York, and Paris who are considering the adoption of the veil as a matter of “choice” must become conscious of what that move would mean for Muslim women living in areas of the world other than their own. “Context is the most important factor that undermines the validity as well as the legitimacy of justifications for the veil at the current historical juncture.”¹⁷³

As far as history – Larzeg states:

. . .I do not think that the women who veil themselves today in Algiers, Paris, or New York are engaged in the same struggle as Algerian women were in the 1950s, when they freed themselves of the veil in order to make history. The war in Iraq bears similarities to the Algerian war in military strategy and the logic of conquest. It has been a setback for women, whose condition

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 12.

¹⁷² *Id.* at 97-131.

¹⁷³ *Id.* at 124.

has been aggravated. . . . Similarly, Afghan women had been caught in the middle of a long civil war that brought to the fore the Taliban, and they continue to be the casualties of ongoing battles between US/NATO troops and local warlords. They were forced not only to wear the burqa but also to refrain from working, among other restrictions. Given these circumstances, it is difficult to see how the veil could be perceived as a tool of liberation or a symbol of resistance for women who wear it outside of these war zones. These women are not taking up the veil in solidarity with Iraqi or Afghan women.¹⁷⁴

A woman's "choice" of the veil, Lazreg urges,

. . . engages her responsibility toward other women. The fight for recognition of the veil as summing up Islam that takes place in Paris, New York, or Istanbul necessarily affects the women in Rivadh and Tehran who are compelled by law to wear it. As a custom grounded in history and sanctified by theologians, the veil is never innocent; it is not what it seems to be – a mark of religiosity. It is part of a historic power configuration . . . and its rehabilitation as a custom reduces women to their biological body and denies them autonomy in their body. Cultural relativism should not obscure the real effects of veiling on a woman's psyche as she lives out her concrete existence.¹⁷⁵

Lazreg warns young Muslim women to be very wary of the distinctive form of "Islamic feminism" currently being advocated by Tariq Ramadan. Its advocacy of veiling, she insists, belies its promise.¹⁷⁶ "The temptation of the veil" being proffered by young Muslim women is – equally – "real" and "misleading."¹⁷⁷

So, Lazreg's work – while she refuses to engage the ultimate political question that we have framed as our focus in this essay – is nonetheless richly historical and deeply political. It offers Muslim women an alternative to Islamism – an engagement with the present and the future that is deeply informed by their history. We appreciate the value of her imagining a space of broader freedom for women and we find inspiring her modeling of access to an intellectual space outside of cultural relativism.

At the same time, however, we have characterized Lazreg's approach as somewhat "monocular." We've done this because we are skeptical about her attempt to avoid the question of whether liberalist policies should – in some

¹⁷⁴ *Id.* at 129.

¹⁷⁵ *Id.* at 125-26.

¹⁷⁶ *Id.* at 115-18.

¹⁷⁷ *Id.* at 126.

contexts – prohibitively regulate veiling. We believe that the history of Islamism of the 20th and 21st centuries – much of which Lazreg herself reports – makes that question unavoidable. So, while her powerful writing offers clarifications for Muslim women, it does not afford the same clarification for the liberalism project in general, precisely because it does not engage with the possibility that liberalism, in order to do its proper work, may sometimes and in some contexts have to support regulation that looks “intolerant.”

C. Liberal Binocular-ism: Nadia Geerts

Thus far we have focused on theoretical writing (Scott, Nussbaum, Ahmed, and Lazreg) in which the issue of Muslim women’s veiling practices has fully occupied the field of inquiry. But, as noted above, Muslim women’s re-veilings – and, indeed, the totality of minority-religious practices contradictory of women’s equality – are not the only developments posing challenges to multiculturalist-liberalism. The expanded power of majority-religions in the West, including those (Christian and Jewish) that are more mainstream than Islam, poses related challenges. These majority-religions are also patriarchal, and liberal governments have historically colluded with their obstructions of women’s access to quality and to full citizenship. Because of both these developments, we note again, the question on which we want to focus is therefore the broad one: *How should civil government treat any culture- or religion-based claim that clashes with the norm of gender equality?* We have found in recent work of Nadia Geerts an approach to this question that is powerful in its rejection of the paralysis of multiculturalist-liberalism. Geerts argues strenuously and persuasively that women’s equality claims must always prevail over claims that are based on culture or religion. She argues that no argument deserves elevated status simply because it is attached to religiously- or culturally-based beliefs or practices.

Geerts has devoted two books¹⁷⁸ to questions arising at intersections of democratic values, secularism, and religious symbols, tackling specifically the issue of veiling.¹⁷⁹ In both she examines veiling as it has occurred in the

¹⁷⁸ See generally NADIA GEERTS, *L’ECOLE A L’EPREUVE DU VOILE* (2006) [hereinafter GEERTS, *L’ECOLE*]; NADIA GEERTS, *FICHU VOILE!: PETIT ARGUMENTAIRE LAÏQUE, FEMINISTE ET ANTIRACISTE* (2010) [hereinafter GEERTS, *FICHU VOILE !*].

¹⁷⁹ Geerts articulates her decision to depart from the “foulard” (“scarf”) terminology sometimes used in France and Belgium to designate the hijab. GEERTS, *FICHU VOILE!*, *supra* note 178, at 19. Explaining her general usage of “voile,” (i.e., “veil”) she emphasizes that she sees the range of Muslim head- and body-coverings as “variations of a single phenomenon, the sacralization/diabolization of a part of women’s bodies, making that particular part ‘untouchable’ – or, more precisely, ‘invisible.’” *Id.*

context of recent social and legal developments in Belgium. At the same time, she documents trends that have evolved in France since the early 2000s, and she references developments in Northern Europe and in North America, particularly in Quebec, Canada. Geerts' perspective reminds readers of the importance of examining the full range of contexts within which events may be situated. The broader view will often disclose linkages between local or domestic events and much larger related international developments.

Noting that the political subgroups of society that traditionally constitute the Left are deeply divided in the debate on veiling, Geerts summarizes the varied and contradictory positions that are advocated in Europe by, respectively, feminists, secular people and democrats.¹⁸⁰ (And, as she states, one single person can indeed embody or support all these commitments.) Among feminists, some support the veiling ban at school or in institutional settings, while others believe that no emancipation can be achieved if it is imposed in a top-down manner or that empowerment of women cannot be brought about by "external" actors.¹⁸¹ Among secularists, some advocate an approach privileging "inclusive secularism, tolerance, and equal respect for all."¹⁸² (Persons in this subgroup tend to find appealing Quebec's model of "reasonable accommodations" of religion.) Other secularists insist that there should be no intrusion of the religious into the institutional sphere.¹⁸³ Finally, as Geerts notes, among liberal-democrats, there tends to be widespread discomfort with the idea that "in order to preserve certain democratic principles, one may need to resort to measures" that include banning and prohibiting some practices¹⁸⁴ (an idea seemingly in tension with liberalism's commitment to "tolerance").

Throughout *FICHU VOILE!*, Geerts aims both to debunk prevalent misconceptions about the veiling phenomenon and to clarify critical issues. For example, while she highlights the fact that veiling is on the rise in Belgium (as it is in other nations generally), she rejects easy explanation: this "phenomenon cannot be attributed to immigration" in recent years. Rather, it must be understood as related to the rise of radical Islam and, particularly, to the influence of Saudi Arabia's funding of local mosques and that nation's support of proselytism among young people.¹⁸⁵

We read Geerts as particularly concerned with five specific and inter-related developments that are connected to the weakened condition of

¹⁸⁰ *Id.* at 22-25.

¹⁸¹ *Id.* at 22-23.

¹⁸² *Id.* at 23.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 24-25.

¹⁸⁵ *Id.* at 20.

contemporary liberalism: (i) a shift in the discourse of rights which at times also informs a shift in legal decisions, and in public opinion; (ii) an elevation of the notion of individual freedom to an extent, she argues, that threatens the modalities of harmoniously “living together”¹⁸⁶ in institutional settings (such as schools, state institutions and the political arena specifically); (iii) a denial of the political dimension of veiling; (iv) a denial of the gendered implications of veiling; and, (v) an increasing, and misplaced, deference to any practice or belief presented as religious. She expounds upon each of these evolutions.

A shift in the discourse of rights: First, Geerts identifies and questions a major shift that has affected the veil debate in the context of debates about “interculturalism” versus “multiculturalism,” currently powerful in Belgium and elsewhere.¹⁸⁷ She asks specifically: How did the notion of a “right to difference” (i.e., a right to be different from the mainstream norm) become transformed into the concept of a “difference in rights” (such as is demanded by advocates of veiling)?¹⁸⁸ As Geerts asserts, the “right to difference” must be ensured in all democratic environments since “a truly intercultural society should uphold, and be based on, common values that transcend our varied particularisms, including religious ones.”¹⁸⁹ But the shift in discourse – as well as in practice – that trends toward recognition of “difference in rights” amounts to a perversion of the foundational “right to difference” that democracies should guarantee.

An elevation of the notion of individual freedom: For Geerts, this shift – and the currency it has gained – may well involve several factors, but it can be explained in part by the current “sacralization of freedom [which] nowadays seems to suspend all judgment [use of reason], as well as to forbid any reminder of a norm, or any reference to values of emancipation, freedom and progress.”¹⁹⁰ (Geerts appears to be alluding here to what is often identified as an effect of “anti-foundational” theory in the West.) As she

¹⁸⁶ This expression (loosely translated from “le vivre ensemble”) is used in European French-speaking contexts (mainly France and parts of Belgium) to convey the aspiration of living together, as diverse communities, in a spirit of harmonious coexistence. See *id.* at 200-01.

¹⁸⁷ *Id.* at 27. Geerts addresses this debate most specifically at 199-212, making clear her rejection of the “idyll of multiculturalism” and her advocacy of an “interculturalism” truly able to support “living together.” See *id.* at 201.

¹⁸⁸ *Id.* at 27. For similar comment on this transformation, see Lalia Ducos, *Personal Status and Bilateral Agreements*, WLUML (July 2011), available at <http://www.wluml.org/resource/dossier-30-31-struggle-secularism-europe-and-north-america> [hereinafter Ducos] (informing, “Muslim fundamentalism is also growing in France . . . Secularist activists see with great disquiet those who accept the existence of differences accepting a difference in rights, in the name of respect for difference.” *Id.* at 89).

¹⁸⁹ GEERTS, L’ECOLE, *supra* note 178, at 28.

¹⁹⁰ *Id.* at 22.

points out, “To go against the grain of this relativism is to systematically bring upon oneself suspicion, or even accusations, of racism, intolerance, Western-centrism, neo-colonialism, and, of course, of ‘Islamophobia.’”¹⁹¹

Compounding the effects of a “sacralization of freedom” is an additional confusion that is skillfully maintained or manipulated. As highlighted in Claude Javeau’s *Preface* to Geerts’ volume, there exists “a confusion, which ought to be emphasized, between a freedom proclaimed at an individual level and a freedom to be defended at a collective level.”¹⁹² In the context of veiling controversies, we would distinguish two types of claims. First, the “*My veil, my right!*” slogans seen in various European pro-veil street demonstrations and in Islamist pamphlets that seemingly promote individual “modesty” or individual “freedom of choice” can be read as asserting claims to “individual freedom.” In contrast, a claim based on the argument that the veil is *the* symbol of (a mythical) Muslim identity and that criticism of the veil amounts to a denigration of “Muslim values” that is harmful to Muslims as a religious or cultural group would be a claim asserting “collective freedom.” The two factors – sacralization of freedom and confusion over the nature of claims – combine to lead to a specific threat: the possibility that “religious propaganda, as it aims to move religion out from /the private sphere in order to establish it in the public sphere, threatens to fragment the public space into communal ghettos.”¹⁹³

A denial of the political dimension of veiling: Geerts notes that many commentators fail to recognize that the veil is not a simple “religious symbol” but remains – *no matter* what the intention of the individual subject/veil-wearing woman may be – “a flag . . . for an Islamist social project” in which “religion comes first and state comes second;” in which “women’s bodies are kept under men’s control;” in which “coeducation or mingling of the sexes is challenged at school and in society at large; and, in which Western democratic values are undermined and attacked.”¹⁹⁴ The European Court of Human Rights expressed this understanding of the meaning of the veil in 2004, in *Sahin v. Turkey*,¹⁹⁵ Geerts notes, when the Court stated: “Beyond a simple innocent garment, the ‘scarf’ is becoming the symbol of a vision that contradicts women’s freedom and the

¹⁹¹ GEERTS, L’ECOLE, *supra* note 178, at 11, 22 (identifying the invention of this term by Khomeini “to designate Muslim women who refused to wear the veil”); *see also* MEREDITH TAX, *supra* note 8.

¹⁹² GEERTS, L’ECOLE, *supra* note 178, at 7.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 27-28.

¹⁹⁵ *Sahin v. Turk.*, App. No. 44774/98 Eur. Ct. H.R. (2004). The judgment was affirmed by the Grand Chamber in *Sahin v. Turk.*, App. No. 4474/98 Eur. Ct. H.R. (2005), *available at* <http://www.echr.coe.int/echr>.

fundamental principles of the [Turkish] Republic.”¹⁹⁶ But, Geerts points out, while there is awareness of the political dimension of veiling in some circles, in others, the veil continues to be treated as a banal or an innocuous marker adequately characterized as a “scarf” or as a “simple piece of cloth.”¹⁹⁷ In Belgium, this banalization has led to governmental tolerance of civil service employees wearing religious symbols in their workplaces;¹⁹⁸ of a college professor wearing hijab to teach;¹⁹⁹ and of a member of Parliament wearing a veil.²⁰⁰

A denial of the gendered implications of veiling: Geerts observes that proponents of veiling often insist on an individual “woman’s right to choose [the veil].”²⁰¹ (This slogan was repeatedly used in demonstrations against the banning of the burka in France in 2009 and, prior to that, in 2004–2005 in opposition to the law banning all conspicuous religious symbols in French state schools.) Crafted by the theoreticians of radical Islam (who usurp the mantra of supporters of abortion rights for women), such slogans can confound Western liberals who, afraid of being labeled racist, fall into the trap of cultural relativism. As Geerts jokes, somewhat bitterly: “Here is a true progressive mantra: the argument that one is free to choose one’s shackles!”²⁰²

Undoubtedly, some women and teenagers can derive personal benefits from being veiled. We are aware that veil-wearing might, for example, permit their taking advantage of their status as “virtuous,” “modest,” and “pious,” and thereby allow them freedom to engage in activities that would not otherwise be possible for them – e.g., pursuing studies; displaying deep

¹⁹⁶ This understanding has also been expressed by numerous human rights advocates and feminists. See Karima Bennoune, *Secularism and Human Rights: A Contextual Analysis of Headscarves, Religious Expression, and Women’s Equality Under International Law*, 45 COLUM. J. TRANSNAT’L L. 367 (2007) [hereinafter Bennoune, *Secularism and Human Rights*]. See generally GEERTS, L’ECOLE, *supra* note 178, at 33–34; Ducos, *supra* note 188. At the same time, it is effectively denied by certain human rights groups, prompting feminists such as Nadia Geerts to argue in response. See Nadia Geerts, *Lettre ouverte à Amnesty International* (Apr. 25, 2012), <http://nadiageerts.over-blog.com/article-lettre-ouverte-a-amnesty-internationa-104056238.html> [hereinafter Geerts, *Lettre ouverte*].

¹⁹⁷ Geerts, *Lettre ouverte*, *supra* note 196, at 21.

¹⁹⁸ Geerts references the policy recommended by the Diversity Office of the Ministry of Justice, recommending that religious symbols be allowed for government workers. *Id.*

¹⁹⁹ Geerts provides an account of a case involving a veil-wearing mathematics teacher, and argues that teachers’ veil-wearing – even in the absence of their actively proselytizing – violates the “neutrality” essential to the teacher-student relationship. *Id.* at 158–62.

²⁰⁰ Geerts criticizes sharply the veil-wearing of Mahinur Ozdemir, elected to Parliament in 2009, characterizing it as marking her religious identity in a singular way and as confusing elected officials’ – or candidates’ – political projects with their religious or philosophical beliefs. *Id.* at 168.

²⁰¹ *Id.* at 112.

²⁰² *Id.*

cleavage; or, sneaking out to meet lesbian lovers. Undoubtedly, too, many veiled women are strong and empowered, and able to challenge the often racist environments in which they live. Still, the veil remains, as Chahdortt Djavann has stated powerfully, the “yellow star of women’s status.”²⁰³

Geerts notes that advocates of veiling often accuse their opponents of being Western imperialists who systematically undermine women’s agency and construct all “Muslim women” as inherently victimized. Deconstructing that proposition, she urges that veiled girls and veiled women are indeed victims of a pervasive form of imperialism – but not of the Western type, as generally alleged: rather, they are “victims of Saudi imperialism.”²⁰⁴ Indeed, the veil may be a cultural marker – but, as such, it has nothing to do with the traditions from which the families of most veiled women and teenagers in Belgium originate: the plain, dark or white, veils prevalent in Belgium could not be farther away from Turkish or Moroccan traditional forms of veiling.²⁰⁵

Further, Geerts proposes, veiled women and girls are constructed as “victims-only” by advocates of the veil, as much as they are so-constructed by Westerners displaying deep-seated “post-colonial arrogance.”²⁰⁶ Veiled women may be constructed by Islamists either as victims of Western-colonialism or as victims of “Islamophobia.” These Islamists purport that “veiling is a fundamental right that cannot be restricted”²⁰⁷ and that “only hostility . . . could explain an opposition to veiling.”²⁰⁸ Geerts to the contrary, marshals evidence establishing that much of the opposition to veiling, especially in schools, is not an expression of “racism nor a sign of hostility to diversity.”²⁰⁹ She also notes that “the parents of most Muslim girls are not themselves opposed to banning the veil at school.”²¹⁰

In fact, Geerts points out that “. . . more than a religious sign, the veil is

²⁰³ *Id.* at 187, n.9 (quoting Chahdortt Djavann’s formulation “l’*étoile jaune* de la condition féminine.” CHAHDORTT DJAVANN, *BAS LES VOILES!* (2003)).

²⁰⁴ *Id.* at 47-48.

²⁰⁵ This point resonates with the “invention of tradition” we have identified *supra*. See Leila Ahmed’s reference to Egyptian Islamists’ fashioning (from the 1970s onward) a new dress code for women which they define as being “traditional” though it has little to do with indigenous forms of veiling. As Ahmed notes, this form of hijab prescribed by this dress code – was in its origins different from traditional types and was, instead, a garment “worn by women of the Muslim Brotherhood—and only by the women of the Muslim Brotherhood.” AHMED, *supra* note 94, at 3; Geerts, *Lettre ouverte*, *supra* note 196, at 32, 46-47; *see also* Anissa Hélie, *supra* note 115 (referencing footnotes 97-99 and accompanying text).

²⁰⁶ Geerts, *Lettre ouverte*, *supra* note 196, at 58.

²⁰⁷ *Id.* at 11.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 65.

²¹⁰ *Id.* at 66.

a gendered sign,”²¹¹ evidenced by the fact that the alleged requirement-of-veiling does not apply to men. Further, the veil is the sign of a “morally unacceptable sexual morality”²¹² and its primary goal is to mark women as sexually unavailable objects of male lust and “urges.” This sexual marking applies not only to women, but even to young girls. To illustrate this, Geerts refers to a court case involving the parents of two female pupils, aged nine to ten years-old, who had been veiled since their first year of primary school (i.e., since ages five or six). She is indignant at the implicit suggestion that the bodies of such young girls should be marked as “sexually unavailable.”²¹³ And she rejects equally strongly policies providing that children and teenagers can attend schools while veiled. Geerts sees these as indefensible exceptions to the recognitions and protections of young persons, (because of their immaturity), that are otherwise broadly evident in general regulations – e.g., in prohibitions of minors’ smoking, consuming alcohol, engaging in (even consensual) sexual behavior, or voting.²¹⁴

Because sexism is much more explicit now than it was a decade ago, Geerts insists, it is urgent to assert that:

[W]e cannot tolerate . . . in the name of respect for difference, the further spread of the idea that a respectable woman is a veiled woman; that a veiled woman must lower her gaze in front of a man; that she must refuse all contact with any man who isn’t related to her; and that her body must be entirely veiled.²¹⁵

An increasing and misplaced deference to any practice or belief presented as religious: Geerts explains her position about the proper relationship of church and state. She specifies: “The simple fact that any behavior may be motivated by a strict observance of religious principles does not in any way constitute an argument in its favor.”²¹⁶ Religious-motivation is simply not a relevant criterion. With regard to veiling specifically, “civil society. . . must determine whether veiling is compatible with the rules of ‘living together:’ this is the relevant question.”²¹⁷ Further applying this principle to the veiling issue, Geerts observes that an individual’s veil-wearing may be problematic as disrupting of the modalities of “living together”: by her wearing a veil, she “defines herself first and foremost as a good Muslim, respectful of religious dogmas (or as a sexual

²¹¹ *Id.* at 35.

²¹² *Id.* at 43.

²¹³ *Id.* at 36-38, 56.

²¹⁴ *Id.* at 113.

²¹⁵ *Id.* at 68.

²¹⁶ *Id.* at 71.

²¹⁷ *Id.* at 13.

being), rather than as a pupil open to learning,” or as a public servant, or an elected political figure primarily doing her job.²¹⁸

All these considerations together lead Geerts to conclude that it is crucial to maintain a strict separation between church and state – a notion, she stresses, that is often misunderstood. Secular people should not be “perceived to be anti-religious;” they are simply “firmly opposed to any interference of the religious in the political sphere.”²¹⁹ In actual fact, “secularism is nothing else than a political organizational principle which posits the necessary reciprocal independence of church and state, so that no religion – including irreligion – is able to, precisely, establish itself as state religion, which would threaten the freedom of conscience that every democratic state must preserve.”²²⁰

Given the rise of the Muslim religious right and of other religions’ influence in Western democracies and in international fora, we find ourselves at a crossroad. Geerts warns us:

We are now confronted with a choice; we must today make a choice, and one which is urgent, between affirming the primacy of gender equality and the primacy that some would gladly give to religious freedom. And we are required to make this choice “in a climate that tends to construct the constitutional principle of gender equality as a second-class principle, as a principle that is contingent and subjected to the priorities set by other principles. Including, in this case, the principle of religious freedom.”²²¹

In making these recommendations, Geerts demonstrates her perfect understanding of the pitfalls of multiculturalism and her determination to escape these. Geerts urges her readers to uphold firmly liberalism’s commitment to protecting both democratic principles and women’s equality. At the same time, she warns us that the banning of veil-wearing in schools (by pupils, teachers, and staff), as well as bans applicable to civil servants and political figures, must be accompanied by positive measures²²² that will truly offer equal opportunities to young girls of all social and ethnic backgrounds.

²¹⁸ *Id.* at 21. Geerts references the policy recommended by the Diversity Office of the Ministry of Justice, recommending that religious symbols be allowed for government workers. *Id.* at 21. Geerts provides an account of a case involving a veil-wearing mathematics teacher, and argues that teachers’ veil-wearing – even in the absence of their actively proselytizing – violates the “neutrality” essential to the teacher-student relationship. *Id.* at 158-62.

²¹⁹ *Id.* at 82.

²²⁰ *Id.* at 83.

²²¹ *Id.* at 68 (quoting ANNE MARIE LIZIN, *AU-DELA DU VOILE* 24-25 (2004)).

²²² *Id.* at 58.

Of the writers whose work we have reviewed here, Geerts is singular in having responded unequivocally to the question of the conflict between “women’s equality” and “religious liberty.” She affirms unconditionally:

the hierarchization of human rights appears inevitable if one wants to be in a position to settle the conflicts that necessarily arise between some of these rights. The European Court of Human Rights understood this when [in the 2004 case *Sahin v. Turkey*] it affirmed that equality between men and women and *laïcité* [secularism] were principles superior to the right to express one’s religious beliefs.²²³

III. LIBERALISM FOR THE 21ST CENTURY: FEMINIST, ANTI-RACIST, AND SECULARIST²²⁴

In 1999, identifying Will Kymlicka as “the foremost contemporary defender of cultural group rights” and assessing his work as representative of that of all prominent defenders of multiculturalism, Susan Okin pointed out that, in spite of enormous evidence of “cultural practices that control and subordinate women,” Kymlicka’s work had not “adequately or even directly addressed the troubling connections between gender and culture or the conflicts that arise so commonly between feminism and multiculturalism.”²²⁵ While writing of culture, Okin understood religion to be an aspect of culture. She emphasized: “Those who make liberal arguments for the rights of groups. . . must take special care to look at inequalities within those groups. It is especially important to consider inequalities between the sexes, since they are likely to be less public, and thus less easily discernible.”²²⁶

The problem identified by Okin in 1999 has become more visible in ensuing years. In *Uneasy Partners*,²²⁷ contributing his thoughts about multiculturalism in Canada – and doing so as one of six male essayists responding to the essay by the single woman among the contributors – Will Kymlicka has now acknowledged that: “[I]t may well be true that in some cases the ethos of multiculturalism in Canada has served to suppress debates about how best to achieve. . . emancipatory aims”²²⁸

²²³ *Id.* at 98.

²²⁴ The caption of this section echoes one of the subtitles in GEERTS, FICHU VOILE!, *supra* note 178.

²²⁵ Okin, *supra* note 1, at 20; see WILL KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE (1st ed. 1989); WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (1995).

²²⁶ Okin, *supra* note 1, at 23.

²²⁷ UNEASY PARTNERS: MULTICULTURALISM AND RIGHTS IN CANADA (Janice Gross Stein et al. eds., 2007).

²²⁸ These acknowledgments are welcome, because for too long Kymlicka has been

We understand the “ethos of multiculturalism” to designate liberalism’s misguided turn away from its historical commitments to liberty and equality of individuals, a turn made in order to provide stronger protection of groups. We have focused here on the way that that turn has exacerbated liberalism’s practical failure to deliver equality to women. But the turn toward multiculturalism has meant that liberalism has been weakened in theory as well as in practice. We have seen that reality in our examination of the controversies about veilings, in which many liberals (including some human rights organizations) have been so distracted by real or imagined injuries to groups that they have failed to recognize and to intervene against those groups’ own egregious harms to individual women. We think we have seen it, too, in American legal-theoretical writing about “the veil,” including, perhaps most prominently, writings of Leti Volpp²²⁹ and of Adrien Katherine Wing and Monica Nigh Smith.²³⁰ Our own analysis of “the veil” will differ from the perspectives of this work in its insistence that a renewed liberalism must be unqualifiedly feminist as well as anti-racist. We further insist that a renewed liberalism – in order to be committedly feminist and anti-racist – must also be committed to secularism.

We approach our analysis with a focus, first, on “the veil,” offering argument in support of the French law of 2004 banning all conspicuous religious symbols from school grounds. Secondly, we argue – more broadly – in favor of liberalism’s commitment to preserving and enriching cultures of secularism. We do this not out of any hostility toward religion but because of our recognition that the preservation of “secular space” is essential: (a) for liberalism’s breaking away from collusion with patriarchal religious forces – both mainstream and minority – that are hostile to women’s equality; and, (b) for reducing political conflicts strongly attached to religious identities. We will stress what we think are four key considerations.

(1) Preliminarily, we want to acknowledge our recognition that *right-wing groups will misinterpret and misuse veil controversies*. In Western contexts marked by openly racist discourses and assaults on ethnic and religious minorities, vocal demands in favor of veiling can strengthen negative stereotypes about “Muslims” and can be used to justify the

satisfied with the proposition that the “gravitational pull” of democracy will draw into the ambit of democratic values the beliefs of conservative ethnic and religious groups. It is very much to the credit of his interlocutor, Janice Gross Stein, that she has provoked them by her critique of Canadian multiculturalism in operation. Will Kymlicka, *Disentangling the Debate*, in *UNEASY PARTNERS: MULTICULTURALISM AND RIGHTS IN CANADA* 147, 147 (Janice Gross Stein et al. eds., 2007).

²²⁹ See Leti Volpp, *The Culture of Citizenship*, 8 THEORETICAL INQUIRIES L. 571 (2007).

²³⁰ See Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743 (2006).

narrative that “Muslims” may be in need of Western disciplining and wisdom. That secularists are anxious to cater to ultra-conservatives (including Le Pen in France, and Romney in the United States) remains a real issue.²³¹ This issue is clearly of great concern to Leila Ahmed, who observes:

I continue to believe. . .that the rights and conditions of women in Muslim-majority societies often are acutely in need of improvement, as indeed they are in many other societies. But the question now is how we address such issues while not allowing our work and concerns to aid and abet imperialist projects, including war projects that mete out death and trauma to Muslim women under the guise and to the accompaniment of a rhetoric of saving them.²³²

With this issue very much alive, liberals should indeed be concerned not to feed racist and gendered stereotyping, and concerned, as well, not to support neo-conservative projects that, while asserting Western superiority, predict an increase in conflicts linked to “competing cultural identities.”²³³ At the same time, liberals must remember that ultra-conservative/racist discourses will not be successfully undermined or defeated by liberals’ catering to the Muslim religious right. Or by liberals’ catering to *any* religious institutions, whose mainstream incarnations – conceptualized and run by men – are by definition patriarchal. The fact that Western conservatives and extreme right-wing constituencies use the veil debate as political fodder must not lead liberals to forget two significant facts. First, as Leila Ahmed has demonstrated in her examinations of both the Egyptian and the U.S. contexts (and as has been attested in other regions²³⁴), the

²³¹ How can one not worry when a U.S. presidential candidate in 2012 can openly assert the superiority of U.S./Western “culture” over that of Palestinians (read: Muslims)? See Ashley Parker & Richard A. Oppel, Jr., *Romney Trip Raises Sparks at a 2nd Stop*, N.Y. TIMES, July 31, 2012, at A1, available at <http://www.nytimes.com/2012/07/31/us/politics/romney-angers-palestinians-with-comments-in-israel.html>.

²³² AHMED, *supra* note 94, at 229.

²³³ The text probably most cited – or mis-cited – in support of those projects is: Samuel Huntington, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996). For a perspective challenging Huntington’s construction of “cultural identity,” see interview by Mark O’Keefe with Akbar Ahmed, *Pew Forum: Five Years After 9/11, “Dialogue” with Islam Cause for Hope*, Aug. 22, 2006, available at: <http://www.pewforum.org/Politics-and-Elections/Five-Years-After-911-Dialogue-with-Islam-Cause-for-Hope.aspx>.

²³⁴ See, e.g., AYESHA IMAM, JENNY MORGAN & NIRA YUVAL-DAVIS, *WARNING SIGNS OF FUNDAMENTALISMS* (2004), available at <http://www.wluml.org/sites/wluml.org/files/WLUML-WSF-1h-final.pdf>.

proliferation of Islamist dress codes does not reflect the real political perspectives of the majority of Muslim believers and persons of Muslim heritage. Second, discrimination, including the subordination of women in the name of freedom of religion, must be challenged.

(2) Next, in specific support of our argument in support of the French prohibition of “all conspicuous religious symbols” in public schools, we urge recognition of both the *political effect of veiling* and the *violence associated with enforcement of veiling* mandates (whether those are enforced by governmental or non-state actors)—both of these realities having egregious consequences for women’s equality.

While acknowledging the varied meanings that have attached to “the veil” in different times and places – we read as incontrovertible the message strongly communicated by Bennoune, Lazreg, and Geerts: that the veil is – necessarily and inevitably at the present moment—a political and politicized symbol throughout the world. It cannot be overlooked that veiling is used primarily (though not only, of course) by the Muslim religious right, as a tool to enforce strict gender norms. It is also used by young Muslims who originate from or now live in Western contexts, as a marker of identity that references culture and religion. It is sometimes used by Western liberals to mark their associations with particular claims of culture-based rights. And, at the same time, it is denigrated by the Western right-wing in “a repeated pattern played out many times in history when women, Islam, and the veil merged into the foreground as symbols of civilizational tensions.”²³⁵ As Lazreg has observed, it *cannot* be an “innocent” symbol.²³⁶ Instead it is necessarily a marker of women’s sexual difference, emphasizing their consignment to specific roles and social locations.

We urge liberals’ recognition that the veil is and has for decades been a political tool of radical Islamists. Marnia Lazreg has described the history of extremist Muslim fundamentalist groups that have acted both vigorously and persistently for decades – and in multiple areas of the world – to ensure that the “veil comes to represent the essence of Islam.”²³⁷ Focusing on 20th-century history in Egypt and on developments in the United States since the late 1960s, Leila Ahmed has documented the promotion of the veil by extremist religio-political forces to assure its having this singular significance.

Ahmed has examined what we think of as an “invention of tradition” that has been key to this promotion, an invention that has depended upon denials of historical realities.²³⁸ The fact that the veil is often

²³⁵ AHMED, *supra* note 94, at 195.

²³⁶ LAZREG, *supra* note 162, at 125.

²³⁷ *Id.* at 10.

²³⁸ The historical realities denied have included: the variations in veiling practices that

(mis)understood, echoing the Islamist mantra, as simply involving “piety, self-respect and free choice”²³⁹ is one demonstration of Islamists’ successful inroads into public and academic discourses.

We want to emphasize, also, the mechanisms through which the practice of veiling has been effectively coerced. Some forms of coercion have been exercised through pressures toward social conformity that are exerted by peers, preached through religious propaganda, or urged through anti-imperialist discourse. When peer pressure has been used, it has been used systematically, as Ahmed has recorded.²⁴⁰ The efficacy of religious propaganda is evident, worldwide, in the degree to which the global trend toward veiling is often mistakenly understood as the expression of a religious obligation. Many believe that “this is what Muslims do: women are veiled.” But there is of course plenty of internal debate, including debate among religious scholars, as to whether veiling is a religious requirement (God’s injunction) or a man-made diktat. Lazreg is one scholar who has argued strenuously that: “Nowhere in the Quran is there an indication that the veil is an indication of a woman’s acceptance of her faith.”²⁴¹ Lazreg has commented, too, on the ways in which anti-Western-imperialist discourse has operated in academic research of the last decades.²⁴²

An additional coercive force, often overlooked in discussions of increased veiling, has been the critical significance of the Gulf States’ imperialism. An absolutely crucial reality has been the powerful flow of Saudi and Kuwaiti money into Western Muslim communities. As noted by Geerts, Saudi funding in Belgium has enabled activity ranging from pro-veiling pamphleteering to the building of mosques.²⁴³ Ahmed, too, has documented the links between Saudi money and the development, in the United States, of the Muslim Student Association and ISNA – projects whose developments have been highly instrumental in leading young women to take up veiling practices.²⁴⁴

It has been reported of Saudi Arabia that: “There is no other state who

have occurred even during the 20th century, the periods during which veil-wearing has been seen as a reflection of habit or place of origin or class, rather than of religion or “Islamist identity,” and the periods during which absolutely no connection was recognized between a woman’s veiling or non-veiling practice and her individual identity as a religious or non-religious Muslim. AHMED, *supra* note 94, at 27 (referencing footnote 114 and accompanying text).

²³⁹ GEERTS, FICHU VOILE!, *supra* note 178, at 182-83.

²⁴⁰ AHMED, *supra* note 94, at 25-26 (referencing footnotes 104-108 and accompanying text).

²⁴¹ LAZREG, *supra* note 162, at 77.

²⁴² *Id.* at 6.

²⁴³ GEERTS, FICHU VOILE!, *supra* note 178, at 48.

²⁴⁴ AHMED, *supra* note 94, at 155-56, 160-63, 169, 187-89.

spends as much money at ensuring conservatism and fanaticism among Muslims.”²⁴⁵ A 2007 report on Saudi financing states:

Saudi Arabia’s brand of Islam, the ultra-conservative Wahhabism, has been exported globally and is followed by al-Qa’ida and other Sunni fundamentalist groups responsible for terrorist attacks around the world. Funding for such groups comes from charitable organisations and wealthy individuals in Saudi Arabia and other Gulf states. . . . In the decade up to 2002, according to a report to the UN Security Council, al-Qa’ida and other Islamist bodies collected between £150m and £250m, mostly from Saudi charities and private donors. This practice is still occurring, with Saudi Arabia linked to funding Sunni jihadists in Iraq.²⁴⁶

In the Summer 2012 Olympic Games in London, a new example of what Saudi money can buy became evident when athletes participated in hijab for the first time, flouting the rules of the Olympic Charter.²⁴⁷

Demands for veiling are specifically articulated and promoted by fundamentalist forces. Despite their differences (across and within religious traditions) fundamentalists’ ideological goal for society is one that is detrimental to the human rights of women, of secular voices, of religious minorities, of stigmatized sexualities, etc. As feminist scholars have noted, in all cultures, women are the pivotal territories, markers, and reproducers of the narratives of nations and other collectivities.²⁴⁸ The Women Living Under Muslim Laws Network has also noted, based on its three decades of documenting and analyzing the strategies used by politico-religious forces, that the control of women, and the control of their sexuality in particular, constitute the cornerstone of a fundamentalist agenda. With the rise of fundamentalist politics, discourses of moral codes and arguments of cultural and religious “authenticity” are increasingly being deployed as means of control. Further, women (along with others deemed “undesirable” or “deviant”) are specifically targeted by politico-religious groups.

²⁴⁵ *Saudi Time Bomb?: Interview Vali Nasr*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/saudi/interviews/nasr.html> (last visited Nov. 24, 2012).

²⁴⁶ Paul Cochrane, *Terror Finance Trail Vanishes in Saudi Arabia*, INDEPENDENT (Sept. 30, 2007), <http://www.independent.co.uk/news/business/news/terror-finance-trail-vanishes-in-saudi-arabia-403912.html>.

²⁴⁷ For a history of this dispute and discussion of the Olympic Charter specification that “no kind of demonstration of political, religious, or racial propaganda is permitted on any Olympic sites, venues or other areas,” see Julie Bindel, *On Track: The Great Olympic Cover-Up*, STANDPOINT MAGAZINE (June 2011), available at <http://standpointmag.co.uk/node/3930/full>.

²⁴⁸ NIRA YUVAL-DAVIS, GENDER AND NATION 39 (1997).

Even if it is often forgotten in both the Western media²⁴⁹ and Western conservative discourses, it is a fact that religious fundamentalism is a global phenomenon that affects all major religions,²⁵⁰ and that religious fundamentalisms feed one another.²⁵¹

²⁴⁹ EDWARD SAID, *COVERING ISLAM: HOW THE MEDIA AND THE EXPERTS DETERMINE HOW WE SEE THE REST OF THE WORLD* (1997).

²⁵⁰ It should be remembered, for example, that Orthodox Jews have instituted sex-segregated public transportation in some neighborhoods in New York City on buses that are New York City-subsidized, although operated by private transport companies (which benefit from the public funding). See Sasha Chavkin & Josh Nathan-Kazis, *Riding Together on Sex-Segregated Buses*, ISRAEL RELIGIOUS ACTION CENTER (Nov. 5, 2011), <http://www.irac.org/NewsDetails.aspx?ID=1278>. Further, shopkeepers in Hasidic neighborhoods in Brooklyn, New York, are under pressure from local “modesty committees” who appear “concerned that the mannequins in [their] stores’ window, used to display women’s clothing, might inadvertently arouse passing men and boys.” The verbal warnings issued by such “modesty committees” in Williamsburg carry “an implied threat — comply with community standards or be shunned. It is a potent threat in a neighborhood where shadowy, sometimes self-appointed modesty squads use social and economic leverage to enforce conformity.” As a result, faceless heads models have recently replaced mannequins, while groups of men also “seek to pressure parents to rein in children who wear dresses too short or stockings too thin.” See Joseph Berger, *Modesty in Ultra-Orthodox Brooklyn is Enforced by Secret Squads*, N.Y. TIMES, Jan. 29, 2013, at A1, available at <http://www.nytimes.com/2013/01/30/nyregion/shadowy-squads-enforce-modesty-in-hasidic-brooklyn.html?pagewanted=1>. Their counterparts in the city of Beit Shemesh, Israel, in order to excuse discrimination and violence perpetrated against an eight-year-old girl who allegedly had not observed the proper dress code, insisted that “spitting on a girl who isn’t behaving according to the law of the Torah is justified.” See Allison Kaplan Sommer, *The 8-year-Old Girl Who Woke Up Israel*, JEWISH DAILY FORWARD (Dec. 25, 2011), <http://blogs.forward.com/sisterhood-blog/148571/>. It should also be remembered that in 2012 a prominent Coptic Bishop insisted that Egyptian Christian women should dress “more modestly” and imitate their “Muslim sisters.” See Mariz Tadros, *Egypt’s Women Have Had Enough of Being Told to Cover Up*, GUARDIAN (May 29, 2012), <http://www.guardian.co.uk/commentisfree/2012/may/29/egypt-women-cover-up-coptic?INTCMP=SRCH>. And it should be remembered that Christian fundamentalists are denouncing the “gay peril” from their pulpits in Jamaica and elsewhere in the Caribbean. See *Can counselling ‘fix’ my gay husband?*, Jamaica Observer (Apr. 23, 2012), http://www.jamaicaobserver.com/magazines/allwoman/Can-counselling--fix--my-gay-husband_11270719; Marc Lacey, *Anti-gay violence defies laid-back image of Jamaica*, N.Y. TIMES (Feb. 24, 2008), <http://www.nytimes.com/2008/02/24/world/americas/24iht-jamaica.1.10331900.html?pagewanted=all>; Adele Ramos, *Belize Churches Join GOB in Court Battle Against Homosexuals*, AMANDALA (May 22, 2011), <http://amandala.com.bz/news/belize-churches-join-gob-in-court-battle-against-homosexuals/>. Additionally, these groups are lobbying aggressively in Uganda to add draconian provisions to the existing criminalization of consensual sex-same conduct. See Tim Padgett, *Viewpoint: Uganda’s Anti-Gay Bill a Christmas Alarm for Christians*, TIME (Dec. 4, 2012), <http://world.time.com/2012/12/04/viewpoint-ugandas-anti-gay-bill-a-christmas-alarm-for-christians/>.

²⁵¹ The Uganda “anti-homosexuality” matter (among other examples of coalition-building across religions) involves collaborations between local and U.S. Christian Evangelists. See

We want to emphasize, as well, in considering the French Law of 2004, that the *recent history of enforcement of veiling has been a history of violence*. As we have documented in *Section I.A*, forces of violence and threats of violence have been deployed against women when and where other forms of coercion have been ineffective in assuring their veiling. That history of violence leads us to emphasize the urgency that Western liberals – and especially young persons, Muslims and non-Muslims, living in Western democracies – learn about the realities of enforcements. It is critical that the history of violent enforcement of veiling mandates not be forgotten, and that the Algerian history of the 1990s be particularly referenced as illustrative of that phenomenon.²⁵²

Murders of women by Islamist armed factions became commonplace in Algeria throughout the 1990s. Initially, specific groups of women (such as “unveiled women, hairdressers, working women or single women . . . who did not follow [radical Islamists’] diktats”²⁵³) were more at risk. Fundamentalists also sought to prove their effectiveness at eliminating “undesirable” members of the community (e.g., women engaged in prostitution, and lesbian or transsexual women). Later, women who had chosen non-traditional careers (e.g., doctors, journalists, school headmistresses, architects, and athletes), as well as feminist activists,²⁵⁴ were systematically targeted. Women dressed in European clothes were scarred, disfigured, or attacked with acid.²⁵⁵

In all cases, perpetrators were clearly linked to extreme-right Islamist groups. Armed groups such as the GIA (Islamic Armed Group) took responsibility for such crimes, claiming to execute God’s law. For example, El Moundhir, a GIA leader, announced in 1997 (in the London-based underground newspaper *Al Djamaa*) that the GIA had a “duty” to “eliminate immodest or debauched women [and] those who use alcohol or drugs, and those who do not pray.” Abou El Moundhir added, “Our fighters only kill

Kapya John Kaoma, *Colonizing African Values: How the U.S. Christian Right is Transforming Sexual Politics in Africa* (2012), available at http://www.publiceye.org/Reports/Colonizing_African_Values/Pdfs/PRA%20Report%2072dpi.pdf; see also *LGBT Uganda Fights Back: The Case Against Scott Lively*, CENTER FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/LGBTUganda/> (last visited Nov. 24, 2012) (discussing information on the federal law suit launched in March 2012 by the Center for Constitutional Rights).

²⁵² LAZREG, *supra* note 162, at 122.

²⁵³ See INT’L WOMEN’S HUM. RTS. LAW CLINIC & WOMEN LIVING UNDER MUSLIM LAWS, SHADOW REPORT ON ALGERIA 9 (Jan. 1999) [hereinafter SHADOW REPORT ON ALGERIA], available at <http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/shadow-report-algeria-eng.pdf>.

²⁵⁴ *Id.* at 9, 14.

²⁵⁵ *Id.* at 12.

those who deserve to die.”²⁵⁶ Even if social-political contexts may vary and if the place accorded to women may be adjusted to local contingencies, the goal of fundamentalists – to impose a type of gender apartheid within a theocratic system – does not vary. Hence, this history must not be forgotten.²⁵⁷

(3) We want to emphasize, most strenuously, our conviction that that liberalism has in recent years been de-railed by a failure to see *beyond recognition of racism*. We have already suggested, in our discussion of Joan Scott’s work, that she has been blinded by a fixed-focus on the history of French racism. That focus – through which she has seen Islamist radicals *only* as victims of racism – has made her unable to recognize the human rights violations perpetrated through Islamist programs aimed at propagating veiling practices. What we have characterized as a blindness in Scott is by no means unique to her.²⁵⁸ We have come to believe that the task of “challenging The Empire” often renders liberals myopic.²⁵⁹ Liberals have some experience in looking for, and recognizing racism. It may be that racism is almost always at the top of their lists of human rights violations to watch out for. (It is our opinion that women’s rights are nowhere near the top of liberals’ lists.) In any case, a discovery of racism should never be the ending-point of liberals’ inquiries.

²⁵⁶ AFP, *Those Who Deserve to Die*, <http://www.library.cornell.edu/colldev/mideast/3gia.htm> (last visited Nov. 24, 2012).

²⁵⁷ In memory of the women who resisted fundamentalists’ pressure in Algeria, especially during the 1990s, RAFF (Rassemblement Algérien des Femmes Démocrates) activists created the “Award for Women’s Resistance Against Fundamentalism and Against Forgetting” (Prix de la résistance des femmes contre l’intégrisme et contre l’oubli). In 2001, this prize was awarded posthumously to eleven women teachers assassinated in 1997, a time when schooling of girls was banned by Islamists. It has also been awarded posthumously in 1999 to Katia Bengana, a 17-year-old Algerian girl who in 1994, because of her refusal to wear the hijab, was assassinated by Islamic extremists as she made her way home from school. For a historical summary see Lalia Ducos, *Algérie: Le code de la famille - les femmes contre l’intégrisme*, SECULARISM IS A WOMEN’S ISSUE (Feb. 28, 2010), <http://www.siawi.org/article1702.html>. Concerning the case of Katia Benganas, a 1995 Amnesty International appeal related to death threats issued (and murders perpetrated) by Islamist armed groups against Algerian women who did not comply with the imposed dress code, see *Algeria Appeal Case: Algeria*, AMNESTY, <http://www.amnesty.org/pt-br/library/asset/ACT77/004/1995/en/4ee796e7-eb64-11dd-b8d6-03683db9c805/act770041995en.pdf>.

²⁵⁸ See Wing & Smith, *supra* note 230. See generally Volpp, *supra* note 229.

²⁵⁹ See Bennoune, *Law of the Republic*, *supra* note 86, at 181 (noting that “both Amnesty International and Human Rights Watch, along with a number of other international human rights groups, like the International Federation of Human Rights (FIDH), have been outspokenly critical of the French Law [of 2004] . . . Moreover, some prominent international human rights lawyers have been involved in recent cases defending the ‘right to veil’ at school”); *id.* at 189 (characterizing: “the failure of human rights forces to comprehend and respond forcefully to the menace of religious fundamentalisms – in this particular manifestation, to Muslim fundamentalist pressure on women and girls to cover . . .”).

Western liberals must be mindful of the cleverness of the pro-veil arguments advanced by fundamentalist Islamists/politico-religious forces. These arguments are clever enough to persuade teenagers interested in embracing a “true Muslim identity” and/or standing up to Western arrogance and racism. They are clever enough to attract citizens of Muslim heritage, who feel they can use the hijab to assert: “I’m a Muslim – Deal with it!” And they are clever enough to distract liberals who – inclined to agonize, “Who am I to dictate my values to the Other?” – would rather play blind than run the risk of being accused of racism. Human rights lawyer and feminist advocate Rhonda Copelon (who was the lead attorney in a case involving a leader of the Algerian Islamic Salvation Front (FIS) accused of crimes against humanity, arguing against his being granted asylum in the United States) found the liberal “reluctance to really take on the political manipulation of religion, which becomes a reluctance to take on people who act in the name of God” to be especially strong when “you are dealing with . . . an immigrant minoritised population. . . .

You are talking about a really excluded group [Muslims in a racist context] and that plays differently in terms of the willingness to critique.”²⁶⁰

It is indeed the moral obligation of liberals to name racism wherever we discern it, and to work to challenge and to undo its deep and persisting effects. Most important in liberal efforts must be an insistence on the implementation of positive measures to overcome and remediate the harms produced by discriminations on the basis of race.²⁶¹ But it is also important to be alert to alarming warning signs,²⁶² and to the fact that, as Algerian feminist Lalia Ducos (witness to the rise of fundamentalist terror in her home country in the 1980s and 1990s), warns: “[F]undamentalism’s new strategy is to give visibility to ‘religious communities’ and their claims.”²⁶³ It is important to be particularly alert to those arguments used by Islamists – crafted to appeal to liberal sensibilities – that are framed in terms of respect for culture and diversity.

²⁶⁰ WOMEN LIVING UNDER MUSLIM LAWS, DOSSIER 30-31: THE STRUGGLE FOR SECULARISM IN EUROPE AND NORTH AMERICA 254-55 (2011), available at <http://www.wluml.org/sites/wluml.org/files/WLUML%20dossier%2030-31%20v2.pdf>.

²⁶¹ The need for such positive measures in France has been stressed particularly by Scott, Geerts, and Bennoune in their discussions of the situations of the banlieues. In the United States, the continued reality of racism is evidenced by the extremely disproportionate incarceration of African-American and Hispanic citizens. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

²⁶² For a global overview of such trends, see Imam, Morgan & Yuval-Davis, *supra* note 234. For warning signs in Western liberal democracies specifically, see generally DOSSIER 30-31: THE STRUGGLE FOR SECULARISM IN EUROPE AND NORTH AMERICA, *supra* note 260.

²⁶³ Ducos, *supra* note 188, at 89.

It is important, moreover, that liberals avoid “new form[s] of prejudice”²⁶⁴ based on stereotyping that are akin to racism. Lazreg has identified this kind of stereotyping in academic research that celebrates the “agency” of veil-wearing women while dismissing non-veil wearing women as “un-authentic.”²⁶⁵ Bennoune, countering such stereotyping trends, has reported perspectives that have not received much attention in Europe or, especially, in North America: the voices of democrats and feminists from Muslim communities. These include the views of people of Muslim heritage who are keenly aware of the danger posed by both Muslim and other religious fundamentalisms. Bennoune reports, for example, that “[Jeanne] Favret-Saada identifies some Muslim fundamentalist groups as important allies of the Catholic Church in its opposition to women’s rights and homosexuality.”²⁶⁶ She herself observes that: “This Catholic Church project is often clearly opposed by those same Western leftwing, liberal and human right figures”²⁶⁷ who place religious freedom over gender equality. She identifies, too, Mohamed Sifaoui’s emphasis that “the Muslim fundamentalists are *our* extreme right.”²⁶⁸ Bennoune insists – as do we – that:

One must somehow find a space for opposition to fundamentalism and racism, to sex discrimination and religious or ethnic discrimination, to the Muslim far right and the French far right. This requires an anti-racism which is unabashedly feminist, a feminism which is unequivocally anti-racist and a thick analysis of human rights.²⁶⁹

We find Bennoune’s defense of the French hijab-ban entirely persuasive, and we endorse her highly-contextualized analysis based on commitments to both women’s equality and anti-racism. We also applaud her suggestion, as she muses on “uncovering the way forward,” that “the lack of a coherent human rights theory of secularism” is a “problem.”²⁷⁰ We

²⁶⁴ LAZREG, *supra* note 162, at 7.

²⁶⁵ *Id.* Consider, too, Algerian Djemila Benhabib’s expression of a clear sense of agency: “No! You must know that there is nothing in my culture that makes me predestined to hide myself under a shroud, an ostentatious symbol of difference...That is indeed racism! Not to recognise that I have the same rights and obligations as everyone else, just because of my origins. I do not ask any privilege, any special right and any derogation from the law. I just want to be treated as a simple citizen. Is this really so hard to understand?...One of the intrinsic values of democracy is that of equal justice for all.” See DOSSIER 30-31: THE STRUGGLE FOR SECULARISM IN EUROPE AND NORTH AMERICA, *supra* note 260, at 229.

²⁶⁶ Bennoune, *Law of the Republic*, *supra* note 86, at 169.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 189.

²⁷⁰ Bennoune, *Secularism and Human Rights*, *supra* note 196, at 425. Bennoune states

want, however, to take our argument one step beyond where Bennoune has ventured, and to insist that a renewed liberalism *must* be one committed to secularism as much as to feminism and to anti-racism. Indeed, we suggest that the commitment to secularism is *necessary* for effectuation of the other commitments.

(4) Our answer to our broad reformulation of Okin's question about multiculturalist-liberalism can be framed unequivocally: *In a hierarchy of rights, women's equality interests must always take priority over competing claims based upon religion or culture.*

Muslim fundamentalists are not alone in their systematic attacks on women's rights (or on the related rights of stigmatized sexualities). In the United States at present, Christian evangelicals – whether or not “fundamentalist” – have been powerfully active in opposition to women's equality interests. Gila Stopler has ably demonstrated liberalism's long collusion with patriarchal religious forces oppressive of women, and we find her arguments highly persuasive that liberalism – to the degree that it is serious about protection of women's equality – must commit or re-commit to protecting and enriching a culture of secularism.²⁷¹

Rhonda Copelon has pointed to the absence of such a well-developed culture in the United States, urging that the “maintenance of secularism” is essential for preservation of both “religious pluralism” and “women's rights.”²⁷² When secularism – embodied in separation of church and state – becomes weakened, what happens is that law openly prefers certain religious organizations over others, and certain individual women over others. As separation of church and state has eroded in the United States, the Supreme Court has shown no inclination to protect the autonomy and equality of women as individuals asserting rights of conscience with regard to reproduction.²⁷³ At the same time, in cases involving subsidizations of religion, the Court has undermined the value of religious pluralism as it has moved in the direction of “accommodating” religion, reckless about the

specifically, “A coherent gender sensitive human rights theory of secularism could be a valuable tool for negotiating between freedom of religion and gender equality, especially in today's climate of religious extremism.” *Id.* at 425-26. She proposes, in the absence of such secularist theory, the “use of a careful, contextual approach to resolving these seemingly intractable conflicts [about the veil].” *Id.*

²⁷¹ Gila Stopler, *The Liberal Bind: The Conflict Between Women's Rights and Patriarchal Religion in the Liberal State*, 31 SOC. THEORY & PRAC. 191 (2005).

²⁷² See DOSSIER 30-31: THE STRUGGLE FOR SECULARISM IN EUROPE AND NORTH AMERICA, *supra* note 237-48; see also Ashe, *supra* note 70, at 198-209 (discussing the turn away from “religious pluralism” in the United States).

²⁷³ See Ashe, *supra* note 70, at 209-13.

reality that certain religions will be more “accommodated” than others.²⁷⁴ Some cases decided by the European Court of Human Rights have similarly reflected preference for Christianity (the majority religion) over non-religion²⁷⁵ or over non-Christian, including Muslim, interests.²⁷⁶

The reality of legislative and judicial dis-preferencing of other religions relative to Christianity warrants much fuller documentation and analysis than is possible within the scope of this article. But the central consideration can be stated succinctly: to the degree that a dis-preferred religion is associated with ethnicity or race, judicial decisions accomplishing the dis-preferences will be seen as racist. The *only* path away from *both* divisiveness based on race (or ethnicity) and policy highly inimical to women’s equality will be a path in the direction of secularism.

CONCLUSION

We have found many positive and valuable proposals within the texts we have reviewed in this essay. In our discussion of the major themes of those writings, our hope has been that readers who have found advocacy of multiculturalism persuasive in the past, will be awakened to realities that it has occluded, about which Okin, Lazreg, Bennoune, and Geerts have written. We hope, too that they will turn away from the seductions of

²⁷⁴ These dissents have included that of Justice Breyer in *Zelman v. Simmons-Harris*, 536 U.S. 639, 717 (2002), in which the Supreme Court upheld governmental issuance of “vouchers” to parents to be used for payment of school children’s tuitions at private religious (and primarily Catholic) schools. Breyer noted the “social conflict, potentially created when government becomes involved in religious education.” *Id.* at 781. He urged recognition that such strife can be best avoided “not by providing every religion with an equal opportunity (say, to secure state funding or to pray in the public schools), but by drawing fairly clear lines of separation between church and state...” *Id.* at 722-23. Also notable is Justice Stevens’ dissent in *Van Orden v. Perry*, 545 U.S. 677, 706 (2005) in which the Court upheld governmental display of a large “Ten Commandments” monument on the grounds of the Capitol of the State of Texas. Stevens wrote to insist on governmental “neutrality.” *Id.* at 734. He rejected Justice Scalia’s propositions, in a related case, *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 885 (2005), that government can favor religion over irreligion and can favor one religion over another and within the area of “public acknowledgment of religious belief...the Establishment Clause permits...disregard of polytheists and believers in unconcerned deities, just as it permits the disregard of devout atheists.” *Id.* at 893 (Scalia, J., dissenting).

²⁷⁵ For example, in *Lautsi v. It.*, App. No. 30814-06 Eur. Ct. H.R. (2011), the European Court of Human Rights (affected by the interpretative principle of “margin of appreciation,” which generally directs the Court’s deference to national court decisions) upheld, against the challenge of a secularist parent, the Italian governmental practice of placing crucifixes in all public school classrooms.

²⁷⁶ European Court of Human Rights decisions that appear to manifest special solicitude for Christianity (restricting free speech rights in order to protect sensibilities of Christians) have included *Otto-Preminger-Institut v. Austria*, 295 Eur. Ct. H.R. (ser. A) at 1 (1994) and *Wingrove v. U.K.*, 23 Eur. Ct. H.R. 1937 (1996).

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multiculturalism, toward the challenge of restoring and renewing a liberal project for the 21st century – one that is truly feminist and anti-racist and secular.