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THE LIMITS OF LIBERALISM:
FRANCE, THE VEIL, AND PUBLIC SCHOOLS
BY
ELEANOR ZUPANCIC

A master's thesis submitted to the Graduate Faculty in Political Science in partial fulfillment of
the requirements for the degree of Master of Arts, The City University of New York

2015

This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the requirement for the degree of Master of Arts.

Alyson Cole

August 2015

Thesis Advisor

Date

Alyson Cole

August 2015

Executive Officer

Date

THE CITY UNIVERSITY OF NEW YORK

Abstract

THE LIMITS OF LIBERALISM:
FRANCE, THE VEIL, AND PUBLIC SCHOOLS

By Eleanor Zupancic

Advisor: Alyson Cole

Liberal political theorists often attempt to claim that a set of universal ideals can ensure equal agency and freedom for all. This paper makes use of the case study of the French approach to Muslim headscarves as a case study for exploring the limitations of this philosophy. In particular, this paper examines the ways in which liberalism conceptualizes universal ideals, particularly in the case of the headscarves in France. It then explores two ways in which the French headscarf ban exposes weaknesses in liberalism's conceptualization of identity and agency: rather than being universal, liberalism has very particular conceptions of 1) what constitutes agency for women and 2) the relationship between the role of religion in a person's life and his or her autonomy. This paper explores the ways in which the case study of the French headscarf ban exposes those two sets of particular assumptions, and then looks at two very different ways that political actors and theorists have attempted to resolve the tensions in liberal political thought exposed by the headscarf ban: 1) a rejection of any attempts at universalism in favor of a forthright claim that membership in the French republic demands membership in traditional French culture, and 2) conversely, an attempt to delineate a distinction between group and individual rights. The first approach resolves the tension in liberal theory only in the sense that it rejects some of liberalism's basic premises; the second approach, when applied to the case of the French headscarf ban, also falls short.

Acknowledgments

I am deeply indebted to Alyson Cole for her thoughtful and patient support of this project. She took me on as an advisee without having ever laid eyes on me, and was generous with her time and insightful in her advice.

Marshall Berman was my advisor for an entirely different incarnation of my Master's thesis. I remain grateful for the time and thought he put into my work.

My parents, Madeline Marget and Ernie Zupancic and my husband, Jon Bresman, were consistent in their support over the length of this work; I'm especially indebted to my mother and husband for their careful readings of drafts of this thesis.

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Introduction

In 2004, French Prime Minister Jacques Chirac passed a law banning the wearing of “ostentatious” religious symbols in public schools. While the ban ostensibly applied to students wearing *kippot* and large crosses, as well as those wearing the Muslim veil, the ban was widely understood to be aimed at girls who wore the veil to school.¹ The prohibition came about as the result of a governmental study into the best ways to integrate Muslims in France, and the subsequent tests of the law all involved Muslim girls who wished to wear a hijab to school. In 2011, France banned full-face coverings, particularly the niqab, in public spaces, a law that was recently upheld by the European Court of Human Rights.² These laws sparked considerable press attention both within and outside of France, as well as significant scholarly debate.

The case study of the French approach to headscarves illustrates some of the limitations of liberalism: despite the hopes of many of its champions, liberalism is not truly universal, but instead is situated in Western ideas about individualism and agency. More particularly, French laws about Muslim female dress illustrate that there are culturally-specific understandings of both freedom for women and the role of religion in public life embedded within liberalism as it is currently applied in the West.

This paper examines the ways in which liberalism conceptualizes universal ideals, particularly in the case of the headscarves in France. It then explores two ways in which the French headscarf ban exposes weaknesses in liberalism’s conceptualization of identity and agency: rather than being universal, liberalism has very particular conceptions of 1) what constitutes agency for women and 2) the relationship between the role of religion in a person’s life and his or her autonomy. This paper explores the ways in which the case study of the French

¹ Joan Wallach Scott. *The Politics of the Veil*. Princeton: Princeton University Press, 2007. Page 1, 34.

² “European Court Upholds French Full Veil Ban,” *BBC News*. Web. July 1, 2014.

headscarf ban exposes those two sets of particular assumptions, and then looks at two very different ways that political actors and theorists have attempted to resolve the tensions in liberal political thought exposed by the headscarf ban: 1) a rejection of any attempts at universalism in favor of a forthright claim that membership in the French republic demands membership in traditional French culture, and 2) conversely, an attempt to delineate a distinction between group and individual rights. The first approach resolves the tension in liberal theory only in the sense that it rejects some of liberalism's basic premises; I argue that the second approach, when applied to the case of the French headscarf ban, also falls short.

Though this paper focuses primarily on the case study of headscarves in France, the problem is not uniquely French, but is instead a limitation of liberalism itself. The American approach to multiculturalism and religious liberty – perhaps more than the French approach – includes the idea of toleration, which political scientist Wendy Brown explores in depth. Members of the majority culture are exhorted to tolerate cultural and religious minorities. While this stance is presumably superior to encouraging intolerance, it is a framework that empowers those who tolerate and places a psychic toll on the objects of tolerance, who are “invariably marked as undesirable and marginal, as liminal civil subjects or even liminal humans.”³ While the French approach is to attempt to efface difference, the American approach asks the public to tolerate it, which in and of itself suggests the superiority of Western culture and justifies norms that promote Western culture and religion over non-Western cultures and religions.

This paper focuses primarily on the debate over the place of the hijab, a veil that covers the hair and chest, in public schools. This debate took place primarily in the 1980s through the early years of the 21st century. More recently, the French government banned women from

³ Wendy Brown. *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton: Princeton University Press, 2006. Page 28.

wearing the niqab, a cloth that covers the face and which some Muslim women wear in addition to the hijab, in public. Though this paper will reference both, it will focus primarily on the 2004 law. I will use the term “headscarf,” “veil,” “voile,” or “hijab” when discussing the 2004 law, which is the most recent ruling on hijabs in public schools; “niqab,” when referring to the 2011 law, and “head covering” when discussing both.

The headscarf ban is a particularly useful case with which to explore the limitations of liberalism because the degree to which the ban violates the individual rights of the headscarf wearer is ambiguous, and because the presence or absence of a veil is especially public. There are many non-Western practices that Western nations have restricted on the grounds that they violate universal individual rights. Child marriage and female genital mutilation, for instance, are practices that immigrants may bring from their countries of origin but that some Westerners, particularly those concerned with maintaining individual rights for women (political philosophers Susan Okin and Will Kymlicka are two examples) have argued should not be permitted to practice in the West. Because headscarves, or hijabs, are personally abhorrent to fewer Westerners than some other practices, the debate surrounding the headscarf highlights the subjectivity of the idea of universal rights. In other words, an ideal that might seem “universal” to one person may, upon closer examination, be rooted not only in specific cultures but also in the personal opinions of an individual. Secondly, the hijab stands out from some other non-Western practices because the ban specifically pertains to what happens in public: no one, to date, has made a serious argument that Muslim women cannot wear a head scarf in private. Instead, proponents are concerned with what women wear in public spaces, and particularly what girls wear in schools. The prominence of an issue that is much less personally harmful but much more publicly visible than, for example, a clitorrectomy, illustrates how critical the ideal of a

secular public space is to the French public. The ban on headscarves, therefore, is useful for examining the ideal of a secular public space as a tool for greater civic engagement. Political scientist Eléonore Lépinard notes that “a strict divide between the public and private spheres supposedly enables citizens to detach themselves from their particular affiliations to participate in a national body politic bound by a common civic culture.”⁴ In other words, civic participation requires that individuals come to public life unfettered by obvious signs of cultural or religious affiliations beyond their affiliation as a French citizen. The French debate about the headscarf highlights the importance of this idea to many in France, and is a test for its validity.

The History of the Headscarf in France

Though the debate about the headscarf in France can be traced to France’s history as a colonial power in northern Africa, it first became a major topic of political debate in the late 1980s. Levels of both student commitment and administrative opposition to wearing the veil in public schools fluctuated over the course of the next three decades, as did the perceived significance of the issue as a whole. In each of three distinct periods of the debate, the veil stood for slightly different aspects of the French public’s concern about the impact of Muslims on French universalist ideology.

The first such period began in 1989, when the veil emerged as a symbol of religious Islam’s potential to threaten *laïcité* – generally translated as “secularism,” and used for the specific context of the religious neutrality of the French Republic -- in public schools. The debate began when three French girls of North African descent wore headscarves to school and were expelled when they refused to take them off, on the grounds that the scarves interfered with “the

⁴ Eléonore Lépinard. “From Immigrants to Muslims: Shifting Categories of the French Model of Integration.” *Identity Politics in the Public realm: Bringing Institutions Back In*. Ed. Avigail Eisenberg and Will Kymlicka. Vancouver: UBC Press, 2011. 190-214. Page 193.

laïcité and neutrality of the public school.”⁵ Though in later years, opponents of the veil in schools voiced concern about the negative impact of foreign influence, in the 1989 case, it was a public request from the king of Morocco that the girls remove their veils in school that led two of the three girls to do so; the third girl was never readmitted. Though some schools remained wary of the veil as a symbol of, or impetus for, separatism -- they successfully excluded girls who they felt did not participate adequately in the school community -- in general, most girls were able to wear scarves to school if they had good disciplinary records. This general policy was supported by cases that made their way to the State Council.⁶ The 1989 case set a precedent that the veil might be a threat to secularism, but did not, in general, shift the general policy that girls could participate fully in a secular public school while wearing a veil unless they were disruptive in other ways.

The second phase of the debates started in 1993, when two disputes over the veil in school illustrated French anxiety that the veil was an indication of radical Islam. In one case, the *affaire Akouili*, in Nantua, girls refused to remove their headscarves in gym and science class; teachers argued that the scarf posed a physical risk to the girls in those settings. Anthropologist John Bowen notes that “two self-proclaimed Islamic authorities declared publicly that Islam *required* women to cover themselves. The absolute nature of the claims – the veil is by nature discriminatory; girls must wear it – raised the stakes of the public debate.”⁷ Around the same time, a girl in Grenoble went on a twenty-two day hunger strike when she was expelled for insisting on wearing a headscarf to gym class. Though the legal resolution to these cases was similar to that achieved in 1989 – girls could wear headscarves to school so long as did not have

⁵ John Bowen. *Why the French Don't Like Headscarves: Islam, the State, and Public Space*. Princeton: Princeton University Press, 2007. Page 83.

⁶ *Ibid*, 87.

⁷ *Ibid*, 87.

any disciplinary problems – this phase of the debate signaled a rise in fears about the impact of radical Islam on French culture. The public conversation was not only about whether schools were secular, but also about whether the veil signified a form of radical Islam that was dangerous to French liberal values. During and after these incidents, there was a rise in stories in the popular press about the “Islamic Peril;”⁸ the debate about headscarves in school seems to have been part of a larger trend of concern about the role of religious Islam in French life.

The law currently in place in France originated with a series of incidents in 2003, as part of a broader conversation about the role of Islam in France. These incidents included not only the high-profile expulsion of two sisters for wearing headscarves to school, but also events such as the attempt of one Muslim community to establish separate hours for men and women at a public pool. President Jacques Chirac’s initial response was to establish the Stasi Commission, named for its chairman, Bernard Stasi, with the charge of making recommendations to increase the integration of France’s Muslim population. The resulting report contained many recommendations, which included improving conditions for the poor, establishing one Muslim and one Jewish federal holiday, and fighting labor discrimination, alongside the recommendation to ban “ostentatious” religious symbols in public schools. Only the ban on religious symbols, however, made its way into serious public debate or law. It became law in 2004, and remains in effect today.

The Ideal of Universalism and the Ban

For many proponents of the headscarf ban, such as Interior Minister Nicolas Sarkozy and Social Affairs Minister Francois Fillon, the law was necessary to preserve one of the core ideas of liberal tradition: we all share some fundamental qualities by virtue of our humanity, and societies can assure the freedom and dignity of every individual through the guarantee of a set of

⁸ Ibid, 92.

universal rights. This notion of universalism is clear in the French Declaration of the Rights of Man – so often referenced by politicians who advance the ban – as well as in the works of liberal political theorists such as John Locke and John Stuart Mill. The French are the originators of what sociologist Rogers Brubaker calls “civic nationalism.” In contrast to the traditional German philosophy of citizenship, an “ethnic nationalism” which allows individuals to become citizens of the German nation only, or most easily, when they have German heritage, the French model allows anyone to become a citizen if he or she is willing to subscribe to the civic ideals of the nation.⁹ In the French case, this conception of citizenship requires subscribing to the ideals of the Republic: liberty, equality, and brotherhood, and secularism in the public sphere. Civic nationalism has its roots in philosophers like Hobbes, who asserted that “nature hath made men ...equal, in the faculties of body and mind”¹⁰ and is echoed in the French Declaration of the Rights of Man, which opens with the assertion that “all men are born free and equal in rights.”¹¹ Yet when the French legal system attempts to apply universalism in the case of the headscarf ban, it becomes apparent that “universal” is often a code for Western or French.

“Universal” Rights for Women

The conflation of “universal” values with Western ideals is particularly apparent in the French argument that the law would protect the rights of women. Bernard Stasi, chair of the commission that recommended the ban, said that “the voile is objectively a sign of women’s alienation.”¹² Many argued that the veil was a symbol of women’s oppression, and that women and girls wearing it were likely to have been coerced. While some proponents of the ban might

⁹ Rogers Brubaker. *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press, 1992. Page 1

¹⁰ Thomas Hobbes Oxford: Oxford University Press, 1996. Page 826.

¹¹ Lynn Hunt. *The French Revolution and Human Rights*. New York: St. Martin’s Press, 1996. Page 7.

¹²Scott, 78.

acknowledge that their perspective was particularly Western or French, in the sense that they understood the veil to be a cultural practice from another part of the world, they argued that it was also a practice that – like child marriage – contradicted the universal value of individualism for all people.

Historian Joan Wallach Scott points out that when proponents of the ban argued that they were preserving women's rights, they were in fact working to uphold a specifically French and Western ideal of how women should behave, particularly with regard to their sexuality: women should be free to experiment sexually, and should dress in a way that communicates sexual freedom and availability. Scott notes that French political scientist Janine Mossuz-Lavau “felt deeply” for women wearing headscarves because they were deprived of “the sexual liberation that was hers by right.”¹³ Thus, the ban on the veil did not so much protect a woman's right to dress or express her sexuality as she wished, but rather ensured that she could express her sexuality in the manner of mainstream French society. Indeed, by prohibiting girls from wearing the veil to school, the law impeded a girl's ability to dress according to her own standards of modesty. Scott makes a distinction between French and Muslim theories about the relationship between individualism and sexual difference: the French approach is to deny that sexual difference is a potential political problem, whereas Muslim theorists recognize that problem and attempt to solve it through mechanisms including modest dress and the separation of the sexes.¹⁴ From this perspective, Muslim dress is not necessarily restrictive for women, but instead is an honest adaptation to a social reality.

Some Muslim women, indeed, argue that veiling allows them to be more equal, because it hides sexual difference. A woman who chose to wear the Niqab in Gaza argued that, “I am the

¹³ Ibid, 162.

¹⁴ Ibid, 167-168.

face of the true Muslim, who comes into the world not as a woman, but as a human being.”¹⁵ One could question the validity of this argument on the grounds that it is only women, not men, who cover their bodies to the extent women do when they wear a niqab. It is worth noting, however, that for some women, the ability to cover themselves allows them to be more, not less, equal. This line of argument suggests that the differences between women and men are innate, and that a way to prevent inequality based on those differences is not to ignore them, but rather to literally cover them up. Scott makes a similar point when she notes that, for some Islamic jurists, “modest dress, represented by the headscarf or veil for women and loose clothing for men, is a way of recognizing the potentially volatile and disruptive effects of sexual relations between women and men.”¹⁶ For the woman quoted above, the niqab effaces gender differences by making her body less visible, and as a result, allows her to enter society less restricted by her gender.

One could argue that there was no way to tell if a girl’s choice to wear a headscarf was freely made or coerced; even girls who claimed to be making the choice themselves might actually be doing so because of dictates from fathers or brothers. As one French middle school principal explained, “I want to make sure people are free to decide on their own about dress, prayer, fasting, and so forth.”¹⁷ The principal’s assertion that he “wants to make sure” of his students’ freedom to choose their religious expression suggests a concern that’s reminiscent of political philosopher Susan Okin’s claim that “in many cultures, strict control of women is enforced in the private sphere by the authority of either actual or symbolic fathers.”¹⁸ Both Okin

¹⁵ "Symbol of Both Oppression and Freedom." *Christian Science Monitor* 11 Aug. 2000: 8. Opposing Viewpoints In Context. Web. 19 Sep. 2013.

¹⁶ Scott, 171.

¹⁷ John Bowen, Introduction to *Civic Dilemmas: Religion, Migration and Belonging in a Globalized World* (Brookline: Facing History and Ourselves Foundation, Inc, 2008). Page 9.

¹⁸ Susan Moller Okin. *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999). Page 21.

and the French school administrator are skeptical that a woman's choice to take on a practice that might be interpreted as repressive to women is, indeed, her choice. Instead, they worry that women and girls, when at home and out of view from the public eye, are being coerced; one of the rationales of the headscarf ban is that the state should protect girls from such coercion.

There are three striking assumptions in this line of argument. First, it assumes that wearing more modest dress must have been coerced, but discounts the coercion to wear more sexually revealing, Western-style clothes. Political scientist Wendy Brown points out this asymmetry when she asks, "What makes choices 'freer' when they are constrained by secular and market organizations of femininity and fashion rather than by state and religious law?"¹⁹ Theoretical pressure from Muslim family members counts as coercion, but social pressure does not. This double standard illustrates the particularity of Western universalism: many French people see their culture as neutral while others' cultures are coercive. It is worth noting that this disparity is not unique to France; in other Western nations, including the United States, women face social pressure to dress in accordance with the norms of the majority.

Secondly, the claim that girls who wear the headscarf must have been coerced assumes that parental supervision of clothing becomes dangerous and demeaning when parents guide daughters to wear a headscarf in ways that it isn't if parentally-imposed dress codes fall within the framework of Western fashion. Though French culture certainly encourages dress that is less modest than that worn in much of the Muslim world, parents throughout the West have long been telling their daughters to wear longer skirts and higher necklines, and to take off t-shirts with messages that offend them. There has been, however, no major public debate (in France or elsewhere) about whether there should be law limiting parents' ability to restrict their children's

¹⁹ Brown, 189.

dress when those restrictions fall within framework of Western fashion; we regard that pressure as the legitimate purview of parental authority. In principal, the right of parents to raise their children according to their values is a universal ideal that must be balanced against the individual child's right to live free from abuse; The Universal Declaration of Human Rights assures that "Parents shall have a prior right to choose the kind of education that shall be given to their children."²⁰ Yet proponents of the French ban on headscarves view a parent's choice to compel a child to wear a headscarf as coercive rather than educative. The discrepancy in attitudes toward a parent who requires a headscarf and a parent who insists on a longer hemline illustrates that the distinction between the right of the individual to express him or herself and the right of the parent to convey values through rules about dress is more subjective and culturally specific than it is universal.

Thirdly, the claim that girls who wore headscarves might have done so due to coercion is striking because the girls whose cases became most public were quite explicit in saying that the decision to wear the veil was their own. Alma and Lila Levy were two sisters, the daughters of a Jewish father and non-practicing Muslim mother, who began wearing headscarves to school after independent religious study, and who became major public faces of the debate in 2003. Their parents had objected to their daughters' choice to wear the veil but supported their right to do so in school. Given their parents' objections, it was clear that the Levys were not wearing the veil due to parental pressure, and they insisted that they had decided to wear headscarves out of their own personal religious belief. Proponents of the ban, however, questioned their motives and suggested that their decision was due, if not to family pressure, then to pressure from a rising conservative Islamic subculture.

²⁰ Mary Ann Glendon. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2002. Page 313.

During a 2004 episode of the French talk show *Campus, le magazine de l'écrit*, the Levy sisters reiterated that their choice to wear the veil was the result of their personal religious study. One guest, Muslim author Malik Chebel, asserted that there are different meanings of the veil: peaceful Islam; “le voile marketing” for when a camera is on; and “le voile politique” which is a reaction to the rise of more conservative Islam for the purpose of transmitting a political message, and that the Levy sisters’ choice fell in to this third, political, category. Another guest on the show was Carmen Bin Laden, the ex-wife of Osama’s brother, who told them, “You are very young and do not understand what the voile means for you as women.”²¹ Chebel and Bin Laden insist that the Levy sisters were either deceptive or naïve in their assertion that their choice to wear the headscarf was personal and thoughtful, and that they must have been controlled – if not by their parents – than by the Islamic patriarchy. Ironically, when Chebel and Bin Laden purport to stand up for freedom for women, they do so by dismissing the arguments of two young women. The irony is heightened by the fact that the girls were participating in the nearly universal act of adolescent rebellion, which is perhaps more familiar in the West when it takes the form of sexual experimentation or drug use, but is not necessarily a different phenomenon when an adolescent chooses to express her rebellion in the form of more conservative social mores.

The tone of Bin Laden and Chebel’s comments is reminiscent of Brown’s observation that “‘we’ [the West] have culture while culture has ‘them;’”²² that, in other words, non-Western cultures are inherently coercive in ways that Western cultures are not. When Bin Laden tells the Levy sisters, “you do not understand what the voile means for you as women,” she implies that there is something sinister and controlling in the practice that the girls have not yet grasped. And

²¹ Bowen, 238.

²² Brown, 151.

of course, the veil may have multiple meanings, some of which the Levy sisters may not understand or be aware of – but the same could be said of Western styles of dress. In other contexts, feminist thinkers such as Susan Brownmiller have discussed the potentially coercive nature of Western standards of feminine beauty. Indeed, as Scott points out, this very issue arose in France during “le affair du string,” in which the French public debated a fashion among high school aged girls that included wearing thong underwear that was visible above low-cut pants. Some did “[bemoan] the self-exploitation of girls willing to undergo in pursuit of attention from boys”²³ and acknowledged that the girls’ fashion choices were likely the result of explicit and implicit societal pressure. Still, when the French public debated the veil, Western styles of dress were discussed as if they were culture-neutral, while it is assumed that a woman could not possibly have chosen Muslim dress codes herself.

Western discomfort with Muslim headscarves illustrates professor of law Robert Post’s point that, by applying specific, measurable rules to subjective ideas like dignity and freedom, feminism starts to lose “its status as a general set of constraints on permissible gender rules and becomes a full-blown articulation of a particular vision of gender roles.”²⁴ If one cannot apply universal ideals to specific cases, those ideals become meaningless. At the same time, when Westerners assert that dignity and freedom require that women refrain from wearing traditional Muslim dress, their claim that those ideals are universal is weakened.

Religious Liberty and Coercion of Women

Okin expresses the fear that creating allowances for multicultural or multireligious practices may allow for abuse of women. She argues that “most cultures have as one of their

²³ Scott, 113

²⁴ Robert Post. “Between Norms and Choices.” *Is Multiculturalism Bad for Women?* Ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum. Princeton: Princeton University Press, 1999. 65-68. Page 66.

principal aims the control of women by men.”²⁵ In other words, most traditional cultures are fundamentally patriarchal, and consequently attempts to preserve those cultures’ autonomy in the West will harm women. She attempts to back up this sweeping claim with examples including polygamy, honor killings, and strong societal coercion for women to cover their faces. She suggests that Western societies ought not to protect many multicultural practices, because they tend to harm women in the name of preserving a culture. Okin herself does not seem to view headscarves as inherently especially troubling – when she makes reference to the debate in France over schoolgirls wearing headscarves, she does so to note that the French were simultaneously unconcerned with polygamy among French Arab and African immigrants, and thus she is skeptical about the feminist underpinnings of the ban on the headscarf. Still, her basic argument is similar to that expressed by proponents of the ban: traditional cultures are inherently oriented toward privileging men’s power over women’s rights, and consequently, a Western culture that values the rights of women cannot also allow for the autonomy of traditional cultures. According to both Okin and proponents of the ban, women deserve to be able to live unfettered by cultural norms that have the effect of oppressing them.

Yet within Okin’s argument against multiculturalism are the seeds of an argument against the preservation of a secular public sphere, which is one of the ways that French political culture attempts to ensure liberalism’s ideal of universal rights. One of her primary critiques of multiculturalism, as mentioned earlier, is that “in many cultures, strict control of women is enforced in the private sphere”²⁶ and that it can take “more or less extraordinary” circumstances for the state to protect against abuse.”²⁷ If it is true that non-Western practices that harm women tend to take place in the private sphere, allowing those practices to be evident in public would be

²⁵ Okin, 13.

²⁶ Ibid, 20

²⁷ Ibid, 23.

a way to guard against abuse. The act of making “private” cultural practices public would not necessarily be helpful in the case of more permanent and potentially troubling practices such as child marriage or polygamy, not to mention more unavoidably private practices such as clitorrectomy, but it could be helpful in the case of headscarves. Indeed, a 2013 report by the Open Society, “After the Ban: The Experiences of 35 Women of the Full-Face Ban in France” found that some women responded to the ban of the niqab in public places by going out less frequently.²⁸ Similarly, girls who insisted on wearing headscarves to school despite the law were expelled from school, some of them never to return, placing them on the margins of French society. There is a particular irony to expelling girls from school in the interest of furthering liberal values, since, in France in particular, it is in schools that children are meant to be taught what political theorist Cécile Laborde calls “autonomy-related skills,”²⁹ that is, the ability to develop the critical thinking skills necessary to develop individual identity. By keeping girls out of schools because of their religious practices, the French law prevents the girls from gaining the ability to think independently and avoid the repression that some in France fear the headscarf symbolizes (and, perhaps, to choose not to wear a headscarf at all).

Taking this argument a step further, political theorist Bonnie Honig notes that “many Muslim feminists...see veiling as an empowering practice. Veiling allows upwardly mobile professional women to... ‘emerge into a sexually integrated’ urban world.”³⁰ In practical terms, veiling allows women who might feel compelled to stay in their homes or in very local communities to move into a broader society. It is also telling that Honig alludes to the work of

²⁸ “After the Ban: The Experiences of 35 Women of the Full-Face Ban in France.” *Open Society Institute*. September 2012.

²⁹ Cécile Laborde. “State Paternalism and religious dress code.” *International Journal of Constitutional Law (I-CON)* 10. 2 (2011): 398-410. Page 403.

³⁰ Bonnie Honig. “My Culture Made Me Do It.” *Is Multiculturalism Bad for Women?* Ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum. Princeton: Princeton University Press, 1999. 35-40. Page 37.

Muslim feminists, such as Leila Ahmed; both Okin and French proponents of the headscarf ban claim the mantle of feminist ideals, but many of the women and girls who wear head coverings understand their choice in their own feminist terms.

Anthropologist Saba Mahmood's study of Egyptian women who are observant practitioners and proponents of traditional Islam further explores the feminist possibilities in traditional Muslim practice. She describes the women in her study, who take on many traditional Muslim practices and mores, as members of a "piety movement," because of their advocacy of the observant practice of Islam. Through this study, she suggests that a woman who makes choices outside of the Western values of progressive politics may still be exercising her own form of agency; in other words, the piety movement illustrates that there are forms of agency beyond those articulated by Westerners. Mahmood argues, "What may appear to be a deplorable passivity and docility from a progressive point of view, may actually be a form of agency...agentival capacity is entailed not only in those acts that resist norms but also in the multiple ways in which one *inhabits* norms."³¹ In other words, agency need not be in the service of the goals of Western feminism to be genuine. Instead, individuals can exercise agency through their choices to adhere to norms and by making their own decisions about how they want to live within those norms.

Mahmood illustrates this perspective on agency through the responses of two different women to the stigma facing Egyptian women who are single past typical marriageable age. One woman, a secular Muslim, argues the best response to that stigma is to look for other sources of meaning and self-esteem beyond marriage, such as her professional life. Much as a Western feminist might, her response to stigma is to reject the norm that gives rise to the stigma and

³¹ Saba Mahmood. *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton: Princeton University Press, 2005. Page 15.

cultivates other sources of meaning and self-respect. In contrast, Mahmood recounts a story of a pious woman, Nadia, who advised that the practice of *sabr* – patience – was an appropriate and helpful response to the prejudice an older unmarried woman faces in Egyptian society. She believes that God determines a person’s fate, but that individuals have choices with regard to how they react to the fates allotted to them. In this case, Nadia advocates for *sabr* because she understands it to be the most righteous way to act. Mahmood notes, “*Sabr* in the sense described by Nadia and others does not mark a reluctance to act. Rather, it is integral to a constructive project: it is a site of considerable investment, struggle, and achievement.”³² Thus, the women who Mahmood studies have a different experience of norms that some in the West might see as restrictive; they accept them as part of the framework of a meaningful and righteous life, and respond to them not with protest, but by cultivating the internal qualities that make it easier to live within those norms.

An important underpinning of this conception of agency is a religious perspective that argues that a life of religious meaning is the result of choices to engage in religious acts, rather than an intellectual or emotional affinity with a set of ideals. Mahmood notes that, for members of the piety movement, “belief is the product of outward practices, rituals, and acts of worship rather than simply an expression of them.”³³ Where many in the West might understand the process of living with meaning as one in which a person selects a philosophy, and then lives according to that philosophy, the pietists’ orientation toward religious life assumes that the intellectual and emotional adoption of a philosophy follows, rather than precedes, acting according to it. Islam, as Mahmood’s subjects understand it, suggests that one cultivates religious desire – and, ultimately, meaning – through choices to adhere to traditional norms.

³² Ibid, 174.

³³ Ibid, xv.

Members of the piety movement insist, for instance, that the purpose of the veil is not to be an emblem of cultural or religious identity, but to lead to an increasingly religious way of life.³⁴ Mahmoud offers a similar example in which a member of the piety movement argues that continued attention to ritual practices such as prayer will lead to a life that is both more righteous and more meaningful. In Mahmoud's words, "ritualized behavior is one among a continuum of practices that serve as the necessary means to the realization of the pious self, and that are regarded as the critical instruments in the teleological program of self-formation."³⁵ This vision of how an individual creates a life of meaning stands in conflict with France's laïcité. French proponents of secularism argue that, by joining the national community in public spheres unencumbered by the particularities of religion, an individual will be both free to access the meaning available through civic life and citizenship and able to experience a relationship with God in private. For those with the Muslim belief system that Mahmoud describes, however, this ideal of civic involvement stands in direct conflict with their conception of religious obligation. For them, meaning is constructed through the routine practice of religious obligations and through ongoing adherence to a set of religious ideals. That source of meaning cannot be temporarily set aside in order to join a secular civic community; individuals must engage in religious practices such as wearing a headscarf and maintaining a routine of regular prayer all the time. Mahmoud's work, therefore, adds further weight to the argument that the French conception of secularism is not genuinely universal, but instead privileges a particularly Western understanding of the function of religion in an individual's life.

Additionally, there is a weakness in a philosophy that attempts to preserve the rights of individuals to participate in civic life by demanding that they leave expressions of their deeply-

³⁴ Ibid, 50

³⁵ Ibid, 128

held beliefs at home. In philosopher Martha Nussbaum's words, "being able to search for the meaning of life in one's own way is a central element of a life that is fully human."³⁶ Certainly, for some women – and men – expressions of religious belief are coerced or the result of social pressure, rather than deeply-held belief. Additionally, to a Christian eye, some Muslim religious practices – perhaps especially the wearing of the headscarf – may seem fairly far removed from essential questions about the meaning of human existence. Nonetheless, if the rationale behind a secular public space is that it enables each individual to participate autonomously in public life, then the state takes away a religious individual's autonomy by determining what is, and is not, an essential part of her core sense of self.

Furthermore, for some Muslim women and girls, the act of wearing a headscarf is in itself an act of agency and protest, not against liberal values but in keeping with them. In some cases, those acts of protest are not overtly political; for instance, political theorist Bhikhu Parekh notes that in Britain, "several well-educated white liberal women have in recent years converted to Islam, or returned to some aspects of traditional Judaism, because, among other things, they found these traditions' views or intergender relations more convincing or emotionally more satisfying than conventional alternatives."³⁷ Though Parekh asserts that liberal societies ought not accept practices that are harmful to women on the grounds that one ought to respect non-liberal cultures, he argues that it is not in keeping with the liberal tradition to deny adult, sane women the ability to choose practices with which some in the West disagree. Though the norms that these women have taken on differ from those of Western majority culture, in choosing to take on a way of life that they find more meaningful, they are living out the very liberal ideal that

³⁶ Nussbaum, Martha. "A Plea for Difficulty." *Is Multiculturalism Bad for Women?* Ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum. Princeton: Princeton University Press, 1999. 105-114. Page 108.

³⁷ Bhikhu Parekh. "A Varied Moral World" *Is Multiculturalism Bad for Women?* Ed. Joshua Cohen, Matthew Howard. Princeton: Princeton University Press, 1999. Page 73.

an individual ought to be able to live in the way that she finds most fulfilling. Even if one accepts that the veil is a sign of more traditional, or restrictive gender norms, then, it still may be the case that for some women, the choice to wear the veil is a very conscious and autonomous one.

Laborde notes that for some French women, the veil has a more overtly political meaning, though not necessarily the conservative Islamist meaning that some detractors attribute to it. For some wearers of the niqab, particularly in the wake of the 9/11 and increased anti-Muslim sentiment, that garment can be a symbol of protest against Islamophobia.³⁸ Further, she notes that for some young French Muslims, newfound interest in religion represents not a wish to return to traditional Islam, but rather, an attempt to “invent a European Islam shaped by individualism, globalization, and the virtual (internet-mediated) *Umma* [community], and offer an ‘alternative modernity’ to the consumerist and secularist modernity dominant in the West.”³⁹ This new Islam includes the presence of young women who choose to wear the hijab as a symbol of their individual empowerment and ability to access Muslim texts without relying on a male intermediary.⁴⁰ Far from a symbol of coercion, then, for some women the choice to wear the veil indicates an attempt to assert their voices in both the French and French-Muslim communities.

Secularism as Religious Freedom

As discussed above, one weakness of the theory behind the ban on headscarves in schools is that the French understanding of what freedom for women entails is not as universal as proponents of the ban suggested. A similar example of a universal principal that appears to be culturally specific when examined more closely is the idea that religious freedom is most effectively protected by keeping religion private. This perspective traces its origins to John Locke’s “A Letter Concerning Toleration,” which asserts:

³⁸ Laborde, 405.

³⁹ Ibid, 403.

⁴⁰ Ibid, 402.

The Commonwealth seems to me to be a Society of Men constituted only for the procuring, preserving, and advancing of their own *Civil Interests*... The care of Souls cannot belong to the Civil Magistrate, because his Power consists only in the outward force; but true and saving Religion consists in the inward persuasion of the Mind, without which nothing can be acceptable to God.⁴¹

This principle looks universal: the state ought not to interfere with an individual's religious practice, because religion is a private matter of conscience. Rather, the state should only concern itself with secular matters. In theory, this premise ought to protect all religions equally, and perhaps give extra support to members of minority religious groups, because it guarantees them the ability to participate in public life free of the requirement to adhere to the majority religion. Greater religious toleration was, after all, Locke's goal in this text. The case study of Muslims in France in general, and of the debate over the headscarf in particular, illuminates several weaknesses in this attempt at religious tolerance, however. First, and most practically, it assumes that a secular public sphere is possible. It also privileges a Christian understanding of religious practice and a Western conception of freedom, and it demands that religious people keep a central part of themselves and their world view out of public life.

On the most basic level, the concept that religious freedom is best protected by keeping religion private assumes the possibility of a religion-free public sphere, one in which only "civil interests" are evident and discussed. Though Locke's work – and the work of his intellectual descendants – is influential throughout the West, the idea of a religiously neutral civic space is especially powerful in France. Indeed, French *laïcité* was the primary rationale for the ban on headscarves (the rationale for the ban on the niqab was more mixed, and included concerns about security as well as a philosophical objection to expressions of religion in public spaces). In a 2003 speech defending the upcoming ban on religious symbols in school, President Jacques

⁴¹ John Locke. *A Letter Concerning Toleration*. Indianapolis: Hackett Publishing Company, 1983. Page 26-27

Chirac articulated this philosophy: “Secularism guarantees freedom of conscience. It protects the freedom to believe or not to believe.”⁴² The central and underlying theory of the ban was that it would promote equality by creating a public space in which individuals do not express their religious belief.

Additionally, despite any rhetoric of public secularism, much of public life in France is not religiously neutral, but is instead imbued with specifically Christian values and practices. Some of the simpler and more obvious examples of this infusion include the celebration of Christian holidays, including the Christian Sabbath, as federal holidays. One French Muslim mother noted, “[Y]ou know the secular school, it doesn’t miss celebrating Easter, and when they celebrate Easter...My daughter comes home with painted Easter eggs and everything; it’s pretty; it’s cute. There are classes that are over 80 percent Maghrebian in the suburbs, and they celebrate Easter, they celebrate Christmas, you see? And that’s not a problem for the secular school.”⁴³ These examples illustrate that in France, practices that are Christian are often regarded as religiously and culturally neutral, whereas practices of other faiths are marked as religious. Thus, there is a problem with secularism as it is practiced in France and other parts of the West: members of the majority culture do not seem to understand when they bring elements of their religion into the public sphere.

Even apart from the question – addressed below – of whether secularism does indeed promote freedom of conscience, some are skeptical that a desire to promote freedom was the genuine motivation behind the ban on headscarves. Although much of the rhetoric of those who supported it alluded to the separations between church and state begun by the French Revolution,

⁴² Jacques Chirac. “Principles of Secularism in the Republic.” Paris, France. December 17, 2003. December 10, 2008.

⁴³ Facing History and Ourselves Foundation. *Civic Dilemmas: Religion, Migration and Belonging in a Globalized World*. Brookline: Facing History and Ourselves. 2008. Page 50

Lépinard notes that, with the debate over Muslim head coverings, *laïcité* started to be “invested with a political project of national cohesion rather than one of regulating state-church relations of protecting religious freedom.”⁴⁴ The purpose of *laïcité* was no longer solely to ensure that government did not interfere with religion, but also – or perhaps primarily – to ensure that the religious of particular minorities did not interfere with a sense of cohesion among French people overall, particularly students. One striking aspect of this shift is that many girls and women who choose to wear Muslim head coverings live in minority-majority communities; thus, prohibitions against wearing hijabs in schools may do more to remind students of the gap between their religious sensibilities and that of the French majority than it does to create a sense of disunity amongst classmates or neighbors.

The idea of a secular public space as a mechanism for religious freedom also has theoretical problems, especially when applied to the case of the French headscarf ban, in that the idea of religion as a matter of private conscience is a specifically Christian concept. Locke’s argument that “true and saving Religion consists in the inward persuasion of the Mind,” is an allusion to the Protestant Christian belief that salvation comes through individual faith. For many practitioners of Islam – and other religions, including Judaism -- belief is secondary to the acts of following religious law: dressing, eating, and praying, for instance, in accordance with religious law and custom. For those individuals and communities, the assurance that their religious belief will be protected in a private sphere is not sufficient to protect religious liberty, because religious law dictates that they commit to certain practices all the time. Perhaps because one prominent fear in the public debate about the headscarf was that girls were being coerced, many girls were careful to emphasize that it was their choice to wear the veil – that they had not been compelled to do so by male relatives. Yet for many practicing Muslims, there is an element of obligation in

⁴⁴ Lépinard, 200

the choice to wear a headscarf: it is a demonstration of adherence to a set of religious mandates. One young woman, Souad, expressed this mix of perspectives when she said, “It was clear to me that the headscarf was an obligation, and I felt the need to please our Creator, and it was in that spirit that I wanted to wear it.”⁴⁵ Wearing the veil was a choice, but a choice born out of obligation; unlike a Christian understanding of faith that suggests that religious salvation comes first through private faith, Souad believes that her religious faith demands public action.

The difference in perspective about the desirability of a secular public space illustrates varying conceptions of not only the demands of religious faith, but also what constitutes freedom. Proponents of the ban on headscarves couched many of their arguments in terms of freedom: as cited above, for example, Chirac argued that secularism “protects the freedom to believe or not to believe.”⁴⁶ This conception of freedom is similar to what political theorist Isaiah Berlin called “positive liberty,” or “the freedom which consists of being one’s own master.”⁴⁷ Proponents of a secular public space want to ensure that individuals can act with autonomy and can be guaranteed the ability to engage in public life free from coercion. Many opponents of the ban hoped for that type of liberty as well, though they believed that this type of liberty demanded the opposite public policy, i.e., that anyone ought to be free to wear what she wished wherever she wished.

Berlin’s conception of “negative liberty” is at play in this debate as well, though. When an individual understands freedom in terms of negative liberty, he or she operates from a stance that says, “I am free because, and insofar as, I am autonomous. I obey laws, but I have imposed them on, or found them in, my own uncoerced self.”⁴⁸ The notion of a person who has taken on

⁴⁵ Bowen, 76

⁴⁶ Chirac.

⁴⁷ Isaiah Berlin. *Four Essays on Liberty*. New York: Oxford University Press, 1970. Page 131.

⁴⁸ Berlin, 136.

religious laws may be unnerving to proponents of a secular public sphere in part because those laws seem restrictive: how can a young woman be free if she is obliged to dress in a particular way? Yet if an individual believes that these restrictions make her life more worthwhile or righteous, then the compulsion to shed them in public is not freeing. Christian cultures and religions, in general, do not talk as explicitly about systems of religious obligations that create greater meaning, but some non-Christian religions do; that is part of the reason that a secular public space seems freeing to Christians but restrictive to non-Christians.

To some Westerners, and certainly some French proponents of the headscarf ban, these two conceptions of liberty seem to be in conflict because of two fears: first, that the claim that some women may voluntarily take on the restrictions of their religion could actually be a cover for coercing women into religious restrictions, and second, that allowing individuals to express allegiance to laws other than French civil law heightens the possibility of communalism in French society. Bowen defines communalism as “the closing in of ethnically defined communities on themselves...and the refusal of integration”⁴⁹ In particular, Bowen, argues, French political philosophy demands that individuals interact with each other as fellow citizens, rather than as members of a shared ethnic or religious group.⁵⁰ Scott notes that, in the context of the debate about the headscarf ban, “social divisions were blamed on the stubborn refusal of Muslims to integrate...it followed that the cure for discrimination was the denial that differences existed at all; if they did, it was the fault of ‘communalism’ – a concept alien to France.”⁵¹ Thus, a woman’s choice to wear a headscarf because she has decided to take on a set of obligations beyond the scope of her obligations to the French republic is read by some as a refusal to integrate into France.

⁴⁹ Bowen, 157.

⁵⁰ Ibid, 158.

⁵¹ Scott, 120.

French Voices Against Universalism

One way to resolve the theoretical challenges that arise from the attempt to articulate genuinely universal understandings of autonomy is to reject the idea of universalism altogether. There have always been some voices in the French political landscape who do not argue for universalism at all, but instead are quite clear about promoting a French culture that is not only specific but exclusive. French statesman Charles de Gaulle, for instance, suggested that – though it is good for there to be French people of all races, as it proves the universalism of the French Republic, “they must remain a small minority. Otherwise, France would no longer be France. We are after all primarily a European people of the white race, our culture Greek and Latin, our religion Christian.”⁵² De Gaulle’s comment bespeaks a deep discomfort, not unique to him, with the idea that the only thing a person must do in order to be French is to sign up for a set of ideals. The discomfort is expressed by charitable groups as well as those in government positions. In 2006, right wing charity groups, part of a small nationalist movement called the “Bloc Identitaire,” began a campaign that involved giving out pork soup to the hungry, with the explicit purpose of excluding Jews and particularly Muslims who would refuse to eat the soup because of their religious beliefs. One group leader explained that, “with pork in the soup, we return to our origins, our identity.”⁵³ For those groups and individuals, Brubaker’s “civic nationalism” is not a sufficient explanation for what makes a person French; in addition to a set of ideals, Frenchness also demands a religious and cultural heritage, much like Brubaker’s counterpoint to France, Germany. Or, put differently, if faced with political scientist Benedict Anderson’s assertion that a nation is an “imagined community” because “members of even the smallest nation will never know most of their fellow-members, or meet them, or even hear of them, but in the minds of

⁵² Facing History and Ourselves Foundation, 47.

⁵³ Craig Smith. “In France, a meal of intolerance,” *International Herald Tribune*, February 28, 2006. Web.

each lives the image of their communion,”⁵⁴ members of Bloc Identitaire would say that common ideals are not sufficient to allow them to imagine some members as part of their community, but that a shared cultural heritage is necessary, as well. For those groups and individuals, the question of the headscarf would be, by and large, less complicated: France is culturally, if not necessarily religiously, Christian, and therefore France can legitimately demand norms that are culturally Christian in order to participate in public life.

These arguments, however, were not especially prominent in the debate over the ban on headscarves in public schools. Instead, most proponents of the ban argued that the law was essential because it leads to a France in which universal values guarantee greater freedom for everyone. In other words, though the ban on the headscarf had the effect of promoting Western fashions and norms, the political arguments in favor of it were arguments in favor of universalism. It was primarily in the application that the law privileged French culture over others.

The de facto privileging of French culture has been evident in French approaches to the niqab. Though much of the rhetoric about the niqab has centered on security concerns – the idea that safety requires the ability to see a person’s face – and on the assumption that the niqab is inherently oppressive to women to an even greater degree than the hijab, French legal approaches to the niqab also indicate a belief that Islam may be incompatible with being French. There is, for instance, the 2008 decision of the Conseil D’État’s -- France’s administrative supreme court -- to uphold the rejection of a Moroccan woman’s application for citizenship on the grounds that her niqab indicated an inability to integrate into French society. Lépinard notes that, with this decision, “the incompatibility between some religious identities and the French

⁵⁴ Benedict Anderson. *Imagined Communities*. New York: Verso. 2006. Page 16.

national identity was discussed openly, and, finally, embedded in law.”⁵⁵ That court case illustrated a more explicit acknowledgment of the view that entrance into the French national community requires that a person be, if not necessarily Christian, at least not religiously Muslim.

Similarly, the application of a more recent law banning the niqab anywhere in public in France illustrates a perception that religious Islam is incompatible with Frenchness. Although Muslim women living in France are subject to consequences of fines or citizenship classes if they appear in public in niqabs, a journalist noted that “shop owners said that luxury fashion boutiques near the Champs Élysées were unlikely to call the police to detain female tourists in niqabs from the Gulf. This would create a two-tier system between rich tourists and poor French people, one trader complained.”⁵⁶ This application of the law suggests that the French public does not understand the niqab to be an affront to human dignity on a par with, for instance, domestic violence, which they presumably would not tolerate on French soil regardless of the nationality of the people involved. Neither are the security concerns that some use to justify the ban grave enough to merit enforcing the law on women who are visiting from elsewhere. Instead, a de facto system in which rich women other countries may wear the niqab, but French women may not, suggests that the heart of the ban may be a discomfort with French women who do not dress as Westerners and who do not have the economic clout that might counterbalance some of the public’s discomfort.

The possibility that headscarf ban is rooted more in concerns about the impact of religious Islam on French society than in concerns about the well-being of Muslims seems particularly plausible when one recalls that the origin of the headscarf ban was a package of proposals to improve the lives of Muslims in France. The Stasi Commission suggested that both

⁵⁵ Lépinard, 202.

⁵⁶ Chrisafis, Angélique. “Muslim Women Protest on First Day of France's Face Veil Ban.” *The Guardian*. 11 April 2011. Web. 22 Apr. 2013.

material support of low-income Muslims and the affirmation of their religious rights would be helpful toward achieving that end. Though Bowen argues that the majority of the proposals aimed at the welfare of Muslims were too vague to be genuinely useful,⁵⁷ the French government's decision to focus only on the ban on headscarves, and not on improving life in Muslim communities, suggests that concerns about the impact of religious Islam on French life outstripped concerns about the well-being of French Muslims.

Group vs. Individual Rights

The French ban on headscarves, then, raises a question: how might a society ensure individuals' rights while supporting groups in the maintenance of their unique traditions. Political philosopher Will Kymlicka argues that those two goals need not be in conflict, but can instead be reconciled through a distinction between "internal restrictions" and "external protections." The former category refers to the attempt of cultural groups to impose traditional practices on individual members by, for instance, keeping girls out of school or promoting child marriage. The latter refers to groups' claims for collective rights from the majority society; for example, special representation rights, land claims or language rights. In other words, "the first involves the claim of a group against its own members; the second involves the claim of a group against the larger society. Both kinds of claims can be seen as protecting the stability of national or ethnic communities, but they respond to different sources of instability."⁵⁸

This theory initially seems to hold some promise for the dilemma of French Muslims, yet it does little to help with the specific challenges raised by the headscarf debate. The distinction between external protections and internal restrictions suggests that Muslims in France might helpfully be permitted a guaranteed number of seats in government or the ability to have Arab-

⁵⁷ Bowen, 123.

⁵⁸ Will Kymlicka. *Multicultural Citizenship*. Oxford: Oxford University Press, 1995. Page 35.

language schools, but that they could not be permitted to require individual members to adhere to specific cultural norms. In offering “external protections,” Kymlicka’s theory suggests the political system of which proponents of the ban were most afraid: one in which minority groups are supported in thinking of themselves as primarily members of their cultural group, rather than as primarily French. It’s possible that some women who have chosen to wear the headscarf might find these protections helpful, if their motivation for wearing the veil was cultural expression or a desire for the continuity of their culture in France.

Ultimately, however, Kymlicka’s theory fails to solve the challenge of the French headscarf debate because it attempts to solve a different problem from the one raised by many of the women and girls at the heart of the debate, for whom wearing the veil was a personal religious decision. Kymlicka’s concern is primarily about the ability of cultural groups to survive and flourish, not about the ability of individuals to use cultural practices as a tool to construct a meaningful life. For those individuals – in this case, girls who wish to wear the veil to school -- the “internal protections” raise the same challenges mentioned above: who decides whether the veil was forced on women unwillingly, and thus an example of an “internal protection,” or whether the woman took on the veil of her own volition, and thus ought to be permitted to wear it? Many French proponents of the ban made claims similar to Kymlicka’s argument that “it is one thing to require people to do jury duty or to vote, and quite another to compel people to attend a particular church or follow traditional gender roles,”⁵⁹ arguing that the government should play a role in both requiring the former and prohibiting the latter – yet the ban on the veil seems to have the ironic effect of limiting individual choice under the banner of upholding it.

⁵⁹ Kymlicka, 36.

Perhaps the greatest problem with Kymlicka's conception of group rights as applied to the case of Muslim head coverings in France is that the women who might wear those head coverings do not enter the debate with the same level of power as Christians do. Parekh argues that multiculturalism – a philosophy that Kymlicka attempts to embrace – demands that “truly universal values can be arrived at only by means of uncoerced and equal intercultural dialogue.”⁶⁰ Through the creation of laws that prohibit headscarves in schools and niqabs in public, France ensures that a dialogue about the meaning of those head coverings is inherently coercive and unequal: the women and girls who wear the head coverings, in general, lack the political power to create laws in France. By creating laws forbidding headscarves in schools and niqabs in public, the French have placed apparatuses of the state - including the police - on the side of those opposed to the head coverings and ensured that any discussion about Muslim head coverings is unequal.

Fears of Cultural Fragmentation

The rhetoric of the debate about headscarves suggests that the French commitment to liberalism in general and secularism in particular is tied to anxiety about the fragmentation of French political culture. Many French people are concerned that, if adherence to French ideals of universalism in the public sphere is not enforced by law, those ideals could disappear or lose their power. Proponents of the headscarf ban spoke, in particular, about fears of communalism: they were concerned that the ideals of individual ethnic communities, particularly predominantly Muslim communities, could diminish French civic ideals.

French political philosopher Blandine Kriegel argued that “here in France each individual has to abstract him / herself from those traditions and accept the transfer of certain rights to the

⁶⁰Parekh, 74.

Law. That is the contract: we move from pluralism to unity through consent.”⁶¹ According to this perspective, unity may matter more than individual autonomy. Kriegel’s argument differs from that of groups who advocate for the predominance of French culture, such as the charitable organization referenced earlier that gave out pork soup. She does not explicitly suggest that French culture is superior to the culture of Muslims (either immigrants or French-born), but rather that the political ideals of France are so important that some cultural practices may have to be sacrificed to guarantee those ideals. The suggestion that the individual must “abstract him / herself” from the specificity of cultural traditions appears, at best, naïve, when one notes that the cultural practices that are sacrificed are seldom those of ethnically French people. Though some proponents of the headscarf ban argue that the ban promotes freedom, an examination of the law suggests that in fact it is not freedom that the ban preserves, but a culturally and religiously specific public sphere.

The French approach to difference as illustrated by the headscarf ban is similar to legal scholar Stanley Fish’s “boutique multiculturalist,” who believes that “taking pleasure in one’s ‘particular identity’ is perfectly all right so long as when the pinch comes, and a question of basic allegiance arises, it is one’s universal identity that is affirmed.”⁶² While there were certainly some overtly racist voices in the debate about headscarves, most proponents of the ban expressed a wish to integrate Muslims more fully into French society; indeed, recall that the ban arose out of a set of recommendations from a commission charged with finding ways to do precisely that. Still, the philosophy behind the ban demands that, if a choice has to be made between “universal” French values and specific religious values, the French values should be more important. To some Muslim women, however, head coverings are an expression of some of their

⁶¹ Bowen, 41.

⁶² Stanley Fish. “Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking about Hate Speech.” *Critical Inquiry*, Vol, 23 No 2 (Winter 1997). 380.

essential human qualities – relationship to God, culture, family, and so on; this is the idea that many advocates of the ban could not seem to take seriously. Ultimately, then, the theory of a secular public space – and the attempt to ensure that all French people are able to live in accordance with French civic ideals – contradicts the needs of some French people to live in accordance with their most deeply held beliefs.

Additionally, Kriegel seems inattentive to the fragmentation that exists within France, not primarily because French Muslims have significant religious or philosophical differences from French Christians, but because of ingrained, perhaps unconscious, assumptions that people who are non-white and/or non-Christian are not genuinely French. A 2000 survey by the National Consultative Commission on Human Rights attempted to gauge the level of racist attitudes amongst French people. While some of the reported results were alarming – for instance, 69 percent of respondents identified as “racists” – perhaps more telling, notes sociologist Trica Danielle Keaton, was the fact that “the Commission failed to problematize the general category of ‘French people’ used in its study, which is important given that many members of the groups about whom racist attitudes are held are also tax-paying citizens.”⁶³ Though the report was intended to uncover the attitudes of the respondents, it also revealed the assumptions of the report creators themselves, i.e. that “French” people are white, Christian, and born in France. The Commission presumably hoped to improve the situation of those who might be the targets of racist attitudes, but it also implicitly suggested that non-white, non-Christian, non-French born people were not truly French. The fears of cultural fragmentation, then, are based in reality, but the cause of that fragmentation is not – or is not solely – the result of the beliefs of newer French citizens, but also in the assumptions of the longtime French toward them.

⁶³ Trica D. Keaton. *Muslim Girls and the Other France: Race, Identity Politics, & Social Exclusion*. Bloomington: Indiana University Press, 2006. Page 50.

American Multiculturalism

This critique of the French ban on headscarves, and the approach to religious liberty behind it, begs the question: is American multiculturalism better? In the United States, religious liberty is generally understood to entail freedom from interference, rather than a guaranteed secular space. In theory, the American conception of religious liberty accepts that individuals may openly bring their religious sensibilities into the public sphere, and at first, it seems that this philosophy would be more accommodating of women hoping to wear the headscarf. Just as with the French interpretation of liberalism, however, the American ideal of religious liberty is not fully coherent when put into practice.

The American and French theories of religious freedom parallel Scott's account of the contrast between French and Muslim approaches to the potentially disruptive effects of sexuality on public life: the French, she argues, deny such potential, while Muslim theorists recognize it. In the Muslim view:

Modest dress, represented by the headscarf or veil for women and loose clothing for men, is a way of recognizing the potentially volatile and disruptive effects of sexual relations...the veil signals the acceptance of sexuality and even its celebration, but only under proper circumstances – that is, in private, within the family. That is a psychology not of denial but of recognition.⁶⁴

One can apply a similar distinction of philosophies of denial and of recognition to the American and French approaches to religion. American political theory and culture denies that religion can be disruptive to public life, or even that it could be present there, even while the American political landscape is immersed in it. The French approach, in contrast, acknowledges that bringing religious into public life can be disruptive to national unity, and attempts – with all the

⁶⁴ Scott, 171.

exceptions and flaws noted above – to remove this powerful, potentially divisive force from the public sphere.

It is worth noting, first, that although Muslim women are permitted to wear the hijab and niqab in public places, including public schools, in the United States, many face harassment for doing so. The pressure in the United States is primarily social, not legal, and as a consequence the implications for our assessment of the American approach to religious difference are not the same: it is the weight of public opinion, rather than the force of law, that shapes the experience of women who wish to wear Muslim dress. Still, the American Civil Liberties Union notes that, in 2006, the Council on American Islamic Relations reported 154 cases of “discrimination or harassment in which a Muslim woman’s head covering was identified as the factor that triggered the incident.”⁶⁵ The ACLU further noted cases in which Muslim girls were prohibited from wearing headscarves in public schools.

The legal guarantee of freedom to practice religion free from interference does not prevent social pressure to conform to the norms of a Christian-majority country, nor does it prevent individual authorities from implementing their own prohibitions. From a theoretical standpoint, the American system allows Muslim women the freedom to wear headscarves if they wish, and practically speaking, the legal system gives them more support to protest if that freedom is abridged. Still, in both the American and French cases, systems that purport to allow or prohibit, respectively, religious expression equally in fact appear to prohibit Muslim expressions more frequently than Christian expressions.

Additionally, Christianity is very much present in political life in the United States in ways that other religions – and particularly Islam – are not. When President Bill Clinton accepted

⁶⁵ American Civil Liberties Union Women’s Rights Project, “Discrimination Against Muslim Women,” The ACLU website, <https://www.aclu.org/sites/default/files/pdfs/womensrights/discriminationagainstmuslimwomen.pdf> (Accessed September 28, 2014).

the Democratic Party's nomination in 1992, he referred to his campaign platform as the "New Covenant", and, lest the listener miss the religious overtones of his language, spoke to the necessity of articulating a political vision by exhorting his audience to "remember what the Scripture says: 'Where there is no vision, the people perish.'"⁶⁶ Whether this religious allusion was the result of Clinton's genuine religious beliefs or his calculations about what might appeal to the electorate, similar religious language is far from uncommon in American national, state, and local politics.

On the one hand, this dynamic allows politicians to bring their deeply-held beliefs to their work and to their conversations about national policy. For those individual politicians whose values are significantly informed by their Christian faith, this element of American political culture is more genuine than a political culture which would prohibit such expressions. At the same time, however, this openness to religious expression is not distributed evenly across religions; for example, the rumors during the 2008 presidential election that Democratic nominee Barack Obama was secretly a Muslim – and the implications that he would consequently damage the country – illustrate that some religious expressions are more acceptable than others in American political culture. Because of the rumors about his religion, Obama apparently felt compelled to make a public statement of his Christian faith: "I've been a member of the same church, Christian church, praying to Jesus Christ, our Lord and Savior, I've been praying – I've been in Church for almost 20 years."⁶⁷ For Christians, who see their religious beliefs reflected in their political leaders, this dynamic may be affirming, but for those whose religious beliefs are not only not present in American politics, but implicitly prohibited, such a political culture is

⁶⁶ William J. Clinton. "Remarks Accepting the Presidential Nomination at the Democratic National Convention in Chicago," August 29, 1996. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. Web. October 13, 2014.

⁶⁷ Brian Kaylor. *Presidential Campaign Rhetoric in an Age of Confessional Politics*. Lexington: Lexington Books, 2012. Page 112-113

potentially alienating. Yet because the American approach to religious freedom denies the potential divisiveness of this dynamic by claiming that all individuals have equal ability to express their religious beliefs, those individuals and communities who find the religiosity of their leaders alienating lack the recourse they might have in a system that interprets liberalism to demand a guarantee of secularism.

Conclusions

Proponents of both the French and American approach might benefit from serious consideration of political theorist Nancy Hirshmann's observation that feminism "demands that women be able to share in the power structures that control their circumstances."⁶⁸ In the context of women and Muslim head coverings, this statement has two major implications. First, it suggests that the guarantee of liberal values such as dignity and equality demands that women play powerful roles in educational, commercial, and judicial institutions. Some of the concerns of those who support a ban on head coverings on the grounds that they facilitate the oppression of women might be alleviated if women played a stronger role in preventing more clear-cut instances of oppression. Secondly, one need not extend Hirshmann's observation very far to suggest that feminism also demands that Muslim women share in the power structures that shape their lives. One of the most troubling aspects of both the French and American approaches to Muslim head coverings is that Muslim women are largely powerless to determine the politics and policies that dictate what they can and cannot wear; an approach that more genuinely respects their individual rights would ensure that Muslim women have a strong voice in shaping those policies.

⁶⁸ Nancy J. Hirshmann. "Eastern Veiling, Western Freedom?" *Non-Western Political Thought*. Spec. issue of *The Reviews of Politics* 59.3: 461-488. 25 Apr. 2013. 465

Similarly, given that much of this debate, in France, centers on young people, it is critical that the young people themselves have a strong voice in it. The French, rightly, take seriously the role that education plays in ensuring that young people grow to be engaged citizens – but they also, in this case, are using schools as the theatre upon which to play out other debates: can a person be truly French if she is also religiously Muslim? What is the correct role for religion in an individual French person’s life? What are the ideals that are most important to French culture and politics? This phenomenon – using schools, and the lives of adolescents, as the vehicle for debating adult political questions -- is by no means unique to France. In the United States, we use the lives of children in schools as a vehicle for debating what it means to be American and how we can stave off the societal phenomena that we fear: we wrestle over whether a child in an American school receive instruction in their native language, if that language is not English; we struggle with how to discipline students of color. In the United States, as in France, schools serve both as a place to educate students and as the focal point for our worries about what our country might become.

One major problem with this approach is that, in each case – and certainly in the case of the headscarf ban – there is significant theoretical muddle in the ideas behind the regulations. Like Americans, the French aren’t entirely clear on what constitutes a universal right, especially when it comes to religion and to the rights of women; they debate amongst themselves what is really requisite to be French. That confusion is perhaps unavoidable; it is certainly an understandable phenomenon in a country whose demographics are shifting in dramatic ways. But while that muddle continues – or perhaps even once it’s clarified – adolescents should be invited into the conversation, rather than having the conversation visited upon them. The debates about headscarves in France have featured a few articulate, thoughtful girls, but the public

conversation, and particularly the decisions, have been dominated by adults. A country that genuinely stands for ideals such as dignity and freedom should work to ensure that the people most affected by laws have a respected seat at the table when those laws are considered.

The French laws banning headscarves in public schools and the niqab in any public setting illustrate the lack of coherence in French political philosophies of universalism and liberalism. When they are applied to the particular case of the ban on wearing headscarves in public, ideals that appear universal turn out to be culturally specific, and the secular public space not only turns out to not always be fully secular, but also prevents some individuals from bringing their full selves to political life. That is not to say, however, that there is currently another political model that guarantees religious equality more effectively; the American model certainly raises parallel problems when put into practice.

An examination of the French ban on headscarves, therefore, does not necessarily suggest that the model of secularism ought to be disposed of in favor of an American-style system of freedom from religious interference. Instead, it suggests that shifting demographics in the West call for a close look at how all liberal theories that attempt to ensure equality affect actual individuals and communities when put into practice. It also demands rigorous honesty, especially from those who are members of dominant cultures and religions, about the cultural origins of ideas that may seem universal. While these examinations may not solve every policy dispute, they are an essential step toward the empowerment of an increasingly diverse national community.

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