Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality

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Through the lens of the French law prohibiting Muslim headscarves in schools, this article examines the way in which societal tensions that arise in the context of religious and cultural pluralism are translated into legal discourses relating to human rights and equality. It explores the way in which the law is rooted in France's broader sociopolitical structure and history and contrasts it to the United Kingdom and Turkey. It proposes that the law is based on an anachronistic, formal interpretation of equality that is inappropriate for addressing the inevitable cultural diversity of modern French society, and through its permeation into law and policymaking more widely, it is a primary cause of the heightened social tensions involving the Muslim minority. An assessment of the legitimacy of a law that restricts minority groups' cultural practices in this way in any society should be based on a substantive interpretation of equality and should necessarily involve an active endeavor to understand the meanings of those cultural practices for those groups within their distinct context. Upon this foundation, law and policy can be developed in a way that better reconciles the pluralism of modern society with the common objectives of social harmony, stability, and tolerance.

Article L. 141–51 of the French Education Code provides:

> "In state primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited." (Legislation passed on March 15, 2004)

The headscarf is a visible marker of the identity of Islam. As such, it is frequently presented as a symbol of both the controversies currently surrounding the religion in domestic and international affairs, and of the wider tensions relating to the multicultural nature of modern European societies. To question the legitimacy of the law banning headscarves in French schools is to open Pandora's box, revealing jumbled interrelationships and tensions between notions of equality, human rights, and the social and political theories that surround and inform them. There is disagreement on

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the matter between cultural relativists and universalists, liberals and communitarians, those on the left and on the right, those with "Western" and "non-Western" perspectives, and proponents of different branches of feminism. Most would unite in desiring an end result that reflects and supports a harmonious society that values equality. Yet most differ in how they envision the nature of that equality in a multicultural context, and the most appropriate means to achieve it.

In this article I explore ways in which the headscarf issue is invoked to characterize differentiated visions of equality. I examine the formal interpretation of equality which underpins this law and which is characteristic of the French administration's approach to minority groups more generally, and map this onto France's distinct sociopolitical structure and history. I contrast the French approach with the approaches of the United Kingdom and Turkey. I propose that, in a modern world characterized by cultural diversity, the legitimacy of any law affecting cultural practices depends on its consistency with a substantive vision of equality. Assessing the legitimacy of such a law consequently requires an active endeavor to understand the meaning and importance of those cultural practices for those affected within their particular context, in order to understand whether or not it ultimately imposes unfair disadvantage. This endeavor is particularly important in situations where such a law appears to target a minority group that is already experiencing widespread discrimination. On this basis, I argue that the French law is actively hindering French society in its efforts to improve integration and equality.

The French Law: Context and Constitutional Roots

The French legislation effecting a ban on headscarves is unique within the EU and has provoked controversy both domestically and internationally. On its face, the law imposes a prohibition on all overt religious symbols. The common tendency to refer to it as "the headscarf ban," however, demonstrates that this is widely understood as the government's primary intention. This understanding derives from a coalescence of factors including the events and discussions immediately preceding it, the broader social context of Muslims in France, the impact of the ban, and France's colonial and constitutional history.

The law is an amendment to the part of the French Code of Education that concerns the constitutional principle of *laïcité*, or secularity. The roots of this principle go back to the French Revolution in 1789, when the French people sought to overthrow the entire system of hierarchical, undemocratic power that included

the Roman Catholic Church. Separation of church and state was for a long time only partial; it was not until 1905 that total secularism was imposed, and any state recognition, funding, or endorsement of any religious groups was prohibited; the Code of Education was accordingly amended to impose a prohibition on endorsement of any religion in state schools. This did not in practice lead to any restriction on religious dress; school administrators tolerated schoolchildren wearing a range of symbols from Christian crosses to Jewish kippahs, and no controversy over the matter arose for almost a century.

France enjoyed a sustained economic boom post-World War II. In an effort to fill the new array of available jobs, it encouraged a wave of immigration, primarily from Islamic North African countries, such as Algeria, which were former colonies. By the early 1980s, the Muslim population in France had risen to approximately 5 million (9–10 percent of the total population),[1] the largest in Europe, making Islam the second biggest religion in France after Roman Catholicism. These immigrants were hardest hit when the economic boom came to its abrupt end. Finding themselves unemployed, many were pushed out en masse to live in housing estates (*cités HLM*) in the suburbs of the big French towns, where they became spatially segregated. Tension quickly mounted between Muslims and non-Muslims over this socioeconomic disparity. As a visible symbol of the difference between the two groups, the headscarf was seized upon as a factor in the tensions and escalated into a politically charged topic of debate. Passions in the media reached boiling point following the 1989 "headscarf affair" (*affaire du foulard*), when two schoolgirls were expelled for wearing their headscarves.

The Minister of Education sought advice from the Constitutional Council (Conseil) as to whether or not school administrators should be able to expel students for wearing religious symbols in view of the laïcité principle. The Conseil took the view that not only was the right to wear headscarves compatible with the laïcité principle, but it was legally constitutive of citizens' fundamental rights to exercise their freedom of expression and religion. It qualified this view somewhat by stating that the wearing of such symbols should not be "ostentatious or provocative" in a way that would constitute an act of proselytism or propaganda, or disrupt order in a school (Conseil d'Etat 1989). Grasping hold of this element of the analysis, the minister issued a nonbinding circular advising that "ostentatious or provocative" symbols should not be worn in schools. However, the Conseil proved unwilling to alter its

[1] Even this approximation is disputed, the imprecision of the figure being largely due to the fact that France does not ask for a person's religion in its census.

interpretation of the law; in a judgment in November 1992, it found against a school that had imposed a rule prohibiting religious signs. Dissatisfied with the state of affairs, President François Mitterand set up a High Commission on Integration in 1993, which, in its first report, set out the philosophy underlying the government's attitude to cultural diversity resulting from immigration. The following extract represents the heart of the report:

> The French conception of integration should obey a logic of equality and not a logic of minorities. The principles of identity and equality which go back to the Revolution and the declaration of the rights of Man impregnate our conception, thus founded on equality of individuals before the law, whatever their origin, race or religion . . . to the exclusion of an institutional recognition of minorities (Haut Conseil à l'Intégration 1996:35).

This interpretation of "equality" as a concept that logically excludes minorities clearly underpins the increasing orientation of successive French governments toward cultural assimilation of immigrants and their offspring. It manifests a conviction that a common republican identity must take precedence over any divergent aspect of an individual's identity that is religious, ethnic, or linguistic. It is this interpretation of equality as cultural "sameness" that underlies the French government's desire to ban the wearing of headscarves.

Tensions continued to increase through the 1990s, and incidents of ethnicity-related violence began to occur in the suburbs. Statistics suggested that this was primarily caused by North African Muslims' continued economic and spatial exclusion. In 2002, then–Interior Minister Nicolas Sarkozy attempted to demonstrate solidarity with Muslims by permitting a Muslim Council to formally represent Muslim views. But this gesture did not solve the prevailing problems; in 2003, unemployment rates among French North African immigrants were still four to five times the national average (which was already close to 10 percent), and 50 to 80 percent of France's prison population was Muslim (Khosrokhavar 2004). Despite the size of its Muslim population, France had very few large-scale mosques. There was not (and there still is not) a single Muslim representative in the French National Assembly. Despite such statistics, the government did not accept the existence of institutional discrimination against Muslims. Instead, it continued to attribute the tensions to the presence of religious symbols (and particularly Muslim headscarves) in schools, in effect judging the key social problem to be Muslims' non-acceptance of "Frenchness."

In July 2003, President Jacques Chirac set up the Stasi Commission to produce a report on the application of the laïcité principle, which recommended the passing of a law prohibiting

religious symbols. It reasoned that the foundational purpose of state schools in France was to assure "autonomy" and "openness to cultural diversity," and that this presupposed fixed common rules such as gender equality and secularity. It argued that the headscarf did not fit with this vision, portraying it as contrary to the principle of gender equality. It was not an entirely one-sided report; some counterarguments were raised in support of girls' freedom to wear the headscarf, but they were given far less emphasis. The government quickly acted on the recommendation. Upon the announcement of the new law, street marches took place in Paris and elsewhere in France, and many more protests were staged internationally (Loi nº 2004–228). Although most students complied and removed their religious garments, approximately 50 expulsions resulted that year from students' refusal to remove headscarves, and a number took up distance learning or moved to private education in religious schools.

Since 2004, clashes involving France's Muslim population have increased. This came to the attention of the international community in October 2005, when a series of riots and violent incidents began in the suburbs and spread to *citéś* throughout the country, causing panic within the government. The roots of this and other such events can undoubtedly be traced to the continuing low socioeconomic status of ethnic minorities who remain segregated in the suburbs. A recent report from the French think tank Institut Montaigne talks of the situation in such terms as "rampant ethnic segregation" of North African Muslims in "ghettos," and attributes it directly to the country's refusal to "recognize itself as a pluri-ethnic nation" and to face up to "the reality of minorities" (Sabeg & Méhaignerie 2004).

Echoes of French Colonialist Policy and Jacobin Republicanism

The French notion of "integration," as suggested above, is best characterized as one of assimilation: the obliteration of any "minority" identity in favor of "Frenchness," with the objective of achieving a sense of equality through cultural similarity. As Roy has suggested, there is officially no "Muslim community" in France at all; Muslims who identify themselves as members of an ethnic, religious, or cultural minority are best described in French terms as "casualties of the integration process" (Roy 2004). This preference for assimilation over integration is far more deep-rooted than the debates of the 1980s and 1990s; its roots can be found in the approach of the French authorities toward its colonies.

A primary justification used by the French in the nineteenth century for extending their colonial reach was the idea of a "mission to

civilize" (*mission civilisatrice*), whereby the spreading of French culture abroad would have the dual benefit of enlightening the "backward" colonized peoples and increasing France's international influence. This idea arose at a time of deep disillusionment in France in the wake of its defeat in the Franco-Prussian war and was promulgated by philosopher Charles Renouvier, who asserted that this mission would be a way for the French to positively promote their ideals and make the rest of the world take notice. This idea was soon adopted by French leaders, who made it an official doctrine of the state.

Once colonial governance was established, the French administration exercised a highly centralized mode of control, particularly in North African countries such as Algeria. Its policy of cultural assimilation was a natural offshoot of the original mission civilisatrice idea, the aim being to make the colonies an integral part of the "mother land" and their citizens into model French citizens, so that the French administration could exercise greater and more effective control. Consequently, the Algerian people were characterized as "Muslim French," Algerian towns were infused with French-style architecture, and there was a high degree of linguistic acculturation. Notably, one of the core tactics in pursuing the assimilation strategy was the persuasion and coercion of women into removing their headscarves, the idea being that if one woman were to remove it, and thereby to become uprooted from her culture, then the rest would follow.[2]

The French preference for centralization of control and absolute unity of values stems from the distinctive Jacobin republican tradition, characterized by its political idealism, egalitarianism, and desire to extinguish opposition. Drawing from Rousseau's theory of a social contract arising from a general will, the Jacobins envisaged a nation-state model that would enshrine the equal rights and obligations of citizens in such as way as to obviate the need for any group identity politics based on particularized local, religious, or racial factors. Its influence has ingrained itself in French sociopolitical ideology and has meant that, since the time of the Revolution, all hyphenated or localized identities have been associated with subversion and disloyalty to the Republic, seen as destructive of a unitary idea of French citizenship, and generally considered contrary to the common good.

In the twentieth century, this ideology translated itself into an immigration policy with a goal of minimizing sociocultural difference through the assimilation of immigrants into the dominant culture. Consequently, for many French politicians and commentators

[2] Of course, the strategy did not ultimately breed the compliance and cultural metamorphosis that the French administration had hoped; the Algerians' dissatisfaction finally led to the war of independence, which was achieved in 1962.

the very concept of "ethnic minorities" is unacceptable and is rarely referred to in contemporary political debates. Instead, the term *immigrés* is still commonly used, in reference not just to recent immigrants but also to men and women with immigrant ancestry who have been born and spent all their life in France. There is no institutional recognition for ethnic origin, which is formally precluded by data protection laws; even the national census only covers two categories: *national* or *étranger*. This makes it difficult to state with any degree of certainty figures for ethnic minorities in France or to assess the real impact of ethnic diversity on the French population.

The Headscarf in the United Kingdom: A Contrasting European Approach

The United Kingdom takes a very different approach to cultural diversity and is noted for its policy of "multiculturalism," whereby cultural differences are supported by the state. Accordingly, although 3 percent of the population is Muslim and the headscarf is worn by many women and girls, it has never arisen as a controversial issue; it is simply assumed to be a matter of basic freedom of expression and religion that women and girls are able to wear it in public life. No restrictions on its use have been considered in relation to state schools or any other public space, and a blanket ban has never been suggested.

An aphorized expression of the difference between the two states' approaches to cultural diversity can be found in extracts from their own reports to the UN Human Rights Committee on measures they had adopted to give effect to the rights of minorities under Article 27 of the International Covenant on Civil and Political Rights (ICCPR; Human Rights Committee 1986). France's report states that the Republic, under the terms of its constitution, is "indivisible, secular, democratic and social. It shall ensure the quality of all citizens before the law, without distinction . . . France is a country in which there are no minorities." The United Kingdom's report appears almost a deliberate contradiction, stating that "integration is not seen as a flattening process of assimilation, but as equality of opportunity accompanied by cultural diversity in an atmosphere of mutual toleration." (Parekh [3] Essentially, the British approach to cultural pluralism aims to accord respect to the

[3] In a similar vein, the United Kingdom's government-commissioned report "The Future of Multi-Ethnic Britain" describes its approach to multicultural policy as follows: "Citizens are not only individuals but also members of particular religious, ethnic, cultural & regional communities . . . Britain is both a community of citizens and a community of communities, both a liberal and a multicultural society, and needs to reconcile their sometimes conflicting requirements." See Parekh 2000:Preface, pp. x–xi.

distinctive identities of minority communities and to create the conditions in which minorities can thrive and obtain social justice despite their differences while interacting productively with both the majority culture and with other minorities (Poulter 1997:47–8).

To some extent this difference in approach reflects the country's internal composition and liberal democratic political philosophy; unlike France, where the emphasis has always been on the unity of the Republic, the United Kingdom is an assembly of nations that has always allowed a looser connection to the center through a greater degree of devolved power. Again, the historical approach of the British to their colonies is informative. The British Empire was based on a looser and more informal model, and the approach to colonial control was also less centralized (Pitts 2005). Although a certain degree of cultural indoctrination was pursued in some British colonies such as India among the elite classes, the ambition to "civilize" and to assimilate the colonized peoples was not as strong a motivation for the British as it was for the French administration. Rather, the Empire was intended primarily as a trade-based infrastructure, to maximize Britain's economic strength and control (Ferguson 2002).

Immigration in the United Kingdom has been approached differently from the beginning. In the 1950s, immigrants arriving from a wide spectrum of Commonwealth countries were immediately given more rights, including the right to vote. They were more successful in lobbying for sociocultural developments such as the building of mosques and the introduction of *halal* food in schools, which manifested a recognition of their distinct cultural practices and identities. Britain has increasingly ensured the visibility of ethnic minorities in prominent positions in public life. An obvious example is their strong presence as television news readers, which can be contrasted to the virtually snow-white profile of news readers in France; another example is political representation. Ultimately, the British approach has produced more social mobility for minorities. Despite the British policy of multiculturalism, there is in fact less ethnic and racial segregation in the United Kingdom than in France. The situation is far from perfect; some towns in the north of the United Kingdom such as Bradford are very racially divided, and riots occurred in 2001 as a result of those divisions. However, this is the exception rather than the rule. In London, a third of the population is now from an ethnic minority, and although there are some ethnically defined concentrations, the city is visibly multiracial. This can be contrasted to Paris and indeed most of France's big cities, where the spatial segregation remains evident.

The multicultural social vision is not in any way limitless; it stops far short of complete cultural relativism in its support of

minority cultures. Lines are drawn at culturally divergent practices such as polygamy and forced marriage, which have long been illegal. Although the Muslim headscarf has not provoked debate in the United Kingdom, debates have arisen about other items of religious dress worn by Muslim women. The terms of these debates aptly illustrate the different points at which the United Kingdom and France draw the line.

The *jilbab* (a full-length Muslim dress) became the subject of public contention in the United Kingdom in 2005, during a court case brought by a pupil against her school, which had forbidden her to wear the garment on the ground that it contravened the uniform rules (*R [on the application of Begum] v. Headteacher and Governors of Denbigh High School* 2006). Ultimately, the House of Lords decided in favor of the school, but this was only because it found that the school had clearly acted sensitively and reasonably, and had demonstrated a respect for the girl's freedom of religion. It had ensured pupils a degree of flexibility of dress by allowing Muslim headscarves, it had put forward a good reason for requiring pupils to comply with the core terms of its uniform that were not consistent with the jilbab, and it had considered the fact that the girl was, in the circumstances, able to move to a nearby school where the *jilbab* was permitted. Notably, in none of the surrounding political or media discussions was there a mention of the possibility of a blanket ban.

An even more heated debate has arisen more recently in the United Kingdom over Muslim women who wear the *niqab* (a face veil with slits for the eyes).[4] The matter came to the media's attention when Cabinet Minister Jack Straw asked a woman in his constituency whether she would mind removing it when she talked to him because he felt uncomfortable (Straw 2006). Debates raged over whether or not this request was acceptable. The key question at issue was whether or not women can communicate with the rest of society effectively while wearing a face covering, particularly when they are employed in positions such as teaching school where interpersonal communication is paramount. There soon followed two legal controversies over the niqab. The first concerned a classroom assistant who was sacked for refusing to remove it.[5] The second concerned a solicitor who refused to remove it during a trial when ordered to do so by the judge on the ground that he could not hear her properly, and who consequently ceased

[4] The debate over the niqab is not in fact directly comparable to the French situation, as it tends only to be worn by older Muslim women, and consequently it does not raise questions in relation to schoolgirls. However, it also serves to illustrate the distance between the lines drawn by the United Kingdom and French authorities over issues of religious dress.

[5] This decision was upheld by an employment tribunal, but an appeal is pending.

representing her client.[6] These cases and the issues they raise have not yet been resolved. But again, despite disagreements over the appropriateness of the garment in these particular contexts, there have been no proposals for a blanket ban.[7]

The United Kingdom's approach to minority groups is not exemplary; several of the government's policies appear to impede integration due to the particular ways in which they give benefits to those groups. One such policy is the increasing consultative power given to religious organizations and their leaders. This is intended to create a process whereby cultural values are interchanged to produce representative multicultural policies. However, religious leaders' views are not necessarily representative of the broader minority communities; their views generally represent the most extreme end of the spectrum in relation to issues such as the maintenance of traditions. Moreover, this process can verge uncomfortably toward bringing religion directly into the sphere of secular politics. Another such policy is the increasing state funding of faith schools. This explicitly classifies and segregates people at a young age and facilitates curriculum disparities that result in the teaching of differentiated social, cultural, and political as well as religious values. In Sen's view, the British approach is analogous to ushering children "like sheep into pens" according to their religious faith (Sen 2006). This approach to multicultural policy, he argues, tends toward a kind of "plural monoculturalism" and has a damaging, divisive effect on society.

Indeed, a degree of soul-searching is taking place in the British government and the public arena more generally about how to generate a clearer notion of citizenship in terms of values that apply to all to bind citizens together, without imposing dominant "white" values on the cultural diversity of society. Although this debate arises from a degree of dissatisfaction in terms of cultural integration, the terms on which it is conducted demonstrate the a priori assumption that cultural diversity exists, that it will continue to exist indefinitely, and that it needs to be considered in the process of decisionmaking on key national policies in a sensitive manner.

The Headscarf in Turkey: A Secularist Ban in the Muslim World

Like France, Turkey is a secular state and has legally restricted the wearing of headscarves. However, a key difference is its

[6] This decision was followed by a circular giving temporary guidance to judges in the form of a compromise solution: a presumption that the niqab is allowed, but judicial discretion to require its removal if to do so is in the interests of justice.

[7] This, however, is being proposed in the Netherlands, and if it goes ahead, it will be the first European country to impose a complete ban on the niqab.

ethnographic profile as an overwhelmingly Muslim country: 96.9 percent of its population positively identify themselves as such. Consequently there have been dramatic legal and political swings of opinion on the headscarf matter, and public debates surrounding the ban have been even more tense and drawn-out than those in France. The Turkish ban can also be differentiated from the French ban in that it actually extends further, to universities and to women in other public institutions.

The historical background again serves to illuminate the thinking behind the contemporary law. Following its war of independence, Turkey became a republic in 1923 on the twin foundations of modernity and secularism. Radical modernizing reforms were immediately introduced by its first president, Mustafa Kemal Atatürk, including the abolition of Islamic law in favor of a secular legal system. Religious dress was targeted early on with the Hat Law (1925) and the Law Relating to Prohibited Garments (1934). These laws, however, were not strictly enforced in practice.

In the 1970s and 1980s, politics began to bifurcate between parties who sought a relaxation of the secularist policies and more militant secularists, and the headscarf was used as a symbol in that divide. There followed a series of clashes between the various arms of the state on the matter. The existing dress regulations were extended to apply to students (Regulation Concerning the Dress of Students and Staff in Schools 1981: Art. 6), and a mandatory punishment was imposed for students who did not comply (Disciplinary Regulation for Students in Higher Education 1985). Universities were reluctant to implement the changes, and in 1987, the government sought to pass a law to exempt them, but this was vetoed by the President.[8] A further attempt in 1989 was annulled by the Constitutional Court on the ground that it breached the principle of secularism and thus threatened the "unity of the state" and "public order" (Judgment No. 1989/12). In a more assertive endeavor, in 1990, the government managed to pass a law to allow the headscarf in universities, "provided that it is not forbidden by law" (Law 3670 1990), but the Constitutional Court went on in its judgments to declare that current laws of sex equality did indeed forbid it (Judgment No. 1991/8). In the wake of this confusion, universities continued to be inconsistent in their application of the headscarf ban. But in February 1997, the Turkish military issued an ultimatum to the government, in what has been called a postmodern coup d'état, demanding that the civilian authorities implement the ban without exception.

[8] The president of the time was Kenan Evren, and the office of president had recently increased in power with the new Constitution of 1982, giving him powers to veto such proposals.

Since then, the ban has been far more widely enforced. State officials have prevented women with headscarves from registering for educational and driving courses, and they have suspended academics who either refuse to comply with it or who publicly criticize it. The ban has even touched the private sphere, which should in theory be beyond its scope: in February 2006, the Constitutional Court ruled in favor of a decision to revoke the promotion of a nursery school teacher on the grounds that she regularly wore a headscarf outside of school, on her journey to and from work, and in the same month it upheld a decision to reject the application of a religious education teacher who had been refused a public position because his wife wore a headscarf (Human Rights Watch 2004). Concurrently, however, some women with public profiles as high as that of Emine Erdogan, the prime minister's wife, dis-align themselves with such moves by continuing to wear headscarves in public.

The issue was brought to the European Court of Human Rights (ECHR) in 2005, in the case of Leyla Şahin, a university student who was forbidden to sit her exams because of her headscarf (*Leyla Şahin v. Turkey* 2005). The court upheld the ban on the ground that Turkey's political concerns legitimated the interference with her freedom of religion. Key concerns include the possibility that an Islamic political party may rise in popularity and move to create a fully Islamic state. This tension was evidenced in the *Welfare Party Case (Refah Party v. Turkey)* (2003), in which the Turkish government was challenged in the ECHR over the ban it imposed on an Islamic extremist party whose political aims, if elected, included the implementation of traditional Shariah law, and even a renunciation of the very democratic process by which it would have come to power. Another clear concern is that Turkey is seeking to demonstrate it is serious about reducing the systemic oppression of women in its society in order to further its bid to join the EU, and the headscarf can be used as a symbolic means of demonstrating a commitment to gender equality.

However, the reasonableness of the Turkish state's professed concerns is questionable. First, it is an oversimplification to argue that the headscarf is an indicator of a polarizing opposition between Islamists threatening a reversion to Islamic law and reasonable secularists seeking to retain a secular democracy and legal system. As Göle has pointed out, the modern trend of veiling in Turkey may well have emerged for reasons quite distinct from veiling in traditional Turkey, but it is by no means a flag of religious fundamentalism (Göle 1996). Statistics support this; 77.3 percent of the population favor the secular republic despite positively identifying themselves as Muslims, and 77 percent of households in Turkey include at least one woman who wears some form of

headscarf (Human Rights Watch 2004). Second, it is misleading to posit the headscarf as a garment inherently opposed to gender equality and to use this assertion as a political tool to gain Europe-friendly credentials, when the gender equality implications of the headscarf are far from straightforward, and when the real reason that Turkey is failing to meet human rights standards in terms of the oppression of women is the continued existence of practices such as honor killings in the country, which are clearly far more pressing and are self-evidently discriminatory.

Interestingly, the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has declared itself to be far less certain than the ECHR on the issue of whether the ban is valid and whether the above political concerns justify the restriction. In discussing the matter in its most recent report about Turkey, it expressed concern that the ban has resulted in discrimination against female students wearing headscarves, particularly in restricting their access to education, and it recommended that Turkey consider carefully the effects of the ban and put forward a solution on the matter by 2009 (CEDAW 2005).

In any event, although the ECHR ultimately validated Turkey's concerns, it emphasized that the legitimacy of a ban in terms of human rights was highly context-specific. This clearly left the door wide open for a different judgment in different sociopolitical circumstances, and many commentators have interpreted this an implied reference to the ban in France.[9] Paradoxically, the fact that the majority in France are *not* Muslim may make its ban even less legitimate. In France, Muslims form a minority group that is already experiencing social exclusion and disproportionate poverty of a kind that indicates the presence of discrimination, and consequently a ban enacted in this context will be seen as only adding to that. There is arguably an important difference between a law that results from a political consensus within the majority ethnic group in determining the treatment of a minority group, and a policy that results from a political consensus within the majority group in determining the treatment of that same majority. A headscarf ban in the latter case inevitably has a greater degree of democratic legitimacy than the former, albeit the question of exactly

[9] See paragraph 115 of the Şahin judgment: "[a]s the Turkish courts state . . . this religious symbol has taken on political significance in Turkey in recent years . . . . The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts." Also see paragraph 136: "[i]t is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. Moreover, the Convention is a living instrument which must be interpreted in the light of present-day conditions" (*Leyla Şahin v. Turkey* 2005).

how much weight should be given to a minority rights claim in any particular circumstance is a complex one.

Models of Multiculturalism

It is evident from the above portraits of France, the United Kingdom, and Turkey that a state's decision as to law and policy on a matter of this kind generally reflects the deeper, underlying model of integration that the particular state employs to deal with cultural diversity. Indeed, the way in which a state guides (or even mandates) its schools to deal with cultural diversity is often a fairly accurate microcosm of that model.

Globally, there is a wide spectrum between pluralist and assimilationist models (Kallen 2003:167–78). At the pluralist end is the Canadian "mosaic" model, according to which cultural differences of minority groups are recognized and actively supported by the state. Designed to achieve "unity in heterogeneity," it emphasizes the preservation of cultural distinctiveness. The Canadian state has gone so far as to recognize it as a fundamental characteristic of its heritage, by passing the Canadian Multiculturalism Act (1988). The United Kingdom's model comes fairly close to this. In the middle of the range are models such as the United States' "melting pot" model, where the cultural differences are amalgamated but not suppressed. The U.S. model works on the assumption that minorities are willing and able to abandon their distinctive characteristics (in order to "melt"), and it provides for equal recognition of political rights, but not group cultural rights. At the other end, there is the assimilationist model, epitomized by France, where cultural differences are explicitly disapproved by the state and relegated to the private sphere, so that "integration" takes place by absorption or coerced suppression. Indeed, France is considered to have one of the most assimilationist models of all Western countries, in that immigrants and their descendants are expected not only to conform as far as possible to traditional "French" values and social norms, but to avoid defining themselves as minorities at all.

There are two major justifications for pursuing an assimilationist integration model in contemporary democratic societies, both of which appeal to equality. One is the proposition that an emphasis on diversity and difference is prone to cause social fragmentation and create unrest. Indeed, the word *multiculturalism* has become a somewhat loaded term, due to its association with such concerns. Some who take this view see distinct immigrant communities as simply incompatible with the society surrounding them, which is defined by the majority culture; according to this

view, to pander to culturally divergent views would lead to infinite relativism and rupture the existing moral fabric of society. Others see the members of distinct immigrant communities as inherently unstable, divided characters with "split personalities" resulting from their bicultural influences and conclude that they need to be "brought into line" with the cultural norm in order to integrate in an orderly way.[10] Either way, the French law is clearly a manifestation of a broader concern about social fragmentation and an attempt to improve social harmony by engineering an *equality of sameness*. As a justification, this depends on a presumption that cultural identity (at least, cultural identity divergent from the majority norm) is unimportant.

Another proposed justification for an assimilationist policy is that it is in minorities' own benefit to swallow the bitter pill of cultural adaptation in order to succeed in the society they are living in, so that they can achieve *socioeconomic equality*. According to this view, whatever the merits of an ideal of cultural pluralism, the practical reality is that minority groups are really just shooting themselves in the foot if they insist on retaining their distinctive cultural practices, because the powerful in society will inevitably regard them with incomprehension or suspicion and will consequently restrict their progression up the socioeconomic scale, preventing them from breaking free from existing cycles of disadvantage and discrimination (Poulter 1997:47). "Integration as assimilation" could therefore, according to these views, prevent such economic problems from escalating; in fact, it could ultimately increase socioeconomic equality between minority groups and the majority. However, the current socioeconomic position of the minority Muslim community in France, relative to the majority, can hardly be said to support this thesis.

Equality, Discrimination Law, and Affirmative Action

The nature of a state's integration model has a direct impact on the nature of the laws and policies it implements concerning discrimination. In an assimilationist state such as France, where the very existence of minority groups is denied, anti-discrimination law is logically defunct; minority groups simply do not exist to be discriminated against. Consequently, France is notoriously passive in its approach to race discrimination law, and affirmative action measures to redress situations of existing inequality are inconceivable.

[10] As Ahmed puts it, "It should not be concluded that biculturalism in a colonised subject necessarily entails the internalisation of a sense of superiority of the colonizer's culture or that it necessarily results in an unstable, divided sense of self" (1992:207).

Consequently, even when indisputable instances of discriminatory practices are uncovered in France, they are dismissed as aberrations.

This is not to say that France is in any way averse to the concept of equality; however, it pursues a "formal" interpretation of the concept, rather than a "substantive" one, in dealing with ethnic and cultural pluralism. Formal equality translates into an anti-classification approach to laws, policies, and selection processes whereby like cases are treated alike and no difference except merit, or other "rational" criteria, are taken into account in decisionmaking. It is distinct from substantive equality, which translates into an anti-subordination approach to laws, policies, and selection processes whereby differential treatment may sometimes be required, if it becomes clear that a meritocratic approach has in fact perpetuated the disadvantage of a particular group (Fredman 1997). This characterizes the Canadian model of integration and to a certain extent the British model.

The tide of current thinking about equality suggests that a formal, ostensibly neutral approach has consistently failed to redress existing inequalities and that it tends instead to reproduce existing structures of domination in society. The reason is that interpreting "equal treatment" is often a contestable process, being dependent on the categorization of the individual or group that is to be treated equally, and on the chosen comparator. For example, a family of Gypsies living in a trailer who are evicted by a local governmental authority from a public area could be compared either to any other family who decided to live illegally on public land, or to other minority travelling communities who have particular vulnerabilities and different lifestyle needs that warrant special consideration. A gay couple seeking marriage could be compared either to other couples seeking marriage, or to heterosexual couples for whom marriage has traditionally been a foundation for the natural conception of children. As Bourdieu (1977) has pointed out in his analysis of social domination in the field of law, legislators and lawyers, who tend themselves to come from the most dominant social groups, will be prone to develop and interpret the law (for instance, in their choice of comparator in a discrimination case) to further their own groups' interests, rather than focusing on the interests of disadvantaged minority groups.

This appears to be the outcome in France, as the social reality for a large proportion of ethnic minorities in France (particularly those of North African origin) is marginalization in the economically deprived suburbs. Despite repeated studies revealing widespread discrimination on the grounds of ethnicity and religion in the country, few people actually seek legal redress; there is clearly a common belief that this would be a fruitless exercise. The first report of the antidiscrimination authority shows that only 1,800

claims were filed in 2005, and that only 600 were followed by action (Haut Conseil à l'Intégration 2006).

A substantive conception of equality seems the only way to avoid the tendency to perpetuate the domination of a powerful majority group. However, there are many variations in how substantive equality itself is theorized. Some consider that equality can only be assessed in terms of its results, and so the implementation of "positive discrimination" measures, whereby minority groups are given special treatment, are vital to produce a situation in which minority groups are fairly treated and visibly represented (Phillips 2004). Others are wary of special measures, either because they lean too far toward social engineering, or because they appear to distort the core principles of equality excessively by basing individual decisions directly on nonmeritocratic characteristics (Abram 1986). There are many different interpretations, and the scope of this article does not permit these to be set out in any depth here. Examples include the idea of "equality of opportunity" promulgated by Rawls (1971) and the idea of "equality of respect" promulgated by Ronald Dworkin (1977), both of which would support the proposition that special measures must at times be used, but would restrict them to a minimum in order to preserve the traditional anticlassification principles where possible. Accordingly, indirect forms of "positive action," whereby monitoring and standards are imposed, would be preferred over positive discrimination by way of direct differentiation in treatment. Alternatively, Collins (2003) has suggested that equality should focus on the aim of furthering social inclusion.

The multiplicity of potential interpretations of equality in any given situation has led Westen (1982) to argue that it is nothing but an empty concept, used principally for rhetorical effect. However, it seems short-sighted to dismiss the conceptual value of equality in this way. As D'Amato (1983) has proposed, equality may well gain meaning only when it is based on an understanding of the substantive issues affecting the parties in any particular circumstance; but rather than rendering it an "empty concept," this simply requires a conceptualization recognizing that a consideration of the relevant substantive issues in each individual case is always imperative. And although "substantive equality" can be variously interpreted, its underlying principle remains constant and inherently valuable in any interpretation: the objective of remedying unfair disadvantage. That premise underlies the central proposition of this article: that laws and policies impacting minority cultural practices can only be consistent with the aim of substantive social equality in the context of modern, pluralized society if the process of developing these laws involves an active endeavor to understand the meaning of minority practices for those they will affect. This

way, the nature of any forms of disadvantage that may potentially result from implementation, and the consequent equality implications of that disadvantage, can be properly understood.

States that seek to pursue a substantive equality approach to laws and policies concerning minorities do so in different ways. Canada has particularly strong antidiscrimination laws and an active approach to affirmative action measures for minority groups.[11] Special measures are permitted where it is clear that there is a situation of inequality causing a particular group to be disadvantaged but that cannot be reconciled under the existing policy. For example, quotas for ethnic minority candidates in institutions may be appropriate when it is clear they are insufficiently represented as a result of the current selection system. Asserting that a state should "re-allow" practices such as headscarf-wearing for schoolgirls, however, is not equivalent to requesting a form of "affirmative action" as it is not a claim for a temporary measure,[12] but for the indefinite recognition of a distinctive cultural attribute. It is a claim of indirect discrimination on the basis that the law disproportionately affects rights to freedom of religion and expression, and more intangibly the cultural identity of a minority group.

In line with its substantive equality agenda, Canada found in favor of a minority group in a comparable case, in which Sikh policemen sought a policy amendment from the state exempting them from the requirement to wear motorcycle helmets so that they could wear a turban (Kymlicka 1995:96). The comparability of the two situations is limited, however. In the Canadian case, the police policy itself was in place to ensure officers' physical safety, and there was no indication of a prior objective to restrict any minority cultural practice; the discrimination inherent in the policy appeared to be entirely unintentional. The French case is significantly different in this respect. The 2004 law was implemented not only with the direct intention of restricting the headscarf as a secularist measure, but also on a positive equality ticket, in that the

[11] Canada's stance on this is constitutionally entrenched: Section 15(1) of the Canadian Charter of Rights and Freedoms (1982) guarantees equality to a broad range of groups, and Section 15(2)(1) affirms the validity of affirmative action, providing that the first subsection does not preclude any "law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." This is confirmed by case law; the leading case is *Lovelace v. Ontario* 1 S.C.R. 950 (2000), where the Supreme Court of Canada decided that distribution of gaming profits to registered aboriginal groups and not to unregistered groups was not discriminatory, because the purpose of the law was to improve the social and economic conditions of the registered groups.

[12] The definition of legitimate special measures in international human rights law includes the proviso that any such measures "shall not be continued after the objective for which they were taken had been achieved" (Article 1(4) of the International Covenant for the Elimination of All Forms of Racial Discrimination 1969).

headscarf was presented as inherently incompatible with the principle of gender equality.

Gender Equality and Its Contradictions

An examination of the multiple ways in which the headscarf issue can be understood in terms of gender equality reveals the complexity involved in interpreting the equality implications substantively. Part of the reason for that multiplicity of understandings is due to the multiplicity of meanings the headscarf has as a garment for the women who wear it.

The headscarf is referred to as *hijab,* a term that is used to refer to the practice of wearing numerous other forms of Islamic dress and in Islamic scholarship is given the wider connotation of modesty, privacy, and morality. These values are generally considered by Muslims to be key principles of Islam, and they form the basis of the religious justification for the dress practices. However, questions such as the extent to which modesty and privacy are religious duties, the weight and content of those duties, and the specific question of whether or not the hijab principle equates with a requirement of Islam that all Muslim women should wear headscarves, are disputed. Those who believe that Islam requires women to cover their hair tend to refer to several verses from the Qur'an. One is of these is verse 24.31, which reads, "Enjoin believing women to turn their eyes away from temptation and to preserve their chastity; not to display their adornments (except such as are normally revealed); to draw their veils over their bosoms and not to display their finery except to their husbands," and another is verse 33.59, which reads, "Prophet, enjoin your wives, your daughters, and the wives of true believers to draw their veils close round them. That is more proper, so that they may be recognised and not be molested". Many women who wear the headscarf say that they do so on the basis of their reading of the Qur'an and consider it to be a symbol of modesty, a constant physical reminder of that value in the course of their daily life, and an inalienable part of their religious identity.

However, many deny that these verses in fact require the head to be covered, particularly when read in a contemporary setting. Ashfar (1989:13), for instance, argues that although the headscarf has developed as a religious tradition on the basis of the Qu'ranic texts, women should not consider it to be an obligation of Islam, as the Qu'ranic verses do not stipulate that it must be worn by all women. Taken as a whole, in her view, they simply require that women should behave "modestly," which in itself is a relative term requiring interpretation. Indeed, there are many other Qu'ranic

verses that refer to head coverings, each of which is given different, often disharmonious scholarly interpretations (Ashfar 1998:198–202).[13]

Despite the divergence of interpretations, many feminists (from both Muslim and non-Muslim backgrounds) conclude that the headscarf is inherently inimical to gender equality, acting as a marker of women's inferiority in relation to men. Some who have been involved directly or indirectly with patriarchal societies in protest about the abuse and oppression of women view the headscarf as a representative element of that struggle. In Iran, for instance, wearing the headscarf in public is a legal obligation under the Islamic Criminal Code (Art. 139), and to go out bareheaded is to risk imprisonment. In 1994, Professor Homa Darabi from Tehran's National University was dismissed from her chair for not wearing the veil and responded by taking it off in the street, pouring petrol over herself, and setting herself alight. This is clearly an extreme and localized case, but it demonstrates the danger that the headscarf can be interpreted by strongly conservative elements of Islam not merely as a covering for women, but as a structural separation barring women's way to the public sphere (Ashfar 1998:210). It is important to recognize, however, that it is inconceivable for a comparable situation to occur in the context of a European democratic society such as France, in which the headscarf is being examined for the purposes of this article. Conversely, France represents the opposite extreme, as legal restrictions are imposed to prevent it from being worn, rather than to enforce it.

Looking to the future, some Muslim feminists argue that because the headscarf has now become a visible symbol that the global public has become acutely aware of, it will prove to be an important indicator of the gender relations that will shape the future for Islamic women and could ultimately be the main determinant as to whether Islamist movements around the world evolve toward integration with civil societies that uphold individual rights, or toward a countersociety that produces totalitarian tendencies (Göle 1996:140).

Many non-Muslim feminists writing from a Western perspective argue that headscarves are inevitably damaging for women and for the cause of gender equality as a whole, even in societies where they are not a direct catalyst for violence against women or an element of a fundamentalist regime. "Radical" feminists, such as MacKinnon, regard the headscarf as one of a multitude of means developed by men to entrench male domination throughout society by imposing an inferiority complex on women. As such, the headscarf is representative of an entire narrative of female

[13] Ashfar cites Nazira Zin al-Din's work on this matter.

subjugation. Even if women believe they want to wear the headscarf, MacKinnon (1983) argues, this is in fact a "false consciousness," as their self-perception and social roles are forced upon them and instilled in them by the culture around them.

"Liberal" feminists take a more modified stance but still tend to see the headscarf as a symbol of opposition to a vision of gender equality wherein women should be treated in parity with men. They prioritize this objective over claims about the importance of cultural identity, arguing that the importance of cultural membership for women is overstated. For them, "traditional culture" is often sentimentalized and perceived as a static phenomenon, whereas in fact is it more fluid and evolutionary (Yael Tamir, cited in Okin 1999:52). Rather than prioritizing what seems to be best for the continuity of a cultural tradition, it is more important to prioritize what is best for women. They point out that in many cases where "culture" is invoked as a defense for laws or traditions that treat women differentially, the proponents of the cultural argument are nearly always men, rather than women.[14]

In relation to the specific question of headscarves in schools, one liberal feminist view is that the school environment should offer female pupils a means of escape from male domination rather than mirroring the pattern of paternalistic cultural life experienced at home. The headscarf can be considered a particularly restrictive garment in this context, on the basis that schooling is a formative environment in terms of personal development. This line of argument maintains that, if girls mark themselves by such a distinctive article of clothing, this may inhibit their ability to form relationships with others and will ultimately affect their right to education. Another factor in the equation is the problem that the headscarf is sometimes worn by girls at school not through their own choice but due to the demand of conservative religious parents who may thereby be inhibiting their children's capacity to integrate into the mainstream culture in which they are living (Katha Pollitt, cited in Okin 1999:29–30).

Although many of these anti-headscarf arguments are persuasive, all are in some ways problematic. Is the headscarf solely or invariably a symbol of female submission and inferiority in Islam, or is its meaning more complex and divergent, particularly in

[14] An example is *Lovelace v. Canada* 1981. In this case, the Human Rights Committee (HRC) overturned a decision of the Canadian Supreme Court regarding a provision of the Indian Act, which stated that women (not men) would be struck off the Indian Register if they married a non-Indian. The Canadian court had decided that the relevant disadvantaged group for consideration was the interests of the minority Indian group as a whole, rather than the women within that group. The HRC disagreed and found the provision to be discriminatory against women. Clearly, those articulating the interests of that Indian group had been men, not women.

contemporary European societies? How far is the form of "equality" sought by liberal feminists actually representative of the wishes of all women, and of Islamic women in particular? And are schoolgirls who wear the headscarf really "brainwashed" to believe that they cannot grow up to be the independent women they could otherwise become in society? As for those girls who choose to wear the headscarf independently of their parents' preferences, is it not patronizing to suggest that they may not be able to form meaningful relationships with other children?

Indeed, in manifestation of the stratified nature of feminist thought, there are many feminists who argue that the headscarf is far from inimical to principles of gender equality, and that to portray it as such is to misunderstand and misrepresent it (Azizah Al-Hibri, cited in Okin 1999:41). Many Muslim feminists consider Western feminists' critiques of the headscarf to be culturally essentialist value judgments that demonstrate stereotypical views of Muslim women as the inferior "other" and fail to appreciate the diversity of cultural practices within Islam (El Guindi 1999:182). In her discussions about the matter, Ahmed (1992:246) emphasizes the problem famously articulated by Said in *Orientalism* (1979) that much of Western scholarship on Eastern cultures is produced within a Western framework and is therefore distorted by cultural bias and deep-rooted misunderstanding. Some Muslim feminists associate support for banning the headscarf with colonialist tendencies, citing the French social policy of cultural assimilation and emphasizing the damage caused to people by attempts to obliterate their cultural identity through the imposition of prohibitions on cultural symbols as personal as items of dress.

Although many Muslim women see the headscarf purely as a religious requirement, there are many other, more nuanced aspects of the modern tendency to wear the headscarf. El Guindi has explored ways in which the headscarf is used to define the relationship between religious beliefs and values and everyday social interactions. She claims that "reserve and restraint in behaviour, voice and body movement are not restrictions" (1999:145). For example, rather than manifesting a passive submission to the Islamic community, the headscarf can express an active interest in Islamic scripture, as a gesture to reaffirm a commitment to Islamic morality and identity within a modern social context (Göle 1996:4). In a similar vein, when examining the role of the headscarf in modern Turkey, Özdalga (1998) situates it as part of a larger struggle of devout women to find a place for themselves after the disorienting break of continuity created by Atatürk's secular revolution and its aftershocks.

Alternatively, the headscarf can be used as an enabling device, in that it allows its wearer to interact in modern society without

feeling that she is being perceived as a sexual object. However, other feminists interpret that same point differently; Göle (1996) asserts that, while the headscarf does indeed have a pragmatic function of enabling women to take an increasingly active part in modern society, this is not so much due to their own personal values as it is to the feeling that women need to conform to a standard of propriety imposed by their peers, and this paradoxically maintains a distinction between private and public based on a gender-separating view that inevitably props up male hegemony. But again, the relative importance of these conflicting impacts is debated; some argue that the headscarf's function as a means of cultural identification is more important for women, in the real circumstances of their daily lives, than more abstract concerns about perceptions of gender implications.

Another reason that some women cite for wearing the headscarf is to use it as a positively empowering political tool, a means of demonstrating a reformulation of their social and cultural identity to include aspects of both the traditional and the modern. Again, reasons for this depend on the social and geographical context. Macleod (1993) has conducted empirical research into the seemingly paradoxical phenomenon that modernizing middle-class women in Egypt with successful careers in office jobs have voluntarily begun to wear the headscarf, in contravention of legal restrictions imposed by the secular state. She found that most of these women conceive of it as a new style of political struggle, a tense subcultural dilemma that involves elements of both resistance and acquiescence. These women want to express their ambivalence about working outside the home in an office environment, which they consider to bring new burdens as well as benefits. They are concerned that leaving their home and family in this way is eroding their social status and their traditional identity. This does not mean, however, that Egyptian women are abandoning their career aspirations and returning to an antiquated self-perception of social subordination; their views are far more subtle, and women retain ambition to work freely outside the home. That finding was confirmed by Zeinab Radwan (cited in Ahmed 1992), who conducted a systematic investigation in Egyptian universities where she questioned both veiled and unveiled students about their values and future aspirations to see whether a pattern emerged among its wearers. She found that, although the veiled women were a little more conservative concerning questions relating to the importance of women's education and employment outside the home, responses were on the whole very similar. Performative modes of political resistance of this kind have been examined in depth by Butler (Salih 2004), who argues that members of minority groups are able to express themselves much more easily and powerfully

through such symbolic physical acts than they are able to do through verbal discourse.

In Western European countries such as France, the headscarf can be politically empowering as a means of positively expressing dis-alignment or disillusionment with certain aspects of Westernized commodity culture, particularly in relation to the sexualization of women. In fact, an "antisexualization" perspective of this kind is strikingly aligned to the views of radical feminists such as MacKinnon and Andrea Dworkin, whose principal aim has been to attack what they consider to be the oppression of Western women through sexual portrayals in pornography, and the more widespread pressure on women to advertise their sexual potential as a commodity. Azizah Al Hibri highlights this connection and points out the implications of the headscarf debate for cultural essentialism in feminist thought, asking, "Why is it oppressive to wear a headscarf, but liberating to wear a miniskirt? The crux of the explanation lies in the assumptions each side makes about the women involved and their ability to make choices" (cited in Okin 1999:46).

Other branches of feminism add further colors to the spectrum of perspectives on the headscarf issue. For instance, the "cultural feminist" angle is that there are inherent differences between male and female identities that should be embraced. Gilligan (1982), a representative of this school, argues that a key difference is that women are generally more caring and compassionate, and their sexual life is directly connected to their capacity to bear children in a way that it is not for men. Consequently, rather than being forced to conduct themselves like men, women should be able to express their womanhood in whichever way they experience and understand it. This poses a challenge to liberal feminists' arguments that differential treatment for women in the form of dress codes is necessarily a violation of gender equality principles, since for Muslim women an expression of their womanhood may involve wearing a headscarf.

Finally, feminists with a postmodern approach such as Cornell (Benhabib et al. 1994) emphasize that the word *woman* should not be understood or used as a uniform category, as women everywhere are different, with needs, values, and beliefs that are dependent on their sociocultural context. Therefore the headscarf is a garment that is used and valued by some women for subjective reasons upon which it is not for others to cast judgment. As for the distinction between women and girls, this view would tend to suggest that the experience of girls from Muslim families who choose or are encouraged to express their religion by wearing headscarves may well be of equal worth to the experience of girls from non-Muslim families who may be brought up in other equally distinct ways; in short, cultural values are primarily relative values.

If the key test for assessing the substantive equality implications of a law or policy is whether on balance it creates unfair disadvantage in its particular context, this diverse set of perspectives would suggest that a headscarf ban in a European country fails that test, as it restricts the freedom of many women and girls who conceive of it not just as an affirmation of traditional Islamic values but also as an embodiment of contemporary feminist concerns about egalitarianism, community, identity, privacy, and justice (El Guindi 1999:145).

Gender Equality versus Freedom of Religion and Expression?

However, in a situation as complex and multilayered as this one, the equality formulation does not end there. Those gender equality issues must also be considered in relation to other human rights pertinent to the headscarf matter, most prominently the right to freedom of religion. Seen as one of the most important rights in liberal democratic society, freedom of religion is recognized in all major civil and political rights instruments. There is an acknowledged asymmetry within liberal theory created by the conflict between freedom of religion and principles of gender equality that exists in relation to Christianity as well as Islam and other religions and religious practices (Cass Sunstein, cited in Okin 1999:86). For instance, in no country with sex equality legislation is the Catholic Church required to accept female priests. The principle underlying this apparent disjunction within liberal theory is that to apply sex discrimination laws to religious institutions would make it intolerable for some to sustain their existence and would place a substantial burden on the religious beliefs of individuals. The key questions pertaining to the headscarf debate are as follows: first, whether this "disjunctive" approach can be justified in view of the importance of gender equality; second, how an appropriate balance should be struck; and third, whether the approach to a minority religion can be considered differently from the approach to the religion of the majority, in order that all religious groups may be treated in a substantively equal way.

Most liberal feminists are reluctant to reconcile gender equality and freedom of religion by means of any significant compromise in the values of gender equality. They tend to be fairly cynical of religion as a whole in view of its tendency to embody and perpetuate perceptions of male superiority through its teachings and practices, or at least highly critical in their interpretation of particular religious practices, seeking to draw these practices toward maximum consistency with values such as gender equality that characterize contemporary liberal society. Okin takes the view that

liberal society should allow only the most minimal amount of leeway for religious practices in cases that involve nonautonomy for women, particularly when it comes to children's education. "It seems not at all unreasonable," she argues, "within the context of a liberal state that values its citizens' capacity to make informed decisions ... to require that children's education be non-sexist" (1999:130). According to this view, the right to gender equality should take priority, and it provides the state with a compelling interest in instituting legal reforms that interfere with religious practices in order that gender equality can be attained. As we have seen, however, the question of whether wearing a headscarf equates with nonautonomy, Okin's prime concern, is far from straightforward.

Another liberal feminist, Martha Nüssbaum (cited in Okin 1999:106), takes a different approach, conceiving of the right to freedom of religion as a cornerstone of pluralist liberal democracy. She proposes that its importance is founded on the dual bases of the intrinsic value of religion as a reasonable way in which citizens can pursue their conception of the good within society, and the concept of respect for persons, within which she includes respect for their choices to lead traditional religious lives. She is therefore deeply critical of feminists such as Okin for taking what she sees as a reductionist approach to religion and viewing it as merely a "bag of superstition." She situates their contradictory perspectives within the sphere of liberalism by labeling Okin as a "constructive liberal," aligned with theorists such as Mill and Raz who see the fostering of personal autonomy as the principal goal of the state,[15] and labeling herself as a "political liberal," such as Rawls, with a conception of liberal values not as comprehensive moral values but as political values that stem from the premise that society will inevitably encompass reasonable disagreement and a plurality of doctrines about the good. This necessitates an "equality of respect" for difference within the religious sphere.

An evaluation of the way that the right to freedom of religion relates to a particular case must address the issue of whether the right is being exercised without discrimination as to race, or any other factor. Given that the historical religious orientation of the

[15] Note, however, that Raz also gives special status to religious beliefs, but principally on the basis that religion forms a central part of a person's chosen path through life and therefore is a feature of personal autonomy, rather than focusing as Nüssbaum does on the existence of plural doctrines of the good as a necessary element of liberal society. See Raz's *The Morality of Freedom* 1986:251. Finnis goes further in his evaluation of the status of religious belief: he sees religion as a self-evident good, as a means by which people seek an understanding of their relationship with the forces that created the universe. See Finnis's *Natural Law and Natural Rights* 1980:89–90. Perry argues that a legal system that is detached from fundamental spiritual values loses a lot of its legitimacy. See his *Religion and Politics* 1997.

majority in the relevant context often determines the acceptability of different objects of value conflict (Modood 1997:16), it is perhaps not coincidental that an Islamic symbol such as the headscarf should come under attack in France, a country where the majority population and its history are Christian. Of course the relevant French legislation bans all "overt" religious symbols in schools, including large Christian crosses, and so purports to be impartial in its impact and therefore to be politically and legally legitimate. However, the impact is not equivalent. Wearing the headscarf is believed by many to be a religious obligation of Islam, whereas wearing a Christian cross is a matter of choosing to express a religious orientation, and it is not widely or systematically worn by Christians.[16] Of course, this is also the case for members of other minority religious groups who consider their own religious garments obligatory, such as skullcaps for Orthodox Jews and turbans for Sikh men. Indeed, the Sikh community has also been up in arms about the French law. However, the North African Muslim immigrant population is so clearly socioeconomically excluded that it seems clear that the French ban was intended to affect that particular minority disproportionately.

The secularity of a state adds another dimension to the rights balancing process and affects the way in which equality is conceptualized in relation to issues of religious freedom. In a secular state such as France, the equal treatment of all according to the secular norm is clearly more likely to be prioritized over the provision of any "special treatment" to take into account distinct religious practices. However, laïcité is far from being the only key post-Revolutionary principle to be promulgated in France; *liberté* (freedom) is also central. It is perhaps in an attempt to strike a compromise between the two that France has chosen to draw the line at imposing a headscarf ban within schools.

The Legitimacy of Minority Group Rights

The central problem with this law is that it affects not only rights and freedoms in general, but also the rights and freedoms of a minority group; France's position is representative of the

[16] Kenneth Roth, executive of Human Rights Watch, states:

> The impact of a ban on visible religious symbols, even though phrased in neutral terms, will fall disproportionately on Muslim girls, and thus violate the antidiscrimination provisions of international human rights law as well as the right to equal educational opportunity. Indeed, the promotion of understanding and tolerance for such differences in values is a key aspect of enforcement of the right to education. In practice, the law will leave some Muslim families no choice but to remove girls from the state educational system (article posted 27 Feb. 2004, http://www.hrw.org).

unresolved debate within liberal theory over the place of minority group rights within the field of human rights, and the way in which this fits into an overarching vision of social equality.

The principal human rights instruments largely set out rights in individual terms, and there has long been a widespread liberalist reluctance to conceive of them in any other way. However, the idea of equality is a core structural plank in the foundation of human rights, and it necessarily has a "group" aspect. Nondiscrimination guarantees feature in all such instruments and apply to all rights, and those guarantees are necessarily set out on the basis of categorized groups, defined by features such as race, ethnicity, and sex. This presents the problem of how to reconcile the demands of those categorized groups with the prevailing liberal democratic state structure, which is based on the idea that purely individual freedoms are balanced against the wishes of the elected representatives, who collectively embody the values of the majority. This problem is particularly acute in the context of a republican state model such as France, which emphasizes the collective nature of the nation.

The international approach to the matter of minority rights has been changeable and has been likened to the swinging of a pendulum (Tom Hadden, cited in Caney & Jones 2001). The initial move to develop a framework of international human rights law began between the two World Wars under the auspices of the League of Nations, and the establishment of a system of protection for minorities was a primary focus in this period (Thornberry 1991). This system collapsed after 1946, and there was an explicit decision by the General Assembly to leave group rights off the UN agenda in favor of individual freedoms. Consequently, Article 27 is the sole provision in the ICCPR relating to the rights of minorities, and it refers to the individual members of minority groups, rather than the groups themselves. This position has recently been reconsidered, as many in the international community feel that individual rights have proved insufficient to deal with problems such as regionalism, the status of indigenous populations, or the position of immigrants within society. Remedies for this imbalance have begun to be provided in international law with the creation of instruments that are designed to protect minority groups.[17] The influence of such developments on interpretations of the principal human rights instruments, however, is as yet unclear. But on the whole, the balance of opinion is moving toward an increased recognition of group rights.

[17] Instruments adopted to remedy this situation include the UN Declaration against Intolerance and Discrimination based on Religion or Belief in 1981, which contains collective rights provisions; the Council of Europe resolution creating the Charter of the Rights of Ethnic Minorities in the same year; and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992.

The approach of national jurisdictions to group rights has been mixed, but group-specific rights have been upheld by the courts, beyond the realms of pluralist Canada. In the case of *Wisconsin v. Yoder* (1972) the U.S. Supreme Court upheld the claim of the Amish community to be able to withdraw their children from school before the legal age of 16 so as to reduce the likelihood of members leaving the group in favor of mainstream culture. The individual's right to free exercise of religion under the First Amendment was held to outweigh the state's interests in compelling school attendance beyond the eighth grade. The Court found that the values and programs of secondary school were in sharp conflict with the fundamental mode of life mandated by the Amish religion, and that an additional one or two years of high school would not produce the benefits of public education cited by the state of Wisconsin to justify the existing law. The response to this case was mixed. Communitarians such as Sandel (1998) praised the Court's decision, on the basis that freedom of conscience involves the freedom to choose one's constitutive ends, that people's religious affiliation and cultural background are profoundly constitutive of who they are and represent their overriding interest, and therefore that others do not have the ability to stand back and objectively assess the value of that identity. But many liberal theorists have taken an opposite view of the judgment: Kymlicka (1995:31), for instance, considers *Wisconsin v. Yoder* to be an excessively extreme group rights case, legitimating an "internal restriction" imposed by the group's leaders on its members to prevent their ability to exit the group, and thereby conflicting with individual rights.

Kymlicka differentiates this type of case from religious dress issues such as the headscarf question, which he categorizes as an example of an "external protection": a less extreme form of group rights claim that is intended to protect particular groups from the destabilizing impact of decisions of larger society, and one that does not conflict radically with individual rights. In the case of *Wisconsin v. Yoder,* the children's right to education is compromised by their removal from mainstream school in a way it would not be by the wearing of a headscarf or any other item of dress. Kymlicka refers to modes of dress as examples of "polyethnic rights," which are intended to help ethnic groups and religious minorities express pride in their cultural particularity without hampering individual members' success in the economic and political institutions of the dominant society. His justification for this particular type of group rights claim is founded on a principle that individual members' autonomy and agency within wider society is preserved, and that this is the primary constitutive element of human well-being. This distinguishes his theory from the more communitarian principle

that one's immediate culture (including its religious traditions) is an inherently valuable element of human existence.

In practice, a grey area remains as to where societies should draw the limits of tolerance for group-specific cultural practices. A notable example is clitoridectomy, a traditional practice in certain societies. With respect to this issue, even those who believe that morality is a relative phenomenon that is dependent on culture and context would also agree that relativism in modern societies has limits, and that practices that seem to go so far beyond moral acceptability for the majority, particularly when they involve physical harm, should certainly be restricted.[18] Wearing the headscarf, however, does not present moral problems of the same nature; it does not involve any form of physical harm. Thus it seems a far more appropriate subject for the exercise of cultural tolerance. Yet there is a danger that cultural practices of this kind can be attacked in the same way, by those who are simply uncomfortable with their foreignness. Hönig (cited in Okin 1999:35) has accused Okin, for instance, of implying that the slope from veiling to murder (via the practice of "honor killing") is slippery, and that both represent just one essential thing: male violence against women, and patriarchal domination. She points out the danger of a one-sided approach to questions of cultural difference being taken by decision makers from the cultural majority and emphasizes the importance of anticipating, considering, and understanding the effects that laws and policies have on cultural minorities from their perspectives.

The argument that liberal democratic societies tend to select the minority practices they tolerate in a rational, reasonable way has been undermined by many legal cases that demonstrate how easily law can be distorted by legal authorities, manifesting an irrational dislike or fear of a minority group considered to be "other," and how legislation is translated through the apparently neutral and objective mechanism of the law to stigmatize and unfairly discriminate against members of a minority group. A gender-based case illustrates the point particularly clearly in relation to social tolerance: in *Karen Ulane v. Eastern Airlines Inc*. (1984), the claimant, a pilot, was fired because of her decision to change sex and become a woman. The airline successfully argued that there was a "safety issue" on the part of passengers and crew, and a potential for "danger" because of passengers' reactions to her new gender. This case reveals an interesting relationship between the sense of difference and "otherness," and the perception of safety and psychological stability, which is pertinent to the headscarf

[18] Some dispute that the practice of clitoridectomy should be attacked, comparing it to Jewish circumcision for boys and questioning why that should be considered more acceptable (see Sander Gilman, cited in Okin 1999:54).

debate in light of the connection it is alleged to have with Islamic fundamentalism. The political and cultural overlap in countries such as Turkey, where the threat of Islamic fundamentalism is very much more real than it is in Western Europe. However, the political rhetoric emanating from the United States in relation to the so-called war on terror has permeated Western Europe and generated irrational fears that are directed at Muslim communities who are largely peaceful, law-abiding European citizens, opposed to fundamentalist violence. Nevertheless, fundamentalism has often been cited by politicians and the media as a justification for dress restrictions ("Bavaria Bans Teacher Headscarves," BBC News Report, Friday, 12 Nov. 2004, http://news.bbc.co.uk/1/hi/world/europe/4005931.stm [accessed 3 Dec. 2006]).[19]

The extent to which a society tolerates minority groups' cultural differences is also significantly affected by class. Intolerance tends to be most acute when the members of minority groups are economically subordinated; it is no coincidence that the French attack on the headscarf commenced at a time when its Muslim minorities were being relegated without employment to the suburbs. In his exploration of this idea, Walzer (1997:56) points to the invisible caste system of immigrant groups from poorer countries in the United States who work as cleaners, dishwashers, and rubbish collectors, and who are rarely looked in the eye by members of the majority. He suggests that the combination of political weakness, poverty, and racial stigma poses enormous problems for the "regime of toleration" that the immigrant society in the United States is supposed to embody, and he concludes that a system of affirmative action is always needed reduce the class hierarchies that infect social tolerance. Masking such problems by laws to suppress dress codes that visibly manifest minorities' cultural differences is surely not the answer.

Those who argue that one of the key problems with giving Muslim French girls a "group right" to wear the headscarf have two prongs to their argument: first, that some Muslim schoolgirls are coerced by their families into wearing the headscarf in school (so they are not doing it through individual choice), and second that it then affects these schoolgirls' equal ability to pursue their education and develop relationships with their peers. There are problems with both prongs. First, the right of parents to bring up and educate their children in the way they believe to be best, in accordance with their own cultural values, must be respected. Article 13 of the International Covenant on Social, Economic, and

[19] This BBC news report cites statements of Bavarian Culture Minister Monika Hohlmeier, an advocate of imposing a headscarf ban for German teachers, whose central justification for the proposal was the threat of fundamentalism.

Cultural Rights (ICSECR), which provides for the right to education, is qualified in Subsection (3) as follows: "The State Parties to the present Covenant undertake to have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions."[20] In any event, although parental "coercion" is clearly undesirable, it is in practice rare as the situation is often far more subtle; children tend to naturally adopt their parents' values and practices. Second, an assertion that the headscarf inevitably causes disadvantage in terms of social interaction in school and that this affects girls' right to education is of questionable validity. The headscarf certainly does not need to affect the "core" of their equal right to education, in terms of the substantive content of learning gained in the classroom, where all girls follow the same curriculum; girls with headscarves are equally able to absorb ideas and learn to think for themselves, and they are thus enabled make their own choices about their religion and lifestyle when they reach adulthood. On this analysis, the *disadvantage* caused to girls as a minority group by the headscarf in terms of their right to personal autonomy and education is marginal, and it should therefore be tolerated.

The Importance of Cultural Identity

Despite the unwillingness of the French to address the socioeconomic inequalities affecting Muslims, the French law is not solely an attempt to mask those tensions; it is also a manifestation of a deep discomfort with the idea that the distinct cultural identity of Muslims is a legitimate thing for the state to protect, or even for Muslims themselves to want to protect. Indeed, debates over the legitimacy of group rights claims inevitably lead to deeper questions about the importance of the phenomenon of "cultural identity." What does "cultural identity" really mean within multicultural society? And, most important for the purposes of this article, how should it affect the interpretation of equality in a case involving the characteristic practices of a minority group?

[20] See the *Şahin* judgment (*Leyla Şahin v. Turkey* 2005), paras. 134–152, for a discussion of Article 2 of Protocol No. 1 ECHR, which provides for the right to education. See also Article 13(3) of the ICSECR, which provides:

> The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

The classical liberal view is that cultural identity is not important, as it is peripheral to the teleological moral and rational development of civilized society that gives meaning to human existence. This perspective is reflected in the ideas of contemporary liberal rights theorists such as Talbott (2005), who claims that the Universal Declaration of Human Rights is the result of the process of continual moral development of the societies who produced it, and that it is founded on universal and invariable moral principles. Laws and policies that pertain to polyethnic recognition for immigrant groups are seen as either damaging to the development of a universal society, or simply an unimportant "symbolic" mode of recognition; Ignatieff has described them as "narcissism of minor differences" (1993:21).

But many other liberal theorists believe that cultural identity is central to self-identity, to a sense of community belonging (Margalit & Raz 1990:447). Rawls (1993:222) has proposed that people depend on the history, customs, and conventions of their society and culture to find their place in the social world they inhabit. Kymlicka (1995:105) argues that cultural membership provides people with an intelligible context of choice to call upon in confronting questions about personal values and projects. Many who dismiss the importance of cultural identity do so upon the premise that the "culture" referred to tends to be a traditional, inherently static concept that is both unsuitable and unrealistic in multicultural societies. However, it is a mistake to characterize it that way; culture is almost always a fluid entity. It has been described by Tamir (cited in Okin 1999) as the product of a "continuous, creative social effort," and as a phenomenon that is "continually being made and remade" (Yael Tamir, cited in Okin 1999:72). Elements of tradition are often fused with elements of modernity in creative and unexpected ways, particularly in multicultural society. Culture's kinetic nature, however, does not prevent it from being understood as a tangible entity that matters to people's sense of self and worth.

Communitarian theorists argue that cultural identity is fundamentally important to individual well-being, as an inherent part of human existence, because of every individual's need to identify with a group, and Sandel emphasizes the depth of commitment that most individuals have to comprehensive culturally derived doctrines that they learn from their communities (Sandel 1998:189). Taylor et alia (1992:25) maintain that it is positively harmful for a state to ignore cultural difference, as nonrecognition or misrecognition can be a form of oppression of members of minority cultural groups, imprisoning them in a false, distorted, and reduced mode of being.

Identity in the modern world is conceived of by postmodern theorists as multiplicitous, fragmentary, fluid, contingent, and continuously shifting. Women from immigrant communities are subject to many different influences that shape their identities.

These influences are dependent on a range of factors such as the nature of the society they have come from, the society they are now living in, and their generation. The various identity-shaping processes have been described by Kallen as a combination of "enculturation" (learning the ways of one's own ethnic collectivity through the transmission of ethnically valued symbols and skills), which generates "pull" forces into the group, and "acculturation" (learning the ways of larger society by exposure to cultural alternatives and to new societal groups), which generates "push" forces away from the group (Kallen 2003:82). In her story "How It Feels to Be Colored Me," Zora Neale Hurston presents a vivid account of identity from a racial minority perspective, describing her own sense of self as a "brown bag of miscellany propped up against a wall" (Hurston 1979:155). Individual identity, then, should not be seen as a unitary essence, but as a "multiple consciousness" constructed from fragments of experience (Harris 1990:584).

The interaction of such multifaceted identities is inevitable in the context of complex, multicultural societies. The outward manifestation of these identities through visibly different modes of dress is similarly inevitable. Cultural symbolism is not just a peripheral concern for minorities; the headscarf controversy in France makes this only too clear. To trivialize the importance of societal recognition of such symbols seems misguided; conversely, societal recognition and acceptance indicate that people belonging to that minority group are perceived by wider society to be of equal value despite their cultural differences (Parekh 1990:96–7).

Conclusion

In the light of the ever increasing cultural pluralism of modern societies, normative assumptions of objective neutrality in legal discourse are constantly being unpeeled. Traditional, formal conceptions of equality are being rejected by contemporary scholarship in favor of a substantive equality that seeks to redress unfair disadvantage. Cultural identity is now recognized to be of foundational importance to the human experience, particularly for minority groups. To deliberately suppress aspects of minorities' cultural identity through restrictive laws is likely to constitute unfair discrimination and as a result to exacerbate social tensions. A renewed awareness of the need to incorporate cultural diversity into legal thinking is now permeating interpretations of human rights instruments, founded as they are on the core idea of equality; it is becoming widely accepted that acknowledging the diversity of human existence does not need to compromise the commonality of values expressed in human rights instruments, but should in fact

increase their meaning. If human rights and equality are interpreted with greater sensitivity to cultural identity, this will prevent anachronistic laws based on formal equality from being invoked as a justification to suppress cultural differences and will act as a catalyst for legal changes that enable societies to develop more organically and harmoniously.

References

Abram, Morris B. (1986) "Affirmative Action: Fair Shakers and Social Engineers," 99 *Harvard Law Rev.* 1312–26.

Ahmed, Leila (1992) *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven, CT: Yale Univ. Press.

Ashfar, Haleh (1989) "Gender Roles and the 'Moral Economy of Kin' among Pakistani Women in West Yorkshire," 15 *New Community* 2211–25.

——— (1998) *Islam and Feminisms: An Iranian Case Study*. London: Palgrave MacMillan.

Benhabib, Seyla, et al. (1994) *Feminist Contentions: A Philosophical Exchange*. London: Routledge.

Bourdieu, Pierre (1977) "Structures, Habitus and Power: Basis for a Theory of Symbolic Power," in *Outline of a Theory of Practice*. Cambridge, United Kingdom.

Caney, Simon, & Peter Jones, (eds.) (2001) *Human Rights and Global Diversity*. London: Frank Cass.

CEDAW (Committee on the Elimination of Discrimination Against Women) (2005) "Combined Fourth and Fifth Periodic Reports on Turkey," http://www.un.org/womenwatch/daw/cedaw/reports.htm (accessed 4 Dec. 2006).

Collins, Hugh (2003) "Discrimination, Equality, and Social Inclusion," 66 *Modern Law Rev.* 16–43.

Conseil, d'Etat (1989) "Quelques Grands Avis, n° 346.893," http://www.conseil-etat.fr/ce/rappor/index_ra_cg03_01.shtml (accessed 12 Dec. 2006).

D'Amato, Anthony (1983) "Is Equality a Totally Empty Idea?," 81 *Michigan Law Rev.* 600–3.

Dworkin, Ronald (1977) *Taking Rights Seriously*. Cambridge, United Kingdom: Cambridge Univ. Press.

El Guindi, Fadwa (1999) *Veil: Modesty, Privacy and Resistance*. Oxford, United Kingdom: Oxford Univ. Press.

Ferguson, Niall (2002) *Empire: How Britain Made the Modern World*. London: Penguin.

Finnis, John (1980) *Natural Law and Natural Rights*. Oxford, United Kingdom: Oxford Univ. Press.

Fredman, Sandra (1997) "Reversing Discrimination," 113 *Law Q. Rev.* 575–600.

Gilligan, Carol (1982) *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, MA: Harvard Univ. Press.

Göle, Nilüfer (1996) *The Forbidden Modern: Civilization and Veiling*. Ann Arbor: Univ. of Michigan Press.

Harris, Angela P. (1990) "Race and Essentialism in Feminist Legal Theory," 42 *Stanford Law Rev.* 581–616.

Haut Conseil à l'Intégration (1996) *Liens culturels et intégration: Rapport au Premier ministre, 1995*. Paris: Haut Conseil à l'Intégration.

——— (2006) *Le bilan de la politique d'intégration 2002–2005*. Paris: Haut Conseil à l'Intégration.

Human Rights Committee (1986) *Yearbook of the Human Rights Committee*, Vol. II. New York: Human Rights Watch.

Human Rights Watch (2004) "Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education,

and Access to Higher Education for Women who Wear the Headscarf," 29 June, http://hrw.org/backgrounder/eca/turkey/2004 (accessed 29 Nov. 2006).

Hurston, Zora Neale (1979) "How It Feels to Be Colored Me," in A. Walker, ed., *I Love Myself When I Am Laughing . . . and Then Again When I Am Looking Mean and Impressive: A Zora Neale Hurston Reader*. Old Westbury, NY: The Feminist Press.

Ignatieff, Michael (1993) *Blood and Belonging: Journeys into the New Nationalism*. London: Chatto and Windus.

Kallen, Evelyn (2003) *Ethnicity and Human Rights in Canada*, 3d ed. Toronto: Oxford Univ. Press.

Khosrokhavar, Farhad (2004) *L'Islam dans les prisons*. Louvains Le Neuve, France: Presses Universitaires de Louvain.

Kymlicka, Will (1995) *Multicultural Citizenship*. Oxford, United Kingdom: Oxford Univ. Press.

MacKinnon, Catherine (1983) "Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence," 8 *Signs* 635–58.

Macleod, Ann (1993) *Accommodating Protest*. New York: Columbia Univ. Press.

Margalit, Avishai, & Joseph Raz (1990) "National Self Determination," 87 *J. of Philosophy* 442–7.

Modood, Tahir, ed. (1997) *Church, State and Religious Minorities*. London: Policy Studies Institute.

Okin, Susan (1999) *Is Multiculturalism Bad for Women?* Princeton, NJ: Princeton Univ. Press.

Özdalga, Elizabeth (1998) *The Veiling Issue in Modern Turkey*. Surrey, United Kingdom: Curzon.

Parekh, Bikhu (1990) "Integrating Minorities in a Multicultural Society," in F. Requejo & U. Preuss, eds., *European Citizenship, Multiculturalism and the State*. London: Baden-Baden.

——— (2000) *Report: The Future of Multi-Ethnic Britain*. London: Runnymede Trust Commission.

Perry, Michael J. (1997) *Religion and Politics: Constitutional and Moral Perspectives*. New York: Oxford Univ. Press.

Phillips, Anne (2004) "Defending Equality of Outcome," 12 *J. of Political Philosophy* 1–19.

Pitts, Jennifer (2005) *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*. Princeton, NJ: Princeton Univ. Press.

Poulter, Sebastian (1997) "Muslim Headscarves in School: Contrasting Legal Approaches in England and France," 17 *Oxford J. of Legal Studies* 43–74.

Rawls, John (1971) *A Theory of Justice*. Oxford, United Kingdom: Oxford Univ. Press.

——— (1993) *Political Liberalism*. New York: Columbia Univ. Press.

Raz, Joseph (1986) *The Morality of Freedom*. Oxford, United Kingdom: Oxford Univ. Press.

Roy, Oliver (2004) "Islam in France: Religion, Ethnic Community, or Social Ghetto?," in B. Lewis & D. Schnapper, eds., *Muslims in Europe*. London: Pinter.

Sabeg, Yazid, & Laurence Méhaignerie (2004) *Les oubliés de l'égalité des chances: Participation, pluralité, assimilation . . . ou repli?* Paris: Institut Montaigne.

Said, Edward (1979) *Orientalism*. New York: Vintage.

Salih, Sara, ed. (2004) *Judith Butler Reader*. London: Blackwell Publishing.

Sandel, Michael (1982) *Liberalism and the Limits of Justice*. Cambridge, United Kingdom: Cambridge Univ. Press.

——— (1998) *Democracy's Discontent*. Cambridge, MA: Harvard Univ. Press.

Sen, Amartya (2006) *Identity and Violence*. London: W. W. Norton.

Straw, Jack (2006) "I want to unveil my views on an important issue," *Lancashire Evening Telegraph*, 6 October, http://www.lancashiretelegraph.co.uk/blog/index.var.488.0.i_want_to_unveil_my_views_on_an_important_issue.php (accessed 5 Dec. 2006).

Talbott, William (2005) *Which Rights Should be Universal?* Oxford, United Kingdom: Oxford Univ. Press.
Taylor, Charles et al., eds. (1992) *Multiculturalism and the Politics of Recognition*. Princeton, NJ: Princeton Univ. Press.
Thornberry, Patrick (1991) *Minorities and Human Rights Law*. London: Minority Rights Group.
Walzer, Michael (1997) *On Toleration*. New Haven, CT: Yale Univ. Press.
Westen, Peter (1982) "The Empty Idea of Equality," 95 *Harvard Law Rev.* 537–42.

Cases Cited

Constitutional Court of Turkey, Judgment No. 1989/12.
Constitutional Court of Turkey, Judgment No. 1991/8.
Karen Ulane v. Eastern Airlines Inc., 742 F. 2d 1081 (7th Cir.1984).
Leyla Şahin v. Turkey, 11 November ECHR (2005).
Lovelace v. Canada, Human Rights Committee, No. 24 (1977).
Lovelace v. Ontario, 1 S.C.R. 950 (2000).
R (on the application of Begum) v. Headteacher and Governors of Denbigh High School, UKHL 15 (2006).
Welfare Party Case (Refah Party v. Turkey), 13 February ECHR (2003).
Wisconsin v. Yoder, 406 U.S. 205 (1972).

Statutes Cited

Canada:
Canadian Charter of Rights and Freedoms 1982
Canadian Multiculturalism Act 1988
International:
International Covenant for the Elimination of All Forms of Racial Discrimination, Article 1(4) 1969
Charter of the Rights of Ethnic Minorities 1981 (Council of Europe resolution)
UN Declaration against Intolerance and Discrimination based on Religion or Belief 1981
UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992
Iran:
Islamic Criminal Code, Article 139
Turkey:
Disciplinary Regulation for Students in Higher Education 1985
Law 3670, October 25 1990: Supplement to Article 17 of the Higher Education Law "Hat Law" 1925
Law 3670 1990
Law Relating to Prohibited Garments 1934
Regulation Concerning the Dress of Students and Staff in Schools, Article 6, 1981

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