Laicité, Liberalism and the Headscarf

Khaled A Beydoun, University of Arkansas, Fayetteville
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Khaled A. Beydoun

Faculty of Law, University of Toronto, Canada

In 2004, legislation was passed in France that effectively banned the ostentatious display of religious symbols in the public sphere. The 2004 law, which came to be known as the “headscarf ban”, also formally proscribed the display of other religious symbols such as Christian crucifixes and Jewish yarmulkes, but was centrally motivated by the Muslim headscarf. Scholars from varying disciplines polemically claimed that Islamophobia, a phenomenon sweeping through Europe, was the main catalyst leading to the ban. Amid today’s polarized geopolitical landscape, this interpretation was trendy but simplistic. A survey of the modern French historical narrative reveals that laïcité, the uniquely French brand of secularism, furnishes a more robust and comprehensive rationale and, coupled with the spreading culture of “Islamophobia” provides an ample and accurate assessment of the genesis of the headscarf ban.

The second half of the article comparatively assesses the French secularist model with the American religiously neutral model, examining both through the theoretical prism of John Rawls’ “political liberalism” Whereas the United States’ First Amendment mandates religious neutrality and the ample right to practice religion freely, France’s enshrinement and implementation of strict secularism, or laïcité, most radically evidenced by the 2004 law, is a violation of Rawls’ political liberalism paradigm.

Keywords: headscarf; French laïcité; Islam; Rawls; liberalism; hijab; free exercise; secularism

Introduction

The headscarf has attracted much academic attention in recent times. Scholars and students in many disciplines, from law to religious studies, are examining the sociopolitical implications of the headscarf, and the subjects who are donning it at an alarming rate. Indeed, intellectual treatments of the headscarf may be considered to have reached almost cliché proportions, considering that the study of Islam has become (in many circles) both a fashionable and politically correct subject of study – particularly in today’s precarious political climate which has pushed Muslims to the political fringe. Legal examination of this matter has generally suffered from a poor accounting for the historical events that have given rise to animus toward Islam, and towards the headscarf in particular, while interdisciplinary engagement has suffered from being too polemical or unfocused. Nevertheless, the proliferating academic focus on the headscarf and Islam may ultimately be a constructive stimulus, and perhaps influence a more comprehensive and careful political and social understanding of these widely misunderstood subjects.

This article aims to present an account of the headscarf and its turbulent political experience amid today’s polarized political landscape. Moreover, it is suggested that the
article is atypical not only because the headscarf is treated from a legal or political theory angle, but because it is more concerned with the codified clauses and traditions about religion in the two states being examined – France and the United States – which have both been the scene of provocative political and legal debates about the headscarf in particular, and Islam in general. Both nations, which are simultaneously engaged in the “war against terror” and are also hosts to growing Muslim populations, confront the challenge of accommodating the religious and normative traditions of their Muslim citizens. This challenge has, in turn, exposed both nations’ respective commitment, or lack of it, to the free exercise of religious liberties by their citizens.

On 15 March 2004, France implemented Law No. 2004-22, legislation that, “forbade the wearing of ‘ostentatious’ religious symbols in public schools. While this law affected Jewish vartnulkes, Sikh turbans, and large Christian crosses, its main effect was to ban the wearing of headscarves, or hijabs, by young Muslims girls.” The result of the “headscarf ban”, as it came to be known in media and academic circles, had explosive consequences on the ground throughout France, climaxing with weeks-long riots led by French Muslim and African youth. Although this watershed law was considered too radical a step for France by many Western pundits and critics, as well as several French liberal scholars, a closer examination of the French historical narrative vis-à-vis the state’s relationship with religion proved that it was anything but. Only weeks earlier, a Florida judge held that a Muslim American woman was required to remove her headdress in order to be photographed for a state driver’s license. In this case, which will be closely examined below, the court’s rationale was ultimately dictated by growing national security concerns. The American sociopolitical climate had drastically changed after 9/11, ushering in a more critical political disposition toward Islam at large, and Muslim Americans in particular. In the public sphere, politicians ubiquitously espoused Islamophobic views, perspectives that penetrated deep into the broader private consciousness in the United States. Islamic practices, whether ostentatious or hidden, were oftentimes stripped of their religious meaning and sometimes equated with terrorism. This dubious nexus was echoed in political halls of power, including Congress and the courts, creating a climate which effectively compromised the civil liberties of not only Muslim Americans but American in general, and acutely impacting the free-exercise of Islam by American citizens. Although this period of crisis did not formally alter the letter of the law, as the spirit of the Free Exercise Clause formally ensured Muslim Americans’ right to practice their faith, its bounds were drawn more tightly

2Wing and Smith, op. cit. 743. See also John R Bowen, Why the French Don’t Like Headscarves: Islam, the State, and Public Space (Princeton University Press, Princeton, NJ 2007): “Although worded in a religion-neutral way, everyone understood the law to be aimed at keeping Muslim girls from wearing headscarves in school. The law was based on recommendations issues in late 2003 by two prestigious commissions, one formed by the Parliament, the other appointed by President Jacques Chirac (the Stasi Commission).”
3Wing and Smith, op. cit. 745–746; “During the fall 2005, France experienced more than two weeks of violence that spread to more than two hundred cities. The violence occurred to a large degree where people of color disproportionately live in conditions of high employment, poverty, and discrimination. The rioters included recent immigrants and long-term inhabitants, many from France’s former colonies in Africa and elsewhere. Many were Muslims.”
4In this case, the neqab, a more conservative version of the hijab, which covers both the hair and face, exposing only the eyes. Women who wear the neqab also tend to dress more conservatively, usually exposing no part of their body.
by ever-growing national security concerns. Where the headscarf was once viewed as purely a mode of religious expression, it took on an increased political significance after 9/11. In other words, Islam and the headscarf were politicized. Thus, the free exercise of Islam in America was indirectly proportional to the maximization of national security, which ranks as society’s primary political concern. In addition, the proliferating geopolitical tension between the West and fundamentalist Islamic networks has significantly complicated the experiences of the millions of Muslims living in Western democracies, particularly those in Western states that were once homogenously white and Christian.

At this challenging historical moment for Islam and its adherents, Muslims nevertheless continue to migrate into Western states. The economic opportunity, political stability and constitutional democracies of the United States and France, which comprise the contexts in which this article will be practically engaged, have attracted Muslims from all points of the globe. Naturally, with demographic pluralism comes religious diversity, and hence additional doctrinal systems which must be duly integrated into the social fabric and national identities of host states – bringing us to this article’s central focus.

The objective here is to neither dismiss nor to condone the French or American policies in question, but rather to analyse them through the philosophical framework of a leading treatise on political liberal thought – John Rawls’ Political Liberalism. According to Rawls, a fair conception of justice is only achieved if society’s doctrinal milieu readily accepts the prevailing social contract. This conjectural political contract, which he identifies as an “overlapping consensus”,7 neither favors nor discriminates against comprehensive moral or religious doctrines held by members of its citizenry. Accordingly, it is essential to the logic of justice as fairness that the political conception remains both formally and functionally impartial, seeking to neither advance nor diminish any single comprehensive doctrine. A state’s formal enshrinement of a particular religion, sect or confession, or even secularism, which is in and of itself a comprehensive doctrine much like religion, violates the precepts of political liberalism.

Moreover, political liberalism provides the philosophical prism through which to engage and assess the policies and legal decisions levied against the headscarf in France and the United States. Naturally, the reader might ask why Rawls? First, political liberalism provides a political paradigm suitable for the discussion of Islam’s capacity to integrate with Western societies, because political liberalism’s raison d’être is to address the (theoretical) inclusion of minority doctrines into the political establishment. Second, the prevailing sociopolitical climate, positioning Islam as antithesis, presents provoking practical challenges to Rawls’ notion of justice as fairness. Third, today’s geopolitical divide, pitting the West against Islam, threatens not only the latter, but also governmental adherence to liberal values and principles in the United States and France. Thus, in a historical moment where

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5This is not to say that Islam and the headscarf were not viewed with suspicion before 9/11, but that this was exponentially increased following the terrorist attacks. Islam and the headscarf were consequently conflated with national security concerns.

6In 1900 Islam was concentrated in the Arab world and Southeast Asia. Today, there may be as many practicing Muslims in England as there are practicing Anglicans; though in the 20th century, at least, Islam’s expansion has mostly come about through population growth and migration, rather than conversion” (“The Battle of the Books” The Economist (22 December 2007) 80).

7“In an ideal overlapping consensus, each citizen affirms both a comprehensive doctrine and the focal political conception, somehow related. In some cases the political conception is simply the consequence of, or continuous with, a citizen’s comprehensive doctrine; in others it may be related as an acceptable approximation given the circumstances of the social world” (John Rawls, Political Liberalism: Expanded Edition (Columbia University Press, New York 2005) xix).
the practicability of integrating Islam and Muslims into Western societies is being debated. Rawls' work provides a political barometer to gauge the policies levied against Muslim populations in France and the United States.

Though the surface focus of this article may appear to be the headscarf, the intellectual exercise in which it really aims to engage is to provide a comparative analysis of the French and American governmental relationship with religion vis-à-vis recent policies aimed against the headscarf. A salient area of examination is uncovering the political, historical narratives that gave rise to the prevailing conceptions of the French and American governments' association, or disassociation, with religious doctrines. In France, the eighteenth-century struggle between politicized Catholics and secular nationalists concluded with the latter's victory, which led to the 1905 law enshrining secularism as France's guiding political doctrine, while it is the Free-Exercise Clause of the US Constitution's First Amendment that memorializes the American Revolutionary narrative. Thus, the established laws addressing the place of religion in government in both France and the United States are ultimately a legal extension of their distinct sociopolitical histories, reshaped by prevailing controversies and sociopolitical phenomena, including Islamophobia. Examining the historical experiences of both states sheds much light on their modern-day narratives and legal engagement of religion in general, and Islam in particular. However, this component of the article's methodology simply explains the theoretical genesis of modern-day legal institutions, thereby establishing a historical context where Rawlsian political thought is not only applied to render particularized assessments of an individual policy or legal decision regarding the headscarf, but also put into operation to examine the uniquely constructed legal traditions of France and the United States. Thus, the fundamentally distinct historical and political narratives of France and the United States spawned two equally divergent legal approaches with regard to governmental treatment of religion. While France formally enshrined laïcité, a rigid brand of secularism premised on liberal notions of French nationalism, as its comprehensive doctrine, the American First Amendment is distinguishable because it does not operate as doctrine, but rather as a doctrinally neutral platform ensuring its citizens the right freely to exercise any religion. Hence, because secularism functions as France's guiding comprehensive doctrine, to the exclusion of a panoply of other worldviews adhered to by its citizens, an overlapping consensus of just governance cannot be had, while the American model of neutrality accords with Rawls' notion of justice as fairness in a pluralistic society.

This article is made up of four parts, which aim to assess the justness of French and American policies isolating the headscarf at a challenging politico-historical moment for Islam. Part I provides a summary of Johns Rawls' Political Liberalism, on the basis of which French and American policies regarding the veil are philosophically engaged and assessed. Part II examines the defining historical narratives in France and the United States that shaped and ultimately established the contemporary legal traditions codifying government's relationship with religion. Part III surveys the phenomenon of Islamophobia, which is a central theme in the current societal and political imaginations of France and the United States. Finally, Part IV engages the salient French and American controversies regarding the headscarf from a Rawlsian perspective.

I Rawls' political liberalism: a summary

The dynamic production of a state's narrative vis-à-vis religion, and the public bounds of religious expression, fits neatly with the theoretical paradigm envisioned by Rawls. Moreover, Rawls' work has never been more relevant, particularly with the rapid diversification
of, and Muslim migration into, Western liberal societies. *Political Liberalism* is ultimately an update of his earlier treatise, *A Theory of Justice*, which he revises to address the liberal dilemma posed by doctrinally pluralistic societies, such as France and the United States. As discussed above, the narrative model illustrates the process in which minority (and competing) doctrines are either eliminated or integrated into the master (or entrenched) narrative. Through the narrative model, we have a greater understanding of how and why the French secular model is exclusionary of comprehensive doctrines such as Islam, while the unique political history of the United States has given rise to an inclusive and neutral disposition toward comprehensive doctrines and religions of all stripes. We now come to Rawls’ paradigm, which provides a critical perspective on French and American policies toward Islam, by way of the headscarf.

The harmonious coexistence of a pluralism of doctrines and a defined mode of governance is the fundamental philosophical dilemma underlying John’s Rawls’ *Political Liberalism*. Rawls is concerned not with ethnic or cultural pluralism, but with the pluralism of diverse doctrines that originate out of a free and politically liberal society. If a doctrine is reasonable, it is expected that citizens of a free and reasonable society will eventually choose to subscribe to it. Thus, a state must allow its citizenry individually to choose and pursue their political or religious doctrine of choice, without encroaching on these rights. Consequently, a state’s endorsement of one comprehensive doctrine to the exclusion of other distinct and competing doctrines qualifies as unjust rule and violates political liberalism’s notions of justice as fairness. The *en masse* migration and settlement, of Muslims into the liberal constitutional democracies of Europe and North America adds another comprehensive philosophy to their doctrinal milieus. There follows a concise survey of *Political Liberalism*, paying special attention to the ideas and principles most salient to the question at hand.

Before delving into *Political Liberalism*, we must first ask why Muslim women choose to wear the headscarf? From a rational perspective, Muslim women believe that wearing the headscarf advances their religiously defined conception of the good, and thus advances their life plan. Such an act, according to the precept of political and classical liberalism, is reasonable as long as it does not encroach upon the religious rights of other citizens who hold a contrary religious, or even sectarian, perspective. It is contested by many jurists and intellectuals that the Qu’ran alone, if read purely from a textual disposition, does not legally mandate female covering as generally practiced by Muslim women today. Nevertheless, there are several verses that are considered to be the legal bases for covering. The scriptural origins for the practice of veiling specifically stem from the following two verses in the Qur’an, which have provided the legal basis upon which “conservatives legitimize a generalized model of veiling for all Muslim women.”

The first germane verse, which generally encourages modesty, does not expressly mandate veiling in its traditionally observed forms:

And say to the believing women that they should lower their gaze and guard their modesty; and they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands’ fathers, their sons, their husband’s sons, their brothers or their brothers’ sons, or their sisters’ sons, or their women, or the slaves who their rights hands possess, or male servants free of physical needs, or small children who have no

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8John Rawls, *A Theory of Justice*.

sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. (Q 24:31)

Although the words veil, hijab, negab, burqa, chador or the like do not occur in this verse, or the Qur'an in general, it has become a mainstream interpretation that the donning of the headscarf (or its many gradients) is a reasonable expression of Islamic modesty. Therefore, as we shall discover below, it qualifies as a religious practice that should be permitted from the perspective of political liberalism.

Islam is one of the numerous reasonable doctrines that citizens of a free society may subscribe to if given the liberty. In such a society, where citizens are given the right to freely and liberally determine their own conception of the good, a diverse array of doctrines will naturally be selected. In order to account for this doctrinal diversity, Rawls advances a revised philosophy of justice as fairness to reflect the doctrinal pluralism in liberal constitutional states as an enhanced brand of political liberalism. Moreover,

The aim of justice as fairness, then, is practical: it presents itself as a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement. It expresses their shared and public political reason. But to attain such a shared reason, the conception of justice should be, as far possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm. In formulating such a conception, political liberalism applies the principle of toleration to philosophy itself.  

Hence, justice as fairness envisions a political conception that is not established under the doctrinal precepts of a particular religious or epistemological view, but a purely political set of guidelines that facilitate the achievement of an overlapping consensus. Hence, no single comprehensive doctrine or system that espouses a meaning of the “good” or “virtuous” should be enshrined, according to Rawls. In metaphorical terms, “the political conception is a module; an essential constituent part, that fits into and can be supported by reasonable comprehensive doctrines that endure in the society regulated by it.” This collective support, or endorsement, signals an “overlapping consensus”, which must be achieved in order to have a well-ordered society – where an otherwise diverse citizenry can find common philosophical ground on which to discuss and debate salient legal and political matters. However, Rawls distinguishes between reasonable and unreasonable comprehensive doctrines, the latter of which lack the requisite influence to challenge societal constructions of justice, and therefore need not endorse the political conception. A state’s institutions of justice, therefore, need not take into account claims of unreasonable doctrines, whereas they are obligated to take into consideration those of reasonable doctrines. The state’s legal

\[10\text{To begin with, the Qur'an uses the words jilbab (cloak) and khunur (shawl), both of which, in ordinary usage, cover the bosom (juyub), not the face, heads, hands or feet. The Qur'an does not mandate such a form of veiling in any Ayat [verses]" (ibid. 55).}
\[11\text{Rawls, Political Liberalism, op. cit. 9–10.}
\[12\text{Rawls defines the political conception as follows: “While such a conception is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions. In particular, it applies to what I shall call the ‘basic structure’ of society, which for our present purposes I take to be a modern constitutional democracy” (ibid. 11).}
\[13\text{First, it is a society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice; and second, its basic structure – that is, its main political and social institutions and how they fit together as one system of cooperation... And third, its citizens have a normally effective sense of justice and so they generally comply with society’s basic institutions” (ibid. 35).}
\[14\text{Ibid. 39.}
institutions need only be endorsed by reasonable doctrines. Endorsement entails that the plurality of reasonable doctrines, as interpreted through their respective guidelines, individually accept the political conception's fundamental constitutional principles. Rawls says that, "when citizens share a reasonable political conception of justice, they have a basis on which public discussion of fundamental political questions can proceed and be reasonably decided, not of course in all cases but we hope in most cases of constitutional essentials and matters of basic justice." Hence, neither the integrity of the religious doctrine nor its epistemological views are in question, for political liberalism is exclusively concerned that society's collective doctrines approve "a political conception of justice for a constitutional democratic regime." Thus, Rawls draws a critical division between political liberalism and comprehensive liberalism premised on impartiality, for the latter contemplates and resolves moral questions through a particular doctrinal lens, which would spell disaster in a society permeated by doctrinal heterogeneity.

However, Rawls does discuss several exceptions to the provision proscribing state discrimination in favor of one comprehensive doctrine. In the course of protecting society's many doctrines, or one doctrine in particular, a state may issue legislation that disproportionately impacts one doctrinal community that is encroaching on the freedom and liberty of another. Part and parcel of the state's role of facilitating the free and unbridled flourishing of its society's comprehensive doctrines is maintaining this balance, and acting affirmatively when there is activity threatening this balance. However, the state cannot act with unfettered authority, but must execute a proportional response to a doctrinal community that is itself rational, but within which a faction is behaving in a deviant fashion.

It must be noted that Rawlsian political liberalism simply aims to articulate a paradigm for justice that regulates public, or political, affairs. Unlike preceding landmark works of political philosophy, Rawls' is not concerned with an individual citizen's private activities, and thus finds no purpose in theorizing about what a "good life" or "ideal citizenry" might be. Ultimately, Rawls is concerned with "just governance", which is founded on doctrinal neutrality completely divorced from religion, secularism, or an analogous comprehensive

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15A fundamental principle that must be examined before discussion of "endorsement of the political conception" and "overlapping consensus" is the initial phase of political bargaining that Rawls titles the "original position". Rawls explains the original position thus: "We must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between persons regarded as free and equal can be reached... [The hypothetical original position] must eliminate the bargaining advantages that inevitably arise within the background institutions of any society from cumulative social, historical, and natural tendencies" (ibid, 23). This latter idea, addressing the political and social imbalance favoring one group, is particularly relevant to one of the questions addressed in this article – namely, whether the attainment of Islam's endorsement of the political conceptions in France, the United States and Canada is undermined by the established social and political imprint left by the White and Christian traditions. Moreover, the original position theoretically mandates that each and every doctrine is symmetrically situated, which in reality. However, Rawls considers this exercise as the best available philosophical exercise by which to construct a political enterprise where a range of doctrines find collective accord, and thereupon, a common forum to resolve prospective dilemmas and debates.

16Rawls, Political Liberalism, xxi.

17Ibid. xxvii.

18"The general problems of moral philosophy are not the concern of political liberalism, except insofar as they affect how the background culture and its comprehensive doctrines tend to support a constitutional regime... To maintain impartiality between comprehensive doctrines, it does not specifically address the moral topics on which those doctrines divide" (ibid. xxviii).

19Rawls raison d'etre in Political Liberalism is providing a vision of political justness, not advancing a social contract, as in the works of ancient philosophers and theorists.
II Strict secularism or religious neutrality? Examining the political narratives that gave rise to *laïcité* and the free exercise clause

The state’s legal system, to be effective in ordering the world, generally cannot empower all narratives of identity proffered by competing communities of meaning and identity. In the interest of order and maintenance, uniformity is forced amidst the cacophony of narratives.20

Every entity, including nation-states and governments, has a story. One cannot truly understand the political or legal *status quo* of a particular state without first examining the preceding narrative that led to it. This historicism provides scholars, policymakers and critics of all persuasions with a more panoramic appreciation of adopted laws and adopted political philosophies. Contemporary governmental institutions, legal traditions and even overarching societal consciousnesses are products of historical social and political stimuli, and these fluid narratives are gradually molded and remolded by cultural and ideological struggles for political hegemony. This dynamic notionally explains the turbulent yet revolutionary processes that produced the French model of secularism, or *laïcité*, and the American tradition of religious neutrality.

Before delving into the respective histories that led to the French and American narratives,21 it would be useful to explore seminal works of political theory that articulate the narrative’s capacity to elucidate the purposes and rationales that give rise to laws, and the malleability of legal systems. Citing Jurgen Habermas,22 Islamic law scholar Anver Emon identifies the narrative as, “a shared language and lifeworld provide the temporal/spatial context through which background values find expression in time and space.”23 Accordingly, the communicative and dialogical common ground that provided the forum in which warring camps could first ideologically disagree, then engage in violent battle, made possible the normative competition that resulted in certain values gaining influence over others. In other words, a shared lexicon and cultural background furnished warring revolutionary camps in the United States and France with a battleground where rival doctrines could be intelligibly understood by either side, so that triumphant doctrines seize political control without completely eradicating a society’s fundamental epistemology, or Habermas’ “lifeworld.” Thus, a society’s narrative is fluidly evolving (or devolving), and periodically tweaked by successive doctrinal regimes.

Emon’s articulation of the narrative, premised on the work of Habermas and also inspired by Robert Cover’s construction of the *nomos*,24 provides a conjectural vehicle for

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21Here, when identifying the French and American narratives, the focus is specifically on the 1905 law in France, and the First Amendment in the United States. The narrative is not used in its comprehensive sense, to encompass the entire legal charters’ of both states.


23Emon, op. cit. 9.

understanding how shared values spawn a galvanizing experience, and ultimately, a unifying national narrative that is manifested by the legal status-quo:

In other words, like the lifeworld of Habermas and the frameworks of Taylor, nomos is the transcendent ideal that is given expression in the present through a narrative mode of communication that fuses the facticity of reality and the normative vision of good. The shared conceptual vocabulary of a community is the mechanism by which the nomos is brought to bear on the reality of the moment... Narrative, as a mode of telling, sharing, and communicating, fashions the way one understands, makes sense of, and represents, the historical moment in light of the nomos of shared values. The narrative mode provides both coherence in meaning and a telos of vision in light of the reality of lived experience... [However] If left unchecked, the plurality occasioned by the nomos can create not only in vision but also normative chaos.25

Cover’s discussion of the proliferation of offshoots that extend out of a grand nomos (or narrative) theoretically illustrates the doctrinal competitions that take place within states, such as France and the United States. Thus, the stabilizing aim of the narrative shares a fundamental parallel with Rawls overlapping consensus theory, in that both mechanisms function to resolve the normative chaos, and the deficits in democratic governance that would result. This is not to equate Cover’s theory with Rawls’ political liberalism, the latter being a much grander theory while the former advances a more specific inquiry into how doctrinal competitions conclude with a select doctrine being empowered at the expense of others;26 however, for the purposes of this article, surveying these doctrinal competitions in France and United States is a necessary precursor for examining whether their respective narratives accord with Rawls’ theory of justice as fairness.

While modern chapters of French history illustrate an allegiance to strict secularism, the American religious “experiment” was founded on religious neutrality and tolerance. American constitutional law scholar John T. Noonan, Jr. observed, “to the Reverend Frederick Adams who wrote in 1832, America was an experiment in which Free Exercise was put ‘finally to decisive test’.”27 Ironically enough, the American Free-Exercise tradition was modeled after what Thomas Jefferson observed on his visits to France,28 which left him quite smitten with the state’s tolerance of French society’s diverse religious and confessional affiliations.29 In James Madison, Jefferson identified a Constitutional pioneer who shared his own belief that religion must be “wholly exempt from civil society”, as memorialized by France’s Constitution of 1791.30 Consequently, the French spirit of religious neutrality was exported to the United States, but the specific enshrinement of

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25Emon, op. cit. 13, n. 19.
26Cover’s principal concern is with how the law as coercive state institution selects some narratives over others. The selectivity of the law, or its jurispathic tendencies, raises concerns about the institutional effect on the meaningfulness of existence for those whose narratives of identity have been ignored, marginalized, or even forgotten over time. The selectivity of the law, or its ‘violence’ as Cover calls it, satisfies the need for the state to fulfill its imperial function of world maintenance” (ibid. 14).
28His views on liberty were very much influenced by the French Revolution and the Declaration of the Rights of Man and Citizen of 1789.
29In 1791 the French in their first constitution declared, ‘No one should be disturbed for his opinion, even religious ones, provided their expression does not trouble the public order established by the Law’ (Noonan, op. cit. 465).
30In the aftermath Madison steered to passage Jefferson’s great act establishing religious freedom (it had failed of passage six years earlier when Jefferson had tried). The law’s enactment, as Madison wrote Jefferson in Paris, ‘extinguished for ever the ambitious hope of making laws for the human mind.’ (Noonan, op. cit. 461–462).
secularism was not adopted into the United States’ Constitution, as it would be the case in France. Secularism was not a fitting solution for Americans, given their experience with religious persecution at the hands of the English monarchy. The American conception of religious neutrality was therefore premised on tolerance and strict separation of government – general principles that could be integrated with any of society’s comprehensive doctrines. French secularism, on the other hand, was a rigid political philosophy that precluded the public assertion of religion, thereby entangling government with a defined comprehensive doctrine. In his study of the alternate modes of construing the First Amendment’s religion clauses, Michael M. McConnell characterizes the fundamental difference between neutrality and secularism when forced upon a society permeated with religious pluralism, which is most telling for the question at hand. McConnell proposes:

An alternative view is that religion is a welcome element in the mix of beliefs and associations present in the community. Under this view, the emphasis is placed on freedom of choice and diversity among religious opinion. The nation is understood not as secular but as pluralistic. Religion is under not special disability in public life; indeed, it is at least as protected and encouraged as any other form of belief and association... I believe that this view is more consistent than its competitors with the liberal political theory which underlies the Constitution.\(^3\)

French secularism furnishes its citizens with this freedom of choice, but compels them to confine it exclusively within the private bounds of their homes.

France’s volatile relationship with Islam was most sharply evident in their colonial experiments across the Mediterranean into North Africa. France’s colonial advances into the Muslim states of North Africa, particularly Algeria, are not forgotten by the Muslim diasporas who have integrated into the French populace.\(^2\) However, the French contemporary French narrative of secularism finds its roots long before its colonial ventures into Muslim North Africa, starting with the French Revolution and being continually declared today. Modern France is characterized by a strict adherence to “Republicanism”, which John R. Bowen explains thus:

According to the Republican way of thinking, living together in a society requires agreement on basic values. People in many countries would agree with this claim, but French Republicans seek to rigorously and consistently justify policies according to this idea. To do so means adhering to a certain brand of political philosophy, one that emphasizes general interests and shared values over individual interests and pluralism... It requires the state to construct institutions and policies designed to integrate newborns and newcomers into French society by teaching them certain ways of acting and thinking.\(^3\)

Again, France’s preferred political philosophy, which is imposed on its citizenry, is a rigid brand of secularism, in which the government vehemently promotes the circumscription


\(^2\)The assimilatory project of “Frenchification” that was practiced during France’s colonial era, an enterprise aimed at rigidly imposing French language and culture upon the colonized at the expense of their indigenous forms, reflected the nation’s ethnocentrism. “In France today, the history of the Algerian colonization is not forgotten. When you have an Arab face and you speak French like the French do, and you say, ‘I am a Muslim,’ there is a great deal of suspicion. I am just a symbol of what’s coming, which is a new generation of Muslim leaders, men and women, able to speak English as you are speaking English, French as they do in France” (Paul Berman, ‘Who’s Afraid of Tariq Ramadan: Interview with Ramadan’, Foreign Policy (November/December 2004) 3).

\(^3\)Bowen, op. cit. 11.
of religious observance and symbolic manifestation in the public sphere. The French Revolution was premised on this divide, and modern French society is very much founded on this political philosophy.\textsuperscript{34} Thus, to be French is to embrace laïcité, and laïcité is perhaps the most salient hallmark of French identity today.\textsuperscript{35} Consequently, newcomers are expected to leave their distinct practices and values at the border, and accept laïcité if they would like to become part of French society. Bowen writes (in the excerpt above) that laïcité, “requires the state to construct institutions and policies designed to integrate newborns and newcomers into French society by teaching them certain ways of acting and thinking.” Naturally, this process of teaching primarily takes place in public schools, where the French government has been most vehement in promoting its political philosophy.

The \textit{Stasi} Commission strongly emphasizes public education because it is at school that young people get their training in citizenship... Considerate of the vulnerability of the young pupils’ minds, the Commission stresses that public schools should educate them in a tranquil climate, remote from the vehement controversies of the adult world. In order to protect the serene educational atmosphere against ideological controversies, the \textit{Stasi} Commission proposes a bill that bans all religious symbols from public schools.\textsuperscript{36}

Hence, it is not surprising that the context that initially gave rise to the headscarf ban was France’s public schools, scene of the 1990s ‘headscarf affairs’.

Proponents of the 2004 law contend that modern French government has always maintained a strong separation of church and state. Secularism as the official state political philosophy, proponents will argue, was formally implemented in 1905, when laïcité was reformed and formally incorporated secularism, rather than religious neutrality, as its philosophical framework. Furthermore, the 2004 law evidenced a stronger commitment to this philosophy, and so was not triggered by recent sociopolitical happenings, but evidenced a return to the essence of strict secularism. However, opponents will argue that governmental maneuvering and legislation never take place within a vacuum, and are fundamentally colored by the pressing sociopolitical phenomena of the day, which mold the communicative interplay that substantiates the current prevailing narrative. In other words, opponents of the headscarf ban will ask plainly: would the 2004 law ever have been enacted, or even contemplated, were it not for the spreading cultural and political animus against Islam in Europe?

France’s unyielding and exclusive brand of secularism appears, upon closer inspection, to be a narrative shared by most of its European neighbors. After publishing the controversial Prophet Muhammad caricatures, Danish cartoonist and journalist Fleming Rose, published an unapologetic and scathing editorial that voiced a growing continental sentiment of ‘European’ nativism, which is specifically geared not only towards Muslims and African

\textsuperscript{34}Most historians of laïcité emphasize the continuity of Republican thought. The Revolution laid down the basic principles; the Third Republic extracted the church from the schools; the Assembly ratified laïcité in 1905” (ibid. 28).

\textsuperscript{35}In accordance with its official name, \textit{Commission de reflexion sur l’application du principe de laïcité dans la Republique}, the Commission concentrates on the principle of ‘laicity,’ or secularism. It presents laicity as a typically French principle, constituting the very foundation of the Republic. Born with the French Revolution and the Declaration of the Rights of Man and Citizen of 1789, in the course of the nineteenth century laïcité has evolved in a struggle between the Republic and the Catholic Church, gaining victory with the legal separation of state and church in 1905” (Cees Maris, ‘\textit{Laïcité} in the Low Countries: On Headscarves in a Neutral State’, \textit{Jean Monnet Working Papers}, 14, 2007, 3).

\textsuperscript{36}Ibid. 5.
immigrants, but also towards long established citizens and communities. Moreover, the emergence of the European Union has blurred national and social lines across the continent, thereby integrating state-specific yet analogous narratives into a shared grand nomos. The culture of Islamophobia sweeping across Europe, with its hyper-liberal traditions, is galvanizing the continent against minority doctrines – particularly those manifested externally, like Islam’s headscarf, which are considered a brazen challenge to European cultural identity. Thus, recent developments indicate that France’s secularist narrative is not taking place only within its boundaries, but is sweeping through continental Europe. In France, Islamophobia has furnished champions of a rigid conception of laïcité to push it to its extremes, culminating with the 2004 law; which has provided a template that many European states, including Germany, have adopted, with others contemplating adoption. In November 2005, the European Court of Justice upheld the headscarf ban in Turkey, which is geographically not even a European state (Anatolia, the peninsula that comprises the vast majority of Turkey’s population, is in Asia). Islamophobia is indisputably a central cog in the rising grand narrative harmonizing Europe politically and culturally.

The First Amendment of the United States Constitution, as interpreted by the Supreme Court in Wisconsin v. Yoder and its progeny of relevant cases, has adopted a test that is highly protective of the free-exercise of religion. Today, the Court upholds regulations that discriminate against religious practices so long as they are neutral and of general applicability. Although Employment Division, Department of Human Resources of Oregon v. Smith narrowed the meaning of the free-exercise clause in Yoder, the standard is far more tolerant of religious practice than the French model of imposed secularism. The “Smith Test” still ensures the robust, free-exercise of religious practices and exhibitions, both in the public and private sector. However, as I will explore below, growing national security concerns and the political vilification of Islam has narrowed Muslim Americans’ free-exercise rights.

Therefore, the political philosophies steering French and American governance are inherently different from each other because of their distinct historical narratives. While the French Revolution led to the formal installment of secularism as the state’s doctrinal compass, the religious persecution that triggered the American Revolution gave rise to a legal regime premised on religious neutrality. Thus, religious exercise and manifestation

37“‘It’s time for the Old Continent to face facts and make some profound changes in its outlook on immigration, integration and the coming Muslim demographic surge. After decades of appeasement and political correctness, combined with a growing fear of a radical minority prepared to commit serious violence, Europe’s moment of truth is here’ (Fleming Rose, ‘Why I published the Muhammad cartoons’ New York Times (31 May 2006) <http://spiegel.de/international/spiegel/0,1518,418930,00.html>).

38The European Court of Human Rights on Thursday threw out an appeal by a Muslim student against Turkey’s ban on women wearing headscarves in universities... The court ruled that the prohibition did not breach the fundamental rights of the secular state’s Muslim population... Leyla Sahin had appealed to the court claiming she was excluded from Istanbul University during her medical studies in 1998 because she insisted on wearing a headscarf” (Staff, ‘European Court Upholds Scarf Ban’ International Herald Tribune (11 November 2005) <http://www.iht.com/articles/2005/11/10/news/court.php> accessed 24 June 2008).


40494 US 872 (1990). Justice Scalia delivered the majority opinion, writing: “Precisely because we are a cosmopolitan nation made up of people of almost every conceivable religious preference, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order.”
in France must remain completely private in nature,\footnote{Organized religion has a cognitively salient template for most French in the institutions of the Catholic Church: a liturgy, performed inside a familiar sacred place once a week, with teaching intended to guide over private claim. Claims to do other things in the name of religion (sell tracts, ring doorbells, wear headscarves) are outside the template (and outside protection) and could be prosecuted if they contravened ‘public order’” (Bowen, op. cit. 20).} while the American Free-Exercise Clause encourages precisely that, the free-exercise of religion, both in the private and public spheres so long as it does not lead to state endorsement.\footnote{The ‘Establishment Clause’ of the First Amendment is based on the rationale that the state cannot endorse one religious doctrine to the detriment of others, which accords with the precepts of political liberalism, as we shall show.} Nevertheless, the influence of Islamophobia on the sociopolitical narratives of France and the United States cannot be ignored.

### III Islamophobia and the headscarf

Islamic Law Scholar Mohammed H. Fadel claims, “If the salient question of the twentieth century was race, first as manifested in European imperialism and then in international decolonization and domestic civil rights movements, the corresponding question of the twenty-first century may very well be religion, particularly Islam,”\footnote{Mohammed H Fadel, ‘Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law’ (2008) 8(1) Chicago J of Intl L, 1.} Islam as a religion, and its various politicized strains, are now front and center on the geopolitical stage. This has also led to a greater degree of interest in Islam and its teachings, among both lay and academic communities. Academic and policy literatures focused on conflict, transnational-identity, statecraft, and socio-religious movements have invariably dealt with the question of “political Islam” Some contest the compatibility of the politicized Muslim masses with “Western modernity” (the achievement of an overlapping consensus), and more reactionary pundits argue that the influx of Muslim diasporas will gradually erode the fabric of Western societies. One influential school of thought claims that Islam ranks as the most imminent threat to the stability of “Western civilization”:\footnote{See generally, Samuel P Huntington, The Clash of Civilizations and the Remaking of World Order (Touchstone, Beaverton, OR 1996).} The terrorist attacks of September 11th, which destroyed New York’s iconic World Trade Center towers, corroborated this pre-existing thesis for many who subscribe to it today. This led to the formal beginning of an orchestrated war on terrorism (later to be called, “war on terror”), one said to be premised on spreading the norms of freedom and democracy against “Islamists”, or those willing to use violence to spread an ideological hybrid of Islamic religiosity and politics. This landscape has complicated the debate as to whether Muslims can realistically integrate with the salient ideals and values of both France and the United States. Central to that debate is the religious freedom of Muslim citizens of France and the United States, particularly visible demonstrations of it, such as the headscarf. Thus, this global phenomenon has penetrated the sociopolitical imaginations of the two states in question, becoming a leading theme in their current narratives.

The attacks on the World Trade Center, perhaps the archetypal symbol of American economic hegemony, furnished reactionaries in academic and governmental halls of power with the rallying call to mobilize the masses against a new “evil enemy” In the United States, this mobilization included a political and legal overhaul of pre-existing checks on executive power, allowing for greater secrecy, surveillance, and use of legally questionable
tactics against dissident Muslim citizens.\textsuperscript{45} The drive to enhance the central powers of the state culminated in an effective drive to war on Iraq with little elite-level resistance – a decision soon regretted by political leaders outside the White House. Similarly, the terrorist attacks in London and Madrid only furthered an already ripe transcontinental animus toward immigrants in general, but specifically Muslims, both in the United States and in Europe. The “War on Terror” filled the vacuum left by the “Cold War”, furnishing the United States and its allies with an ideological foil. Without question, the illustration of Islam as political and normative menace has become a central theme in both the American and French narrative.

The reorienting\textsuperscript{46} of Islam as sociopolitical antithesis proved significantly troubling for the millions of Muslims living not only in America and France, but also in the West in general. This has had a profoundly negative effect on those Muslims citizens in the West most conspicuously linked to Islam – women who wear the headscarf. One cannot ignore the contribution of 9/11 and subsequent events to the headscarf ban in France, as evidenced by the attitudes that spawned this legislation. In France, Islam was viewed as a burgeoning threat to laïcité.

The consensus in the media was that laïcité was in peril and that Islam was the cause. In January 2004, as the proposed law against religious signs in public schools went to the National Assembly, Le Monde de l’ Education decided to devote its main section to “laïcité contested.” The editors began the section by posing the question: “How could laïcité, one of the founding principles that French society took as established, find itself so threatened? In its titled, the lead article complained of “the lost territories of laïcité”... which blamed problems in schools on “Arabic-Muslim culture.”\textsuperscript{47}

Intersecting with the war on terror, the debate on the headscarf’s compatibility with Western culture has challenged political liberal notions of free exercise and religious disentanglement.\textsuperscript{48} In France, the governmental interest in promoting a unified French national identity clashes head on with outward displays of religious symbols, such as the headscarf. Contrary to the United States, where the First Amendment guarantees citizens the

\textsuperscript{45}These tactics were also brought to bear against non-antagonistic Muslim and some non-Muslim communities and citizens were targets of this legislation too.

\textsuperscript{46}“To believe that the Orient was created – or, as I call it, ‘Orientalized’ – and to believe that such things happen simply as a necessity of the imagination, is to be disingenuous. The relationship between Occident and Orient is a relationship of power, of domination, of varying degrees of a complex hegemony” (Edward Said, Orientalism (Vintage Books, New York 1979) 5). In the present article, Orientalism is germane because the West’s conception of Islam is not genuine or accurate, but a politically constructed distortion that fuels political or economic ends. In relation to a politically liberal state, this orientalization of Islam has politically deleterious consequences on that state’s Muslim citizens. This is to put it theoretically, but this matter will be considered more concretely in what follows. The construction of an Oriental-Islam, if you will, in today’s geopolitical landscape, starkly reflects why Orientalism still matters.

\textsuperscript{47}Bowen, op. cit. 31.

\textsuperscript{48}The fate of Islam in Western democracies, however, has not been the only casualty of the ‘war on terrorism.’ Liberalism has found itself under increasing attack as irrelevant to a world in which, we are told, terrorists can threaten death and destruction on the scale of Hiroshima or Nagasaki. Ironically, political realities created by the ‘war on terrorism’ have created conditions – perhaps for the first time in the last two hundred years – in which both liberals and Muslims have a mutual interest in effecting a meaningful rapprochement” (Mohammed Fadel, The True, The Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law, Draft Version – November 20, 2007,1, 7
right freely to exercise any religious belief or practice.\textsuperscript{49} \textit{laïcité} in France strictly enforces secularism among its citizens and thus proscribes the free exercise of religion in the public realm. Moreover, Islamophobia has in fact strengthened the restrictive bounds of \textit{laïcité}, empowering advocates of its purest form to push for policies that are wholly intolerant of not only discrete religious practices, but also cultural and even political expression. Therefore, as well as giving birth to a more zealous brand of Islamophobia, as evidenced by the 2004 law, it is apparent that \textit{laïcité} has also intensified nativist and xenophobic attitudes in France, paving the way for the realization of legislation such as the 2004 law.

IV Toward a Rawlsian model of doctrinal tolerance

For decades, the headscarf issue has been one of the most controversial political and popular debates in France. However, this debate is part and parcel of a broader question being examined in France in both the public and private spheres – namely, the possibility of assimilating French Muslims into archetypal French society without compromising its integrity. Archetypal French identity, as explored in Section I, derives from a particular doctrinal history and cultural experience hallmarked not only by secularism, but a dialogic context premised on Christian and subsequently secularist normative principles. Conversely, the United States’ constitutional enshrinement of religious neutrality (formally) encourages a malleable and integrative notion of American identity. Again, a historical analysis of doctrinal interrelationships with the governments of the two societies in question provides a perspective into the normative contexts that gave birth to the contemporary narratives. With an understanding of how this history is acutely linked to contemporary French and American policy toward Islam, we may now turn to Rawls for analysis of these policies.

France

“The challenge today is to make Muslims understand [that] you don’t have to be less Muslim to be more European. You can be both... The pluralistic society I want is a society where anyone can choose what he or she wants to be and [remain] faithful to his or her principles. So for me the point is not to Islamize Europe.” (Tariq Ramadan)\textsuperscript{50}

The challenge the enigmatic Ramadan\textsuperscript{51} highlights is the leading social and political debate in France today. Although Ramadan states that Islamic identity is not inherently oppositional

\textsuperscript{49}“It is sometimes forgotten that religious liberty is the central value and animating purpose of the Religion Clauses of the First Amendment” (McConnell, op. cit. 1).

\textsuperscript{50}Berman, op. cit. 3.

\textsuperscript{51}Tariq Ramadan has become arguably the most controversial public figure in Europe in recent times. The debate about whether Muslims can integrate culturally into Europe ranks among the most salient questions investigated on the continent today, and Ramadan in large part has assumed the role of \textit{de facto} spokesperson for the Muslim community in Europe. Ramadan, however, is viewed with the same careful suspicion that European politicians and lay people view Islam. In one camp, Ramadan is considered an enigma at best, a skilled politician who says one thing although he really represents another view, while others champion him as a refreshing voice for a progressive and modernist Islam. Mainstream media forums routinely provide Ramadan with a platform to voice his disenchantment with the plight of Palestinians or his certainty of Islam’s compatibility with European values and culture, for instance, but are nevertheless highly skeptical of the views he presents to their (generally non-Muslim) audiences. Berman (op. cit.) addresses the common “double-speak” critique that is level against Ramadan, which alleges that Ramadan appeases mainstream Western media by voicing moderate and modernist views to resonate with non-Muslims audiences, but preaches a fundamentalist Islamic worldview when speaking to his base.
to Europeanism, a position many of his opponents reject both philosophically and through ad hominem criticism, the French law of 2004 took the contrary stance. The established and still expanding Muslim communities in France, like the Jewish populations before them, have challenged French cultural notions of national identity and culture. Long before Muslims were isolated for their outward expression of religious observance, Jewish Europeans were likewise singled out for precisely the same reasons. In France, the same debate questioned whether French Jews considered the Jewish part of their identity more important than the French part, and whether their “tribal” tendencies precluded the possibility of assimilating them into being, utterly and singularly, French. Decades later, these very same questions are being asked in relation to French Muslims. Many scholars, including the controversial and enigmatic Ramadan, identify the alleged “competition” between European Muslims and Jews over who endures more discrimination. Nevertheless, the headscarf, the primary target of the 2004 law, signals that Islamic practices in particular have been highlighted as the most significant threat by the French government:

Islam’s public ritual practices, which include sacrifice, scarf wearing, and prostrations in exotic buildings, are felt by some to threaten public order... Muslims’ demands to live their religion publicly also made explicit the contradictions already in place between French ideas about religion’s private character and the still-public role of France’s Catholic heritage. The public ubiquity of crosses and churches could be ignored — had to be ignored — for reasons of civil peace, but ignoring crescent and mosques as more difficult.

Societal integration, given the considerable premium the French place on keeping religion within private bounds, places a tremendous burden on French Muslims whose religious beliefs cannot be easily reconciled with this prevailing doctrine.

Again, the hallmark of French identity is secularism, so assertions of religious affiliation distance individuals from the nationally constructed archetype. As a result, many perceive women who choose to wear the veil as subversives, or more specifically “challengers to French cultural homogeneity”, naturally, this has alienated not only the new Muslim immigrant populations, but also those established communities that had successfully balanced both identities while living in France. Many French Muslim women simply do not appreciate the irreconcilability of being both veiled and French: “linked to this choice to wear the hijab is pride in being a Muslim in France. It is a way of asserting a determination to be both French and Muslim.” Consequently, laïcité’s rigidity and intolerance of

52. Especially in Europe now, there is a competition: Are the Arabs or Muslims more targeted than the Jews? I think that all together, if we really are citizens — and it’s exactly the same in the United States — all kinds of racism are wrong. If we see acts of anti-Semitism or Islamophobia, we should condemn them not simply as Jews or Muslims. As citizens, we have to condemn them all these cases” (Berman, op. cit. 1).
53Bowen, op. cit. 20.
54 The argument is that in France, people are expected to be French. Muslim refugees flaunt their religion to the point where it is offensive. The women are being insolent and disrespectful toward French institutions. Some may think that it is a deliberate insult to French customs and values to wear such garb” (Wing and Smith, op. cit. 773–774). Cf. Fadel, who discusses how political movements use Islamophobia as a method for rallying support, and brand Muslims in general as subversive. “This in turn contributes to fostering domestic political movements in various democracies that promote fear of Muslim immigrants as a subversive cultural and political force” (‘Public Reason as a Strategy for Principled Reconciliation’, op. cit. 1).
55Chouki El Hamel, ‘Muslim Diaspora in Western Europe: The Islamic Headscarf (Hijab), the Media and Muslims’ Integration in France’ (2002) 6(3) Citizenship Studies, 293, 303.
56Wing and Smith, op. cit. 765.
ostentatious assertions of religion, such as the headscarf, reveal that it is unreasonable.\textsuperscript{57} Because it is unreasonable, French Muslims cannot endorse the ban. Although France’s narrative is founded on a rigid rejection of religion, and in this vein ‘neutral,’ the establishment of secularism – a comprehensive doctrine in its own right – legally proscribes French citizens from practicing their religious beliefs in public. Its’ enshrinement undermines the French government’s alignment with the Rawlsian conception of justness and political liberalism, and runs counter to the spirit of his argument.

Not surprisingly, the French doctrine of laïcité is extended into the classroom, where citizens are shaped and made. After all, schools were the setting that in which the “Headscarf Affair” unfolded, sparking the wave of political discord that ultimately led to the watershed 2004 ban.\textsuperscript{58} Schools, particularly in France, are an extension of the public arm of the state.\textsuperscript{59} The precepts of political liberalism would not justify the headscarf ban in public schools because it is a formal injection of secularism into a public sphere where students are obliged to attend. Therefore, public schools do not meet the requirement of voluntary engagement with associations or organizations. Again, the 2004 law would only be justified, from the standpoint of political liberalism, if the rights and liberties of others were not threatened by the wearing of the headscarf. Advocates of the law, as outlined in the Stasi Report, contend that the headscarf promotes division among students, effectively isolates those students who wear it from the remainder of the learning environment, and may potentially be a source of tension and conflict among students. However, the Report fails to articulate a justification that accords with the exception outlined by political liberalism, namely, that those students who wear the headscarf threaten or infringe the religious liberty of those who do not – Muslim and non-Muslim alike. The Stasi Commission does not articulate a justification based on this exception, but the report is premised on a paternalistic argument which holds that the headscarf is detrimental to the development of girls, and fundamentally oppressive. This argument is linked to the Commission’s derisive opinion of Islam’s treatment of women, which it criticizes scathingly in its report:

The Commission focuses its concerns on the headscarves of Muslims girls. Whereas the secularity of public life has since long been recognized in the religious traditions of Europe, in the Commission’s view Islamic scarves express a tendency towards religious isolation. Moreover, as symbols of the traditional subordination of women in the Islamic world, they impede the development of girls in autonomous persons. The command to wear headscarves in public ensues from the traditional ideal of female chastity that puts women under lifelong control of men. The Commission recognizes that some girls may voluntarily put on scarves, and that this headgear may incite her social environment to widen her freedom of movement. On the other hand, a large group is wearing headscarves under a threat of force and violence, as has been

\textsuperscript{57}The intuitive notion is that one can be rational, meaning that one’s actions make sense in light of one’s beliefs and desires, but unreasonable, meaning that one is unwilling to acknowledge the legitimate claims of others. Rawls put it this way, “what rational but unreasonable agents lack is the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and do so on terms that others as equal might reasonably be expected to endorse” (Lawrence B Solum, ‘Situating Political Liberalism’ (1994) 69 Chicago-Kent L.R. 558, 564–565).

\textsuperscript{58}The issue of females choosing to wear the headgear first arose in 1989 when three girls in Creil, a suburb of Paris, were suspended for wearing their headscarves in their public middle school. This incident and its aftermath became known as the “Headscarf Affair.” Between 1989 and 1998, more than 1,200 articles were written on the headscarf controversy in the French press” (Rawls, Political Liberalism, op. cit. 754–755).

\textsuperscript{59}The public school is part of the public because it is where civil education takes place. And so it is public administration” (Bowen, op. cit. 14).
convincingly demonstrated by public hearings. According to the Commission, this corresponds with other Islamic violations of women's rights, such as marrying off, polygyny, repudiation and clitoridectomy [female genital mutilation].

The rationale underlying the headscarf ban is that it is intrusive on the religious liberties of Muslim women, and lacks a reasonable justification. Furthermore, the government’s objective of ameliorating and avoiding ideological tension is not carried out in a proportional fashion. The headscarf ban is too radical a step toward that end. The ban, which formally proscribes the headscarf in public settings such as schools, may well impact the private lives of women who choose to wear the headscarf. The government could have explored more reasonable and narrowly tailored means to achieve the ends stated in the Stasi Report, but the Commission’s stated opinion of Islam as patriarchal and oppressive women informed its unreasonable legislation. Moreover, students who wear the headscarf do not create an atmosphere where they are symbolically compelling their fellow students to do the same. In other words, students wearing the headscarf are not forcing Islam as faith, or Islamic ritualistic observance such as wearing the headscarf, on non-Muslim classmates.

It must be noted that the prevailing culture of the public school system, an extension of the French government, is also premised on secularism, according to which religion is said to have no place or constructive role. Thus, any symbolic assertion of Islam in this setting is trumped by the doctrinal ethos of the state and the 2004 law squarely conflicts with political liberalism in the realm of public schools because the justifications given for the ban do not meet the exception defined by Rawls. Without question, the headscarf ban was a political calculation aimed to strengthen governmental commitment to laïcité, not equal citizenship. This assertion of laïcité was essentially designed with Islam in mind and accordingly had a disproportionate impact on Muslim women.

Ultimately, the headscarf ban meets both the criteria for unreasonableness posited by Rawls: first, that Islam “present[s] a foreseeable threat of serious injury, political, economic and moral, or even destruction of the state”; and second, that Islam “proposes to use the public’s political power – a power in which all citizens have an equal share – forcibly to impose a view affecting constitutional essentials about which many citizens have an equal share” The latter illustrates the state’s fear that schoolgirls wearing the headscarf may seek to use their outward appearance to attempt, aggressively and forcibly, to convert non-Muslim classmates. In other words, non-Muslims in public schools are categorized as potential converts. According to political liberalism, the deliberate and forceful imposition

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60 Maris, op. cit. 5.
61 A rational solution requires a more subtle balancing of the component values of laïcité. In order to establish the proportionality of a prohibition of headscarves, one should differentiate according to the importance of state neutrality in diverse social domains. To this end, it is helpful to construe a sliding scale running in between the extremes of private and public life” (ibid. 9).
62 See John R. Bowen, Why the French Don’t Like Headscarves: Islam, the State, and Public Space (Princeton University Press, Princeton, NJ 2007): “By allowing the veil or headscarf in schools, teenagers in the suburbs are once more placed under the yoke of Islamic dogmas, hampering their emancipation even stronger. Some are raped or called whores because they refuse wearing a veil or headscarf” (Stasi Commission Report (2004) 57, quoting the testimony of ChaходORT Djaxavin).
63 Rawls, Political Liberalism, op. cit. 354.
of a comprehensive doctrine, such as Islam, upon an individual who holds another doctrine would violate his/her rights as a free and equal person.\footnote{64}

Ultimately, the French government would not openly contend that Muslims in France, as part of some hypothetical home grown, concerted political movement, would compete to seize state power. Moreover, linking Islam in toto to a terrorist organization such as al-Qaeda would be to formally ban Islam and brand it as an unreasonable doctrine.\footnote{65} However, as evidenced by the derisive language in the Stasi Report and the fact that the 2004 law primarily targeted the headscarf, there are clear signals of government distrust and fear of Islam. Furthermore, while the ban on headscarves is uniformly and strictly enforced in public schools, this is hardly the case with other outward displays of religion,\footnote{66} indicating that the chief concern of the law is headscarves, while other religious symbols are of secondary, or no, concern. This corroborates arguments made by those who have challenged the law, who have claimed that other religious symbols were included merely to make the law appear religiously neutral on the surface, although its true target was always the headscarf. Again, the anxiety and fear linked to Islam in France, and across Europe, probably explains the disparate enforcement of the 2004 law. This is further evidenced by the government's "investment in Islam", and specifically its less known role of helping create a moderate, quasi-governmental Islamic presence in France.

The French government, defying its strict adherence to separation of church (or mosque) and state, has long been investing in creating a moderate Islamic entity in France. Therefore, it would be inaccurate to assert that the French government has not partaken in the advancement of religion, namely Islam. On one hand, the headscarf ban circumscribed the religious freedom of conscience of Muslims in France, but on the other the French government has been active in formally promoting Islamic institutions:

It is not exactly right, for example, to say that religion remains entirely "private" in France. Leaving the legacies of Catholicism, we note that the French state and municipal governments have endeavored to aid Muslims in building Mosques, to provide graveyard space for Muslim burials, and to create a publicly funded quasi-state Muslim council.\footnote{67}

Hence, in these respects the French government is clearly violating the bounds of laïcité, or strict civic secularism. What could explain this doctrinal deviation? Perhaps it is the state's national security concerns and agenda to create a moderate Islamic voice to counter the

\footnote{64} The liberal requirement that religious groups not seek to use the state to force others – those not sharing their comprehensive commitments – to comply with the moral precepts flowing from those commitments, and the liberal requirement that religious groups not use non-state coercion to prevent members from leaving the group or flouting its rules, both flow from the same conception of the person as free and equal" (Andrew F March, "Liberal Citizenship and the Search for an Overlapping Consensus: The Case of Muslim Minorities" (2006) 34(4) Philosophy and Public Affairs, 1, 34).

\footnote{65} Some people may wish to argue that the terrorist attacks of September 11th are reflective of the Islamic faith and thus pose a serious threat to the state. It would be incorrect, however, to label all Muslims under one common religion. To suggest that the actions of fundamentalist Islamic organizations such as the Taliban is indicative of the Islamic faith would be similar to suggesting that the IRA is indicative of Catholicism. Terrorist actions are obviously not to be condoned or ignored. Stating that Islam is "unreasonable" is a burdensome position to take" (Dianne Gereluk, "Should Muslim Headscarves Be Banned in French Schools" (2005) 3(3) Theory and Research in Education, 259 <www.ioe.ac.uk/pesgb/x/gereluk.pdf> accessed February 2008.

\footnote{66} Under the proviso of neutrality, state schools have been strict in enforcing the ban of the hijab. Yet small crucifixes and small yarmulokes are inconsistently enforced, with many state schools turning a blind eye to similar religious symbols. This raises a worrisome question of why some religious symbols are not being prohibited, while other religious are being strictly banned "(ibid.).

\footnote{67} Bowen, op. cit. 4.
wave of fundamentalism spreading through France. French secularism, or laïcité, is inflexibly enforced upon Muslim women and French citizens at large. Thus, the French government’s far-reaching actions are clearly beyond Rawls’ prescribed bounds of public reason specifically because they are unacceptable to, and would not be endorsed by, Muslims and other religious communities whose free-exercise rights are infringed.

Unlike the Anglo and American (theoretical) celebration of multiculturalism, France promotes a model of social citizenship according to which recent immigrants of various hues and religious convictions must amalgamate toward a homogenous “French” identity. “[Former] French President Jacques Chirac has stated that France, ‘would lose her soul’ if she succumbed to Anglo-American multiculturalism. The theory is that to be French is to be part of a proverbial melting pot, rather than an American style salad bowl of religious and other identities.” The melting pot model, functionally, obligates new immigrants, communities who ostentatiously exhibit their faith or “wear it on their sleeve,” if you will, to trade in their indigenous and religious identity traits in favor of a “French identity.” Chirac’s assertion articulated the spirit of the 2004 law, namely, that religious identity cannot coexist with French identity in the public sphere. In order to adopt the latter, a French citizen must publicly sacrifice the former. Reconfirming the 2004 law, Chirac commissioned a Charter of Laïcité, which: “clearly defines each citizen’s rights and duties. Civil servants should show strict neutrality in their actions as well as their outward appearance. Separation of the sexes in the public domain should be prohibited; closed communities should not be subsidized.”

The veil ban, in large part, cannot be solely viewed as a calculated jab at France’s Muslim population. Rather, it must be viewed in a broader historical context, with special attention given to how religion, in general, is viewed in contemporary French society. Naturally, the ostentatious character of the veil combined with the negative light in which Islam is perceived has consequently isolated it among the other faiths, but the modern French narrative is founded upon an aversion to religion as an institution:

[Some] French look at Islam as a rigid religion that has trouble existing in modern day democratic societies. Others consider it “a regressive tendency and inimical to the continuing process of national integration”. As one person said, “people have to fit the Republic not the reverse.” To these French, there is no room in France for people who cannot do that.

Current Prime Minister Nikolas Sarkozy and his administration have been actively engaged in an enterprise to weld Islam into a more agreeable faith that harmoniously aligns with French culture, free of its “fundamentalist” and “foreign” components: “France’s center-right government is trying to create a model Muslim citizennship. President Jacques Chirac has spoken about his vision of a ‘tolerant’ Islam. M Sarkozy said recently, ‘There is no room for fundamentalism at the Republic’s table.’ For them, model Muslims would be French-speaking and law-abiding. They would celebrate the 1905 French law that requires total separation between church and state. They would attend mosques presided over by clerics who are French-trained and avoid politics in their sermons. Model Muslim women would not try to wear headscarves in the workplace; model Muslim girls would not try to wear headscarves to school. Most important, model Muslims would call themselves French first and Muslim second. The thinking goes something like this: Muslims must be integrated into French society to avoid a culture clash that could contribute to terrorism. So the French government has embarked on a two-pronged strategy that will give Muslims what French leaders call ‘a place at the table,’ but monitor and regulate their activities at the same time.” (Elaine Sciolino, ‘France Envisions a Citizenry of Model Muslims’ New York Times (6 May 2003).

Wing and Smith, op. cit. 755.

Maris, op. cit. 4.

Wing and Smith, op. cit. 773.
Moreover, while in the United States the formal celebration of religious pluralism makes possible the conspicuous donning of religious symbols, France’s rigid assimilatory model precludes it, and thus, complicates Muslim citizens’ endorsement of the enshrined doctrine of secularist égalité.\textsuperscript{72} One cannot wear his/her religion in France in the public domain, whereas the spirit of the Free Exercise Clause in the United States encourages citizens to manifest their beliefs as they choose. The public school setting provides a most fitting platform to distinguish the French political philosophy of strict secularism from the American model of neutrality:

Unlike the United States, where the separation of church and state is based on a notion of neutrality of equal inclusion, that meaning, all conceptions of the good are accommodated in schools (at least in theory) – the French state bases its notion of neutrality on equal exclusion... The principle behind the notion of “equal exclusion” is that a “secular ideal” is the very substance of the Republican schools and the foundation of its duty to civic education. The hope is that students will unite under a defined national character, within the public space of France.\textsuperscript{73}

The French government’s enshrinement of strict secularism functions as a civic religion, if you will, that ultimately precludes its capacity to function as a neutral entity. It advances secularism, or laïcité, as a conception of the good, informing its mode of Republican rule. Therefore, it unreasonably undermines competing conceptions of the good advanced by other comprehensive doctrines, most notably Islam, and this has evidently served as the impetus bringing about an intensified mode of secularism today in France.

\textit{The United States}

It is not coincidental that the separation of church and state, and its ancillary guarantee of the freedom to exercise one’s religion, is the first right written into the United States’ Constitution. Religious persecution was the impetus that brought the colonists to the United States, and accordingly, the Founding Fathers sought to establish their new nation with a commitment to religious tolerance and neutrality. However, the war on terror has so some degree compromised these principles when practiced by Muslim Americans.

The polarized sociopolitical landscape in the United States, which sets democracy in the right and Islam on the opposing axis has created a particularly turbulent experience for Islam in general and Muslim American women in particular. Coupled with this climate is a general ignorance of Islam and Muslims, which only exacerbates the political and social animus toward the two. The nearly three-million Muslims in America are generally perceived to be Arab and non-citizens, both stereotypes that are grossly inaccurate.\textsuperscript{74} Furthermore, the war on terror and national security have become not only paramount concerns in the political realm, but also priorities that have infiltrated the social consciousness, as evidenced by rampant racism and a culture of paranoia directed at anything linked to Islam. Moreover, the US Patriot Act, legislation that violated the spirit and arguably the letter of the Constitution, evidenced Congress’s reactionary alignment against Islamic-sponsored terrorism.

\textsuperscript{72}“Reasonable persons will think it unreasonable to use political power, should they possess it, to repress comprehensive views that are not unreasonable, though different from their own” (Rawls, \textit{Political Liberalism}, 90–91).

\textsuperscript{73}Gereluk, op. cit. 4.

\textsuperscript{74}There are almost three-million Muslims in the United States. The American Muslim Council reports that 42 percent are African-American, 24 percent are of South Asian origin and 12 percent of Arab origin” (Omid Memarian, “Keeping the Muslim Faith – and a Low Profile” \textit{Arab American News} (20–26 October 2007) 10). <http://ipsnews.net/news.asp?idnews=39675> accessed 27 June 2008.
Likewise, the neo-conservative administration of President George W. Bush dictated the political direction of the Executive Branch, which adopted a geopolitical worldview of “us versus them”, the latter clearly being Muslims.75

In contrast with the situation in France, legal decisions in the US leveled against covering have been made by the courts and not the legislature. Moreover, these courts are not insulated from the political latitudes and media platitudes levied against Islam, and both naturally color how an individual judge perceives Islam at large and its adherents in particular. This section focuses specifically on recent judicial decisions in the United States involving veiled women’s ability to freely exercise their interpretation of Islam, a fundamental right guaranteed by the First Amendment.

Metropolitan Detroit, home to one of the most concentrated Muslim populations in the country, has also been the scene of several of the most provoking judicial debates testing veiled women’s right to freely exercise (their interpretation of) Islam. The neqab has been the subject of many of these court cases. One notable case is the following, which considered the question of whether a Michigan woman wearing neqab could testify in court.

Ginnah Muhammad of Detroit, Michigan, brought a small-claims civil action in Hamtramck District Court.76 Muhammad, however, was denied the right to testify on her own behalf because her face was hidden by the neqab. Muhammad’s was the first case of its kind, and she was perhaps the first woman wearing neqab who sought to testify in a Michigan courtroom.77 Judge Paul Paruk rigidly held that,

He needed to see her face to judge her truthfulness and gave Muhammad, 42, a choice: take off the veil when testifying or the case would be dismissed. She kept the veil on... Paruk said that as a fact-finder, he needs to see the face of a person testifying. Michigan has no rules governing what judges can do regarding religious attire of people in court, so the judges have leeway on how to run their courtrooms. “My job in the courtroom is to make a determination as to the veracity of somebody’s claim... Part of that, you need to identify the witness and you need to look at the witness and watch how they testify”... Paruk said he offered to let Muhammad... wear the veil during the proceedings except when she testified.78

Although Rawls does not expressly state so, it could be argued that the spirit of political liberalism encourages state institution to fluidly adapt to the diverse constituencies they are intended to serve, and accordingly, become religiously literate and thus sensitive to popularly held religious customs and practices.79 In other words, the judge should (at least) understand and appreciate why Muhammad chose to wear the veil in order to justly adjudicate her claim. Accordingly, the President of the American Judges Association (AJA)

75 The [Bush] government has explicitly engaged in racial profiling in terms of its targets of our “war on terrorism.” Furthermore, President Bush and other top officials have characterized the war against terrorism as a battle for “civilization” – indeed, a “crusade.” (Leti Volpp, “The Citizen and the Terrorist” (2002) 49 UCLA LR 1575, 1581–2).
76 A devout Muslim, she wore a neqab – a scarf and veil to cover her face and head except for her eyes – October 11th as she contested a rental car company’s charging her $2,750 to repair a vehicle after thieves broke into it” (Zachary Gorchow, “Veil Costs Her Claim in Court – Judge: Face Key in Deciding Truth” Detroit Free Press (22 October 2006)).
77 Mark Somers, chief judge of the Dearborn District Court, which covers the bulk of the Detroit area’s Muslim population, said he could not recall an instance when a woman who wore a neqab came before his court to testify” (ibid.)
78 Ibid.
79 Although a neqab is donned by a minority of Muslim females, it is still a bona fide religious practice... There definitely needs to be greater sensitivity toward the growing populace in that municipality,” stated Dawud Walid, Executive Director of the Council on American-Islamic Relations-Michigan, in regard to Judge Paruk’s position.” (ibid.).
strongly disagreed with Judge Paruk’s stance, considering it both insensitive and disrespectful of a legitimate religious belief, and further claimed that he “would not require a woman to remove her veil during a civil case.”\(^{59}\) Although there was disagreement among judges regarding this case, from Judge Paruk’s point of view, his beliefs were reasonable. In order to assess Muhammad’s veracity, he would have to examine her facial expressions and reactions. In addition, his request was proportional and narrowly tailored to his stated objective: he asked her to remove the *neqab* only so that he might see and examine her face when she was questioned, and did not radically compel her to remove the entire headscarf. Because this case was a first in that it questioned whether a Muslim woman with her face covered should be able to testify, the opinions and attitudes following a decision will naturally be diverse and provocative. The Judge may have acted reasonably in this instance, but according to political liberalism the ruling was ultimately unjust.

Should American citizens who wear the *neqab* have the right to take state identification photos without removing their religious headaddress? In 2003, the Florida Circuit Court responded with a resounding “No” Sultaana Freeman, a practicing Muslim who wears the *neqab*, testified that a Florida state official who ordered that she removed the veil from her face infringed her First Amendment right to freely exercise her faith:

Although the court acknowledges that plaintiff herself most likely poses no threat to national security, there likely are people who would be willing to use a ruling permitting the wearing of full-face cloaks in driver’s license photos by pretending to ascribe to religious beliefs in order to carry out activities that would threaten lives.\(^{81}\)

Florida Circuit Court Judge Janet C. Thorpe believed that Freeman held a sincere religious belief that she was obligated to wear the *neqab* in front of all strangers, including state officials, but failed to prove that “the photo requirement itself substantially burdens her to right to free exercise of religion... or that momentarily lifting the veil in a private room for a photo taken by a female officer would be such a burden.”\(^{82}\) Moreover, Judge Thorpe ruled that the state duly demonstrated that, “having access to photo image identification is essential to promote [the] compelling interest in protecting the public.”\(^{83}\) Furthermore, what is troubling in Thorpe’s rationale is the nexus linking the *neqab* to potential terrorism. Nevertheless, it was a reasonable opinion linked to a rational objective: the judge aspired to safeguard: national security. Again, this was another case featuring the *neqab*, or face covering, among the most conservative modes of religious expression a Muslim women can assume. Judge Thorpe reasoned that the *neqab* seriously limited the authorities’ ability to determine identity, and could potentially be exploited by terrorists (of all religious or doctrinal persuasions). Although her opinion was surely colored by social and political attitudes averse to Islam, her rationale was reasonable and proportional, given that the *hejab* continued to be permitted in such state identifications.

The United States’ political philosophy, unlike French *laïcité*, makes possible the development of state practices that cater to society’s many religious and doctrinal practices and

\(^{59}\) Ibid. Judges should seek to strike a balance between running their courtrooms and respecting the religious views of those appearing before them, ‘ said Steve Leben, a Kansas trial court judge who is president of the American Judges Association. ‘But if it’s a person’s legitimate religious belief, we have a duty to reconcile these competing differences.” (Ron French, ‘Michigan Tries to Accommodate Muslim Women’ *Detroit News* (11 June 2003).

\(^{81}\) ‘CNN News Staff, ‘ Judge: Woman Can’t Cover Face on Driver’s License’ *CNN News*, (10 June 2003).

\(^{82}\) Ibid.

\(^{83}\) Ibid.
idiosyncrasies. For instance, Michigan has instituted an accommodating practice with regard to state identification photos. Rawls theorized, “Citizens learn and profit from conflict and argument, and when their arguments follow public reason, they instruct and deepen society’s public culture.” The following compromise reflects a political conception’s institutional embracing of new and divergent doctrines:

Customers at Secretary of State branches in Dearborn routinely are asked to move across the office, to provide privacy to Muslim women being photographed without their face veils. Women who by tradition cover their faces in public [negab] routinely take those veils off to be photographed for driver’s licenses. Other Muslim women, who wear veils covering their hair [hejab], are allowed to keep their headdresses on for driver’s license photos.

Although this resolution is neither ideal for the state or the class of Muslim women it impacts, it effectively represents a political accommodation where public institutions are working with the constituents they serve, and striving to find ways to cater to Michigan’s prominent Muslim community. This fluidity signals an individual approach toward Rawls’ public reason, whereby political institutions are gradually integrating doctrinal sensitivities of the Muslim community into their mode of operation. In addition, the Michigan Secretary of State’s Dearborn offices have also implemented a program permitting women in negab to schedule an identification photo during publicly closed hours, to be administered by a female official.

Although it may superficially appear that both French and American legal decisions levied against the headscarf have been fueled primarily by religion-based animus, a Rawlsian analysis proves that this is far too simplistic an assessment. Without question, Islamophobia has been a factor, but the more salient influence has been the historical, political narratives that inform these two governments. One can easily determine how the American traditional of religious neutrality is far more receptive to a system premised on political liberalism, while France’s enshrinement of strict secularism precludes the possibility of an overlapping consensus, and must ultimately be branded as unjust from a political liberalism perspective.

Conclusion

Concentrated Muslim enclaves are to be found in almost every major metropolitan center across Europe, most notably in the United Kingdom, France, Germany, Sweden and Denmark. European states with considerable Muslim populations have struggled with the existential dilemma of integrating them into their respective societies, and oftentimes,

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84 Rawls, Political Liberalism, Introduction.
85 French, op. cit.
86 "It’s a compromise between the state and the city’s large Muslim population that has worked for years, a rare accommodation of bureaucracy and religion in a world where the two often lock horns" (ibid.).
87 "It is crucial that public reason is not specified by any one political conception of justice, certainly not by justice as fairness alone. Rather, its content – the principles, ideals, and standards that may be appealed to – are those of a family of reasonable conceptions of justice and this family changes over time" (Rawls, Political Liberalism, xlv–xlvi).
88 Janice Trimm, support manager for Secretary of State branches in the area, said women wearing face veils is ‘a daily occurrence’ in the Dearborn office. Women who call ahead can arrange to have a woman employee take their photograph at the office when the office is closed” (French, op. cit. 80).
89 "So Sweden now has a Muslim population of 200,000 to 400,000; the higher tally would place it among the most heavily Muslim countries in Western Europe” (Christopher Caldwell. Islam on the Outskirts of the Welfare State’ New York Times (5 February 2006) 3).
native Europeans have been less than welcoming and sometimes hostile. Recent developments across Europe indicate that categorical bans of the headscarf may be adopted by more states. Furthermore, the enshrinement of secularism in the public sphere is a phenomenon unfolding not only within the bounds of Europe, but also in Turkey and Singapore. In other parts of the world where such legislation is not being considered, governments have guised their animus toward Islam and Muslims in more creative ways. For instance, a Canadian village outside of Montreal in Quebec placed an official municipal sign along its city limits that read,

Among other things, community residents are not allowed to hide their face except on Halloween, employers are not required to provide a place to pray or time off to pray; children may not bring weapons to school including ceremonial weapons; and a girl may choose her own spouse. Killing women in public beatings, or burning them alive are not part of our standards of life.90

In October 2007, the Canadian conservative Tory Party sought to limit veiled women’s access to voting in federal elections, only several months after Canadian Prime Minister Stephen Harper, ‘blasted Canada for defying Bill C-31 – which was passed by Parliament in June – allowing Muslim women to wear veils and burqas while voting’ The “no-veils no-vote” bill, as it has been referred to on the ground in Canada, is described below:

The Tories have introduced a bill that would require all voters, including veiled Muslim women, to show their faces before they vote in federal elections. According to Government House Leader Peter Van Loan, the bill would provide Elections Canada the ability to allow Muslim women to uncover their faces in front of a female election’s official behind a screen.91

Islamophobia is spreading from one part of the globe to the next with great vigor. As it proliferates, states host to established and burgeoning Muslim communities will have to examine whether their underlying political philosophy will require them to “Come as you are, or only come if you agree to be who you are not.”

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