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Rights and the Hijâb: Rationality and Discourse in the Public Sphere

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Abstract

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Keywords

Human rights, Islam, Women's rights, France, Muslims, Hijâb, Headscarves, Nationalism, Immigration, Integration, Feminism, Discourse ethics

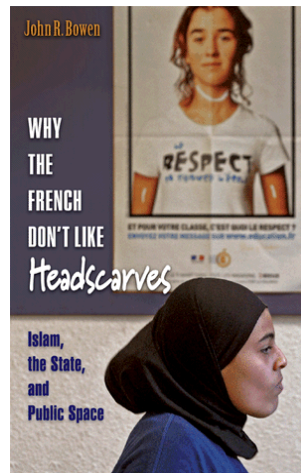
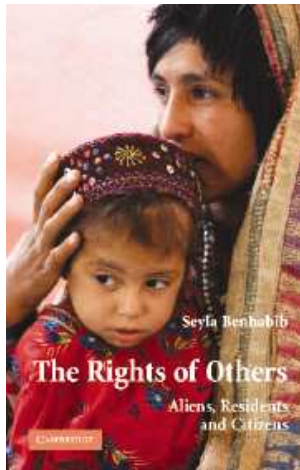
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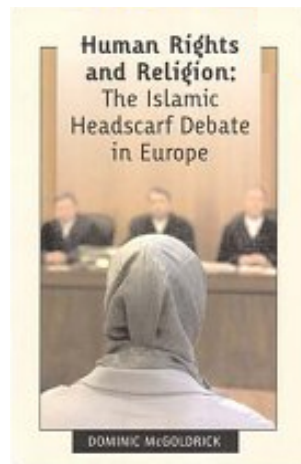
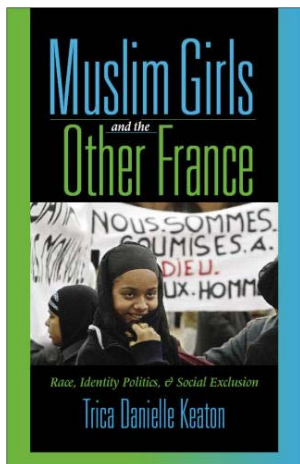


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Preamble

When I took my family to France for one of the hottest summers on record, we went to a local municipal pool in Beaune. After paying the entrance fee and entering the pool area, we were informed that my children would not be allowed to swim wearing their North American boxer-style swimming shorts. “Public health” required that they wear speedo-type suits. No reason or evidence was offered to explain the policy. The officials simply said it was French law. The swimming pool administration generously provided washed speedos. My children had a great time. The next day, my youngest son developed an itch in his crotch. When we took him to the doctor, he was diagnosed with a serious skin infection most likely contracted from the borrowed swim suit.

In a room the size of a football field in Copenhagen, in 1995 Astri Suhrke and I presented our findings on the involvement of the international community in the commission of the genocide in

Rwanda to delegations from nineteen nations and eighteen international organizations that had funded our study (Adelman, et al. 1996). The French delegation denounced our report as a pack of lies. The denunciation backfired as the other delegations rallied to our defense. I went to lunch with the French delegates to ask them why they had been so harsh in their criticism since, unlike all the French studies we had read, we did not call France genocidal or even complicit in genocide. The French delegates explained their harsh criticism:

You do not understand France. We love our intellectuals. We respect and honor them. We name streets after them. They are free to write and say what they wish. But we pay no attention to them when they criticize (or push policies) that dishonor France and do not reflect French fundamental values. However, when a foreigner says terrible things, we are insulted. French honor has been attacked. And we respond accordingly.

Undiplomatically, I commented that France entered the Franco-Prussian war to save its honor and was crushed. The French had not seemed to learn anything in over a century.

French honor clashes with Muslim immigrant families who regard their daughters as standard bearers of “the family’s honor” (Keaton: 172). In part, the controversy over the *hijab* in France is a clash of a French idealized national identity that requires all French to leave their particular identities at home when they emerge into the public sphere, against both a sense of family honor and proud Muslim French girls with a very strong sense of their personal honor. A small minority of Muslim girls literally wear that honor on their heads to express their love of God and/or their attachment to their culture. Jewish converts to Islam, like the Lévy sisters (2004) and Sylvie in Keaton’s study, are as free as any French girl to go out at night without an escort, but choose to wear a *hijab*. When these girls converted to Islam, they did not identify with Islam’s sexist, homophobic strands and tendencies in Islam and certainly not the cancer of anti-Semitism now pervasive among a number of Muslims.

A conflict among different senses of honor provides only part of the explanation. The complexity of the issue requires further explication. In 2006, three superb books in English were published that complement each other, though, as we shall see, undermine the argument of Seyla Benhabib published two years earlier on the same issue. Together, the three 2006 books under review in this essay tell almost the full story, but not quite, because they do not confront Benhabib directly and deal with the issue of whether public debate and discourse, if conducted appropriately, is sufficient to settle debates of this type over the issue of headscarves in public places.

Headscarves

Audrey Hepburn’s headscarves established a standard of elegance and chic. So did the long train of Grace Kelly’s headscarf. Isadore Duncan’s became a noose. However, this essay is not about sartorial elegance and elegant silk Hermès *carrés*. Nor is it about babushkas worn by Russian grandmothers. On the other hand, debates over headscarves are historical echoes of older controversies about the habits traditionally worn by Catholic nuns (Curtis 1995). In the current context, the conflict is over the *hijab*, the modest headscarf that covers the top of a Muslim woman’s

forehead, her hair and neck as well as its stylish versions, such as a *shayla*, a rectangular scarf wrapped around the head and pinned at the shoulders. The right to wear a *hijâb* is not at issue; the right of students in public schools, teachers or even court judges to wear *hijâbs* is.

Though the word *hijâb* derives from the Arabic word for “barrier” or “veil” (Bouselmati 2002; Debray 2004; Vianes 2004) and its primary reference is to the curtain that separates men and women in prayer; like the *mechitzza* in an Orthodox Jewish synagogue, a *hijâb* is a type of kerchief and not a veil, though revealingly the debate in France focused on the *le voule* (veil) when referring explicitly to the *hijâb* (Zouari 2002; 2004). Of course, there are headscarves that also serve as veils to cover the face, such as the two-piece *al-amira* veil, the *kehimar*, the cape-like veil that extends almost to the waist, or even those that cover the whole body and even the eyes with a fabric mesh, such as the *burqa*. However, *hijâbs* are not technically veils. In France, *foulard* (Gaspard and Khosrokhavar 1995; Lévy and Lévy 2004), though it just means scarf, has come to be associated with the *hijâb*, and *écharpe* is now used to refer to a non-Muslim headscarf. The *hijâb* should also not be equated with the *jilbab*, the long flowing robe that the Koran requires women and their daughters to draw close around them so that they may be both recognized but not molested, or the *chador* worn in Iran that is really a headdress extended over the whole body but leaving the face exposed. The *niqab* (a head veil covering the face except for the eyes, as well as the *dupatta*) is also technically just a headscarf, but it covers the face. Garments that cover the face raise other issues. I restrict my essay to the *hijâb*.

An Outline of the Issues

In France, legislation in 2004 banned the wearing of ostentatious religious symbols in public schools. The centre of the debate was not over the ban, but whether the ban should apply to all “visible” religious symbols, particularly *hijâbs*, rather than just “conspicuous” ones. The debate focused on the sense of French republicanism and secularism—*la laïcité* (Touraine and Touraine 2005)—the French, widely-shared faith in a set of common values in spite of historic and ethnic differences among its citizens (Baubérot 2000 and 2004; Pena-Ruiz 2005). *La laïcité* is based on France’s official ideology of a single and undivided republic in which all citizens are equal; religious and ethnic differences are bracketed.

If you support secularism, you support liberty: that is, freedom from the disciplines and shackles of religion. It also means that you support maintaining a distance between all spiritual or community affiliation in the public arena, thus making all equal and the same in civil life. If you stand for secularism, you stand for the construction of a space for citizens where all men, and especially all women, can be united, whatever their belief or their faith (Levy 2004).

Most French citizens, including most Muslim citizens, believe in the necessity of a uni-culture. McGoldrick (253) cites several polls in 2003 that show that seventy-eight percent of Muslims favored *la laïcité*. Most French reject multiculturalism, reject that there are different beliefs, norms and practices that can be tolerated, indeed respected, and that cause no harm to anyone else or to the national polity. France does not recognize that citizens can behave in culturally different ways as public

persons (distinct from differently in public) yet be equally French (Bowen: 247). “Acceptable progress in the school system is measured not only by the acquisition of knowledge, but additionally by student’s capacity to assimilate the dominant behavioral forms and cultural norms that are presented to them as their own” (Keaton: 97) Through schooling, the state displaces the family as the instrument for educating and supervising the ethical value-development of the individual. The inculcation of knowledge and norms becomes the vehicle for producing a cooperative and compliant citizenry.

In addition to the requisite neutrality towards religion—sometimes interpreted as requiring a stringent exclusion of any competing values originating in religious sources, though specifically requiring the state to define, regulate and observe the activities of religious leaders (Bowen: 18)—it is not clear that Muslims who support the doctrine agree that *la laïcité* also requires a positive inculcation of values into pupils by schools, schools that are viewed as the singular tool for teaching the values of French citizenship. “This was to be accomplished by a finely crafted common-culture curriculum, one intended to bind young republicans morally and civically to their homeland” (Keaton: 102). For Jules Ferry, the nineteenth century educational godfather of *la laïcité*, scientific method and rational thought would replace religious exegesis as the backbone of the French educational system. But what was seen as scientific became, in reality, a secular version of top-down Catholicism that inculcated expected behavior in its members through education that had little to do with science or rationality (Baubérot 2004 and Onfray 2005). Further, *la laïcité* was insensitive to its imperial vocation and its lack of respect and recognition of “the Other.”

The headscarf issue also headlined problems with integrating second- and third-generation descendents of immigrants who traced their origin to North Africa, West Africa, Turkey and Iraq. The socio-economic crisis of the suburbs, the outer cities of France where the immigrant families lived, which bore an eerie parallel with the inner cities of America, provided a complicating layer to the headscarf issue. Very high youth unemployment rates and declining unemployment benefits, deteriorating public housing, declines in social services and spending on health at the same time as utility bills and local rates increased faster than the rate of inflation, seemed to have created a preponderantly Muslim underclass that belied France’s ostensible celebration of equality. All citizens were not being treated equally as the Stasi Commission documented (McGoldrick: 254). Discrimination seemed to be endemic (Tévanian 2004) in spite of France’s vaulted tradition of *égalité*. Many French citizens of French heritage tended to attribute the low academic achievements and downward mobility to a deficiency in culture among the immigrant population (Keaton: 194). The *hijâb* controversy was in reality a symbol of the French failure of its uni-cultural approach to immigrant integration (Lorcerie 2001; 2005).

These failures in socio-economic policy in the context of a conflict in values between French Republicanism and a perceived Islamic revival must also be viewed in the context of the revival of political Islam in the international arena which some have perceived as a “clash of civilizations” involving “an historic reaction of an ancient rival against our Judeo-Christian heritage, our secular present, and the worldwide expansion of both,” (Lewis 2003) while others viewed such a conception as reifying and homogenizing both Islam and the Judeo-Christian tradition (Gresh 2004a; 2004b). In the last three decades, beginning with the overthrow of the Shah in Iran and culminating in militant Islam and its attacks on the Pentagon/World Trade Center on 9/11, the Madrid railroad and the London subway, there has been a rise in Islamophobia in Europe generally (Muir, Smith and

Richardson 2004) with increasing incidents of discrimination, insults and attacks directed at Muslim citizens in France (Afshar, Aitken and Francs 2005). France has not been spared its encounter with terrorism given the 1995 bombings in Paris and Lyon by the Algerian Armed Islamic Group, the 9/11 “twentieth hijacker”—French-Moroccan Zacarias Moussaoui, and the French North African insurgents in Iraq held at Guantánamo. Few French intellectuals connected the new upsurge of terror with the self-certitude of secular egoistic terrorism of the French Revolution that has cast such a long shadow of fear on the French republic.

How does *la laïcité*, failed socio-economic policies in integrating immigrants (Sorensen 1996), the rise of militant Islam worldwide and its corresponding heightened Islamophobia in Europe, end up focusing on a kerchief worn on the head of a schoolgirl? How could such a small piece of cloth come to bear the weight of so much political controversy? “That’s crazy,” one of my sons said when he saw what I was writing about. “The French get so worked up about really trivial issues.” I tried to explain that the issue was serious and complex. His eyes simply glazed over.

I have not even reached the feminist issue. How could one explain that leading French feminists opposed giving the right to teenage girls who chose to wear a *hijâb* (Hirschman 1998; Habti 2004)? More significantly, at the center of French values is the concept of *droit*, the equality of rights that became particularly focused on the equality of the sexes. Gender rights, particularly equal women’s rights, was the product of a hard struggle with the Catholic Church, which placed women in subordinate roles, and resisted liberal divorce laws and abortion rights. Thus, the treatment of women and the historical struggle of women, pointedly including the freedom to uncover increasing aspects of their bodies in public, came to symbolize the core of French values and *la laïcité*. But why was the focus not on male violence against women, especially Muslim women? Was it because this occurred in the private sphere, in the home, and not in the public realm where *la laïcité* held sway?

In the name of gender rights, how could a state deny high school girls the right to choose to wear a kerchief, *un foulard*, on their head, especially when the decision was made on their own without pressure and in opposition to the rulings of a paternalist state and its civil servants?

Competing and Complementary Perspectives

When two sisters and a cousin—Fatima, Leila and Samira—were expelled from a school in small town Creil outside Paris in 1989 (Godfrey 2003), *l’affaire du foulard* exploded. For Benhabib, the decision to wear a headscarf by the three girls was a conscious political gesture of cultural and political opposition to the role of the state as ultimately responsible for integration. However, because the girls were not given the opportunity both to speak and be heard, Benhabib argued that the state failed to observe the principle of accountability. If the girls had been heard, “it would have become clear that the meaning of wearing the scarf itself was changing from being a religious act to one of cultural defiance and increasing politicization” (191).

For Benhabib, the failure to allow the girls to speak and be interrogated re-imprisoned the three girls “within the walls of patriarchal meaning.” The norms of respect and equal treatment for religious beliefs require that the girls “clarify how they intend to treat the beliefs of others from different religions” (192) though no suggestion was made that wearing the *hijâb* showed disrespect

for the beliefs of others. Why should the three girls defend something which they themselves had not put into question? Benhabib wanted the wrong party interrogated.

In the aftermath of 1989, Keaton viewed the development of the issue over the period 1995-2005 in a middle school, a multi-track high school, and a vocational school in Pantin outside Paris primarily through the eyes of a small selection of Muslim girls, each with a distinctive response. In Keaton's portrayal, the girls she studied are thoughtful and articulate, even those who did poorly academically. Contrary to French philosopher Bernard-Henry Levy (2004), who argued that the headscarf was not a religious symbol of piety but of stigmatization and hatred in which the female body is considered a source of sin, for the girls interviewed by both Keaton and Bowen who chose to wear the *hijâb*, the choice expressed their feeling proximate to either God or their cultural heritage. The authors did not find that defiance motivated the girls to wear the *hijâb*. However, like almost all commentators on the issue, all three 2006 authors described how French officials, and many if not most intellectuals, viewed wearing the *hijâb* (which, as stated above, they generally referred to as *le voile*—veil) as defying *la laïcité*.

“Veiling” has a complex and long history. Many Muslim women cover themselves as an affirmation of cultural identification with a rich and varied tradition. For others, wearing a headdress or veil is a modern feminist statement. In some contexts, the veil clearly marginalizes women in society. In others, a headscarf de-marginalizes and expresses liberation from colonial legacies. To preserve their sexual identity, some women wear a headscarf to avert the male gaze. Others do so as a sign of rank and nuanced social status. What women wear on their heads and bodies is always intimately connected with notions of the self, the body and community and the cultural construction of identity, privacy and space (Guindi 1999). Contemporary veiling can be about piety (Mahmood 2005), self expression, or can make a social statement about resistance and preservation, privacy and public identity. Women who wear a *hijâb* do so for a wide variety of reasons—from habit to personal faith, as a safety measure and as a way to lure a husband.

For critics, the *hijâb* is an identity marker for oppression and inequality of women under Islam (McGoldrick: 13; 265). For many ardent feminists who uphold the French tradition of equal rights, the *foulard* was *perceived* as a symbol of paternalism, of patriarchy, of Muslim male oppression of women (*la femme soumise*), a means to control women's bodies and identities. The magazine *Elle's* petition against wearing *un voile* depicted it as symbolizing “intolerable discrimination” as a “visible symbol of the submission of women in public.”¹ Sixty prominent women in the Association Femmes Publiques in December 2003 supported the ban against “this visible symbol of the submission of women.”²

Of the books under review, only McGoldrick set the French debate within the larger context of Europe. He emphasized the human rights dimension, but contended that the issue could *not* be viewed only from the perspective of human rights. Both the Bowen and the Keaton books unpack France's history of state/religion relationships, the emphatic role of the public schools in assimilation in the creation of the citizen, the particular challenges posed by Muslims in fulfilling those ideals, and the way television exacerbated these problems in the conviction that social reality,

¹ I first read this reference in the Australian newspaper in Caldwell (2003b), but it has been widely referenced elsewhere. Cf. Lichfield (2003) and Caldwell (2003a).

² Communiqué de l'association Femmes Publiques (2003); See also Manifeste De Femmes Publiques (2003).

social institutions, socio-historical forces and human activity lead to a structured system of material and symbolic relations.

Secularism is the normal translation of *la laïcité*, but all the authors reviewed agree that this English term is inadequate in conveying its meaning. Bowen explores that meaning by focusing on how public figures define the relationship of religion and the state, and both to the individual. He explores how they justify their policies in terms of *la laïcité*, as well as *la république de l'État* (French republicanism), *liberté* and *égalité*. Keaton looks at the same issues through the translation of those debates, policies and justifications into day-to-day practices and their effects on young Muslim girls in their daily lives. If Bowen practices the anthropology of public reasoning (Bowen 2003), Keaton engages in the sociology of individual feminine resistance and action as these young girls seek to both preserve and transform their lives in the context of the dominant structures of power and privilege; those girls are not always successful. However, as Keaton and Bowen both document, the odds are so heavily loaded against these young girls, given the oppressive weight of their own paternalistic heritage combined with the paternalism of the state, that the small victories are easily suffocated by the overall experience of entrapment. In the name of a “common culture,” diversity is ignored and the lived reality of discrimination against non-Europeans, particularly non-European women of color, is suppressed as these women are excluded socially by the synergistic effects of their paternalist upbringing and the detached universal ideals of the state.

Keaton, Bowen and McGoldrick all underline the inadequacy of legal mechanisms focused on clothing symbols to address the larger issues. Keaton emphasizes the failure of France in its educational curriculum to address its history of colonialism. Only a dozen of 300 pages of a school history text are devoted to the subject, and then only presented as devoid of human costs (120). Decolonization is not addressed (124-5). Keaton adds the gaze of the decolonized to throw light on the issues. Bowen zeroes in on French memory, society, and ways of thinking during the 2003—2004 debates over the “*hijâb*” law to convey a moral message. “French political thinkers and actors long have conceived of laws as ways to teach the French people moral lessons” (2006: 243).

The French Decision to Ban Headscarves in Public Schools

A dress code to establish standards, discipline and safety versus the right to wear headscarves as a public servant or student in a public school developed into a political crisis that made headlines around the world. The issue aroused intense debate over core issues in law courts and legislatures. But not equally everywhere! The problem was particularly acute in France and Turkey (Cf. Orhan Pamuk’s novel, *Snow*³). In a strong French reaction to dismembering the bureaucratic educational uniformity requirements in the early 1970s that followed the 1968 student protests, 1986 legislation in France once again emphasized the role of education in defining French national identity.

³ See Pamuk (2004) and the wonderful review by Margaret Atwood (2004). The story surrounds a fictional Orhan investigating the death of his friend, Ka who had traveled to Kars and stayed at the Snow Palace Hotel in Anatolia just when it is being blanketed by snow (*Kar*) to investigate the recent murder of Kars’ mayor and the suicides of young girls forced to remove their headscarves by their schools and culminates in an hilariously tragic send up when the secularists fire guns at religious teenagers protesting the performance of an Atatürk-era play, “My Fatherland or My Head Scarf.”

Following *l'affair du foulard* in 1989, a French high court determined that religious insignia *could* be worn in state schools (Godfrey 2003). The *hijâb* was deemed *not* to be incompatible with *la laïcité* as long as the purpose of the accessory was *not* intended to pursue the four p's—"pressure, provocation, proselytism or propaganda" (Godfrey 2003).

In spite of the French court ruling, for over a decade young girls were removed from playing soccer if they wore a *hijâb*. Even pre-teens were expelled from school for refusing to take off their headscarves. The vast majority of decisions were overturned on appeal. Yet no one took educational officials to court for ignoring the law. Ardent feminists viewed the *hijâb* as a symbol of legitimizing violence against women, especially in light of gang rapes (*tournantes*—cf. Bellil 2002). Chadortt Djavann and Khalida Messaoudi compared the *hijâb* to being forced to wear the yellow star by the Nazis. Gang rapes, however, occurred well before the immigrants arrived; *Libération* found that 27 of 29 recent gang rape cases were committed by non-immigrant men (Bowen 214-6). The burning of a seventeen year-old girl, Sohane, on 4 October 2002 by a Muslim male youth in Vitry set the match to the anti-*hijâb* flame. The murdered girl's sister created NPNS, *Ni Putes Ni Soumises* (Neither Whores Nor Doormats) to counter the oppression of Muslim women. Wearing the *hijâb* was the symbol.

Whereas in 1989 only ten children were registered as wearing the headscarf to school, by 1994 the total had risen to 2,000, but out of 1.8 million Muslim school girls (McGoldrick: 256). Less than a decade later, that number declined to 1,256 (Keaton: 181) yet the public and politicians of France determined that wearing a *hijâb* was a threat to the establishment's order and to the normal functioning of teaching. The explicit function of the French national educational system is the reproduction and transmission of a unitary and irreducible common culture (Keaton: 10; Bowen: 32; Goldrick: 39); the function of the school system is *not* to understand or explain the reality that its citizens are, in fact, products of many cultures and diverse histories. In 2003, only months after the Russian Federation Supreme Court overruled a decree by the Russian Interior Ministry requiring Muslim women to remove their headscarves for their passport photographs, Nicolas Sarkozy, then-French Interior Minister, in contrast, gave a speech denouncing Muslims who refused to remove their headscarves in accordance with French law for identity photos. French President Jacques Chirac initiated a political campaign that had broad public support to legislate a ban on headscarves in order to preserve the cohesion of the French people and the principle of the separation of religion and state.

In July 2003, President Jacques Chirac appointed The Independent Commission of Reflection on the Application of the Principle of Laïcité to examine the *hijâb* issue in the context of the French doctrine of *la laïcité*. Its report, widely known as the Stasi Report after its President, Bernard Stasi, an expert on immigration, was turned in on 11 December 2003.⁴ The scholars, government officials and professional commissioners included the philosopher Régis Debray, the sociologist Alain Touraine, experts on Islam Mohamed Arkoun and Gilles Kepel, and immigration experts Jacqueline Costa-Lascoux and Patrick Weil. Hanifa Cherifi, a secular Muslim who mediated when girls had previously been expelled for wearing a *hijâb* and who tried to convince girls on *practical* grounds that they abandon their efforts to wear a *hijâb* to school, was also a member.

⁴ Cf. Commission de réflexion sur l'application du principe de laïcité dans la République [Commission of Reflection on the Application of the Principle of Secularism in the Republic] (2003).

Many organizations, such as the League of the Rights of the Child, opposed allowing the *hijâb* to be worn in school, but also opposed the use of the law to impose such a regulation. Following public hearings, after tracing the history, defending and reinforcing the principle of *laïcité*, on 18 December 2003 the Stasi Commission recommended that Muslim head scarves, Jewish skullcaps and large Christian crosses or other *ostentatious* religious insignia be banned in public schools and public hospitals. Though most of the commissioners were initially wary of imposing a new law (Bowen: 113), eighteen of the nineteen members supported a new law to enforce the ban; one member abstained. Law once again was used to treat *citoyens* as abstract individuals rather than variables who needed differential approaches, taking into account sociological educational studies, the immigrant experience, the psychology of adolescent children, and variations in religious interpretation among Muslims. A second commission headed by president of the National Assembly, Jean-Louis Debré, supported the use of law to enforce the ban.

The other more comprehensive recommendations of the Stasi Report were largely ignored at the time: that Yom Kippur and Eid al-Adha be included as public holidays, and that comparative religious education and the history of slavery, colonization, decolonization and immigration be incorporated into the curriculum. The Commission even recommended that non-state languages, such as Berber and Kurdish, be included as curricular options in public schools. Most importantly, the Commission recommended that the “urban ghettos” that bred anti-secularist fundamentalism be “rehabilitated.”⁵

After tabling his proposed legislation on 17 December 2003, Chirac referred it for constitutional review by the Ministry of Education on 5 January 2004. The tribunal upheld its constitutionality. In the name of integration into the founding values of the republican pact (Petit 1997), *la laïcité* was reinforced as the “*pierre angulaire*” or cornerstone of French national unity that provided the guarantee of individual freedom and the basis for integration. On its foundation, girls wearing *hijâbs* were to be expelled from the very schools that were designated to serve as instruments of integration. In February of 2004, by a vote of 276-20 in the Senate and an equally lopsided vote in the National Assembly of 494-36 (there were 31 abstentions), the French legislature overruled the 1989 court ruling and banned wearing ostentatious religious insignia in public schools and in public occupations.⁶

The Girls

The public debate had its ironic and even hilarious moments when it turned out that those most affected by the ban were boys—Sikh boys wearing turbans. The most vocal opponents of the ban in

⁵ This had already been attempted by legislating a mixture of ethnic groups in public housing. *Loi SRU 13 décembre 2000, loi Solidarité et Renouveau Urbain* (Law on Solidarity and Urban Regeneration), Cf. footnote 4 above.

⁶ One event consolidated support for the law. Two French journalists, Christian Chesnot and Georges Malbrunot, were abducted by the Islamic Army of Iraq demanding that the law be overturned as a condition of releasing the prisoners even though France had been so vociferously opposed to the Iraq War. With the help of French Islamic organizations, the prisoners were eventually released. Cf. Keaten (2004).

France were two Muslim girls called Lévy (Lévy and Lévy 2004) whose father was Jewish and, though a professed atheist, a descendent of the ancient Hebrew priestly tribe. Some insights into the phenomenon are tragic. The girls who chose to wear a *hijâb* in opposition to French attitudes and law tended to be strong individuals who came from families ambitious for their children's success. Ardently observant families sent their children to religious schools.

Keaton's study included girls who did not wear the *hijâb*. Fatima was a brilliant student from a strict family, but not one that attended a mosque. She had a protective and supportive mother but a strict—and revealed later to be an abusive—father who did not allow her out at night. Nor did she participate in after-school activities or in sports that were co-ed; as widely practiced, she used a friendly doctor to provide the requisite note. Two older sisters studied law and medicine respectively. Fatima too eventually studied law as a mode of liberation and as a way of protecting the daughters and their mother from a violent father. Fatima wore discrete symbols of her religion, an “Eye of Fatima” and a charm engraved with a verse from the Koran. She considered herself a Muslim, though she did not pray, and fully French.

Fatou, born in France of Senegalese origin as the fourth of sixteen children, led a schizophrenic life. She hid her poor school record from her illiterate but strongly supportive parents. She also hid her home situation, consisting of a submissive mother and a father who illegally had two wives, from her school. She had inadequate writing skills that measured very low compared to the standards set by the Académie Française. She was most akin to the students portrayed in the film set in a Los Angeles school, *Freedom Writers*. She was eighteen and for the second time was failing her first year of high school. However, given the strict French curriculum, there was no chance that she would be given an option of writing a diary to express herself in her own way as the students in the movie did and then gradually learn to improve her French. She had no chance of passing the *baccalauréat*, but nevertheless persisted because she had an older sister who was studying to be a nurse. Eventually, she was shunted to a vocational program. She professed love for her religion but found it difficult to practice. However, she had become a master of the French art of secrecy (Keaton: 170), of separating the private and the public, a mastery in which Muslim girls of North and West African heritage were past masters as they negotiated the tension between the values of their families and inculcated the French secular religion⁷ of drawing a veil between private and public life.

Aïcha was a bright student from a strict Moroccan family but one who flaunted her youth and sexuality when she was out of range of the family gaze. She wore high boots, tight fitting jeans and T-shirts whereas in front of her uneducated father she wore flat shoes, sweat pants and a baggy top. She smoked but hid her *clopes et briquet* (cigarettes and lighter) from her parents. When her mother found out, she did not tell her father who had exploded when he learned her sister had a boyfriend. Aïcha was explicitly not religious but definitely a Moroccan in her language skills and eating preferences.

Rima, Mariama, Sylvie, Amina, Habiba, Su'ad, Anita, Khadija, Leila, Assia, and Naïma were further variations of Keaton's long term study. Khadija, for example, knew her Koran and could cite the two verses that she insisted required her to wear a *hijâb* even though they only referred to covering her breasts and ornaments and drawing her cloak tightly around her. Yet, she considered

⁷ See the later, fuller discussion of “secular religion” in the French context.

herself fully French. In contrast, Anita lived as a domestic slave in the house of her aunt and uncle from Côte d'Ivoire and given her servitude, unlike Fatima whose experience she mirrored, she could not keep up with her school work, though school was a reprieve from a horrific home life.

For a variety of reasons, most Muslim girls supported the doctrine of *la laïcité*, but whereas Naïma interpreted it to mean cutting out religion in the public sphere and allowing Christians, Jews, Muslims and Buddhists all to be friends, Fatou saw it as permissive in letting people live their lives as they wished, and Sylvie saw it as excluding “religious stuff.” Aïcha defined it in more activist terms as battling racism and intolerance. Only their teacher defined it in terms of inculcating the values of French citizenship (Keaton: 188-9).

The values of the families of the various girls, two of whom wore the *hijâb* while the rest did not, directly conflicted with the French doctrine of *mixité*, which Nadia Geerts (2006) defended in her comparison of French secularity (Kros 2005) with Belgian neutrality. Geerts supported prohibiting the *hijâb* in schools as a defense against multiculturalism which she equated with the “juxtaposition” of ghettos.

In February 2004, Bowen interviewed (and filmed) three Muslim women in their twenties, all from the Berber-speaking Kabyle region of Algeria. Fariba, born in France but raised in Algeria, returned to France for graduate studies in American history, knew Arabic, read the Koran and prayed. She wore a *hijâb* to express her affiliation with God, not to telegraph her identity to other humans. In contrast to the cosmopolitan Fariba who considered herself Berber, Algerian, French and European, Souad, who was married and lived in the suburbs, wore a brown cap and a light-colored scarf but was not particularly religious or knowledgeable about her religion. She considered her choice of headscarf to be a personal one, but clearly identified as an Algerian, even, surprisingly, as an Arab though she was not ethnically one. Maryan, in contrast to the other two, never wore a headscarf though her mother wore a *foulard* that she insisted was not a *hijâb*.

All the girls objected to attaching any single objective meaning to wearing a *hijâb*. Variations in social backgrounds, birth, age, and educational accomplishments influenced how women born as Muslims, or those who converted to Islam, wear and do not choose to wear a headscarf in relationship to themselves, their families and society at large. There were as many variations and mixtures of motives as there were girls, though the motives fell into different patterns, as Nancy Venel (1999; 2004) has shown. To the small degree that one can generalize, most girls wore the headscarf only to identify with God and/or their culture.

The *Hijâb* and Human Rights

French intellectuals were first publicly recognized and categorized as such during the Dreyfus affair, when those associated with the newly created Ligue des Droits de l'Homme (League of Human Rights) sprang courageously to the defense of an innocent minority ethnic citizen against whom the awesome powers of the state had been unjustly mobilized on false but grave charges of military espionage. A century later, in a striking inversion, leading French intellectuals joined forces with the most senior officers of the state in stigmatizing members of a religious minority who, they claimed, were guilty of undermining the foundations of the Republic through the newly invented and allegedly heinous offence of covering their heads with scarves.

Viewed against the backdrop of a nation that has long prided itself on enlightening the world not only with the Rights of Man but also with the rigor of Cartesian logic and the triumph of scientific investigation over religious superstition, the Islamic headscarf affairs of 1989, 1994 and 2003-04 rank as one of the most dismal chapters in the recent history of France (Hargreaves 2007a: 12).⁸

Though substituting moral outrage for Bowen’s subtlety, this summary raises the question of how intellectual defenders of human rights could end up supporting what seems to be a blatant interference in the right to freedom of thought and expression. How could wearing a *hijâb* be banned in public schools on grounds of “interests in public safety,” “for the protection of public order” or “for the protection of the rights and freedoms of others” (European Convention on Human Rights (ECHR), Article 9(2); International Covenant on Civil and Political Rights (ICCPR), Article 18(3))?

In the name of equal rights, in the name of *la laïcité* and a French belief in common core values to be inculcated through the school system, in the name of excluding religious influences in schools, girls were called aside each year, talked to, and if they failed to remove their head coverings or to modify them in an acceptable manner, such as a bandana, they were expelled. In the name of rights and the values of French society with rights at the core, the individual rights of choice that cause no physical harm to anyone else and the individual right of a teenager to an education (ECHR Art. 2, Protocol 1) seemed to have been denied—with drastic consequences to those who made the choice. No evidence was presented that the girls were unable to deliberate and formulate their choices. Keaton makes clear that they were able to do so and did. However, in the French conception of *la laïcité*, the government’s responsibility was to create the conditions that ensure that all French citizens have the capacity to make *meaningful* choices.

Rights are presumably universal. Kenneth Roth, Executive Director of Human Rights Watch, denounced the headscarf law as “an unwarranted infringement on the right to religious practice” and the religious obligations of the girls, though none of the girls claimed any institution obliged them to wear the *hijâb*. For Roth, “Under international law, states can only limit religious practices when there is a compelling public safety reason, when the manifestation of religious beliefs would impinge on the rights of others, or when it serves a legitimate educational function (such as prohibiting practices that preclude student-teacher interaction)” (Human Rights Watch 2004). He argued that protecting the right of all students to religious freedom does not undermine secularism in schools. “On the contrary, it demonstrates respect for religious diversity, a position fully consistent with maintaining the strict separation of public institutions from any particular religious message” (Human Rights Watch 2004). However, in the French interpretation of human rights, there is no *droit à la différence*. Further, France recognized the legitimacy of public institutions not promoting any religion via their conduct or statements (the neutrality rule), but secularism was undermined if

⁸ See also Hargreaves (2007b) Alec G. Hargreaves is Director of the Winthrop-King Institute for Contemporary French and Francophone Studies at Florida State University. From 5-6 November, the Institute ran an international symposium entitled, “Rethinking French Intellectuals.” On 6 November, Jean Baubérot of the Ecole Pratique des Hautes Etudes in Paris gave an insightful talk entitled, “*Intellectuals and laïcité*.” Azouz Begag who served as Minister for Equal Opportunities in the French government from 2005 to 2007 gave another revealing talk on “Rights and the Hijâb” at the Institute on 18 October 2007. The lectures are available online from the Institute: <http://www.fsu.edu/~icffs/>.

students were allowed to wear religious symbols. That is the principle of *la laïcité*, a principle supported by European human rights courts.

According to *la laïcité*, in the public realm, state rights and obligations supersede those of parents. But according to Roth, “Under international law, states must respect the responsibilities, rights and duties of parents to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the child’s exercise of their basic rights” (Human Rights Watch 2004). Roth further argued that the law disproportionately affecting Muslim *girls* was discriminatory on gender grounds, a claim that most French feminists would find ludicrous. Roth ridiculed the defenders of the ban using the grounds, “that it will protect Muslim girls from being forced or pressured to wear the headscarf by their parents,” but that defense was upheld by European human rights courts (Human Rights Watch 2004).

Kenneth Roth’s absolutism recognized none of the subtle empirical factors or nuances behind the French decision or, in fact, the decisions of European courts. All three 2006 books carefully avoid this abstract universalism. With respect to the legal aspects of the human rights issues, McGoldrick provides the most thorough exposition that complements Bowen’s excellent analysis of the public debate and Keaton’s examination of the issue from the perspective of the girls affected. This does not mean that any of the authors justify the ban. However, they do explicate the legal, political, social and psychological context in which the decision was made.

Human rights law is not clear and unequivocal (McGoldrick: 2). It requires balancing competing rights and contextualizing a debate. Roth could insist that protecting the right of all students to religious freedom does not undermine secularism in schools, but French and European courts have supported the view that even wearing a *hijâb* can do so. French culture respects religious diversity only as long as such diversity does not enter the public realm and interfere with the indoctrination of secular French values. Perhaps human rights norms are less universal and more communitarian than they purport to be.

Is a headscarf ban justified for purposes of public order or interests of public safety or even for the protection of other’s freedoms in accordance with human rights law? Under the banner of French human rights law that reads “Liberty, Equality, Fraternity, *laïcité*,” 20,000 French Muslim demonstrators opposed Chirac’s law on 17 January 2004 in Paris, Lille and Marseille and insisted that their decision was not an instance of paternalistic oppression but a personal decision based on their rights as French citizens. “*Ni père, ni mari, le foulard on l’a chois?*” (“Not our fathers nor our husbands; we chose the headscarf”), they chanted. Amir-Moazami (2005a; 2005b) provides a clear, hard-headed attack against the efforts of states to deny Muslim women rights, but without making a great effort to understand the sources. For the deeper question is whether the headscarf issue is even a debate about Muslims. After all, the Grand Rabbi of France, Joseph Sitruk, and Sikhs opposed the ban on the wearing of religious insignia which applied to kippahs or yarmukas (skullcaps) worn by religious Jewish males and kirpans and turbans worn by Sikhs, and even large crosses as well as the *hijâb*. Further, as stated above, most Muslims support the ban and the law enforcing it.

Patrick Weil, a member of the Stasi Commission and a strong defender of *la laïcité* as the necessary precondition for a common identity that any human group requires (1996, 81; 2004), insisted that you are French because you adhere to French republican values. He saw the rights

dilemma as either leaving a situation open in which large numbers of Muslim girls could be pressured into wearing a scarf versus the legitimate rights of those who chose to wear the scarf. To prevent the former, that is, to protect a much larger number of Muslim girls who *could* be subject to such pressure, especially if the law was not clear, he opted to deny rights to the latter who only constituted just over one hundred girls a year (McGoldrick: 245). In other words, the law banning the *hijab* was for both “the protection of public order” and “for the protection of the rights and freedoms of others”—both conditions that permitted infringements on individual rights by the state. For supporters of the law, allowing the *hijab* in schools opened up a slippery slope to more extensive veiling both in the mode and in the numbers veiled. Because of social imposition, the end point of the slippery slope was seen as the application of *shari’a* law.

These were the same grounds on which in 2001 the European Court of Human Rights in *Dablab v. Switzerland* (Application No. 42393/98, ECtHR decision of 15 February 2001) upheld prohibiting a primary school teacher from wearing a *hijab*. Given a teacher’s position of authority, the garment could also have a proselytizing effect. The government was entitled to ban the headscarf to preserve religious harmony and reinforce the principle of gender equality. Under Article 9(2) of the ECHR, allowing rights to be constrained for the protection of the rights and freedom of others, for public safety and public order (McGoldrick: 129), the court upheld the ban.

In Germany in 1998, Fereshta Ludin, an Afghan-born naturalized German who taught kindergarten, was barred by the state of Baden-Wuerttemberg from wearing a headscarf when she taught. When she refused to comply, she was fired. In the effort to balance individual liberty and the principle of public neutrality by the state, in September 2003, the German High Court ruled that individual states were free to ban or permit wearing of headscarves in the German school system, but that states had to find arrangements “acceptable to everyone” while balancing religious liberty and the neutrality requirement. Legislatures had to give reasons in balancing the following principles: the freedom of religion of the teacher, the rights of parents to determine the education of their children and the cultural identities and traditions to which they would be exposed, the rights of children not to be exposed to religious influences without consent, and the obligation of neutrality on the part of the state. The issue was one of “ostentatious” display of membership in the teacher’s religious community of origin, a community of “fate and memory,” and whether that prevented the teacher from carrying out her duties as a civil servant of the state. If the state observed the process norms in accordance with the above principles and provided a legal foundation for its actions, the teacher could be fired. The state did not have to provide real proof that wearing a religious headscarf by a teacher would, in fact, be a bad influence on children or would interfere with the rights of parents to determine their children’s religious affiliation. The state was only required to give “reasons” and those reasons could be its “belief” that these were effects.⁹

What is the public order that is so threatened by the wearing of a headscarf? In human rights law it generally means the prevention of public disorder that includes incivility and anti-Semitic remarks and, in the extreme, riots and arson. But for the Stasi Commission, it also included *l’ordre public*, referred to twenty different times in its Report, the ability of the state to control and order the public realm. In fact, as Bowen (2006: 29-31) makes clear, there are three different meanings to the public. The public refers to all institutions and agents that are part of the state and which the state controls.

⁹ Federal Constitutional Court [*Bundesverfassungsgericht*] (2003). Cf. Schiek (2004).

It also refers to any area of shared space. Thirdly, the public also refers to anything that affects the common weal. In France, *l'ordre public* includes all three, whereas human rights law as interpreted in North America usually only refers only to the first two, the protection of public order, not the protection of *l'ordre public*. Even then, securing civil peace must be exercised in very bounded ways. No scientific connection was made between wearing headscarves and incivility, class disruptions, anti-Semitism and rioting.

The appeal of rationality must be to a universal standard of what is good for everyone, as if there were an implicit consensus on such a standard of what is good, just and plausibly realistic without raising the question of whether the consensus was artificially manufactured and developed through polite manipulation that provides a cover for civic intolerance, especially towards systems that respect deference towards status and elders or other kinds of hierarchy. The very model seems to be biased towards a specific definition of “public.”

It is also based on prioritizing individual choice versus absolute duties. Suppose there had been universal agreement that the Koran obligated women to wear the *hijâb*, and the state would then be interfering in rights of religious expression. Then the issue would not just be a matter of how a person could express her religious choice. In the Turkish case of *Leyla Sabih v. Turkey* dealing with the right of a university student to wear a *hijâb* in a Muslim country with a secular constitution, the ECHR (No. 44774/98, 29 June 2004) claimed it could not enter into discussions and interpretations of divine and immutable laws. The presumption of a human rights court is based on defending rights and freedoms which presupposes individual choice and not absolute obligation. On 10 November 2005, a panel of seventeen judges of the appellate European Court of Human Rights upheld Turkish law and found that the Islamic headscarf ban at Turkish universities was “not an infraction of human rights.” When Prime Minister Erdogan rejected the “interference” of the European Court, arguing that the matter should be the exclusive prerogative of the *Ulema*, secularist legislators condemned Erdogan for trying to make *shari’a* law supreme in Turkey against the Turkish principle of secularism. When the debate is between individual rights and absolute obligations determined by religion, the human rights courts only consider issues of individual choice. When the debate is between individual rights and the obligations to the secular state, individual rights can be circumscribed. This is a very specific meaning of neutrality.

Thus, the issue went back to the conflict between that choice and other considerations—public order and the freedom of others not to be pressured. International human rights law presumes a dichotomy between the public and the private, and relegates religion to the private realm only, a restriction that no religion ultimately accepts since to be truly religious requires the expression of that faith in *all* segments of one’s life. In much of the world, all-embracing secular religions have conflicted with all-embracing religious ideologies for supremacy. Human rights laws back secular religions (to be discussed more fully later in this essay) in this battle.

Integration and Assimilation in Europe

Though the controversy reached a pinnacle in France and Turkey, the issue is not simply one between an avowedly secular state at war with religious symbolism in public schools and in the

public service. As France's Prime Minister, Jean-Pierre Raffarin, insisted, a defense of the principle of secularism needs "to contain the spread of Muslim fundamentalism" (Ganley 2004). However, the failure in immigrant integration was clearly not a matter of religion or loyalty to France. Even the *harkis* who had fought for the French in the Algerian War had not been successfully integrated and were, ironically, regarded not only by the Algerian community, but by the native French community, as "traitors."

Pia Kjaersgaard was also an anti-immigrant politician, but from Denmark. As leader of the extreme right Danish People's Party and an ally of the ruling liberal-conservative government, in May 2007 he demanded a ban because *hijabs* are oppressive and should not be tolerated (according to *Politiken*, his party's own e-paper and written without any sense of irony or of self-contradiction). In contrast to Kjaersgaard and the French political leadership, the president of the Danish Supreme Court, Mr. Torben Melchior, ruled that a Danish Supreme Court judge need not show her hair and could refuse to shake hands with a male. Melchior encouraged more immigrants to become barristers and judges (Pinholt et. al *Jyllands-Posten*, 6 June 2007).

The *hijab* cannot be divorced from the immigration debate in a Europe, which now has fifteen million Muslims. In a survey conducted by the Catholic University of Louvain-La-Neuve religious faculty's centre for psychology that looked into the Belgians' attitude towards headscarves, women wearing headscarves in public places bother one-third of the population, and over half prefer that headscarves be banned in certain public places.¹⁰ Most of Europe has had great difficulty integrating its new Muslim immigrants. As reported in the Spanish media in March of 2007, a new survey by the Real Instituto Elcano reported that over sixty percent of Spaniards opposed allowing Muslim schoolgirls in Spanish public schools to wear headscarves (though only fifty-two percent of those under thirty shared this opposition compared to seventy percent over sixty-five).¹¹ As McGoldrick (2006) demonstrates, controversies over headscarves have risen throughout Europe—in Belgium, Germany, Denmark, Spain, Italy, the Netherlands, though in the UK it has been handled very differently.

Is it any surprise the most vociferous debate has been in France with an estimated population of about four to five million Muslims (Keaton: 2), approximately seven to eight percent of the citizenry? More startling, the percentage of Muslims under the age of twenty is perhaps as much as twenty-five percent. They have been raised as French but are not perceived as French by many French citizens whose heritage is French. Given the reproductive collapse among the secular French, aside from immigration, the Muslim population in France is growing exponentially. One response is to build symbolic reinforcements to the ideal of Franco-conformity in a uni-cultural France.

Unlike most of North America, the French regard multiculturalism as an anathema. Though the United States once relied on a melting pot image for integration, even that image was based on a model of a multitude of different nationalities and ethnicities coming together to forge a new culture. However, that image has largely been replaced by a multicultural conception (Isbister 1996: 184). France upholds a strong doctrine of assimilation on three different levels: 1) acceptance of the

¹⁰ Belgian News (2007).

¹¹ Fundación Real Instituto Elcano (2006).

supremacy of the state's laws as a precondition for integration; 2) assuming equal rights as citizens and equal responsibilities for inculcating French secular values; 3) full integration into French society by conforming to the core values of French culture. Integration then becomes full assimilation.

However, French society and the state bear considerable responsibility for the failure to integrate Muslims. Just as in the United States, where many Blacks, Mexicans and others have not been integrated and instead are marginalized into low paying jobs, this is the situation of many of the Muslims in Europe. Schools in both jurisdictions have been given a prime responsibility for integrating the second and third generations. This effort or failure at integration takes place against a background that has little to do with Islam and everything to do with a crisis in many public school systems so well portrayed in the movie, *Freedom Writers*, about the challenges and miracles of a dedicated school teacher dealing with students bused in from the no-go area of Watts, the centre of the 1992 riots in Los Angeles when the U.S. government sent in the national guard to quell the firestorm. In France, the firestorm and riots took place in 2005. However, in France, teachers have virtually no option of deviating from the national curriculum and face sanctions for teaching against or outside the required texts (Keaton: 124).

The proud missionaries of liberal ideology as teachers in the schools become “survivors” waiting for their pensions to free them from purgatory as they babysit benighted populations of youth unwilling to submit to a “humanistic” curriculum that bears little resemblance to their lives of neglect and violence. Though pallid in comparison to the French system of high-stakes testing, educational segregation, academic tracking and selection biases in the choice of schools to produce an academic elite that Keaton documents, in different ways both the California and French schools use schooling to reproduce inequality even when the ostensible purpose is to ensure equality of opportunity. As Keaton quotes Van Zanten (2001), teachers of youth of non-European origin were caught

between their belief in a system of which they are a product and the lived reality of its failure, between their faith in the values of equality and justice and the repeated observation that they can do nothing to change the system, between their hope for freedom through the school and the feeling that they are ultimately doing nothing more than ‘policing’ or pacifying this ‘new public’ (129).

Parallel events to those of California occurred in France. When Nicolas Sarkozy was Interior Minister, he sent tens of thousands of riot police and gendarmes into the “Islamic suburbs” following a spate of firebombing of cars, arson and looting. As in the USA, mosques and Islamic associations preaching radical Islam and supporting terrorism were proscribed. This is a crisis of alienation that crosses religious and political lines and can be found in the predominantly Muslim suburbs of Paris and even the reportedly relatively successful efforts at integration in the diverse communities of Toronto (Adelman 2001).

However, problems of integration of immigrants in French culture were of a totally different order of magnitude than in the English-speaking world. It was no surprise that a Muslim referee in Laval Québec ejected eleven year-old Asmahan Mansour from a soccer game for wearing a *hijâb*, despite being allowed to wear it everywhere else she played, leading the Ontario team to withdraw in

protest from the tournament. For it was in Québec in the 1960s, six decades after France, that the very belated quiet revolution took place that deprived the Catholic establishment of its control of the schools, hospitals, old-aged homes and other welfare institutions in a province that was once a stalwart of reaction. In a very short period, Quebec became a center of political nationalism and separatism. It adopted the French model that demanded that all immigrants integrate into francophonic culture. Like France, Quebec was also marked by the lowest (in contrast to its previous status as having the highest) birthrate in Canada. It is difficult to divorce wars over religious symbols from political wars, identity wars, gender wars, immigration wars, and birthrate wars. The republican secular battle or *laïcité* spills over into many other issues and confounds the left/right divide.

As David A. Bell (2007) wrote, “While the Republic waves the banner of anti-clericalism in the manner of Voltaire, they [the girls wearing the *hijab* in protest] respond by praising Mohammed in the accents of Rousseau.” As Bell continued, the girls were not “rejecting secular French society entirely” so much as trying to negotiate a *modus vivendi* with it.

French Muslim hostility to the Republic often goes far beyond defending the right to wear headscarves. The same sort of alienation that drove some Muslim girls to search for a “true Islam” is also driving more dangerous and destructive forms of behavior, as became clear in the massive riots in the fall of 2005, and the continuing high levels of nihilistic violence in the miserable suburbs that surround major French cities. It is a particularly virulent form of alienation that elsewhere in Europe -- notably the Hamburg of Mohammed Atta and the Leeds of the British bombers -- has bred terrorism...Headscarf-wearing Muslim girls are not signs of a “Muslim plot”... But they certainly are signs of a great social transformation whose outcome is unclear but whose dangerous potential is all too visible. And frighteningly, despite the desire of many reasonable people in France to find a peaceful and reasonable accommodation, no one seems to know how to stop the worst case from developing (Bell 2007).

For Bell, well-intentioned liberal nostrums, such as affirmative action or multiculturalism, are totally ineffective against widespread and deep alienation. He cites the Netherlands where liberal multicultural policies did not prevent the murder of Theo van Gogh or the pervasive “mutual hostility and incomprehension” behind it. What Bell does not recognize is that the former Dutch liberal “Ethnic Minorities Policies” initiated in the early 1980s changed to a more republican set of policies in the 1990s that became explicitly assimilationist on the French model after 2002. Further, from true dialogue and discourse that listened to and heard the *voce* of minorities in the 1980s in the effort to achieve consensus, the *res publica* also altered as immigration and integration issues were politicized and reached their culmination in populist rhetoric (Pennis 2006).

Public Discourse Defining the Secular State Religion

Bowen’s “anthropology of public reasoning” focuses on the way people deliberate in public spaces. The process of public reasoning connects political philosophy, public policy and common sense. In France, the discussion connected *la laïcité* and the policy of wearing a *hijab* in public space with French common sense, which is neither very common nor very sensible. This odd hybrid of

abstract Cartesian elitist reasoning and populism inherited from Jean Jacques Rousseau's "general will" resulted in *la pensée unique*, a single way of thinking, that failed to recognize the degree to which the central issue was over belonging and religion, not religion in the institutional sense of Islam versus Christianity or even institutional Islam versus secular values, but a crisis in the French secular religion itself as a binding faith in a community that will offer protection against rivals.

Papademetriou (1996) documented Europe's strenuous but ultimately failed efforts to provide leadership on the immigration issue. France, as Papademetriou and Hamilton worded it, was "caught between Descartes and the Koran" (1996: 24). Suburban youth no longer had faith in the secular religion even as most parents, and certainly the French leadership, continued to insist on its unfaltering value.

Seyla Benhabib raised the issue of the *res publica*, the forum of public opinion where the obligations of cosmopolitan universal rights meet up with the rights of various communities through engaging in public discourse and debate in a transparent, responsible and accountable way (Calhoun 1992). France starts the debate from the premise of a dominant secular religion. As Paul Silverstein (2004) wrote, "the state is, for all practical purposes, the church of republican France." The Stasi Commission insisted the issue was "communitarianism" but its definition of "communitarian" was any practice not endorsed by *la laïcité*, not the crisis in the communitarian values of *la laïcité* itself which were purportedly universal and rooted in rights.

The issue is tribal. The issue is symbolic of a truly religious war focused on those at the center of it, the girls who in a French exercise of rights chose to wear a *hijâb* borrowed from a non-French tradition. They did not choose to cover their hair with a beret. At the same time, they paraded their status as French. In the protest marches, French women draped the French flag as a headscarf and sang *La Marseillaise* carrying signs that read *Françaises, Musulmanes* (French women, Muslim women). For Benhabib, the girls did so in defiance of custom and authority. Benhabib never explains why a religious act became primarily an act of political cultural defiance, and even if it did, why the responsibility should not be attributed to French culture rather than to the girls. Benhabib chastises the authorities, not for their motives, intentions or even their decision, but for the process of reaching their decision without allowing the girls to be interrogated about their intentions and motives to account for their actions before the school community.

When nineteen year-old Sandra Jawad in Dearborn, Michigan donned an Islamic headscarf in spite of her family's initial protests because her parents feared that her career options would be stunted and that she would encounter prejudice (Warikoo 2007), her mother eventually followed suit. We find this phenomenon all over the world, a religious re-awakening among Jews, Christians, Muslims, Buddhists and Hindus. Americans were not upset, however. The United States is no more inclusive than France when dealing with minorities. But America's secular religion is a constitutional faith rooted in and inclusive of religion, not opposed to religion, even though it has its own formulation for the separation of church and state. Further, in France the debate was not conducted with the community, but against communalism in spite of the fact that the French secular religion of *la laïcité* is communitarian. In addition to the issue of "communalism," both Bowen and Keaton attend to the denigration of women in the poor suburbs—the *banlieues*—though Bowen places a much greater emphasis on the influence of international "Islamism" in France. In contrast, America demonstrates little fear of competing religious symbols in public places. Officials at the Seaside High

School in Monterey County California apologized to Issra Omer, aged thirteen, and her parents because a monitor had asked her to remove her headscarf in accordance with the school district's no-hat policy (Barbassa 2007).

In the liberal West, religion was allowed a sovereign role in the private realm as long as it kept out of the public arena, but this compromise has been upset in North America by a more assertive evangelical Christianity, and in Europe by a more assertive secular religion. Jane Kramer (2004) was incisive in her contrast between the American and French method of assimilating newcomers, and compared the United States' reintroduction of religion into the concept of the state, while France was busy reaffirming the secularism of the state. France and America are not non-religious states, but secular religious states with very different relations between the secular realm and traditional religions. Neither these two, nor any other states, have a total separation between church and state in spite of the rhetoric to the contrary.

Though the state also has a responsibility to protect the people that founded the state as well as its founding faith (in the case of France, secular republicanism), that faith is not static or fixed. There has been a history of schismatic debates over the interpretation of civic republicanism among monarchists, aristocratic republicans, representative and popular republicans. But they all agree that the state must serve ethical goals. Benhabib unfairly brands communitarians as "decline-of-citizenship" theorists who "err by conflating the boundaries of the *political community* with those of the *ethical one*" (115). But it is statist who conflate the political community in the form of the state with core ethical values.

Communitarians view the state as an instrument for carrying out and protecting the values of the people, but the people are not pre-defined. Further, the boundaries of the community and the state are not congruent. Various members of the community belong to different diasporas. If *Jews* of Moroccan and Tunisian extraction who went to Israel to escape living in a diaspora now see themselves as part of a Moroccan and Tunisian diaspora (Levy 2005; Rosen-Lapidot 2005), then how can the Muslim communities of France be expected to identify totally with France and its secular religious premises? Once accepted into membership in the state (Compare Adelman 2007 with Benhabib 1996; 1999), the state has a responsibility to provide protection for all its citizens whatever their multiple memberships in various peoples.

The decision to wear a *hijab* is a war over conviction. It is a war over sincerity. It is a war over authenticity. It is a war over recognition. It is a war within Islam, between secularists and non-secularists, between moderates and true believers, between believers and extremists. And it is a war of Islam against a larger society that is perceived as discriminating against Islam. Jytte Klausen's book, *The Islamic Challenge* (2005) based on interviews with 300 Muslim members of the *European* establishment, reveals the doubts these leaders have in the ability of legislative measures, whether propelled by liberal beliefs in affirmative action on behalf of minorities or Rousseauian French reflections of the general will, to guarantee *civic* equality in a secular state and to find answers to a spiritual malaise (See also Klausen 2006). So whether British human rights laws protect students in school who wear a *hijab*, while French and Turkish laws uphold the legality of a ban, the underlying issue is not primarily one of rights but of alienation that finds membership in the modern state to be inadequate and unfulfilling. It was most inadequate and unfulfilling in the suburbs of Paris and Lyon. However, the central and most extreme form of the crisis expressed itself in the secular religion of France itself, *la laïcité*.

In both America and France, alienated youth join tribes that provide identity in their rivalries with other tribes and the establishment. In America, one can belong to the Bloods. In France, one can belong to an Islamist sub-culture, which is seen by the French establishment as a much greater danger because the institution in the name of which they speak also has a global and universal agenda. Because the agenda is mistakenly perceived as universal, a core debate focuses on the way the discussion is conducted between communities and the state in the *res publica*. For the advocates of discourse ethics (Benhabib 1996), the state, not the community, provides the norms not only of admission but of good citizenship. The sovereign state, independent of, rather than in response to, the community, controls the identity of the nation through its rules of membership admission (and revocation), and its rules of good conduct as a citizen. The modern democratic state adjudicates this tension based on cosmopolitan human rights principles that are purportedly context-transcending in principle but always take context into account in practice. And it is the state's interpretation of those rights that triumph.

As Freedman (2007) argues:

While the discourse surrounding these policies and legislation is often framed in terms of a defence of the rights of Muslim women against the patriarchal order which requires them to cover their heads, and thus in terms of the upholding of gender equality, it can be argued that the policy of banning Muslim women from wearing headscarves has in fact been detrimental to the exercise of their rights, acting to further exclude them from European societies in the name of supposedly universal but arguably Eurocentric conceptions of women's rights (29).

“Civilizing” Muslim Institutions

France religiously separates state and religion in the name of *la laïcité*, as Bowen, Keaton and McGoldrick document, subsidizes the upkeep of cathedrals and churches, helps build churches, synagogues and mosques, provides graveyard spaces for the different religions, supports voluntary organizations like the Jewish Consistory, the Protestant Federation of France, and planned to subsidize a new Muslim representative organization promoted by its new President, Nicolas Sarkozy. After 9/11, Sarkozy created a French Council of the Muslim Faith (*Conseil Français du Culte Musulman* -CFCM)¹² to be elected by representatives of the mosques in an effort to “create an official Islam of France” that would, on behalf of the French civil state, oppose the Islam of the cellars and garages (*l’Islam des caves*) allegedly linked to global terrorism.

This new institution had a long historical genesis. During the debate over the *hijâb* in 1989, Interior Minister at the time, Pierre Joxe, created the Working Council on Islam in France to fit Muslim organized religion within the secular French state. In partnership with Dalil Boubakeur, the Algerian rector of the Grand Mosque of Paris, Charles Pasqua, Joxe's successor as Interior Minister, established an Advisory Council of French Muslims to fix the dates of Islamic rituals and determine acceptable public practices based on a Charter of the Muslim Faith in France that would strive for

¹² Cf. the special issue of *French Politics, Culture and Society* 23:1 (Spring 2005).

“the development of an expression of *laïcité* that will bring religions and the state into a state of harmony,” and disassociate the French Muslim faith from extremisms. At the same time, Pasqua, building on the 1993 Méhaignerie laws (overturned by the courts in 1998), created barriers to becoming a French citizen,¹³ limited family reunification, and even permitted deportation to the parents’ home country for children born in France but who acquired a criminal record. Keaton (20) describes Pasqua’s 1987 deportation of more than a hundred Malian immigrants shackled hand and foot.

Given this background, it should be no surprise that the Muslim community turned its back on these efforts at manipulation. The Fédération Nationale des Musulmans de France (FNMF—the National Federation of French [Moroccan] Muslims) and the Union des Organisations Islamiques de France (UOIF—Union of French Islamic Organizations) in 1995 created the High Council of French Muslims to “assemble all democratic Muslims in defense of the principles of *laïcité*.” In 2003, they simply took over control of the state-organized official representative of Muslims in France. In the April 2003 elections, the FNMF and the UOIF (which many French believed was linked to the Egyptian Muslim Brotherhood) mobilized their congregations and captured the majority of seats. The government effort to create a rival national Muslim organization, which it in effect could control and through which it could negotiate such issues as *halal* preparation of meats, training of Imams, appointing Imams for hospitals and prisons, failed. Officially rebuffed by the French Muslims who voted (only 40,000, one percent of those eligible—McGoldrick 257), Sarkozy invalidated the election and threatened to close mosques and expel imams who opposed *laïcité*.

Reason and Romance

France believes that the process for interpreting *laïcité* and formulating the rules for its application is a rational one. Ignore for a moment Bowen’s documentation of the way the dialogue was manipulated. Instead, consider one of its star nostalgic members considered as the *summum bonum* of French culture, *une piaf*, the argot for sparrow. At the time *laïcité* was legislated as the official religion of France, *la chanson réalité*, France’s version of the blues, defined what it meant to be French. Edith Piaf, who performed before the Nazis in occupied France and in Germany, brought its expression to perfection. For former Prime Minister Jean-Pierre Raffarin, the ardent defender of *laïcité* and the need to contain Muslim fundamentalism (though stopping short of advocating a new law [Bowen: 105]), “Piaf symbolized the desire of ordinary voters for a return to ‘real values’ and the rejection of ‘élitism’” (Thurman 2007: 50). Those so-called “real values” belong to the romantic side of France, not the rational side, the idealization of heroic underdog populism, where the defeated can also be winners by singing *La Marseillaise* more brilliantly and more stirringly than anyone else. However, it is a realm of dysfunctional families. Instead of families being based on shared love and mutual commitment, inter-dependency and support as a launching pad for adolescents to enter into civil society as atomized agents pursuing personal ambitions, in the romantic version, there is no family, only atomistic orphans. They are the products of tortured lives. Instead of upholding the bourgeois values of possessive individualism and material accumulation,

¹³ Castles and Miller (1998: 285-6) commented on the French failure to integrate immigrants through its assimilationist policies; the 1993 *loi* Pasqua laws were considered an indication of that failure.

they consume wealth rather than collect it. They even wreck their own bodies rather than engaging in possessive individualism and extending the body through possessions. The French polity romanticizes this overt rejection of its manifest values, bourgeois values articulated and held deeply by most of the Muslim families and their ambitious children.

Piaf's maternal grandmother, Emma Said ben Mohammed, was known by the same name as one of Keaton's young girls, Aïcha, and ran a brothel. She came from the same Berber area of Algiers as Bowen's interviewees. Piaf was born Edith Giovanna Gassion as the child of alcoholic parents who were street buskers. Piaf was a well-abused four foot eight inch waif from a life of childhood squalor. She pursued self-destruction in "weary defiance of life's blows" (Thurman 2007: 49), especially after her deepest love, Marcel Cerdan, 'the Moroccan bomber' middle-weight boxing champion died in a plane crash. The problem is that the girls who wear a *hijâb*, contrary to Benhabib, do not do so in defiance. They are not world-weary cocky savages. They are out to escape the "harsh nasal vulgate of the Paris slums" (Thurman 2007: 49). They want an education, not the dissipated pathos of the pugnacious street fighter, Edith Piaf. They are upwardly mobile and healthy, determined to escape shabby dissipation. As such, they neither fit into the romantic nostalgia of French cultural fantasies nor the Cartesian abstract rationality purported to be at the heart of French culture.

For Benhabib, the issue was how a democratic polity, based on transcendent universal principles that allow variations in "iterations" in relation to the political and legal culture of individual polities, adjudicates between the bounded community of a state and purported transcendent universal principles. Democratic states must still avoid discriminatory practices and establish equal status for all citizens in an inclusionary public realm. But what if that iteration in France refuses to acknowledge and recognize differences? What if the iteration insists on a *bounded* range of conformity? What if the so-called transcendent principles end up in practice merely expressing the communitarian secular religion of the state? What if the iterations as expressed in the contentious public debates and disputes are both open and autonomous, as the Stasi Commission certainly was of any coercion or prefixed strategy by the state, but nevertheless served as a device to define inclusiveness for French citizens in a debate that was both "rational" and critical, but ignored a critique of its premises or references to empirical results that showed those premises to be out of touch? What if behind the neglect of the suburbs there can be found a nostalgic romantic blues attachment to deprivation and despair? In such a context, Habermasian discourse ethics is of no help in organizing discourse for the *res publica*.

The language of inclusion and rational-critical debate, operating in a civil society space free of coercion, the language of transcendent universal norms, may disguise a sub-text of polite coercion in the form of public pressure to accept a dominant set of norms and the real coercive underpinnings of a secular religion. A substantive ethics, in contrast to discourse ethics, if it looked at the confrontation over headscarves from the point of view of the less advantaged or the victim, as Keaton does, might have included measures such as whether the decision helped or hindered groups subject to discrimination and even racism, educated the larger society about discrimination and racism, promoted diversity and strengthened civil society. If the norms of "egalitarian reciprocity" define the identity of the democratic polity and the sovereign nation (Benhabib 1996: 75) in "complex processes of public argument, deliberation, and exchange through which universalist

rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society,” (Benhabib 2004: 179), then France more or less lived up to that standard but nevertheless failed. The process did not interrogate whether the rational principles were indubitable Cartesian first principles or truly transcendent.

Benhabib (2004) argued that the French failed in conducting such a debate. Bowen demonstrates that Benhabib was wrong. The debates were transparent. The Commission findings were accountable to both the courts and the public. The French did conduct the debate—a very extensive one. There was no coercion of the members of the Stasi Commission. But the Commissioners were subject to pressure. They were bombarded by the media. Thus, though the commission conducted itself in accord with her normative requirements, as Bowen documents, the state stacked the deck in its premises, in its witnesses and in the context of the hysteria whipped up by the media. They did not stack the deck in the appointment of the members of the Commission nor limit the public debate. However, the language of inclusion and rational-critical debate, operating in a civil society space free of coercion, may disguise a sub-text of polite coercion in the form of public pressure to accept a dominant set of norms. This is what happened from the beginning. Unity trumped respect for diversity every time.

Bowen found that French politicians and public intellectuals read one another’s work and shared a worldview in a way that is not the case in most in other countries. Critics who “bring empirical facts to bear on a policy decision *without first theorizing those facts in Republican terms*” (19, my italics) do not play a policy-defining role and are ignored. One negative consequence of *la laïcité* is that it results in a large degree of conformist behavior among intellectuals and political policy makers and among school supervisors and teachers resulting in a very restricted field for discourse and innovation. Keaton shows in intimate detail why this is the case, for these officials are shaped and indoctrinated into the same doctrine of “cultural unity” to define a France that excludes thought outside the strict boundaries of that conformity.

There was no evidence or support provided to establish that the display by some pupils of their religious affiliation in any way undermined the liberal premises of the public school or the beliefs of procedural justice in which secular children may have been raised. If anything, challenging the *right* to express one’s solidarity with one’s religion does, in fact, raise questions about the supposed neutrality of the political realm when it bans the private from the public realm where there is no evidence that such displays effect, let alone undermine, the premises of that public realm. Further, if the separation of the private and the public must be constantly debated and negotiated, the question remains whether the construction of that debate privileges one morality—the French secular liberal one—over traditional values. A system of procedural justice, or a system of discourse ethics setting up norms to conduct the debate, may be a polite apologetic for suppressing the *rights* and not just restricting that community’s conception of the good to the private realm. Is the liberal system of public debate really a system of invisible subjection wherein it is not only the results of the debate that are predetermined in the guise of freedom, but the process of the debate helps preclude a real debate as well?

In Europe, as well as France, the individual is ultimately regarded as a de-ontological subject of rights rooted in a pristine self. Kant rules. An inter-subjective doctrine of negotiated rights that is constitutive of the polity has not been accepted. Instead, as the E.U. weakens the national political

structures of states in Europe, it assumes a correlative responsibility, as President Jacques Chirac said when he proposed the headscarf ban in December of 2003; the community has a responsibility to encourage the flowering of culture. As the sovereignty of the French polity recedes, the responsibility to define and protect the French culture grows.

There seems to be no recognition in Benhabib that when our cultural selves are not reflected somewhere in the public sphere, the sense of self-esteem may be reduced, the sense of self-respect can be affected, and the motivation to succeed let alone excel diminished in some though enhanced in others. Accurate self-representation may be critical to allow equality of development and equal participation in debates over the good. Culture *in the public sphere* may be for some, if not most, an important area to permit representation and reflection back upon the self to encourage equality of motive and effort and to permit choices in the public sphere, including the ability to debate the primacy of the social over the individual self, to debate the position that some things are given and are not subject to debate, and to debate that fidelity to inherited communal values taken as Cartesian, unquestionable first premises are critical in fostering transformation.

The Larger European Context

British cabinet Minister, Jack Straw, could both defend the right of a schoolgirl to wear a *hijâb* in British schools, but ban Muslim women visiting him from wearing face-covering veils because he found the veils impeded communication (Tarlo 2005). In response to an immigration hearing attended by a Muslim lawyer wearing a veil that was suspended, the Judicial Studies Board's Equal Treatment Advisory Committee in Britain ruled that Muslim women be allowed to wear the full facial covering, known as the *niqab*, in court as long as it does not interfere with the administration of justice. (Cf. *The Age*, 25 April 2007) In February 2007, the Muslim Council of Britain in a 72-page document recommended that schools allow girls to wear the *hijâb* but not the *niqab* (Garner 2007). The French, in contrast, banned the *hijâb* in schools.

This essay is modest in its singular focus on the *hijâb* that has become such a prominent symbol of the political and religious wars between Islam and the predominantly "Christian" or, more accurately, secular West, and between secular and religious Muslims, particularly in Turkey (Sandikci and Ger 2005). However, I now want to go beyond the three 2006 volumes and Benhabib's 2004 work by suggesting that the European problem rests primarily in an unresolved identity crisis with different iterations in different parts of the European community. As in previous ruptures in the polity when Catholicism was at its center in France, when Lutheran Protestantism was at its center in Germany, this time the rupture has appeared with Islam at the periphery rather than the center. Thus, while Catholicism initiated but was eventually marginalized by the revolution in France, while Protestantism initiated but was marginalized by the transformation of Germany, and in each case each secular society assumed the character of its nemesis, the problem this time requires bringing Islam into the center and thereby transforming it in its European manifestation. Bringing Islam into the center requires two very different processes. One is a diachronic one which requires recognizing Islam as the central Other in the historical fight over a Christian Europe. The second synchronic one requires that the unincorporated people of the suburbs be truly integrated into civil society.

The problem of the *hijab* was a central issue of debate in all of Europe as a tension between formal and legal citizenship and national cultures (Theriault and Peter 2005; Soper and Fetzer 2005). The European University Institute [EUI] conference abstract described the tension between legal citizenship and cultural membership and the efforts of many European states to strengthen the process of assimilation. “Women are particularly implicated not only because they are often seen as markers of communities but especially because their gender submission—symbolized by the headscarf as immediately visible sign—is taken as one of the hallmarks of this incompatibility” (EUI 2007).

Germany was not obsessed with *la laïcité* but it had its own cultural identity concerns. Though not as preoccupied as France with the issue, nevertheless, when the German Chancellor Angela Merkel put forth what was otherwise a commendable new approach to immigration and the issue of integration, she declined to include among its representatives someone wearing a *hijab* when meeting with representatives of the Islamic community in July 2007. The contexts and iterations of the German debate may have been different, but the same reliance on rights—but as Kantian transcendental norms, rather than as given, indubitable, first principles—framed and provided a foundation for the debate. In Germany, a more detached process and decentralized application was used which still allowed local states to pass legislation banning headscarves in schools—harking back to Germany’s own historical reverence for the *Kleinstaat* based on local institutions and a corporatist political model of social duties while referencing the impersonal universal norm of the equal right of every individual human being, regardless of political status, to possess inalienable rights and be respected as a legal person.

The roots of the debate go much deeper than the twentieth century process of Muslim immigration. The emergence of modern Europe as a multinational transnational system beyond the nation-state and its effort to create a European citizenship as a stepping stone to a cosmopolitan one on the basis of a progressive self (and, for postmodernists, the corresponding but repressed silencing of the regressive colonized other) has certainly exacerbated the problem, especially against a background of Islamic resurgence and that effort to create a new transnational Islamic identity (Kastoryano 2003). The development of a more abstract European identity superimposed on a French, German, Spanish identity has compounded the problem and served to reinforce a polity determined to preserve a reified but weakened national identity. But the headscarf issue points to a central paradox in defining national and European identities on the basis of a cosmopolitan abstract theory of rights. That effort lies at the heart of the headscarf issue.

The problem with the rights regimes of Europe is, as McGoldrick states, they “protect some communitarian aspects of freedom of religion” but they “do so via *individual*, not group rights” (244). On the one hand, ethical values without institutionalized civilized laws lead to dogmatism. On the other hand, efforts to construct a legal system on the pretence that they are based on transcendent principles and which, therefore, is not truly founded on the actual ethos and norms held by a people as demonstrated in its day-to-day practices, lead to imperial projects in the name of spreading virtue. Further, the very process politicizes group identities. It reinforces and legitimizes processes of solidarity formation based on exclusion rather than inclusion. As McGoldrick continues:

Liberals conceive differences as reducible to individual claims. But for French Muslims the facial equality of French law is not enough. It ignores the quest for group recognition. They are not seeking merely equality of treatment, but rather equality of respect (244).

Self-determination may be one pole in the dialectic for both discourse ethicists and communitarians. But self-determination is not a characteristic of *popular* sovereignty, but a characteristic of a people that already has norms of adjudication and discourse built into its ethos. Self-determination requires a history of practices (that should include scientific as well as political practices). Self-determination is not just the expression of the popular will at any one time. The efforts to build a regime on abstract cosmopolitan rights, or rights as national given first principles divorced from those historical practices, leads to both contradiction and overreach that produces the very opposite of what is intended, a diminution in the protections afforded by those rights.

The fact is statist communitarians as civic republicans favor the incorporation of foreigners who are “like us” and can become “model citizens.” They are inattentive to the variety of communities that characterize the state. The “people” is not a reified entity but a dynamic and growing social organism. As the three authors who studied the headscarf debate in empirical detail and published their findings in 2006 demonstrate so convincingly, wearing headscarves in schools by teachers or pupils does not threaten community values in any form of rational discourse except one that gives lip service to rationality by extolling its procedural features at the expense of its substance. However, if new prospective citizens want to continue the practice of radical or even moderate (as distinct from symbolic) excision and clitorrectomy, then such values conflict with western norms with respect to both the protection of children and the protection of women. This is also true of norms of revenge killings on women for ostensibly shaming the family. If prospective members want to join a new civic republic, they should and must agree to terminate such practices. Civic republicanism demands and requires that everyone be subject to and be treated equally before the same system of law. The failure of the state to properly convey and educate new members about the law may be a mitigating circumstance in meting out punishment. But there must be one law for all equally applied. This does not entail assimilating everyone to the French communitarian republicanism.

Where do we find the deeper roots of the problem that has both such a trivial and politically heated expression in the *hijâb* debate? Petrus Cunaeus (1617) in *De Republica Hebraeorum* wrote, “Recently, factions and sections tend to multiply in our Republic. And the bones of contention seem to be rather obscure and fairly pointless issues of religious doctrine, which, most of the time, the rivaling factions don’t even understand themselves. The mobs, as usual, are left to follow their whims and passions” (22). Though referring to the new nation-state of the Netherlands, his point is as applicable now to the *hijâb* debate.

The central issue is not procedural fairness based on an abstract sense of “universal” rights that guarantees full discussion in debates, but the content of those debates. When debates that preoccupy republics focus on irrelevancies, when they are obsessed with pointless issues related to religious observance in public places, such as wearing headscarves in school, we have a politics of suspicion and paranoia rather than a politics of debate over justice and equity, freedom and power. Such preoccupations and irrelevant debates are clear signs of a disintegrating polity.

As the European social and political order moves beyond a state system and is developing a polity based on a pluri-verse of political and cultural communities, the traditional polities defending their inherited cultural identities get their hackles up by focusing not on the erosion of exclusive territorial jurisdiction by the state, but over the challenges to their inherited cultural identities. In the process, a voice is denied to the “regressive” colonial Other, even the silent voice of a head marker. Further, in the absence of a common sense theory of political discourse in the Scottish philosophical sense, in the absence of a tradition of common law that avoids the certainty and reification of abstract principles in favor of community rooted precedents, the repression utilizes the abstract norms of rights, either as fundamental indubitable first principles (France) or as transcendental universal principles (Germany) to frame the absence of discourse in the name of rational discourse.

A de-ontological abstract ego without any history becomes the subject with rights in the idealization of a pristine European self. In that construction, there can be no dialogue with a community characterized as Other (Shilliam 2006). Nor can there be an inter-subjective negotiation of rights between and among communities that mutually recognize one another. For the French and German communities, and hence the European one, define themselves as governed by abstract universal norms detached from any communitarian base, even though every empirical investigation reveals the roots of each country’s rational construction in a specific historically rooted community. The problem is compounded because the community as Other is so eager to define itself as an integral part of the state that it fails to recognize either itself or the Otherness in the various European iterations of the self.

The *hijab* debate is a war of words rather than a war of bullets and missiles, but as a war it serves as the court in which judgments are made on whether Europe moves forward in history or clings to a reified past even as it formally seeks to supersede the nation-state. I do not have time or space in this essay to uncover the *longue durée* going at least as far back as violent conflicts with the Barbary pirates (Silverstein 2005) until the current conception of the non-Europeans as “barbarians” (Sorensen 1996: 46), but only when Europe recognizes that the Other as Muslim and Oriental is also a constitutive part of the Self, only then will Europe overcome the crisis of the current moment that significantly has such a trivial focus in our current era.

If Hegel interpreted *aufheben* as capturing the dialectic of progress in history by wrestling with contradictions to articulate new values at a higher level while preserving valued norms at one and the same time, but putting away ones that are no longer relevant, Europeans have largely been practicing the dialectic in reverse by trying to raise up ostensible uni-cultures (through class divisions and socialization) by creating an elite and imposing and inculcating an arbitrary culture on the masses. The external function of the process preserves and maintains class divisions through socialization and selection. At the same time, the ideology conceals and puts away the relationship in a myth of a common culture that make social divisions seem normal (Keaton: 96 following Pierre Bourdieu and Jean Claude Passeron 1977; Bowen: 246). Europe has not used the opportunity that the *hijab* debate offers to come to a higher degree of self-recognition by even comprehending the way the inter-subjective differences *within Europe* are manifested in the debate. To gain a step on the ladder of self-recognition where Europe can come to terms with its mythical grand narrative of progress by an activist and innovative dynamic Europe in relationship to a regressive, passive and plaintive non-Europe incapable of abstract rational discourse (at least, rational discourse as defined by Europeans), Europeans will have to desist from insisting that non-Europeans assimilate fully into European

cultures. To do that, Europe must first come to recognize the communitarian differences among its various selves and manifestations, such as France defining its intellectual superiority to the rest of Europe and Germany. Kant accepted that framework and upped the ante to an even more transcendental plane of abstract discourse.

The enlightenment mission rested upon the French bourgeois elite, the *chocolatiers* who provided the sweet cover for the pursuit of self-interest and monopolized the bureaucracy purportedly imbued with a purely universal ethic divorced from needs and the motivation of egoistic interests. In Germany, the mission rested on a *Bildungsbürgertum* with its lofty sense of duty and its own transcendent universal ethical sense of duty. The educated middle class would lead the way in a process of rational discourse and reasoning untrammelled by inherited religion. In ostensible language, reason was limited to make room for faith, but faith was boundaried to allow reason to rule in the City of Man. Its torch of liberty was the Declaration of the Rights of Man and the Citizen of the French Revolution. Left out was the need to incorporate communal sentiment and the Scottish sense of common sense that recognized that inter-community differences had to be mutually recognized and negotiated. Without it, Germany and France as the two cornerstones of Europe will remain internally conflicted and tied up in abstract rationalization in dealing with concrete issues such as the right to wear a headscarf in school.

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¹⁴ For an additional large and excellent set of articles on *la laïcité* in relationship to the debate over headscarves in France, see the website: <http://www.ac-versailles.fr/PEDAGOGI/SES/themes/laicite/menu1.htm>.

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