Undressing Difference: the *Hijab* in the West

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Reviewing Joan Wallach Scott, *The Politics of the Veil* (Princeton University 2007).

In February 2008 French President Nicolas Sarkozy defended a proposal to require that every ten-year old in France learn the intimate biography of one of 11,000 French Jewish children killed in the Holocaust.[1] The bold proposal that children adopt the memory of a victim of the Nazi's generated intense concern. Critics suggested that this approach to teaching history might even be cruel.

This was not the first time a French President drew criticism for embracing a daring education policy. On March 15, 2006, French President Jacques Chirac signed into law an amendment to his country's education statute, banning the wearing of "conspicuous" signs of religious affiliation in public schools. Prohibited items included "a large cross, a veil, or skullcap." Opponents of the law viewed it primarily as an assault against the *hijab*, a head and neck wrap worn by many Muslim women around the world.

But why would the French government go after the *hijab*? A national law dictating that children not attend school with their hair covered--and in the land of "*Liberté, Fraternité, Equalité"* at that -- requires explanation. In Politics of the Veil, Professor Joan Wallach Scott offered an illuminating account of the significance of the *hijab* in France. "What is it about the headscarf," she asks, "that makes it the focus of

[1] By Making Holocaust Personal To Pupils, Sarkozy Stirs Anger
New York Times **(NY)** Author: ELAINE SCIOLINO. 2/16/08 NYT A1 2008 WLNR 3057977

controversy, the sign of something horrible?"[2] Prior to the ban, headscarves were barely present in the schools; only a few Muslim elementary, middle and high school girls in France wore the *hijab*.. Only 14% of Muslim women in France said they wore the *hijab* at all, and a bare 51% said they actively practice their religion."[3] Scott argues that despite the limited popularity of the Muslim *hijab*, termed "*foulard*" in the French language, the *hijab* is a form of "veiling" and 'veiling" has become a threatening emblem of late 20th century anti-western Islamic politics. Even a few yards of fabric about the head and neck that leave the face fully exposed, is reviled as a symbol of Muslim women's oppressive femininity and, inconsistently, their radical insouciance.

Without a doubt, a woman whose hair and neck are covered by the *hijab*, whose face is covered by the *niquab*, or whose full body is covered by the *burqa* is a troubling figure for Westerners. Many Western observers are uneasy about veiling in Islamic countries and even more so about the practice when it accompanies immigrants abroad. Scott joins other U.S. scholars who have studied veiling. Professor Nancy Hirschman, for example, has assessed the normative significance of veiling within Islam and from a liberal feminist perspective, unstymied by cultural relativism.[4] Scott's lucid, compact examination of veiling complements previous feminist scholarship with a close look at its role in a particular time and place—contemporary France—where it has been the subject matter of a unique "political discourse".

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[2] Joan Wallach Scott, Politics of the Veil, p. 1.
[3] Id. P. 3
[4] Nancy J. Hirschmann, **<u>The Subject of Liberty: Toward a Feminist Theory of Freedom</u> (2002).**

The European Court of Human Rights has held that governments are within their rights when they prohibit head wraps in schools.[5] Yet a national rule against the *hijab* in public schools or universities is nearly unthinkable in the United States. If the *hijab* seems exotic to the French, the French seem exotic to Americans, who view clothing styles dictated by religion and culture as private matters largely –though not entirely-- outside the realm of legitimate state intervention. When compared to U.S. approaches to the *hijab*, the France experience examined by Joan Wallach Scott underscores an important point: there is more than one way to be a modern, multicultural western liberal democracy coping with Islam, and some ways are better than others.

I. Unthinkable in the United States?

In 2005, an 11-year-old Oklahoma Muslim American named Nashala Tallah Hearn was suspended from Muscogee School District's Benjamin Franklin Science Academy for five days. Her sole offense was a refusal to remove her *hijab*. Citing a school dress code against wearing hats, bandanas and other head coverings in the classroom, a teacher had ordered Nashala to take off her *hijab*. When Nashala refused, school administrators punished her for disobedience. Muslim civil rights groups protested the girl's suspension from school. The United States Justice Department Office of Civil Rights announced that it would intervene on behalf of a Muslim girl's right to wear the *hijab*. Feeling the pressure, the Muscogee School District school board decided

[5] **http://www.iht.com/articles/2005/11/10/news/court.php** The case involved a Turksih woman who objected to ban on the *hijab* in Turkish universities.

to overturn the suspension. Nashala returned to school victorious, proudly wearing her *hijab*.

The United States government did not have to involve itself in Nashala Hearn's case. But it is not surprising that government attorneys would voluntarily elect to side with the concept of a pupil's right to wear *hijab*. In the U.S. the *hijab* is commonly worn both by Muslims of recent foreign extraction, but also by indigenous black Muslims. Banning Muslim headscarves potentially discriminates against both African Americans and non African American Muslims. Although the United States Supreme Court has upheld laws aimed at compelling religious minorities to conform to a variety of majority practices, a range of federal cases point to recognition of a constitutional right of minority group members to wear distinctive religiously inspired garb in educational settings. Where the garb in question is called for by a woman's modesty, it is especially predictable that the United States would favor individual preferences over the state's.

a. Religious Difference: Losing Arguments

An unrepudiated, late 19th century decision, *Reynolds v. United States* (1878), [6] proves that the Supreme Court is capable of permitting a ban on a minority group practice loathed by and threatening to the majority. The Reynolds case upheld a law applicable to the U.S. territories, banning the practice of polygamy among the Mormons. Petitioner Reynolds was a prominent Utah Mormon who took a second wife with the approval of Mormon officials, flouting a polygamy ban enacted by Congress. Reynolds wanted to test

[6] Reynolds versus United States, 98, U.S.145 (1878) ("laws are made for the government of actions, and while they cannot interfere with near religious beliefs and opinions, they may with practices.").

the legitimacy of the national ban, and so he cooperated with his own prosecution, eager to appeal his conviction. Although the First Amendment clearly protects religious freedom, the Supreme Court held that the right of free exercise is a right to believe what one wishes, not a right to do what one wishes when what one wishes to do violates laws of general application. Plural marriages were "odious" to the civilized west, argued the Court.[7] And they were odious in part because of the shame they brought on women of virtue and children stained with an aura of illegitimacy.

The *Reynolds* Court's interpretation of free exercise played a role in the Court's decision many years later in *Employment Division of Human Resources of Oregon v. Smith* (1990). [8] In that case members of a Native Americans church lost their social services jobs due to admitted use of sacramental peyote in worship. They were denied unemployment benefits on the ground that they lost their jobs "for cause"—using illegal drugs. The Court held that the First Amendment did not require that the men's use of sacramental peyote be treated any differently from the use of other illegal drugs. The state interest in protecting the public from the dangers associated with drug use is a weighty one, reasoned the Court.

Reynolds and *Smith* evidence a lack of regard for preserving minority religious differences. But other lines of Supreme Court cases are relevant to the issue of embracing difference in education, raised by the question of the school girl's *hijab*. This other caselaw reflects a distinct constitutional distaste for imposing majority practices on well-meaning minority families seeking to educate their children consistent with their religion.

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[7] Reynolds at __.

[8] Employment division, Department of human resources be Smith, 494 US 872 (1990). ("We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate.")

B. Sameness Not Required: Winning Arguments

Meyer v. Nebraska evidences a strong abhorrence to public laws whose sole purpose is to ensure assimilation. In *Meyer v. Nebraska*, the Supreme Court struck down a state law prohibiting instruction in the German language in a parochial school.[9] The law in question criminalized teaching German to children younger than 13, a crime for which Robert Meyer, a teacher at Zion Parochial School was prosecuted. The apparent purpose of the Nebraska law was assimilation-- to ensure that young children became well-assimilated citizens who spoke and thought like Americans. The Court held that the 14th Amendment does not permit compelling English language instruction. The 14th Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." [10]

In *Wisconsin v. Yoder*, the Supreme Court struck down convictions of members of the Old Order Amish religion who refused to send their children to school for formal

[9] Meyer of the Nebraska, 262 U. S. 390 (1923) ("Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution -- a desirable and cannot be promoted by prohibiting means.") ("It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.")
[10] Meyer v. Nebraska at __.

education beyond the eighth grade.[11] A Wisconsin state law mandated that children attend private or public school until the age of 16 years. The court stressed that the application of the compulsory school attendance law, could very well destroy the ability of the Amish to perpetuate their unique way of life. Only the Amish youth's absence from school was at issue in the *Yoder* case, not the "different" clothing they wore to school when they attended. Yet part of the way of life the Court seemed reluctant to disturb included the Amish style of dress. The Old Order Amish reject what they call "English" dress. Instead they wear simple rural attire, not unlike their 19th century ancesters. Deference shown to the Amish way of life and educational values suggest that other groups' religiously inspired requirements of their school aged children would be similarly protected by the Court. If government may not constitutionally ban instruction in a minority language in a parochial school or require formal secondary education for members of a minority religious group, it arguably cannot ban the hijab, an article of clothing worn by a religious minority.

C. Dress Code and Uniform Cases

The Supreme Court has not been asked to address the constitutionality of a *hijab* ban. However, it has been asked to review decisions that concern the constitutionality of dress and uniform codes for school children, public employees and members of the armed forces. The Courts dress and uniform cases are evidence of how it might assess the constitutionality of a hijab ban.

[11] Wisconsin vetoed or, 406U.s.205 (1972). ("[T]he record in this case abundantly supports the claim that the traditional way of life of the homage is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.")

Wearing a muslim headscarf to school, could be compared to wearing a particular hairstyle and choice of clothing. May public schools demand a uniform appearance of their pupils? In the late 1960's and 1970's, many public secondary schools adopted strict hairstyle codes in response to the popularization of the long styles preferred by entertainers, college students and "hippies". In the 1990's there was a resurgence of school uniform requirements in urban public schools. Uniforms appear to improve school discipline and promote pride and teamwork. On a number of occasions the federal courts have addressed the question of whether schoolchildren are constitutionally entitled to wear their hair in styles prohibited by school administrators. Analogous questions have arisen in relation to public employees' hairstyles.

In *Kelly v. Johnson* (1976), the Supreme Court refused to invalidate hair length regulations promulgated by a police department.[12] Chief Justice Rehnquist argued for the majority that: "choice of organization, dress, and equipment for law enforcement personnel is a decision entitled to the same sort of presumption of legislative validity as our state choices designed to promote other aims with in the cognizance of the states police power... .". [13] The requirement that police officers wear their hair in short styles was a requirement of uniform and uniformity. In a dissent joined by Justice Brennan, Justice Marshall made the case for individuality:

> [A]n individual's personal appearance may reflect, sustain, and nurture personality and may well be used as a means of expressing his attitude and lifestyle. In taking control over a citizen's personal appearance, the government forces him to sacrifice substantial elements of his integrity

[12] Kelly versus Johnson 425 US 238 (1976).
[13] Kelly at ___.

> and identity as well. To say that the liberty guaranteed of the fourth amendment does not encompass matters of personal appearance would be fundamentally inconsistent with the values of privacy, self identity, autonomy, and personal integrity that I have always assumed the Constitution was designed to protect.[14]

Justice Marshall's reasoning was in line with that of the Third Circuit Court of Appeals in an earlier case that struck down a categorical hairstyle requirement for high school boys. In Stull v. School Board of Western Beaver, Jr.- Senior High School (1972), the Third Circuit Court of Appeals recognized that "the length and style one's hair is implicit in the liberty assurance of the due process clause of the 14th amendment." [15] A school rule prohibited styles in which a boy's hair covered his ears or fell below his collar line. The court held the policy invalid and unenforceable, "except as applied to shop classes," where safety was an apparent issue.

Kelly v. Johnson is Supreme Court precedent for this principle: that courts should presume the validity of uniform grooming requirements that confer public benefits, notwithstanding any individual's interest in individuality. Following this principle, one could reasonably conclude public schools may constitutionally impose uniform dress requirements, as indeed many public and private schools do. Some schools have uniform requirements that dictate clothing style and color. Boys are often asked to wear khaki pants and polo shirts in conservative colors. Girls are sometimes asked to wear plaid "jumpers" or skirts and blouses. Short of a strict uniform requirement, some schools ban logo shirts, excessively baggy pants, short shorts, tank tops, ball caps and ostentatious

[14] Kelly at __ (Marshall, dissenting)
[15] Stall the school board of Western beaver Jr. -- Senior high school, 459 F.2d. 339 (third circuit 1972)

jewelry. There is at least anecdotal evidence that school uniform requirements further the goal of instilling pride and improving school discipline. Certain clothing is prohibited because it can be used as a place to store contraband.

Schools with uniform requirements could be constitutionally required to make exceptions to accommodate bona fide religious difference. Some schools explicitly exempt the hijab and yarmulke from dress code requirements. In Shermia Issac's Howard County Maryland public school, hats and other head-coverings were prohibited in the classroom, but an exception was made for the *yarmulke* and *hijab*.[16] An African American eighth grader of Jamaican ancestry, Shermia lost her court battle to wear an ethnically-inspired head dress to school. The girl admitted that the multicolored headwrap her school forbade was not required by her religion or cultural traditions, and that she chose to wear it some days for style to conceal a "bad hair day" . However the wraps were an expression of her ethnic pride, and were of a sort commonly worn by her mother. Shermia Issac's case suggest hat head coverings not dictated by religion or cultural traditions of modesty need not receive the deference given a schoolgirl's hijab.

Clearly the constitutionality of dress codes and school uniform requirements does not entail the constitutionality of banning the *hijab* or other religious attire. It is unlikely that a federal court would sustain a school dress code or uniform requirement that did not make an exception for bona fide religious or cultural modesty garb. The courts would doubtlessly distinguish schools from the military, a limited context where concerns about uniformity have been held to trump religious expression. The Supreme Court has upheld military policies limiting the right to wear the *yarmulke*, a Jewish head covering worn by

[16] Isaacs ex rel. Isaacs v. Board of Educ. of Howard County, MD D.Md.,1999.

men. In *Goldman v. Weinberger*, the Court held that a Jewish rabbi and clinical psychologist, serving as an active duty member of the military could be prohibited from wearing a *yarmulke*.[17] The case for permitting the military to ban religious headgear was based on the same reasoning used to make the case for permitting municipal police departments to prohibit long hairstyles. Uniforms and uniformity communicate discipline, professionalism and submission to a common authority.

It can be argued that categorical uniformity in the military-- and law enforcement-- is a legitimate, important or even compelling state interest. The case for categorical uniformity in school is less strong. The needs of schools on the one hand, and police departments and the military on the other, are sufficiently different to warrant constitutionally different approaches to religious or cultural exceptions. Categorically banning religious or cultural headgear in schools is incompatable with due respect for the religious and expressive freedom of children and their families. A boy in khakis, a polo shirt and *yarmulke*, like a girl in a plaid jumper and *hijab*, inherently offends no legitimate state interest such as school discipline or safety.

D. Modesty as a Constitutionally Protected Value

Religious Muslims sometimes say that wearing the *hijab* is an expression both of religious identity and of modesty required by religion. Thus another pertinent angle from which to view government imposed restrictions on the *hijab* would be U.S. modesty laws.

[17] Goldman v.. Weinberger, 475 US 503 (1986) (Orthodox Jew in Air Force sued under First Amendment for right to wear yarmulke)

By "modesty laws" I mean the dispersed set of legal norms that dictate that women cover up their bodies for the sake of chastity, humility, decency or morality.

In *Botsford v. Union Pacific Railroad* the Supreme Court held that a woman who filed a tort action alleging physical injuries need not submit to a medical exam at the request of the defendant. The woman's modesty was at stake. The *Botsford* decision has been effectively overruled. Rules of civil procedure now authorize courts to order the examination of personal injury plaintiffs. But the choice of modesty remains a perogrative of women who want it. This is no to say women have not had to fight for the right to wear Islamic dress to work. Women in the hijab have denied employment opportunites, belittled and harassed.[18] Still, in the U.S., the salient legal modesty battles of our time are mainly about women seeking the freedom to dress less modestly than others expect, and only occasionally about women seeking freedom to be more modest than expected.

A battle for compelled modesty has been symbolically won in the Supreme Court in cases concerning bans on totally nude dancing.[19] Over First Amendment objections, the Supreme Court has twice upheld laws that require women to cover up, a little. The Court has bought the argument that public safety in some community hinges on the

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[18] See Campbell v. Avis Rent A Car System, Inc. E.D.Mich.,2006. Only the Westlaw citation is currently available. (Woman employee of rental car company claims harassment dueto wearing the *hijab* and praying at work).; Wiley v. Pless Sec., Inc. N.D.Ga.,2006. Only the Westlaw citation is currently available. (Woman employed in security business claimed job reassigned prompted by her religious use of the *hijab* violated rules against discrimination in employment.); Alsaras v. Dominick's Finer Foods, Inc.C.A.7 (Ill.),2000.NOTICE: THIS IS AN UNPUBLISHED OPINION.(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA7 Rule 53 for rules regarding the citation of unpublished opinions.)

[19] City of Erie v. Pap's A.M., 529 U.S. 277 (2000) (upholding constitutionality of city ordinance prohibiting public nudity); Barnes v. Glen Theatre, Inc. 501 U.S. 560 (1991) (upholding constitutionality of state statute prohibiting public nudity).

difference between total nudity and the donning of "G strings" covering the genitalia and "pasties" covering the nipples of performers. In a country in which states attempt to impose a symbolic vestige of modesty on its female citizens to such an absurd degree, it is unlikely that women and girls exhibiting greater than average modesty would ever be required to remove modesty garments, solely for the sake of uniformity or cultural assimilation.

I have made the argument that a national ban on the *hijab* is all but unthinkable in the United States were religious expression and modesty are valued, underscoring the peculiarity of what the French attempted to do. I should add that a state or local ban in the U.S. is also unthinkable, although at least one court has held that for purposes of being photographed for a state driver's license photo, a religious Muslim can be required to momentarily remove her *niquab* --a veil that covers her entire face except her eyes.[20] Requiring momentary removal of the *niquab* does not substantially impair religion and is reasonable. Without a facial photo a driver's license could not serve as meaningful driver identification.

The events of September 11 left many Americans with a bad taste for Islam and a phobic suspicion of religious Muslims and people suspected of being from Muslim countries. Even the events of 9/11 did not result in calls for banning the veil, however. Post 9/11 air travel is one of the few contexts in American life where modesty garments have come into potentially serious conflict with public purposes. All women are asked to remove head gear, jackets and shoes when passing through inspection. Authorities have not sought to categorically deny passage to veiled muslim women; though there have

[20] Freeman v. State Fla.Cir.Ct.,2003. Only the Westlaw citation is currently available.

been outrageous casualties, including one American born muslim woman who was strip searched for refusing to remove her *hijab* in a public.[21] Authorities have struggled to devise respectful means of screening veiled women for security purposes but are supposed to provide screening by a female professional in a secluded area.

II. Why in France?

From the U.S. perspective, the French *hijab* ban measure looks unreasonable and inexplicable. The French ban cannot be well-defended as way of limiting the influence of radical Islam or combating terrorism. Joan Wallach Scott's incisive book makes sense of what otherwise does not.

Scott's book is a proving ground for a method as well as a thesis. Her central thesis is that outlawing the veil, "even though it was worn by very few students in French public schools, was an attempt to enact a particular version of reality, one which insisted on assimilation as the only way for Moslems to become French."[22] Scott defends her thesis through an examination of political discourse which she "undertake[s] through close readings of arguments advanced in their specific political and historical context." [23] In defense of her method Scott persuasively maintains that the "situation of Muslim

[21] Kaukab v. Harris N.D.Ill.,2003.

[22] P. 7
[23] P. 8

immigrants in Western European countries can be fully grasped only if the local context is taken into account."[24]

The French *hijab* ban was symbolic political discourse of national identity, Scott explained. The main reason for the French ban was a desire to signal to French immigrant minorities the felt importance of integration and assimilation. The ban on the veil presupposed that a French identity and loyalty to the French government required the subordination of religiosity. To allow the tiny cross, the tiny star of David, the tiny Koran, but not the Orthodox garb of *yarmulke* and *foulard* was a way of raising flag above faith, Scott said.

To explain the attack on the *hijab*, Scott systematically considers the roles of several causative factors. They included: (1) old-fashioned racism and colonialism towards people of north African and Muslim descent; (2) secularism as a public philosophy in France; (3) individualism as a public philosophy in France; and (3) residual sex inequality as an embarrassment to French liberalism.

As for racism and colonialism, Scott links the Western obsession with the veil to sexual fantasies harbored by colonialists who encountered veiled women abroad: "the veil was a sexual provocation, and the denial of sex, a come on and a refusal." A veiled woman might be an unruly prostitute or a slave to a husband. [25] For the confused colonial " Islam [was] a cruel and irrational system of religious and social organization. "[26]

[24] P. 9
[25] P 58
[26] P. 58

According to Scott, "French supporters of the law banning headscarves defined themselves as apostles of secularism." [27] Scott dated secularism in French schools back to the mid-19th century, when primary education was made compulsory for boys and girls and when religion was no longer taught in the classroom by Catholic priests and nuns. Yet while "militantly secular in theory," she argues " French schools were more flexible" in allowing dimensions of religion if only in recognition of the historic significance of Catholicism"[28] Some of this flexibility is seen in the way the French approached the head scarf ban. Scarves were not banned in private schools; they were not banned by women going about their business in the streets; nor they banned by women workers who were employed by the state.[29] On the other hand "the law has sometimes been interpreted as a more general expression of official disapproval of veiling, such as the chastising of women who wished to wear the veil in French naturalization ceremonies.[30] Non-muslims were victims of the attack on the *hijab*, which had to be framed in neutral terms to facially comport with liberalism. The education law amendment made an issue of what had not been much of an issue in France in the past, namely the wearing of skullcaps by Orthodox Jews and turbans by Sikhs.[31] Jews and Sikhs were a kind of collateral damage in the war whose real enemy was islamic difference. Less worrisome collateral damage was the disappoint felt by students who might have wished to wear bandannas or headbands as fashion statements.[32]

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[27] P 97
[28] P. 100
[29] 106
[30] 179
[31] 107
[32] 134

Scott argued that individualism was an important dimension of the political discourse that led to the ban on the headscarf. One might suppose that individualism would point to freedom of religious choice, as it quite often has in the U.S. According to Scott, a committee that studied the issue of Muslim girls in French schools concluded that many girls found the *hijab* oppressive. The foulard was not their individual preference at all. The ban on the scarf was presented as a way to liberate and emancipate individual Muslim girls constrained by family and cultural pressures to cover-up.

French policy makers further imagined that the veil might be a way Muslim parents dominated their helpless children, recruiting them willy-nilly into " an international Islamist movement reaching to France from Pakistan, Iran, and Saudi Arabia". [33] It is worth asking whether individualism is a public value that justifies interfering with religious choices made by parents of young children or teens. Recall that no such rescue of Amish children was endorsed by the U.S. Supreme Court, though dissenting justices wondered if teenage Amish children's own desires might be subordinated to or conflated wit their parents unfairly.

Scott explored a political discourse of sexual equality reflected in the assault on the *hijab*. She argued that by banning the headscarf, French legislators believed they were "removing *the* sign of women's inequality from the classroom" and "declaring that the equality of women and men is the first principle of the Republic." Such declarations are admirable, but the choice symbols is xenophobic, as Scott observes. The fixation on *hijab* –as opposed to skirts or ponytails—as *the* symbol of gender inequality can only be explained by the "foreign" character of this particular feminine emblem. U.S. moms have sometimes fixated on the Barbie doll or the color pink as *the* item to purge from

[33] P. 132

their daughters' lives to insure their equality with boys. But the truth of the matter is that Muslim girls without *hijab*, like ribbonless American girls in dungarees, are still subject to discriminatory treatment and unequal opportunities at home, in schools and in the larger society. [34] It is tempting to think that if we are all to be the same, symbols of difference must be abolished; but another option is always to spare the symbols and change the underlying reality. In the 1980's, when women flocked into the legal profession for the first time, dresses were a symbol of girly vulnerability. Female lawyers on Wall Street were encouraged to wear severe, man-tailored suits with foulard ties to work. But eventually firms and clients got used to having competent women around; women lawyers abandoned the ties and put dresses on the menu of acceptable office attire.

III. Beyond Tolerance (or, How to Live Together Without Attitude)

Immigrant and native diversity are features of western nations. To deal with difference, a country may seek to obliterate it symbols. But undressing Moslem girls from the neck up is a very poor way to create a unified society. We must hope it is possible for modern liberal democracies to truly incorporate people of various racial, religious, cultural and national origins in a single body politic. Legislating against symbols of difference is not the way to go.

In the final pages of her book Joan Wallach Scott considers competing ideals of nation sharing: "In order to come to terms with its north African/Muslim population, French politicians and intellectuals need to come up with new ways of addressing

[34] P. 168

difference, ways that acknowledge its existence rather than refusing to engage."[35] Scott believes political leaders must stop acting as if historically established communities are essences. French leaders have treated French nationality as an essence rather than as a dynamic, fluid construct.[36]

What ideal, though, can a liberal democracy strive for? Is it integration? Is it tolerance? Could it be multiculturalism? Scott finds fault in some of the usual ways of naming the inclusive political idea. Integration implies a loss of identity to assimilation . Toleration sounds snotty; to tolerate is to accept that which one finds offensive. The multicultural ideal, which has had a significant life in American political discourse, starting in the 1980s, envisions a nation of people of different sorts, each maintaining loyalty to an identity group, while mysteriously composing a functioning political unit.

. The U.S. is "better" than France in its acceptance of the *hijab* in schools. But the U.S., like France, struggles with how to incorporate religious and cultural minorities fully and equally into the life of the society. The United States has had to learn the hard way that racial segregation of African Americans confers blessings of cultural and community but causes children to grow up feeling inferior to others and less entitled to public resources and opportunities. Racial segregation impairs preparation of youth for life in a pluralistic, self-governing society; and interferes with the efficiency, productivity and equality of the workplace. But the French surely know this by now. They have had their own hard lessons, too.

Restless disenfranchised minority youth took to rioting in U.S. cities in the mid-1960s. A National Advisory Commission on Civil Disorders was convened by President

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[35] P. 31
[36] 20

Lyndon Johnson in 1967 to study the causes of rioting the black "ghettos". The Kerner Commission, as it came to be called, issued a Report interpreted the rioting as African Americans' demand for equality and inclusion. The U.S. rioters wanted more just police practices, jobs, housing, education, recreational facilities, political power, fair lending, and respectful racial attitudes. Something analogous to the U.S. riots happened in France in 2005 and 2006. A clash with police over the deaths of two teenagers on October 27**,** 2005**,** in Clichy-sous-Bois, a Paris suburb, sparked dozens of racially-charged rebellions throughout the country, leading to loss of life, property destruction, injuries and arrests. Lack of opportunity, isolation and discrimination fueled the frustration of young people who participated in the rioting. Doubtless, ghettoized French minorities living in the *cites HLM*—the public housing projects-- want the same, things ghettoized U.S. blacks have wanted. [37]

Disaffected young men waiting to blow are a real, concrete problem for French democracy. The *hijab* is but a symbolic problem. But it is easier to muster political will to "liberate" Muslim school girls than to adequately house, educate and employ their brothers. Maybe the frank lesson about the Holocaust sought by President Sarkozy should be accompanied by a frank lesson about the *HLM* and the *hijab.*

[37] The HLM (*habitation à loyer modéré*) is low and moderate income public housing in French cities and suburbs. Many immigrants from North Africa live in these facilities.