

Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban

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INTRODUCTION

In 2004, France passed a law that forbids the wearing of “ostentatious” religious symbols in public schools.¹ While this law affected Jewish yarmulkes, Sikh turbans, and large Christian crosses, its main effect was to ban the wearing of headscarves, or *hijabs*, by young Muslim girls.² The underlying principle behind the law was the historical commitment to secularism — *laïcité*.³ This French interpretation of separation of church and state no longer accommodates the wearing of religious head coverings in its secondary schools. The ban on the headscarves may seem strange to many Americans since our historic conception of separation of church and state would permit children to wear religious headgear in most jurisdictions.⁴ It is perhaps easiest for Americans to relate to the French ban when equating it with the U.S. position that religious symbols should not be displayed in public institutions such as courts or municipal buildings.⁵ For the French, a secondary school belongs to the group of such institutions.

During fall 2005, France experienced more than two weeks of violence that spread to more than two hundred cities.⁶ The violence occurred to a large degree where people of color disproportionately live in conditions of high unemployment, poverty, and discrimination.⁷ The rioters included recent immigrants and long-term inhabitants, many from France’s former colonies in Africa and elsewhere. Many were Muslims.⁸ While the initial response was to use force and institute curfews, the government also indicated that it will increase spending to the

¹ Law No. 2004-22 of Mar. 15, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 17, 2004, p. 5190.

² See Keith B. Richburg, *French President Urges Ban on Headscarves in Schools; Chirac Confronts Spread of Islam*, WASH. POST, Dec. 18, 2003, at A1, A44. Headscarves range in appearance. Some girls may wear small kerchiefs in which the girl’s neck and wisps of hair may appear. Others may wear expansive pieces of cloth that show only the front of the face and cover the neck and top of the shoulder area.

³ See Elisa T. Beller, *The Headscarf Affair: The Conseil d’Etat on the Role of Religion and Culture in French Society*, 39 TEX. INT’L L.J. 581, 589 (2004).

⁴ See *infra* Part III.

⁵ See Linda Greenhouse, *Justices Allow a Commandments Display, Bar Others*, N.Y. TIMES, June 28, 2005, at 1.

⁶ Christiane Amanpour et al., *French Riot Police “Beat Youths,”* CNN.COM, Nov. 10, 2005, <http://www.cnn.com/2005/WORLD/europe/11/10/france.riots/index.html>.

⁷ See *id.*

⁸ *Id.*

disaffected.⁹ Part of the response might be to more systematically investigate the history of these people in France to help reveal root causes. The 2004 headscarf ban is one aspect of recent French history that should be examined more closely.

Importantly, the headscarf ban came into effect in the age of the War on Terror, where Muslim minorities in the United States and Europe have been facing increasing discrimination in schools, the workplace, and society in general.¹⁰ Many have been essentialized¹¹ as terrorists or terrorist sympathizers. Thus, some Muslims and non-Muslims have viewed the French ban as part of this discriminatory trend,¹² a position that many believe is contradictory for a country that is an “inventor of human rights and social-contract liberal egalitarianism.”¹³ What France chose to do legally on this issue is important because it is a major power¹⁴ within Europe and has the largest Muslim population in the region, estimated at five to ten percent.¹⁵ The debate is not limited to France, however, as demonstrations worldwide regarding the issue of a headscarf ban “have vividly underscored the sensitivity of religious issues in the global village.”¹⁶

For some, the headscarf has no unitary meaning. Rather, “[i]t reflects the diversity of women’s experience and aspirations around the world.”¹⁷ Others regard the headscarf as even more symbolic — its prohibition

⁹ *Id.*

¹⁰ See generally Adrien Katherine Wing, *Civil Rights in the Post 911 World: Critical Race Praxis, Coalition Building and the War on Terrorism*, 63 LA. L. REV. 717 (2003).

¹¹ See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

¹² See generally Wing, *supra* note 10.

¹³ See Bronwyn Winter, *Fundamental Misunderstandings: Issues in Feminist Approaches to Islamism*, 13 J. WOMEN’S HIST. 9, 27 (Spring 2001).

¹⁴ See, e.g., Katrin Bennhold & Judy Dempsey, *E.U. Leaders Put Charter on Hold, A Long Period of Reflection Is Called, Chirac Throws Doubt on Enlargement*, INT’L HERALD TRIB., June 17, 2005, at 1 (evaluating consequences for European Union’s future caused by France’s recent rejection of European Union Constitution).

¹⁵ Exact numbers of Muslims are impossible to calculate since the country does not officially track religion and ethnicity, though it is estimated at five to ten percent. CIA WORLD FACTBOOK (2005), available at <http://www.cia.gov/cia/publications/factbook/geos/fr.html>; see also Ken Dilanian, *France Struggles to Integrate Its Muslim Minority*, PHILA. INQUIRER, Jan. 5, 2004, at 7.

¹⁶ Jean-Paul Marthoz & Joseph Saunders, *Religion and the Human Rights Movement*, in HUMAN RIGHTS WATCH, WORLD REPORT 2005: EVENTS OF 2004, at 40, 43 (2005), available at <http://hrw.org/wr2k5/wr2005.pdf>.

¹⁷ Anthony Giddens, *French Headscarf Ban Against Interests of Women*, NEW PERSP. Q., Jan. 15, 2004, at 43, available at http://www.digitalnpq.org/global_services/global%20viewpoint/01-05-04.html.

constituting an example where Westerners are trying to oppress expressions of Muslim and/or Arab cultures, both within the West and in the countries of their origin. The women beneath the headscarves may be silent symbols, where national and international politics are played out on their bodies, heads, and minds.

Critical Race Feminism (“CRF”) in its global dimension, which emphasizes the legal status of women of color around the world,¹⁸ can provide a perspective to lift the veil of ignorance and misunderstanding concerning this recent French law and its effect on young Muslim women. Speaking from an American perspective, CRF foremother Professor Mari Matsuda described the “multiple consciousness” that women of color may feel — an awareness of simultaneously facing oppression as a result of both their race/ethnicity and gender.¹⁹ Professor Wing’s own work in CRF has highlighted that women of color may consciously or unconsciously face multiple and simultaneous discrimination, not only on the basis of their race/ethnicity and gender, but also due to their religion, class, disability, sexual orientation, nationality, language, age, stature, marital status, parental status, and/or political ideology.²⁰ A discussion of the headscarf ban illustrates the multiplicative and intersectional nature of the potential discriminations involved.²¹

Part I of this Article provides background on the Muslim headscarf and its reception in France. While France is a major western democracy that embraces an even fuller panoply of human rights than exists in the United States,²² its interpretations of those rights are based upon its own

¹⁸ See GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed., 2000) [hereinafter GCRF]; Adrien Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century*, 11 J. CONTEMP. LEGAL ISSUES 811, 813 (2001) [hereinafter *Polygamy*].

¹⁹ Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297, 297 (1992).

²⁰ See GCRF, *supra* note 18, at 7-10.

²¹ Kimberlé Crenshaw used the term “intersectionality” in a famous article. Kimberlé Crenshaw, *Examining the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL. F. 139, 140.

²² For example, France is a signatory to the International Covenant on Economic, Social, and Cultural Rights and thus, nationally implements economic, social, and cultural rights like rights to education and health care. International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3. The United States has signed but not ratified this Covenant. OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., STATUS OF RATIFICATION OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (2004), available at <http://www.unhcr.ch/pdf/report.pdf>.

unique historical and legal context.

Part II lays out various Muslim and non-Muslim views concerning the appropriateness of the scarf in French public schools, including comments collected by Professor Wing and nine research assistants in France during the summer of 2004.²³ Since CRF is centrally concerned with “demarginalizing”²⁴ the views of Muslim women and girls themselves, and not just reporting what others (the media, men, Christians, Americans, etc.) think about them, a special effort has been made to comb French and Arabic materials to seek out their opinions directly. Unfortunately, very few Muslim female voices are heard in the public sphere on this issue or other subjects, whether in France or the United States. Most of the discussions regarding the French headscarf-ban debate were perpetuated by male voices, and the girls and women who were affected were hardly ever allowed to voice their reasoning for choosing to wear the headscarf.²⁵ As one Muslim female commentator noted: “[T]he debate is biased in advance, the extremists on both sides have made the decision to think in the place of young girls, without taking into account their opinion, nor respecting the fundamental notion of free will.”²⁶ By looking beyond the published articles and televised discussions, and into the statements being made by Muslim women personally affected, there can be a better understanding of the issue and its effects.

There are some Muslim females who are frustrated with the way that public opinion equates them with Islam. They refuse to discuss their religious faith, or lack thereof, because to them, it is a private concern.²⁷ In addition, there are those who are simply tired of justifying their reasons to the public for not wearing the headscarf.²⁸ Another student

²³ Professor Wing has been the director of the 22-year-old Iowa summer program in Arcachon, France, since 2000. During the summer of 2004, she and her research assistants interviewed a number of Muslims and non-Muslims in France about the headscarf issue. This Article subsequently cites this survey.

²⁴ See Crenshaw, *supra* note 21, at 139.

²⁵ Edien Bartels, “Wearing a Headscarf Is My Personal Choice” (*Jasmina, 16 years*), 16 *ISLAM & CHRISTIAN-MUSLIM REL.* 15, 17 (2005).

²⁶ Yacine Saadi, *Le voile qui dévoile!*, OUMMA.COM, Oct. 20, 2003, http://oumma.com/imprimer.php?id_article=729 (“Le débat est biaisé d’avance, les extrémistes des deux bords ont pris la décision de penser à la place des jeunes filles, sans tenir compte de leur avis, ni respecter la notion fondamentale du libre arbitre.”).

²⁷ Janice Valls-Russell, *A Community Divided: Growing Up Muslim in France*, 87 *NEW LEADER* 6, 7 (Mar. 2004).

²⁸ Posting of Question to <http://www.niputesnisoumises.com> (Nov. 21, 2004, 00:50 GMT) (on file with Professor Wing) (“ces gens là en ont généralement mare de se justifier de ne pas porter le voile”).

explained in a newspaper interview that her choice to wear the headscarf was motivated by a desire for privacy in her choices.²⁹ Other Muslim women may resent being used politically by men. For example, one politically active Muslim woman confided that pro-*hijab* protests held in Washington, D.C. were organized almost completely by men. She felt pressured to go on stage by these men, and to demand her right to wear the headscarf at all times, even though she only wears it based on her “spiritual meter” for the day.³⁰

An important conclusion consistent with CRF’s emphasis on anti-essentialism³¹ is that Muslim female views cannot be essentialized. They range across the spectrum from those strongly in favor of the headscarf ban to those strongly opposed to it. This conclusion uses Isabelle Gunning’s critical race feminist “world traveling” three-pronged methodology, which provides a way in which we, Americans, can see ourselves historically on this issue, see ourselves as the “other” might see us, and see the “other” within her own context.³² On this topic, we look at the headscarf as worn or not worn by Muslim girls/women in France, how they perceive themselves, how they are viewed by other Muslims, and the observation of them by those outside their religion. This methodology is therefore useful in viewing the Muslim girls/women in France from a rich array of perspectives.

Part III concludes with some suggestions for considering the headscarf issue in the future. First, France and other nations might consider legal approaches adopted by international and national courts and jurisdictions. Next, banning the headscarf may constitute a form of “spirit injury”³³ that might negatively affect not only the Muslim females who want to wear it in a classroom, but also the rest of Muslim society, and indirectly, all of France. Thus, the ban may constitute a psychic human rights violation even if it is not deemed illegal under French or European law. If the ban is not lifted in the near future, the French government may have to think of other ways to express support for the Muslim minority living in its midst. Finally, Muslim females need to

²⁹ Charles Fleming & John Carreyrou, *Religious Scrap: In France, Policy on Muslims Comes to Head on Scarves — Seeking Rapid Assimilation, Many Schools Ban Them; Two Sisters in Isolation — Ms. Cherifi Mediates Full Time*, WALL ST. J., June 26, 2003, at A1.

³⁰ Sarah Eltantawi, *Yes or No to Hijab: Not for Men to Decide*, MUSLIM WAKEUP!, Feb. 12, 2004, http://www.muslimwakeup.com/main/archives/2004/02/yes_or_no_to_hi.php.

³¹ See Harris, *supra* note 11, at 581.

³² Isabelle Gunning, *Arrogant Perception, World Traveling, and Multicultural Feminism: The Case of Female Genital Surgeries* (1992), reprinted in *CRITICAL RACE FEMINISM: A READER* 352, 354 (Adrien Katherine Wing ed., 1st ed. 1997).

³³ See *infra* Part III.B.

increase their level of educational, economic, political, and legal empowerment so that they can directly participate in decisions of this kind, and in all aspects of life in France.

I. BACKGROUND

To understand the headscarf issue in France, one must become familiar with the central role of the headscarf in Islam, the lives of Muslims in France, the status of the headscarf in France, and the passage of the headscarf ban. The following sections lay out this background, which is characterized by a complexity derived from a history of ethnic and religious discrimination, and a tension between church and state in the schools.

A. *The Headscarf in Islam*

The headscarf derives its religious significance in the Islamic tradition from the Koran, which is the word of Allah as told to the Prophet Mohammed.³⁴ While the validity and the extent of covering one's self varies in different countries and among Muslim women in those countries, those who choose to wear the different types of head coverings point to the Koran as the source of God's command. There are some verses that speak of modesty and the need to cover one's self in general: "O you Children of Adam! We have bestowed on you raiment to cover your shame as well as to be an adornment to you. But the raiment of righteousness, that is the best. Such are among the Signs of Allah, that may receive admonition."³⁵ Other verses are more explicit about the need for women to cover their beauty:

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what must ordinarily appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, or their brothers' sons or their sisters' sons, or their women or the servants whom their right hand possess, or male servants free of physical needs, or small children who have no senses of the shame of sex and

³⁴ IslamOnline.net, *The Most Widely Read Book in the World* (Aug. 14, 2003), <http://www.islamonline.net/english/introducingislam/topic03.shtml>.

³⁵ KORAN 7:26.

that they should not strike their feet in order to draw attention to their hidden ornaments.³⁶

In addition, there is an instruction to men to ensure that their women are covered when they go out in public: "O Prophet, tell your wives and daughters and the women of the believers to draw their cloaks close round them (when they go abroad). That will be better so that they may be recognized and not annoyed."³⁷ Thus, there is a variety of language in the Koran for the faithful to draw upon in the decision-making regarding appropriate headgear.

Relying on these verses in the Koran and the various cultural traditions in different countries that have emerged since the time of the Prophet in the seventh century, some Muslim women have chosen to don one of a variety of coverings. They range from a simple headscarf (which covers a woman's hair) to a fully enveloping Afghani *burqa*³⁸ (which covers the woman's entire body, including the face, leaving only a mesh screen through which the woman can see).³⁹ There are thus two historic objectives of wearing the headscarf: to shield the female body from the view of strange men, and to ensure that women who follow the Prophet will be easily recognizable and not degraded in offense to Mohammed.⁴⁰

Nevertheless, not all Muslim women choose to interpret the above-noted Koranic verses as "eternally obligatory," and instead see them as a "utilitarian recommendation."⁴¹ Others choose to argue that it is not Islam that has imposed the headscarf, but that the headscarf was imposed on Islam and on women.⁴² In other words, customs in specific countries have mandated a covering and not Islam itself. In either respect, when European colonialism ended in the 1950s and 1960s, and immigration to Western Europe from the Middle East and African countries increased, the number of Muslims in these historically

³⁶ *Id.* at 24:31.

³⁷ *Id.* at 33:59.

³⁸ See *In Graphics: Muslim Veils*, BBC NEWS, Aug. 31, 2004, illus.4, http://news.bbc.co.uk/1/shared/spl/hi/pop_ups/05/europe_muslim_veils/html/4.stm.

³⁹ *Id.*

⁴⁰ Christophe Habas, *Mauvaises questions, mauvaises réponses*, LE FIGARO (Fr.), Jan. 12, 2004, at 12, available at 2004 WL 57302684.

⁴¹ Mezri Haddad, *Voile islamique-la loi au-dessus de la foi*, LE FIGARO (Fr.), Oct. 14, 2003, at 12, available at 2003 WL 71358372.

⁴² *Id.*

Christian areas began to rise. The prevalence of the headscarf, in its many forms, thus increased in the European public's eyes.

B. Muslims in France

Islam is a growing religion in Europe. It is estimated that there are fifteen million Muslims, five million of whom are in France.⁴³ The Muslim population in France constitutes approximately five to ten percent of the people⁴⁴ and is very diverse, coming from regions of the Maghreb, the Middle East, Turkey, sub-Saharan Africa, and Asia.⁴⁵ In addition to the sheer number of Muslim immigrants who have entered the country and are putting down roots, more and more individuals of European descent are converting to Islam as well.⁴⁶ Of the many Muslims in France, the number of those who have immigrated and gained French citizenship is not great. Only fifteen percent of Algerian and Moroccan immigrants and one-third of Tunisian immigrants have become French citizens. This is a small amount considering the fact that it is possible to become a French citizen after only five years of permanent residence.⁴⁷

Acceptance by white French society is not any easier for those who gain French citizenship. Unfortunately, discrimination and hostility within France towards French citizens continue based on appearance, dress, names, and religion. According to one immigrant from Mexico, "[i]mmigrants can be French on paper, but citizenship [is] on paper only."⁴⁸ This same individual also said there is significant discrimination in housing and employment, where more requirements are placed on people with darker skin in an attempt to weed out those who are not "truly" French.⁴⁹

While there has always been some political and cultural opposition to Muslim infusion into France from the former colonies, the most recent

⁴³ Bashir Ebrah Im-Khan, *Dear Monsieur Stasi . . .*, Q-NEWS, Jan. 2004, at 36, available at <http://www.q-news.com/353.pdf>.

⁴⁴ See CIA WORLD FACTBOOK, *supra* note 15.

⁴⁵ Open Soc. Inst., *The Situation of Muslims in France, Monitoring the EU Accession Process: Minority Protection* 69, 74 (2002), http://www.eumap.org/reports/2002/eu/international/sections/france/2002_m_france.pdf.

⁴⁶ Im-Khan, *supra* note 43, at 36.

⁴⁷ Caitlin Killian, *The Other Side of the Veil: North African Women in France Respond to the Headscarf Affair*, 17 GENDER & SOC'Y 567-69 (2003).

⁴⁸ Interview by Alex Hernandez with Male, age 26-30, Mexican ethnicity, immigrated to France, in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

⁴⁹ *Id.*

vocal objections have come about as Muslims have attempted to “create an Islamic identity with local institutional, societal, and cultural structures.”⁵⁰ For some French, the erection of mosques and loud Islamic calls to prayer represent “clashes of civilizations.”⁵¹ Because of France’s Islamophobic tendencies,⁵² the Muslim community in France has been “thwarted in its attempt to be both visible and naturalized.” Muslims have reacted to the exclusion from the French and European societies in a variety of ways. For some, becoming more devout in the practice of their religion is a peaceful anchor, providing solace in a culturally and religiously alien environment. For others, their fundamentalism⁵³ may lead to radical and dangerous extremism.⁵⁴

While a male Muslim’s ideology is not necessarily obvious from his dress, a female wearing a headscarf becomes an easy target for those fearing Islamic fundamentalists.⁵⁵ Therefore, while individuals who are actually dangerous may remain potentially invisible, their pacifist, veiled sisters may be heavily scrutinized and potentially victimized.⁵⁶

The future of France, and perhaps all of Europe, may very much depend on whether the tensions can be resolved between the Muslim community and the majority of the citizens. The Muslim exclusion from French society has manifested itself in various ways. There is a socioeconomic crisis for those who now constitute the second and third generations of Muslims in France. They may cling to a remnant of an identity that their parents or grandparents had in the native country, but this identity has not evolved as it would have in the home country.⁵⁷ Thus, they are perceived as foreigners if they visit their “home” country. Yet, in France, these individuals bear the brunt of economic recession where they are unable to find work and are discriminated against as a result of their ethnicity and religion.⁵⁸ According to Bronwyn Winter:

⁵⁰ Emran Qureshi & Michael A. Sells, *Introduction to THE NEW CRUSADES: CONSTRUCTING THE MUSLIM ENEMY* 23 (Emran Qureshi & Michael A. Sells eds., 2003).

⁵¹ A term popularized by U.S. theorist Samuel P. Huntington. See SAMUEL HUNTINGTON, *CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

⁵² Neil MacNamster, *Islamaphobia in France and the “Algerian Problem,”* in *THE NEW CRUSADES: CONSTRUCTING THE MUSLIM ENEMY*, *supra* note 50, at 288-309.

⁵³ See Nilüfer Göle, *The Islamist Identity*, QUANTARA.DE, Oct. 21, 2003, http://qantara.de/webcom/show_article.php?wc_c=549&wc_id=4&wc_p=1.

⁵⁴ Winter, *supra* note 13, at 21.

⁵⁵ *Id.* at 22.

⁵⁶ *Id.*

⁵⁷ *Id.* at 21.

⁵⁸ *Id.*

[T]he resulting socioeconomic marginalization and racist essentializing of their "Muslimhood" (at the same time as this 'second generation,' particularly its female members, has been invested with the weight of memory, exile, and responsibility for family honor and cultural integrity) has problematized a biculturality that, outside situations of racism or exile, rarely is perceived as problematic The identity crisis, to a certain extent has been fabricated and, for some, has been expressed through a militant affirmation of (invented) "traditional values."⁵⁹

The Muslim population also continues to be alienated from the rest of French society through limited education, life in urban ghettos far away from the heart of the cities, and an inability or lack of desire to become involved in French cultural and political life.⁶⁰ The largest portions of the immigrant population are housed in the *cités*, which are "zones of economic and social exclusion," and have become synonymous with "immigrant youth, violence, crime, and lately, Islamic extremism."⁶¹

C. *The Muslim Headscarf in Secular France*

The headscarf's recent history in France is complicated. The issue of females choosing to wear the headgear first arose in 1989 when three girls in Creil, a suburb of Paris, were suspended for wearing their headscarves in their public middle school.⁶² This incident and its aftermath became known as the "Headscarf Affair."⁶³ Between 1989 and 1998, more than 1,200 articles were written on the headscarf controversy in the French press.⁶⁴

France has been a fiercely secular republic since the French Revolution.⁶⁵ To uphold its belief in keeping the church away from state business, France instituted a formal separation in 1905 as a way to protect schools from religious interference.⁶⁶ The government focused on

⁵⁹ *Id.* at 21-22.

⁶⁰ Saadi, *supra* note 26.

⁶¹ Mayanthi L. Fernando, *The Avowal and Disavowal of Difference France*, 77 ANTHROPOLOGICAL Q. 835, 839 (2004).

⁶² Beller, *supra* note 3, at 582-83.

⁶³ *Id.*

⁶⁴ Lina Molokotos Liederman, *Pluralism in Education: The Display of Islamic Affiliation in French and British Schools*, 11 ISLAM & CHRISTIAN-MUSLIM REL. 105, 108 (2000).

⁶⁵ Jean-Pierre Raffarin, Prime Minister, Speech to the *Conseil Représentatif des Institutions Juives de France* ("CRIF") (Jan. 31, 2004), available at http://www.consulfrance-newyork.org/us/news/coverstories/antisemitist_racism/raffarin_crifdiner.htm.

⁶⁶ *A Hot Rentrée?; France and Its Muslims*, ECONOMIST, Aug. 28, 2004, at 32.

educational institutions as the apogee of a religious-free zone.⁶⁷ It is believed that schools are where the future leaders and citizens will be molded in the spirit of the Republic,⁶⁸ which is based on the ideal citizen who is "French" before any other identity.⁶⁹ French President Jacques Chirac has stated that France "would lose her soul" if she succumbed to Anglo-American multiculturalism.⁷⁰ The theory is that to be French is to be part of a proverbial melting pot, rather than an American style salad bowl of religious and other identities.

Yet there exists a tension between keeping the schools free of religious symbolism and the republican values of freedom of religion and conscience that should not prohibit anyone from wearing a symbol to express his or her religion.⁷¹ In an attempt to ease this tension, Jean-Louis Debre, President of the National Assembly, explained that secularism guarantees the freedom of religion and that France "respect[s] all religions but we ask that those who want to live their faith do so within the boundaries of the Republic."⁷² The *legal* boundaries of the French state may not allow respect for and freedom of religion to mean wearing religious manifestations in certain public institutions.

Today in France, the Islamic headscarf debate has remained tied to the *laïcité* concept and the integration of Muslims into French society.⁷³ In determining the best way to integrate Muslims, the French government again reverted to its emphasis on school as the place where French citizens are created. In a movement that mimics the way French colonies were set up in an attempt to "Frenchify" them, the government is focusing on the public school as a place to take the first step towards integration.⁷⁴ In the Frenchification efforts in the colonies, there was an emphasis placed on the education of young girls as a way to pass on the French republican values to their future husbands and sons, as well as their fathers and brothers in the present.⁷⁵ This same emphasis on female

⁶⁷ Henri Astier, *The Deep Roots of French Secularism*, BBC NEWS ONLINE, Sept. 1, 2004, <http://newswww.bbc.net.uk/1/hi/world/europe/3325285.stm>.

⁶⁸ Beller, *supra* note 3, at 593.

⁶⁹ Jacques Chirac, *Le Discours de Jacques Chirac sur la Laïcité*, LE MONDE (Fr.), Dec. 19, 2003, at 17.

⁷⁰ Fernando, *supra* note 61, at 837.

⁷¹ Habas, *supra* note 40, at 12.

⁷² Sophie Huet, Debre — "Je préfère le mot visible à ostensible," LE FIGARO (Fr.), Jan. 9, 2004, at 7, available at 2004 WL 57302308 ("Nous respectons toutes les religions, mais nous demandons que ceux qui veulent vivre leur foi le fassent dans le cadre de la République.").

⁷³ Liederman, *supra* note 64, at 110.

⁷⁴ Winter, *supra* note 13, at 30.

⁷⁵ *Id.*

education is being used again in the twenty-first century. Perhaps the government hopes that bareheaded Muslim girls will carry secularist French values to the men in their family and to others in their community.

D. Passage of the Headscarf Ban

In response to the Headscarf Affair in 1989, the Conseil d'Etat, the French supreme tribunal for administrative justice, did not institute a general ban on the wearing of the headscarf. Each case would instead be evaluated on its own merits. According to the Conseil d'Etat, a ban "would only be permissible under two circumstances: if the wearing of these symbols [was] associated with missionary activities; or if it should become apparent that other members of the same religious community were feeling morally pressurized to conform."⁷⁶ Despite the ruling, however, the situation continued to escalate to the point that in 1994, the Education Ministry began to employ a full-time mediator to deal with headscarf conflicts.⁷⁷

On February 10, 2004, the French National Assembly voted 494 to 36 in favor of legislation that would ban conspicuous religious symbols, including the Islamic headscarf, from public schools.⁷⁸ This same legislation passed the French Senate by a similarly lopsided vote of 276 to 20 on March 3, 2004.⁷⁹ Seventy percent of the French public supported the legislative ban.⁸⁰ The text of the legislation read: "In the schools, public secondary schools and high schools, wearing symbols or dress by which the students conspicuously manifest a religious affiliation is prohibited."⁸¹ The government thus hoped to resolve the issue once and for all.⁸²

⁷⁶ Bernhard Schmid, *The Headscarf Debate à la Française*, QANTARA.DE, Nov. 28, 2003, http://www.qantara.de/webcom/show_article.php/_c-549/_nr-10/i.html.

⁷⁷ Richard Alba, *Bright vs Blurred Boundaries: Second Generation Assimilation and Exclusion in France, Germany, and the United States*, 28 ETHNIC & RACIAL STUD. 20, 34 (2005).

⁷⁸ Elaine Sciolino, *French Assembly Votes to Ban Religious Symbols in Schools*, N.Y. TIMES, Feb. 11, 2004, at A3.

⁷⁹ *Le Sénat Français Adopte le Projet de Loi sur les Signes Religieux à l'école*, LE MONDE (Fr.), Mar. 3, 2004, available at http://www.lemonde.fr/web/recherche_articleweb/1,13-0,36-355392,0.html.

⁸⁰ Marie Brenner, *Daughter of France, Daughters of Allah*, VANITY FAIR, Apr. 2004, at 196.

⁸¹ Law No. 2004-22 of Mar. 15, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 17, 2004, p. 5190 ("Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.").

⁸² Brenner, *supra* note 80, at 196; Im-Khan, *supra* note 43, at 37.

Saudi Arabia's highest religious authority called the headscarf ban "an infringement on human rights" and scolded France for being more concerned with the rights of nudists than of Muslims.⁸³ London Member of the European Parliament Human Rights and Civil Liberties Committee Jean Lambert expressed his dismay: "Banning the wearing of religious symbols is a clear human rights violation."⁸⁴ Human Rights Watch identified the ban as "infring[ing] the internationally recognized right to freedom of religion," even though it recognized that public institutions could seek to not promote any religion through their words or actions.⁸⁵ However, the outright ban on the headscarf was a step beyond this, and Human Rights Watch did not believe that protecting the students' religious freedom undermined secularism.⁸⁶ Even the United Nations' human rights experts criticized the law, calling it intolerant toward Muslims.⁸⁷

II. VIEWS ON THE HEADSCARF BAN

Much discussion has accompanied the passage of the headscarf ban. Ironically, however, the French media has sought out the opinions of everyone but those most affected by the ban: Muslim women. This section acknowledges the general absence of those voices in public debate, highlights the categories of Muslim female opinion in favor of wearing headscarves, focuses on those in favor of the ban, and mentions the non-Muslim voices of the headscarf discussion.

A. *The Presence of the Muslim Female Voice in the Headscarf Ban Discussion*

Michela Ardizzoni researched the presence of women in the many news articles that appeared during the discussion of the headscarf ban, looking mainly at the French daily paper *Le Monde*, and the two weekly newspapers *L'Express* and *Le Point*.⁸⁸ In these three publications, "the

⁸³ Saudi Arabia's Top Religious Authority Slams French Ban on Headscarves, KEEP MEDIA, Jan. 27, 2004, http://www.keepmedia.com/ShowItemDetails.do?item_id=361155.

⁸⁴ Geoff Meade, *French Headscarf Ban 'Breaches Human Rights'* (Sept. 23, 2004), <http://www.religionandpolicy.org/show.php?p=1.1.1327>.

⁸⁵ Marthoz & Saunders, *supra* note 16, at 59.

⁸⁶ *Id.* at 59-60.

⁸⁷ UN Experts Slam French School Ban on Headscarf, WORLDWIDE RELIGIOUS NEWS, June 2, 2004, <http://www.wwrn.org/article.php?idd=8292&sec=59&con=2>.

⁸⁸ Michela Ardizzoni, *Unveiling the Veil: Gendered Discourses and the (In)Visibility of the Female Body in France*, 33 WOMEN'S STUD. 629, 634 (2004).

voices heard in the articles are exclusively those of men — politicians, school principals, editorialists, and religious leaders. The only female voice acknowledged is Danièle Mitterand, wife of the former President of France. As for the young Muslim women, they are quoted only once and very briefly.⁸⁹ “Here, the outspoken young women are denied a voice and their choice is instead vicariously defended or opposed by the patriarchs: their father, male religious leaders (such as the imam of the Paris mosque, a Catholic archbishop, and a rabbi), politicians and school principals.”⁹⁰ Their opinions were apparently not considered worthy of solicitation.

Ardizzoni argues that the absence of women’s voices and presence supports a patriarchal discourse enforcing dual or binary perspectives.⁹¹ When three young women were quoted in the paper describing their reasons for choosing to wear the veil, their words were not looked at as a revindication of women’s voices, but were rather seen as insolent and contemptuous.⁹² This leaves the public unable to read and understand beyond what few words the media has allowed these women to say in public.⁹³

B. Muslim Females in Favor of Wearing Headscarves

Many Muslim females have obviously chosen to wear the headscarf despite societal disfavor. One very astute comment was made by Monique Gadant in her work on women and Islam: “Before we come out against the *hijab*, reduced to a symbol of oppression . . . we should take some time to reflect on the motivations of these women [who wear it].”⁹⁴ There are a wide range of intersecting reasons why Muslim females may want to be able to wear the headscarf in schools and elsewhere. These may include the following: personal religious conviction, freedom of religion, acceptance as a good Muslim female, compliance with family values, neutralization of sexuality and protection from harassment from Muslim males, and individual choice and religious/cultural identity. Any individual may have more than one

⁸⁹ *Id.*

⁹⁰ *Id.* at 639.

⁹¹ *Id.* at 643.

⁹² *Id.* For example, Leila Achaboun said: “It’s not a veil, it’s a headscarf.” The description of her bad temper in uttering the words indicated insolence. *Id.*

⁹³ *Id.*

⁹⁴ Monique Gadant, *Femmes Alibi*, LES TEMPS MODERNES (Fr.), Jan.-Feb. 1995, at 221-32 (“Avant de se dresser contre le hidjab, réduit à un symbole d’oppression . . . on devrait prendre un peu de temps pour réfléchir aux motivations de ces femmes.”).

reason as a justification to wear the *hijab*, and her reasons may change over time.

1. Religious Conviction

For many “believing Muslims,” the headscarf is a religious obligation.⁹⁵ It is a required act of “submission to God.”⁹⁶ Many women say that they wear it because the Koran requires it.⁹⁷ As one female wearer stated: “I am Muslim and I find that wearing the headscarf is one of the aspects of our religion at the same level as our ceremonies for example during the month of Ramadan.”⁹⁸ Another added:

I will soon turn 20 years old and recently I decided to wear the headscarf. That has changed a lot of things in my life and above all, the way I view religion. Personally, I feel more feminine and freer than before, despite what some people may think. I am happy like this and I want to say never be ashamed to want to live your beliefs.⁹⁹

One survey found that while younger girls may feel family pressure to wear the headscarf, young women, between eighteen and twenty-two, often decided to adopt the headscarf out of personal religious conviction or pride.¹⁰⁰ To put it into perspective, one woman compared wearing the headscarf to wearing the latest fashions: “We are submissive to God just as you are to fashion and the looks of others.”¹⁰¹ One young Moroccan woman said: “my veil is simply a sign of adoration of God,” and that

⁹⁵ Posting of bmc to <http://www.niputesnisoumises.com> (Sept. 16, 2004, 13:24 GMT) (on file with Professor Wing) (“Le voile reste pour les musulmanes croyantes un devoir religieux et non un devoir social ni un signe d’infériorité.”).

⁹⁶ Posting of Question to <http://www.niputesnisoumises.com> (Dec. 22, 2004, 06:39 GMT) (on file with Professor Wing) (“[S]oumission à Dieu.”).

⁹⁷ Posting of Anonyme to <http://www.niputesnisoumises.com> (Dec. 23, 2004, 16:05 GMT) (on file with Professor Wing) (“[L]e Coran me le proscrit.”).

⁹⁸ Posting of Rim to <http://nemesia.joueb.com/news/11.shtml> (Aug. 15, 2004, 16:11 GMT) (on file with Professor Wing) (“[J]e suis musulmane et je trouve que le port de la voile est un des aspects de notre religion au même titre que nos cérémonies par exemples au mois de ramadan.”).

⁹⁹ Posting of Sabrina to <http://www.llfm.org/temoinages> (Sept. 5, 2003, 10:55 GMT) (on file with Professor Wing) (“Je vais bientôt avoir 20ans et depuis peu j’ai décidé de porter le voile. Cela a vraiment changer beaucoup de choses dans ma vie et surtout dans ma façon de voir la religion. Personnellement je me sens encore plus femme et encore plus libre qu’avant, malgré ce que certains peuvent croire. Je suis heureuse comme cela et je veux dire n’ayez jamais honte de vouloir vivre votre croyance.”).

¹⁰⁰ This survey is discussed in Killian, *supra* note 47, at 572.

¹⁰¹ Posting of Anonyme, *supra* note 97 (“Nous sommes soumises à Dieu tandis que vous vous l’êtes à la mode et aux regards des autres . . .”).

she only wanted the freedom to adore Him in public and recognize Him as her only master.¹⁰² Such statements are profound and genuine expressions of religious conviction.

2. Freedom of Religion

Whether they wear it or not, some Muslim women see the headscarf as a freedom of religion issue in a democracy. One particular Internet posting made the point that "in front of each educational institution there is written Liberty Equality Fraternity, so where is the liberty to exercise our religion??"¹⁰³ One girl put her view on the headscarf ban very simply: "Not touching my headscarf is good . . . but not touching my freedom . . . is better."¹⁰⁴ Thus, wearing the headscarf can be viewed as a manifestation of a young woman's right to freedom of religion and expression, which does not have to be incompatible with democratic secularism.¹⁰⁵

In a survey conducted among eight Muslim women, all of whom had received education at or above the college level, many could see why the veil may be a problem. Nevertheless, their argument was one of religious freedom and the right for all people to express themselves.¹⁰⁶ Even though several were personally against the idea of veiling, they all banded together on the question of liberty and would defend the right of others to express themselves.¹⁰⁷

3. Blending in as a Good Girl: "I Am Not a Slut!"

In the schools that have largely Muslim student populations, girls who do not wear the headscarf are viewed as whores and are potential targets for violence, such as gang rape and even violence or murder. Within their families, they may also be seen as disgracing family honor if they

¹⁰² Liliane Benard, *Des Valeurs Universelles et du voile . . .*, OUMMA.COM, Sept. 22, 2003, http://oumma.com/article.php3?id_article=709 ("voile est simplement un signe d'adoration de Dieu").

¹⁰³ Posting of Anonyme to <http://www.niputesnisoumises.com> (Oct. 22, 2004, 9:44 GMT) (on file with Professor Wing) ("[D]evant chaque institut scolaire il y a marque LIBERTE EGALITE FRATERNITE alors ou est la liberte d'exercer notre religion?").

¹⁰⁴ Asma Lamrabet, *Au-delà du voile . . .*, OUMMA.COM, Feb. 2, 2004, http://oumma.com/imprimer.php3?id_article=924. ("Ne touche pas à mon voile c'est bien . . . mais ne touche pas à ma liberté . . . c'est mieux . . .").

¹⁰⁵ See Claire Saas, *Muslim Headscarf and Secularism in France*, 3 EUR. J. MIGRATION & L. 453, 455 (2001).

¹⁰⁶ Killian, *supra* note 47, at 575.

¹⁰⁷ *Id.*

do not choose to wear the headscarf.¹⁰⁸ One student said:

When I decided to start wearing hijab, my mother pulled me aside and posed this question: "If you found a diamond that was exquisite in every way, would you show it to all your friends, let them gawk at its dazzle, caress it, or would you covet the stone and protect it by preserving its natural splendor?" Once you bear something for all to see, the second you display something for its beauty, you objectify it and diminish its value. Because its worth is built on its ability to attract, when it no longer elicits awe from onlookers it becomes worthless.¹⁰⁹

As a thirty-four-year-old Algerian female said: "A girl who wears the veil, that means that she's pure and that the other who doesn't wear the veil, she's not pure . . . it's that she's a slut."¹¹⁰ Thus some girls may wear the headscarf to avoid being labeled in such a derogatory fashion.

4. Compliance with Family Values

Many Muslim girls wear the headscarf to comply with important family values. Gaspard and Khosrokhavar completed a study in 1995 to determine the reasons behind girls' decisions to wear the headscarf. In this study, the majority of girls who were pre-adolescent to adolescent said that they wore the scarf because of family pressure, and that their parents would not allow them to go to school if they did not wear the scarf.¹¹¹ Sometimes pressure may not be as direct, however. For example, one young girl explained that she veiled herself to obtain the respect of her father and brother.¹¹²

In recent years, some magazines and newspapers have looked more deeply into the reasons why young women and girls choose to wear the headscarf.¹¹³ In the majority of cases, they found that girls chose the headscarf themselves, without family pressure and many times against their parents' wishes.¹¹⁴ Nadia Hashmi conducted interviews of many

¹⁰⁸ Brenner, *supra* note 80, at 198.

¹⁰⁹ Mod. Religion, Women & Islam, *Are You Ready to Meet the Woman Who Can Get by Without Her Looks*, <http://www.themodernreligion.com/index2.html> (last visited Jan. 9, 2006) [hereinafter *Are You Ready*].

¹¹⁰ Killian, *supra* note 47, at 583.

¹¹¹ *Id.* at 572.

¹¹² Benard, *supra* note 102.

¹¹³ See, e.g., Saadi, *supra* note 26.

¹¹⁴ *Id.*

girls who were wearing the headscarf to determine the reasons behind their decision. Many of these girls chose to wear the headscarf not because of parental pressure, but because the girls felt "ready" to wear it, knew enough about Islam, and understood the significance of the headscarf.¹¹⁵ Among those girls, many had mothers who did not wear the headscarf, indicating further that there was not familial pressure.¹¹⁶ Some girls also said that:

[T]heir parents trust them more when they wear the headscarf. It is noteworthy that parents sometimes discourage their daughters from wearing the headscarf and ask them to wait. They say that girls cannot yet handle the pressure from society this elicits and should therefore wait until they are surer of themselves and have matured. The girls themselves say emphatically that wearing a headscarf means nothing if a girl does not believe in it.¹¹⁷

Thus, while some girls have clearly felt pressured to wear the headscarf due to family values, others have decided to wear the scarf more independently or even despite family wishes.

5. Neutral Sexuality and Protection from Harassment from Muslim Males: "I am not just a body."

Many females around the world prefer to cover up their heads and bodies since women have been the subject of the gaze of men throughout the ages. Women are even depicted nude in art as an object of desire.¹¹⁸ Some Muslim women interpret the Koran as prohibiting dressing in sexually provocative ways. One particular girl stated: "I am 15 years old and I wear the headscarf!! Like many people around me it's a choice that I make . . . so that I no longer experience bestial and disrespectful looks towards me!"¹¹⁹ When a woman chooses to don a *hijab*, she may feel that

¹¹⁵ Nadia Hashmi, *Gender and Discrimination: Muslim Women Living in Europe* (n.d.) (abstract of Ph.D. dissertation in progress, European University in Florence, Italy), available at <http://www.lse.ac.uk/collections/EPIC/documents/ICHashmi.pdf> (last visited Jan. 24, 2006).

¹¹⁶ *Id.*

¹¹⁷ Bartels, *supra* note 25, at 24.

¹¹⁸ See, e.g., Myfanwy Franks, *Crossing the Borders of Whiteness? White Muslim Women Who Wear the Hijab in Britain Today*, 23 *ETHNIC & RACIAL STUD.* 917, 920 (2000) (discussing United Kingdom).

¹¹⁹ Posting of Anonyme to <http://www.niputesnisoumises.com> (Dec. 21, 2004, 23:17 GMT) (on file with Professor Wing) ("J'ai 15 ans et je mets le foularditt comme bcps de jeunes autour de moi c'est un choix que j'ai fait . . . pour ne plus sentir un regard bestiale et irrespectueux sur moi!").

she is no longer subjected to these gazes. Instead, she becomes a participant in society.¹²⁰

The headscarf can thus provide a form of protection for females who wear it because they can come and go without being an object of harassment by Muslim men. On the other hand, if they wear Western clothing, they may be insulted or experience acts of violence from men who view them as “cheap.”¹²¹ This type of harassment is even more likely to occur if a girl is suspected of having a boyfriend. The situation can be worse if the boyfriend is a non-Muslim, since the Muslim boys who attack Muslim girls verbally, and sometimes physically, view themselves as punishing the “whores.”¹²²

Women also choose the headscarf because of the way it changes their interactions with members of the opposite sex. One woman stated: “Men either ignore me completely or if they have to engage, they can only do so with my face/brain.”¹²³ Therefore, there is not the gendered hierarchy of male over female, and the onlooker is limited as to what “sexual sights” he can observe.¹²⁴ Not only does the veil afford a woman the ability to gaze out and deflect attention away from her, but it is also seen as a means for controlling the sexual desires of males who would look upon an unveiled woman.¹²⁵

Instead of drawing attention to herself and bringing dishonor to her family, the veil provides a Muslim woman sexual neutrality that will restrain the urges of men and maintain order within Muslim society.¹²⁶ In addition to deflecting attention, the *hijab* allows security and comfort within one’s own sexuality. For example, a woman who has chosen to wear the scarf stated:

I feel at peace with myself. Before, people would look at me like every other girl. Now . . . [i]t is like I am in the image of Islam. People pay more attention to my behavior, to the attitudes I adopt. Therefore I have to think about my words and actions. Better control myself Now I truly am at peace.¹²⁷

¹²⁰ See Franks, *supra* note 118, at 920.

¹²¹ See Valls-Russell, *supra* note 27, at 8.

¹²² *Id.*

¹²³ Franks, *supra* note 118, at 921.

¹²⁴ *Id.*

¹²⁵ Killian, *supra* note 47, at 570.

¹²⁶ *Id.*

¹²⁷ Islamfrance.com, *La Femme en Islam: Temoignages de Soeurs Musulmanes*, <http://www.islamfrance.com/femmeislamtemoignages.html> (last visited Nov. 22, 2005) (“Je me sens en paix avec moi-même. Avant, les gens me regardaient comme n’importe

One woman stated:

[I have] accepted hijab so that I can be appreciated for my intellect and personality rather than my figure or fashion sense. When I face a classmate or colleague I can be confident that my body is not being scrutinized, my bra-strap or pantyline visible. I have repudiated the perverted values of our society by choosing to assert myself only through my mind.¹²⁸

Thus the scarf desexualizes women, prioritizing the intellect over the body.

6. Individual Choice and Cultural/Religious Identity

Many Muslim females in France express their desire to wear the headscarf as part of their right to individual choice in a democracy. They distinguish their choice from being forced to wear the scarf in an Islamic state.¹²⁹ As one woman said: "I think that the problem could be resolved by respecting the freedom of expression and the freedom to express oneself in all the domains, especially if this liberty does not harm others."¹³⁰ As another stated: "Mr. Chirac, our headscarf is not an aggression to the Republic,"¹³¹ and "France you are my country, *hijab* you are my life."¹³² Signs and slogans that appeared in demonstrations against the headscarf ban focused on the choice of women: "Reservedness is a right, the headscarf is my honor,"¹³³ and "[n]either fear, nor husband, the headscarf is my choice."¹³⁴ Linked to this choice to

quelle fille. Maintenant . . . c'est comme si j'étais une image de l'Islam. On fait plus attention a mon comportement, aux attitudes que j'adopte. Je dois donc davantage mseurer mes mots et mes gestes. Mieux me controler Maintenant, j'ai vraiment la paix.").

¹²⁸ *Are You Ready*, *supra* note 109.

¹²⁹ Franks, *supra* note 118, at 920.

¹³⁰ Posting of Rim to <http://nemesia.joueb.com>, *supra* note 98 (last visited Dec. 5, 2005) ("[J]e pense que ce probleme peut etre resolue en respectant la liberte de l'expression de tous les gens la liberte de s'exprimer dans tous les domaines surtout si cette liberte ne nuit pas aux autres"); Mobilisation contre le projet de loi sur la laïcité, http://www.atalzturquie.asso.fr/info_imm_040117_1.html.

¹³¹ Mobilisation contre le projet de loi sur la laïcité, *supra* note 130 ("Monsieur Chirac, notre voile n'est pas une agression à la République.").

¹³² *Id.* ("France tu es ma patrie, hijab tu es ma vie.").

¹³³ À Paris, undéfilé pour le port du voile moins important que prévu, <http://www.humanite.fr/journal/2004-01-19/2004-01-19-3864241> (last visited Dec. 5, 2005) ("La pudeur est un droit, le voile est mon honneur.").

¹³⁴ Frank Marsol, *Foulards Islamiques* (Nov. 23, 2005), <http://www.le-militant.org/religion/manif/ille.htm> ("Ni peur ni mari, le voile on l'a choisi.").

wear the *hijab* is pride in being a Muslim in France. It is a way of asserting a determination to be both French and Muslim.¹³⁵ Veiling is thus a “sign of their positive affirmation of an Islamic identity.”¹³⁶

This is especially the case for high school and junior high school age women who choose to veil, as it is a chance for them to identify themselves at a time in which they are trying to discover who they are and affirm that identity.¹³⁷ Lots of young girls adopt the headscarf during an adolescent crisis and in search of an identity because it gives them a sense of belonging to something reassuring.¹³⁸ The identity they seek to affirm and recognize within themselves is one in conflict: being “French and Moslem, modern and veiled, autonomous and clothed in Islamic robes.”¹³⁹ The testimonies of those girls involved in the 1989 Headscarf Affair indicate that the choice to wear the headscarf for many girls is an individual one.¹⁴⁰ In a more recent example, two Muslim girls wore the *hijab* out of their own accord and were supported in their decision by their Jewish father and secular Algerian mother.¹⁴¹

Thus, even though younger Muslims are adopting the attributes of French society at a much faster rate and in a wider variety of ways than previous generations, they still generally do not feel as though they are a part of the society at large.¹⁴² Despite their having been born in France, their socialization in schools and their growing up with the language, many still feel like the general public views them as foreigners and immigrants even though they are French nationals.¹⁴³ While they can function in the society, young Muslims are fiercely resisting assimilation for fear that they will lose their distinct Islamic identity and practices.¹⁴⁴ The headscarf is just one way of displaying that identity.

One woman wanted to use the headscarf to combat stereotypes. She declared: “A woman who wears a *hijab* can be active and engaged, educated and professional.”¹⁴⁵ Some women have stated that their choice

¹³⁵ Neal Robinson, *The Fascination of Islam*, 13 ISLAM & CHRISTIAN-MUSLIM REL. 97, 104 (2002).

¹³⁶ Göle, *supra* note 53.

¹³⁷ Killian, *supra* note 47, at 579.

¹³⁸ *See id.* at 579-80.

¹³⁹ Ghâis Jasser, *The Twin Evils of the Veil*, 5 SOC. IDENTITIES 31, 41 (1999).

¹⁴⁰ Im-Khan, *supra* note 43, at 37.

¹⁴¹ *Id.*

¹⁴² Timothy M. Savage, *Europe and Islam: Crescent Waxing, Cultures Clashing*, 27 WASH. Q., Summer 2004, at 25, 30.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 31.

¹⁴⁵ *Viewpoints: Europe and the Headscarf*, BBC NEWS ONLINE, Feb. 10, 2004,

to wear the veil is "a symbol for struggle against encroaching materialism and imperialism."¹⁴⁶

Other Muslim women proclaim their inability to understand the logic behind the headscarf ban. During one of the interviews Professor Wing and her students conducted in France, a Muslim woman in her twenties explained that she was bothered that a younger sister could be told what she can and cannot wear in school, and how she can and cannot express her religion. She also brought up the confusing contradiction in girls being allowed to wear short skirts and tight tops in France, but not being allowed to cover up.¹⁴⁷ Another stated that it is "[i]ronic that the French allow people to be topless on the beach but not covered head to toe in class."¹⁴⁸ Another believed that it is the people who perceive Muslim women as being oppressed that do not truly understand the choice to express religion by wearing a headscarf: "The prejudgments that people have about veiled girls as oppressed girls could have been true years ago, but times have changed and mentalities too . . ."¹⁴⁹

While the argument of oppression seems to be one of the strongest and most talked about in opposition to the headscarf, one counterargument is that oppression does not come from headscarves. "The oppression of women lies in real issues such as illiteracy and lack of education. Even with improved education, many women will still choose to wear the headscarf, because it is their choice and their way of expressing their religion and culture."¹⁵⁰

C. *Muslim Women in Support of Banning the Headscarf*

While the women mentioned above favor wearing headscarves, many Muslim women oppose them. No comprehensive national survey has been taken of Muslim women, but in a poll taken by *Elle* magazine, fifty-three percent of Muslim women of North African background living in

<http://news.bbc.co.uk/1/hi/world/europe/3459963.stm> (relaying statement of Fareena Alam, Editor, *Q-News Magazine*).

¹⁴⁶ Chouki El Hamel, *Muslim Diaspora in Western Europe: The Islamic Headscarf (Hijab), the Media and Muslims' Integration in France*, 6 *CITIZENSHIP STUD.* 293, 303 (2002).

¹⁴⁷ Interview by Allison Harvey with Female, age 20, Muslim woman, in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁴⁸ Interview by Professor Wing with Javaid, in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁴⁹ Posting of meknesia.du06 to <http://www.niputesnisoumises.com> (Jan. 30, 2005, 23:31 GMT) (on file with Professor Wing) ("Les préjugés que les gens ont à propos des filles voilées comme étant des filles soumises étaient peut être vraie il y a quelques années mais les temps changes et les mentalités aussi.").

¹⁵⁰ Im-Khan, *supra* note 43, at 37.

France were hostile to headscarves in schools, and eighty-one percent claimed to never wear a veil.¹⁵¹ The women who were polled provide a wider base than the few thousand who attended demonstrations advocating the right to wear the headscarf in schools after the passage of the ban.¹⁵² There are a variety of intersecting reasons why such women may be against the headscarf, including the following: it is a symbol of oppression and not a free choice; it is sexist; it fosters extremism; and it separates Muslim women.

1. Scarf as Oppression

Probably one of the most dominant justifications in favor of the headscarf ban is that wearing such a garment is oppressive. Prominent Egyptian feminist and physician, Dr. Nawal El Saadawi, is among those who perceive the veil as a symbol of subjugation.¹⁵³ One of the most salient concerns for young girls who wear the headscarf is that it is a requirement being pushed upon them by their family, their community, and their religion. As one commentator indicated: "Where I live, in a small town in France, girls and young women are intimidated by Muslim men who oblige them to wear the scarf. These Muslim women are often isolated, and need some protection."¹⁵⁴ Many view the law's purpose as protecting Muslim girls from decisions made by their parents or brothers.¹⁵⁵ When Luc Ferry discussed the issue of the headscarf ban with the newspaper *Le Figaro*, he mentioned those Muslim girls who were in favor of a ban. Those girls asked their instructors not to back down so that they would not feel compelled by their families or community to wear a scarf.¹⁵⁶

Fadela Amara, president of the association "*Ni putes, ni soumises*" ("Neither whores, nor submissive") and a practicing Muslim herself,

¹⁵¹ Valls-Russell, *supra* note 27, at 8.

¹⁵² *Id.*

¹⁵³ El Hamel, *supra* note 146, at 302.

¹⁵⁴ *Viewpoints: Europe and the Headscarf*, *supra* note 145 (relaying commentary by Rachida Ziouche, journalist who is daughter of Algerian imam, and who fled her homeland and has since been living in exile in France).

¹⁵⁵ See Bartels, *supra* note 25, at 17; Eltantawi, *supra* note 30; see also Interview by Richard Reeve with Female, 58-years old, French, school teacher, in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁵⁶ Luc Ferry, *L'équipe éducative a fait son devoir «Degrées»*, LE FIGARO (Fr.), Oct. 14, 2003, at 8 ("[D]emande aux enseignants de ne pas céder, de peur d'être elles-mêmes obligées de porter le voile par la suite.").

fighters for the girls of the *cités*¹⁵⁷ who are facing a return to obscurantism — girls who, if they do not want to wear the headscarf, are considered by some as rebels and by others as whores.¹⁵⁸ According to Amara, these girls are facing mandatory wearing of the veil, constant surveillance by “big brothers,” forced marriages, and the monitoring of a girl’s virginity by checking the sheets after her wedding night to ensure they are stained with blood.¹⁵⁹ The law helps fight such outdated and oppressive practices.

Anne Vigerie, the leader of a feminist think tank, views the headscarf as “*le drapeau sur la tête*” (“flag on the head”) that confirms the underdeveloped status of women in radical Islam.¹⁶⁰ Vigerie states: “When the girls wear the headscarf, it symbolizes that they accept all the conditions that Islam mandates.”¹⁶¹ Any Muslim girls who do not do it will be considered to be at fault by Islamists.¹⁶² Thus, some view the French law as providing protection by the state against Islamist pressures.

2. Scarf as Sexist

A second justification for banning the headscarf is that it is sexist in nature. Professor Fatima Mernissi, a Moroccan sociologist representing western feminist discourse, believes that “the *hijab* is a response to sexual aggression” and “a method of controlling sexuality.”¹⁶³ Secular feminist movements in the Muslim world associate the veil with the seclusion and isolation of women, which works to ensure that men will maintain their status as providers and guardians of women.¹⁶⁴

Besides just protecting women from physical violence or assault, some Muslim men say that the headscarf protects women from the “carnivorous gaze of men.”¹⁶⁵ According to secular feminists, this belief promotes the understanding that the veil covers a woman from all men

¹⁵⁷ *Cités* are ghetto areas where some of the Muslim girls live. See *supra* note 61 and accompanying text.

¹⁵⁸ *Fadela résiste pour les filles des cites*, DIMANCHE OUEST FRANCE, Dec. 28, 2003, available at 2003 WL 73191222 (“les filles qui ne veulent pas mettre le voile sont considérées comme des résistantes par les uns, par des putes par les autres.”).

¹⁵⁹ *Id.*

¹⁶⁰ Brenner, *supra* note 80, at 196.

¹⁶¹ *Id.* (quoting Anne Elizabeth Moutet).

¹⁶² *Id.* (quoting Anne Elizabeth Moutet).

¹⁶³ FATIMA MERNISSI, WOMEN AND ISLAM: AN HISTORICAL AND THEOLOGICAL ENQUIRY 302 (1991), quoted in El Hamel, *supra* note 146, at 302.

¹⁶⁴ El Hamel, *supra* note 146, at 302.

¹⁶⁵ Eltantawi, *supra* note 30.

except for one, her husband, and in that sense he maintains a possession over her.¹⁶⁶ Thus, “the veiled woman is reduced to impotence in a society whose politics demands the donning of a certain garment and strictly regulates relations between the two sexes; while the woman in a liberal society who exposes her body can usually decide to remove it from the marketplace.”¹⁶⁷ The question is raised as to why Muslim men cannot just control themselves so that women can be free to dress as they wish:¹⁶⁸ “It is not the girls who should be punished for putting on the headscarf but look first at the problem of the ‘bestial’ leer of men!!!!!!”¹⁶⁹ The Koran requires both males and females to be modest and lower their gaze,¹⁷⁰ but most of the time the requirement is applied solely to women.¹⁷¹ If women are required to cover themselves, why are men not also required to do the same?¹⁷² While men can walk freely, women wear the headscarves as a “sexist marker” to remind them of their place.¹⁷³

3. Scarf as Fostering Extremism

A third viewpoint in favor of justifying the headscarf ban is that wearing the veil fosters extremism. As a reaction to the high unemployment rates, discrimination in development opportunities, and overall isolation of Muslim communities in Europe, many young Muslims are turning toward Islam, with those considering themselves practicing Muslims increasing by twenty-five percent between 1994 and 2001.¹⁷⁴ While pride can be a positive expression, some followers take it to the point of extremism, which can pose problems for those girls who identify themselves with the headscarf. “The scarf is seen by some not as an expression of religious belief but rather as a symbol of extremist Islam-terrorism, extermination of apostates, suicide bombers.”¹⁷⁵ One

¹⁶⁶ Jasser, *supra* note 139, at 37.

¹⁶⁷ *Id.* at 38.

¹⁶⁸ See Eltantawi, *supra* note 30.

¹⁶⁹ Posting of Question to <http://www.niputesnisoumises.com> (Dec. 22, 2004, 06:55 GMT) (on file with Professor Wing) (“[C]e n’est pas les filles qu’il faut punir en mettant le voile mais voir plutôt le problème du regard “bestial” des hommes!!!!!!”).

¹⁷⁰ KORAN 24:30-31.

¹⁷¹ Franks, *supra* note 118, at 919.

¹⁷² See Posting of Anonyme to <http://www.niputesnisoumises.com> (Nov. 6, 2004, 21:49 GMT) (on file with Professor Wing).

¹⁷³ Fleming & Carreyrou, *supra* note 29, at A1.

¹⁷⁴ Savage, *supra* note 142, at 31.

¹⁷⁵ Brenner, *supra* note 80, at 196.

commentator sees groups who want to implement the stricter interpretation of the Koran and impose the requirement of a headscarf as "'fundamentalists' [attempting] to assert control over European Muslims at a time when they are coming under increasing attack from far-right groups" ¹⁷⁶ Those individuals who share the commentator's belief would most likely agree that the headscarf ban is a necessity: "A sudden blow was necessary, a strong symbolic act It will be a push towards secularist Muslims in France and the extremists will have no choice but to fold." ¹⁷⁷ Thus, secularism might prevail.

Despite the fear that the headscarf itself is a tool of fundamentalism, the debate over its ban could create a greater risk for extremism. According to Farhad Khosrokhavar, a researcher at the School of Higher Studies in Social Sciences, "[t]he [headscarf] debate as it was presented by the public powers and the media stigmatized the moderate Muslims while risking their radicalization." ¹⁷⁸ For the philosopher Regis Debray, the headscarf is not a symbol but a behavior. He believes that a law banning headscarves was imperative and that "the absence of a law would be worse: not a sign of tolerance, but one of weakness, an incentive for fanatics." ¹⁷⁹ Thus, the law may be the tool to help prevent even further radicalization.

4. Scarf as Dividing Muslim Women

A fourth justification in favor of the ban is that wearing the scarf creates dissension among Muslim women themselves. There are instances where females who wear the headscarf scold women who choose not to wear it, accusing them of "turning their back on God and 'going Western.'" ¹⁸⁰ One entry in an Internet forum said that "[t]hose who do not [wear the headscarf] and pretend to be Muslim are simply poor ignorants who do not know what awaits them after their death." ¹⁸¹

¹⁷⁶ *Debate over Headscarves Heats Up in U.K.*, IBN RADIO FREE EUR., July 20, 2004, available at <http://www.rferl.org/featuresarticleprint/2004/07>.

¹⁷⁷ Chahdortt Djavann, *La laïcité, garante de l'unité nationale*, LE FIGARO (Fr.), Jan. 6, 2004, at 11 ("Il fallait un coup d'arrêt, un acte symbolique fort Elle sera un appui aux musulmans laïques de France et les extrémistes 'auront d'autre choix que de s'y plier.'").

¹⁷⁸ Christophe Barbier, *Enquête sur les ennemis de la République*, L'EXPRESS (Fr.), Jan. 26, 2004, at 26 ("Le débat tel qu'il a été présenté par les pouvoirs publics et les médias a stigmatisé les musulmans modérés, avec le risque de les radicaliser.").

¹⁷⁹ Christophe Lucet, *Une nouvelle loi laïque serait un moindre mal*, SUD OUEST DIMANCHE (Fr.), Jan. 11, 2004, at 4 ("[L]'absence de loi eut été pire: non pas un signe de tolérance, mais d'impuissance, un prime au fanatisme.").

¹⁸⁰ Valls-Russell, *supra* note 27, at 8.

¹⁸¹ Posting of Anonyme to <http://www.niputesnisoumises.com> (Oct. 8, 2004, 20:37).

Thus, if the scarf is banned, differences in opinion on the propriety and religiosity of those who do or do not believe in wearing the scarf will be muted or at least less evident. Muslim women already face multiple problems within their community in France based upon their gender. Just as Muslim men's religiosity is not known by their dress, Muslim women could be more anonymous within their own group without their veils.

D. Non-Muslim Views

While a major emphasis of the Article has been on Muslim women's perspectives on the headscarf, it is important to mention other views as well. The non-Muslim French majority has the power on an individual and broader political level to make a difference as to how Muslim women are perceived and treated.

Most non-Muslim French appear to oppose the headscarf. While a few of the people interviewed by Professor Wing and her students favored permitting the wearing of headscarves in schools, most did not.¹⁸² Some of them dislike Muslims and immigrants generally.¹⁸³ Daniel Pipes, an American commentator, puts this feeling into perspective with his belief that "West European societies are unprepared for the massive immigration of brown-skinned people cooking strange foods and not exactly maintaining Germanic standards of hygiene."¹⁸⁴ Another man said: "Muslim people are bad and French people should not overextend themselves to preserve their religious freedom under the auspices of human rights. If the tables were turned, Muslims wouldn't preserve the religious freedom of others."¹⁸⁵ Opposing the veil can be just one aspect of strong anti-Muslim sentiment.

Some French think that young women who wear the headscarf have to take into account the image that they are projecting to those who see them.¹⁸⁶ People may view those who wear the scarf as potential

GMT) (on file with Professor Wing) ("Celles qui ne [portent pas le voile] et se prétendent musulmanes sont simplement des pauvres ignorantes qui ne savent pas ce qui les attend après leur mort.").

¹⁸² See generally *supra* note 23.

¹⁸³ See generally *supra* note 23.

¹⁸⁴ Daniel Pipes, *The Muslims Are Coming! The Muslims Are Coming!*, NAT'L REV., Nov. 19, 1990, available at 1990 WLNR 2800050.

¹⁸⁵ Interview by Aaron McLeod with Male, Egyptian-born, café owner, resident of Holland, in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁸⁶ Posting of Benoit, PETIT NPNS Aix, to <http://www.niputesnisoumises.com> (Sept. 15, 2004, 18:54 GMT) (on file with Professor Wing).

criminals. For example, the French philosopher Andre Glucksmann has stated: "Hijab is a terrorist operation In France, the zealous pupils know that their hijab is covered in blood."¹⁸⁷ In addition, as the proponents of secularism and feminism argue: "We live in a secular West. No headscarves in schools! The veil is to silence, to make invisible and to subjugate women. It is the mark of oppression."¹⁸⁸ They argue that girls who are being forced to wear the headscarf need to be protected. Since the government cannot personally go into each and every home to determine the reason behind the choice to wear the headscarf, the ban will help reverse the headscarf as a symbol of the inferior status of women.¹⁸⁹

Some French look at Islam as a rigid religion that has trouble existing in modern day democratic societies.¹⁹⁰ Others consider it "a regressive tendency and inimical to the continuing process of national integration."¹⁹¹ As one person said, "[p]eople have to fit in the republic not the reverse."¹⁹² To these French, there is no room in France for people who cannot do that.

Some feel the headscarf ban reinforces the very ideology of the French psyche in its adherence to separation of church and state.¹⁹³ Under this view, no manifestation of religious symbols is allowed. Commission Chairman Bernard Stasi even warned that "forces in France . . . are trying to destabilize the republic, and it's time for the republic to react."¹⁹⁴ The average French citizen has been inundated with this belief. As a male in his sixties interviewed in Biarritz stated: "Muslims and other groups have had problems becoming French."¹⁹⁵

¹⁸⁷ Isabelle Rigoni, *Challenging Notions and Practices: The Muslim Media in Britain and France*, 31 J. ETHNIC & MIGRATION STUD. 563 (2005).

¹⁸⁸ *Viewpoints: Europe and the Headscarf*, *supra* note 145 (relaying posting by Lili Ann Motta, E. Marion, N.Y.).

¹⁸⁹ *Id.* (statement of Binnaz Toprak, Professor of Political Science, Bosphorous University, Istanbul, Turk.).

¹⁹⁰ See Posting of TiredofCons to http://www.expatica.com/source/forum_thread.asp?channel_id=4&thread_id=1521&page=1 (Dec. 20, 2003, 18:33 GMT) (on file with Professor Wing).

¹⁹¹ Ghada Hashem Talhami, *European, Muslim and Female*, 11 MIDDLE E. POL'Y 152 (2004).

¹⁹² Posting of dknh to http://www.expatica.com/source/forum_thread.asp?channel_id=4&thread_id=1521&page=1 (Dec. 18, 2003, 17:55 GMT) (on file with Professor Wing).

¹⁹³ Interview by Alex Hernandez with Male, white, age 50-56, French, partner in small technology company, resident of New Jersey, U.S., in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁹⁴ Dilanian, *supra* note 15.

¹⁹⁵ Interview by Meredith Stewart with Jon, Male, age 60, hotel clerk, in Biarritz, Fr.

Many other French non-Muslims question how French those who wear the headscarf are and whether they see themselves as Muslims before Frenchwomen.¹⁹⁶ The scarf brands them as challengers to French cultural homogeneity.¹⁹⁷ The argument is that in France, people are expected to be French. Muslims refuse to be French and flaunt their religion to the point where it is offensive.¹⁹⁸ The women are being insolent and disrespectful toward French institutions.¹⁹⁹ Some may think that it is a deliberate insult to French customs and values to wear such garb.

"The Muslim woman, whether veiled or not, incarnates in the eyes of a relatively homogeneous public opinion on the subject . . . the irreducible incompatibility between Islam and the democratic values of modern day."²⁰⁰ Many news articles perpetuate the stereotype that wearing the headscarf promotes inequality and backwardness and is a sign of fundamentalism and extremism, while portraying the girls who want to wear the headscarf at school as being "obstinate, recalcitrant and proselytizing."²⁰¹ In fact, when one girl began to wear a headscarf to school, "several teachers . . . saw it as a provocation."²⁰² Such a girl is seen as trying to incite negative reactions from her peers.

Thus, it is clear that the opinions of non-Muslims in France do not support wearing the headscarf. Since a majority of the French public and politicians do support the headscarf ban, some proposals will be considered in Part III as to how to address the needs of the Muslim minority that want to wear scarves for the wide array of reasons previously discussed.

(Summer 2004) (on file with Professor Wing).

¹⁹⁶ See, e.g., David A. Bell, *The Shorn Identity*, NEW REPUBLIC, Nov. 28-Dec. 5, 2005, at 20.

¹⁹⁷ El Hamel, *supra* note 146, at 300.

¹⁹⁸ See Interview by Meredith Stewart with Rafael, Male, French citizen, resident of Colorado, U.S., in Arcachon, Fr. (Summer 2004) (on file with Professor Wing).

¹⁹⁹ Ardizzoni, *supra* note 88, at 641.

²⁰⁰ Valérie Amiraux, *Discours voilés sur les musulmans en Europe: comment les musulmans sont-ils devenus des musulmans?*, 50 SOC. COMPASS (Fr.) 85, 86 (2003) ("[L]a musulmane, voilée ou non, incarne aux yeux d'une opinion publique relativement homogène sur le sujet . . . l'irréductible incompatibilité entre l'islam et les valeurs démocratiques de la modernité.").

²⁰¹ Liederman, *supra* note 64, at 111.

²⁰² Fleming & Carreyrou, *supra* note 29, at A1.

III. PROPOSALS FOR THE FUTURE

“World traveling” to observe the range of views of Muslims and non-Muslims on the headscarf issue in Part II has given us more perspective on appreciating French Muslim females within their own cultural context. We have seen that one cannot essentialize any particular group’s perspectives. Women run the gamut from ardent supporters to staunch opponents of the scarf. Some of these women may resent their government or Westerners generally, non-French, or non-Muslims interfering in decisions of this type. Others may welcome outside involvement.

While the French have made a legal decision that they feel is best for their country, this part of the Article offers some perspectives in case they decide to reconsider this issue at some point in the future. First, legal approaches in other national and international jurisdictions may support or oppose the French position. In the future, the French government might consider the reasoning of the approaches on all sides, rather than only those consistent with their current analysis. Second, banning the headscarf could constitute a form of “spirit injury” that can affect French Muslim and non-Muslim society over the long-term. The government might consider how to alleviate such spirit injuries. Finally, French Muslim women need to become more politically and economically empowered so they can more fully participate in French society and in decisions about their own fate.

A. Legal Approaches

A very recent international court decision supports the French approach regarding headscarves. In 2005, the European Court of Human Rights took a stance that is consistent with the French view on religious manifestations. In *Leyla Sahin v. Turkey*, the Court upheld Istanbul University’s resolution banning the headscarf on its premises.²⁰³ The

²⁰³ See *Leyla Sahin v. Turkey (Sahin II)*, App. No. 44774/98 at paras. 41, 91-98 (Eur. Ct. H.R. Nov. 10, 2005) (sitting as Grand Chamber), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (retrieve decision by application number) (reviewing Istanbul University resolution number 11 of July 1998 and Vice Chancellor’s circular of February 23, 1998); *Leyla Sahin v. Turkey (Sahin I)*, App. No. 44774/98 (Eur. Ct. H.R. June 29, 2004) (sitting as Chamber), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (retrieve decision by application number) (reviewing same).

Court held the ban did not violate the European Convention on Human Rights Articles 8 and 9 (freedom of religion), 10, 14, nor Article 2 of Protocol 1.²⁰⁴ The Court further held that states can apply a principle of secularism that permits them to ban any religious manifestation in their state-run institutions.²⁰⁵ Thus, disgruntled French Muslims will not be able to gain appropriate relief from this important international venue.

Other European countries have taken a variety of approaches. The German Constitutional Court held that wearing the scarf did not violate the religious neutrality of the state, but it did permit individual states to ban religious symbols in the classroom.²⁰⁶ Two states subsequently banned teachers from wearing scarves in the classroom.²⁰⁷ The Belgians are considering legislation to ban headscarves, and politicians in Sweden and Norway have considered the issue as well.²⁰⁸ In the Netherlands, Switzerland, and the United Kingdom, young women can wear the scarves in most circumstances.²⁰⁹ There is not yet a big debate in Austria, Spain, Czech Republic, Slovakia, and Poland.²¹⁰

In the United States, there is no national policy regarding school clothing, and the Supreme Court has not directly addressed the issue of headscarves in its free exercise of religion jurisprudence.²¹¹ Especially in the War against Terror era, there have been a number of discriminatory acts in public institutions toward young Muslim women wearing headscarves. For example, a computer science professor at Antelope Valley College in Lancaster, California, ordered a nineteen-year-old student to uncover her head or leave the class.²¹² He claimed the scarf would block the view of the other students and became furious when the student told him she was wearing the scarf for religious reasons.²¹³ The

²⁰⁴ *Sahin II*, App. No. 44774/98 at paras. 123, 162, 166; see Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature*, Nov. 4, 1950, 213 U.N.T.S. 222.

²⁰⁵ See *Sahin II*, App. No. 44774/98 at paras. 114-16 (citing *Sahin I*, App. No. 44774/98 at paras. 107-09).

²⁰⁶ See Liz Fekete, *Anti-Muslim Racism and the European Security State*, 46 RACE & CLASS 3 (2004).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Sahin I*, App. No. 44774/98 at para. 56.

²¹⁰ *Id.* at para. 57.

²¹¹ See *Employment Div. v. Smith*, 494 U.S. 872 (1990) (upholding denial of Native Americans' unemployment benefits on basis that they had been discharged for illegal activity of ingesting peyote for religious purposes).

²¹² *Teacher Resigns After Muslim Scarf Debate*, CNN.COM, Feb. 28, 2004, <http://www.cnn.com/2004/US/West/02/28/muslim.headscarf.ap/>.

²¹³ *Id.*

college considered taking disciplinary action against the professor, but he resigned.

Another incident occurred in Harvey, Louisiana. A social studies teacher pulled on the *hijab* of a seventeen-year-old girl and said, "I hope Allah punishes you . . . I didn't know you had hair under there."²¹⁴ The teacher was immediately discharged, and the principal emphasized his school's respect for all cultures in a statement to the Council on American-Islamic Relations.²¹⁵

The Bush Administration came down firmly on the side of permitting the wearing of the scarves in a case in Muskogee, Oklahoma, making a strong statement supporting devout Muslim girls in public institutions — the opposite of the French approach. In that case, a sixth grader was twice suspended in October 2004 for wearing her scarf to Benjamin Franklin Science Academy.²¹⁶ The headscarf violated a school policy which, in its efforts to curb gang activity, prohibited "hats, caps, bandanas, and other headgear."²¹⁷ The girl's parents filed suit and the Department of Justice filed an official complaint and a motion to intervene in the private litigation.²¹⁸ The government's complaint alleged that the "school district violated the equal protection clause of the Fourteenth Amendment to the Constitution, which bars states from applying dress codes in an inconsistent and discriminatory manner."²¹⁹ Since the Department of Justice's intervention, the Muskogee School Board has changed its dress code to allow students to wear head coverings for religious reasons.²²⁰ According to Superintendent Eldon Gleichman, however, the student must have both a "serious belief" in the religion and a witness to vouch for that belief in order to wear head coverings.²²¹

²¹⁴ *Louisiana Teacher Removed After Hijab Incident*, CAIR, Feb. 3, 2004, <http://cair-net.org/asp/article.asp?id=1040&page=NR>.

²¹⁵ *Id.*

²¹⁶ *Oklahoma Student Suspended for Wearing Hijab*, CAIR, Oct. 10, 2003, <http://www.cair-net.org/asp/article.asp?id=152&page=AA>.

²¹⁷ *Id.*

²¹⁸ See Anwar Iqbal, *DOJ Allows Hijab in School*, WASH. TIMES, Apr. 1, 2004, available at <http://washingtontimes.com/upi-breaking/20040401-051342-5704r.htm>; *Muslims Welcome Justice Department Hijab Defense*, CAIR, <http://cair-net.org/asp/article.asp?id=1056&page=NR> (last visited Dec. 5, 2005).

²¹⁹ *Muslims Welcome Justice Department Hijab Defense*, *supra* note 218.

²²⁰ *OK: School District Revises Dress Code on Hijab*, CAIR, June 12, 2004, <http://www.cair-net.org/asp/article.asp?id=33561&page=NB>.

²²¹ *Id.*

Some private schools in the United States have nevertheless banned headscarves. For example, a Catholic high school in Ohio prevented a student from sitting in class while wearing a *hijab*.²²² While the principal stated that the community would undertake a process of review, she confirmed that the ban was school policy, and there was no evidence of any accommodation being made. In New Jersey, a student had to resign from the Marine Academy of Science and Technology because the school would not permit her to wear her *hijab* while in uniform twice a week.²²³ Although the Naval Junior Reserve Officer Training Corps permits students to wear a yarmulke under their naval cap, no such exception exists for the headscarf.²²⁴

These few examples illustrate the variety of legal perspectives on the headscarf from a few other jurisdictions. If the French decide to reconsider their legal approach to the issue of religious headgear, they should draw upon the experience of other societies as well as their own.

B. Spirit Injury

"Spirit injury" is a CRF term that contemplates the psychological, spiritual, and cultural effects of multiple types of assaults upon women.²²⁵ Racism, sexism, and other forms of discrimination can lead to the slow death of a person's soul or psyche. The effects of spirit injury are "as devastating, as costly, and as psychically obliterating as robbery or assault."²²⁶ French Muslim women who are not permitted to wear the scarf in school might feel some of the symptoms of spirit injury, including "defilement, silence, denial, shame, guilt, fear, blaming the victim, violence, self-destructive behaviors, acute despair/emotional death"²²⁷ Eventually, this could affect all of Muslim society in France as well as the French nation as a whole.

Both before and after the 2004 law, young women have described the various ways that they experienced the spirit injury from their decision

²²² *Catholic Leaders Asked to Intervene in Hijab Case*, CAIR, Aug. 29, 2003, <http://cair-net.org/asp/article.asp?id=32549&page=NB>.

²²³ Allan Dean, *Muslim Teen Resigns as Student at M.A.S.T. — Scarf Cannot Be Worn with Uniform*, ATLANTIC HIGHLANDS HERALD, Sept. 25, 2003, available at http://www.Ahherald.com/news/2003/0925/elgohail_mast_html.

²²⁴ *Id.*

²²⁵ See Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN'S L.J. 181, 186 (1990-91).

²²⁶ See Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 129 (1987).

²²⁷ Adrien Katherine Wing & Mark Richard Johnson, *The Promise of a Post-Genocide Constitution: Healing Rwandan Spirit Injuries*, 7 MICH. J. RACE & L. 247, 289 (2002).

concerning the headscarf. As one woman said: "Now I feel uneasy when I am not wearing the headscarf."²²⁸ Another went into greater detail stating: "If I do not wear my headscarf I don't feel well, if I do wear it, I am sent away and I will not be accepted in another school and I will be good for cleaning houses as in the time of my great grandmothers."²²⁹ Serious conflicts with family may abound as well. As one young lady said:

I bought a *hijab* and put it on. At that moment, I felt a great joy, a feeling of being "complete." Of course, it didn't go over well with my family. My mother prohibited me from entering the house with the *hijab*, my father and my grandparents no longer speak to me, my brothers are ashamed of me . . . in brief it was misery!²³⁰

One person even described the fact of unveiling as a form of rape.²³¹

The sheer toll that exclusion and rejection can take is evidenced by the account of one girl who decided not to return to school after choosing to wear the headscarf. She stated:

My headscarf was rejected, it was a very difficult time. The teachers completely ignored me. I didn't have the right to a hello. Worse, when I would ask a question, no one would even bother to respond. My friends underwent pressure to no longer stay with me. Often, I was under-graded, I turned in work on which I had spent lots of time, and I received nothing more than a 7 or 8. It was very very long, one week seemed like a month. But I was patient. When the end of the school year came, I decided not to reregister because I was depressed by the year full of stress. Today I find myself unemployed at 17 years old, even though I grew up in a country of

²²⁸ Posting of Soukeïna, 12 ans to <http://www.islamfrance.com/femmeislam/temoignages.html> (n.d.) (on file with Professor Wing) ("Maintenant, je me sens mal à l'aise quand, je ne suis pas avec le foulard.").

²²⁹ Posting of boudassi@aol.com to <http://www.llfm.org/temoignages> (Sept. 9, 2004, 13:05 GMT) (on file with Professor Wing) ("[S]i je ne garde pas mon foulard je ne me sens pas bien, si je le garde, je suis renvoyée et je ne serais pas acceptée dans un autre collège et je serai bonne pour le ménage comme au temps des arrières grand-mères.").

²³⁰ Posting of ajdarpasic_mirsad@yahoo.fr to <http://www.llfm.org/temoignages> (Aug. 6, 2004, 22:41 GMT) (on file with Professor Wing) ("[J]e me suis acheté un hijab et je l'ai mis. A ce moment là, j'ai ressenti un immense bonheur, une sensation d'être 'complete.' Bien sûr, avec ma famille ce n'est pas passé. Ma mère m'a interdit l'accès de sa maison avec l'hijab, mon père et mes grands-parents ne me parlaient plus, mes frères avaient honte de moi. . . . enfin bref c'était la misère.").

²³¹ Posting of Me to <http://www.niputesnisoumises.com> (Feb. 20, 2005, 13:41 GMT) (on file with Professor Wing).

Liberty and Equality. Now I no longer feel free and even less equal and I worry about the principles of France.²³²

Even if a girl removes the headscarf, she will still stand out as a result of her name, her appearance, and her religion. One girl in Rennes sat in her classroom as her teacher went through the roll call. When she came to the girl's name, the teacher then stopped and exclaimed, "Ah! Your name is Fatima! You don't have the right to wear the bandana!"²³³ Even though she was not wearing a scarf at the time, she was singled out for her ethnic name.

Another incident occurred with Cennet, a 15-year old who eventually found her solution to the headscarf dilemma by shaving her head so that her hair would not show and she would be able to go to school.²³⁴ As she explains the experience of isolation and exclusion from her schoolmates, the true nature of the spirit injury comes forward:

"I refused to remove my bonnet. They shut me in a room without windows. They forbade me from going outside for recreation. They treated me like a monster. But I'm not a monster!" Desperate, she armed herself with a pair of scissors the next day: "I did anything with my hair. I cut. I shaved it all with a Gillette high precision razor." "The parents indicated that their daughter lost 4 kilograms when school started."²³⁵

²³² *Témoignage de Fatima, Qui a Renoncé à Retourner au Lycée d'Alembert à St. Etienne*, <http://www.ecole-pour-toutes-tous.com> (last visited Dec. 5, 2005).

Mon voile était rejeté, ça été une période très dure. Les professeurs m'ignoraient complètement. Je n'avais pas le droit à un bonjour. Pire, lorsque je posais une question, on ne prenait même pas la peine d'y répondre. Mes camarades subissaient des pressions pour qu'elles ne restent plus avec moi. Souvent, j'étais sous-notée, je rendais des travaux sur lesquels j'avais passé du temps et je n'avais que des 7 ou 8. ça a été très très long, Une semaine me semblait être un mois. Mais j'ai patienté. Lorsque la fin de l'année est arrivée, j'ai décidé de ne pas me réinscrire car j'ai été dépassée par cette année pleine de stress. Aujourd'hui, je me retrouve au chômage à 17 ans. Alors que j'ai grandi dans un pays de Liberté et d'Égalité. Maintenant, je ne me sens plus libre et encore moins égale et je m'inquiète pour les principes de la France.

Id.

²³³ Eric Vandorpe, *Loi antivoile: le Collectif "Une école pour tous-tous" dénonce le "harcèlement" subi par les jeunes filles voilées*, OUMMA.COM, Oct. 7, 2004, http://Oumma.com/article.php3?id_article=1200 ("Ah! Toi tu t'appelles Fatima! Tu n'as pas le droit au bandana!").

²³⁴ *Id.*

²³⁵ *Id.* ("J'ai refusé d'enlever mon bonnet. On m'a enfermée dans une salle sans fenêtre. On m'a interdit de sortir en récréation. Ils me traitent comme un monstre. Mais je ne suis

The young lady suffered physically and emotionally from the experience. Another young woman indicated she felt treated as if she were a “provocateur” rather than a victim of discrimination.²³⁶

In order to remedy the effect of spirit injury prior to the 2004 law banning conspicuous religious symbols, one school decided to allow bandanas in the hallways as long as girls removed them in the classrooms as an attempt to “avoid the feeling of rape of conscience.”²³⁷ One individual even made the plea in a forum posting that “you don’t have to be racist, we are human beings like you.”²³⁸ This request to be treated as human beings indicates the depth of the frustration.

The consequences of girls being excluded from the classroom are far-reaching. One woman had to stop her studies for a year while she searched for a school that would accept her with her veil.²³⁹ This life disruption could delay one’s goals or push them off indefinitely.

Some people agree that it is more important for the girls to be present in the public schools to receive an education and to experience an environment where different cultures can come together to learn, even if they wear the veil in class.²⁴⁰ The end goal of having educated adults, as opposed to dropouts, is more important to these people than a piece of cloth to promote social peace.²⁴¹ Some citizens want to prevent the destruction of these young girls’ futures, however, and to prevent people like them from becoming victims in that respect.²⁴² They question whether the headscarf ban will really help the girls it is trying to protect.²⁴³

pas un monstre!’ Désespérée, elle se munit dès le lendemain d’une paire de ciseaux: ‘J’ai fait n’importe quoi avec mes cheveux. J’ai coupé. J’ai tout rasé avec un rasoir style Gillette haute précision.’ ‘Les parents précisent que leur fille a perdu 4 kg depuis la rentrée.’)

²³⁶ Djamila, *tant de haine pour un petit foulard?*, http://www.llfm.org/articles/MAJ_ARTICLES/afficheUnArticle.php?id=91 (last visited Dec. 5, 2005) (“Une femme portant le foulard n’est pas traitée comme une victime mais comme une provocatrice le foulard.”).

²³⁷ *Id.* (“evite le sentiment de viol de conscience.”).

²³⁸ *Id.*; Posting of Anonyme to <http://www.niputesnisoumises.com> (Oct. 8, 2004, 20:46 GMT) (on file with Professor Wing) (“[F]aut pas etre raciste on est des êtres humain comme vous . . .”).

²³⁹ John R. Bowen, *Beyond Migration: Islam as a Transnational Public Space*, 30(5) J. ETHNIC & MIGRATION STUD. 879 (2004).

²⁴⁰ Killian, *supra* note 47, at 580.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Viewpoints: Europe and the Headscarf*, *supra* note 145 (relaying posting by Sandra S., N.Y.).

The experience of one girl was broadcast on the Channel 2 news in France to show what happens when a girl gives up the headscarf in order to enter school.²⁴⁴ Additionally, it was described on an Internet forum about the headscarf: "A young girl testified about her return to school. She accepted removing her headscarf. She explained that she entered the classroom to the applause of the reception committee and that someone asked her to yell 'Long live the Republic.'"²⁴⁵ The humiliation that this girl must have felt in being pressured to remove that part of her identity clearly constitutes a form of spirit injury.

These problems exist even outside of the realm of education when individuals try to pursue a future using what they have learned in school. One student stated:

I am a student and I have to undergo an internship in business that is necessary to pass the exam the problem arises during the interviews when as soon as I arrive, the people change their color and tone. Instead of lasting one hour, the interview takes nothing more than 10 minutes. But what makes me mad is when I see that they hire other people for the internship from my class. I am just as qualified as those from my class, but my problem is that I wear the headscarf. As of today, I still have not found an internship.²⁴⁶

This woman's options to make use of her education are limited if she cannot even get an internship. Assuming she does eventually obtain her credentials, she may face further problems in getting a paying job with good career prospects.

More than one girl has mentioned the physical effects from the stress of either not being able to wear the headscarf or being excluded because of wearing it. One girl recounted:

I explained to the nurse how sick I was, how at night and even during the day at school I cried, how I felt humiliated, excluded and

²⁴⁴ Posting of Gazelle to <http://www.niputesnisoumises.com> (Sept. 28, 2004, 00:97 GMT) (on file with Professor Wing).

²⁴⁵ *Id.* ("Une jeune fille témoignait de sa rentrée scolaire. Elle avait acceptée de retirer son voile. Elle expliquait qu'elle était entrée dans la cour sous les applaudissements du comité de réception et qu'on lui avait demandé de crier 'vive la république.'").

²⁴⁶ Posting of moukteb@voila.fr to <http://www.llfm.org/tesmoinages> (May 2, 2004, 10:27 GMT) (on file with Professor Wing) ("Je suis étudiante et je dois effectuer un stage en entreprise qui est fondamentale pour le passage à l'examen [L]e problème vient lors des entretiens à peine arriver les personnes change de couleur et de ton. [A]u lieu de durée 1h l'entretien ne dure que 10min. Mais ce qui me m'ai en colère c'est quand je vois qu'il prenne d'autres personnes pour ce stage des personnes de ma propre classe. Je suis aussi compétente que ceux de ma classe mais mon problème c'est que je porte le voile. Aujourd'hui je n'ai toujours pas trouvé de stage.").

at the very core of myself I considered stopping going to class, even though it was my last year and that at the end of the year I would pass my bac [high school exit exam]. In effect, it's not with a pressure like that that a student can work in peace and succeed at [passing] their [exit exam] at the end of the year. After a lengthy discussion, the nurse told me that the headscarf I wore "posed a problem and remained very significant!!!!"²⁴⁷

Thus, instead of helping, the health official became part of the infliction of the spirit injury.

If France ever wants to alleviate such profound spirit injuries, it needs "to be respectful of diversity and must find ways of nurturing diversity while fostering a common sense of belonging and a shared identity among its constituent members."²⁴⁸ Instead of working to build this cohesiveness, the headscarf ban will further exclude some Muslims from French society.²⁴⁹ "By ordering people to integrate, you are telling them and everyone else they don't belong, which makes it harder for them to integrate."²⁵⁰ They may remain permanent outsiders in a society where they and their families may have now lived for several generations.

As discussed previously, the French government relies heavily on the process of public education to promote civic responsibility and mold the leaders of the future. However, if Muslims are being forced to choose between their religious convictions and a public education, more may look to starting their own private schools. This may only further their alienation from French society.²⁵¹ "When people are challenged in their own core values and beliefs, they usually accept the challenge. In the

²⁴⁷ *Imène, lycéenne à Rennes, a obtenu un "pseudo-compromis,"* <http://www.ecolepourtoutes-tous.org> (last visited Dec. 5, 2005) (on file with Professor Wing) ("J'expliquais à l'infirmière combien j'étais mal, combien le soir et même dans la journée au lycée je pleurais, combien je me sentais humiliée, exclue et que au fond de moi je comptais vraiment arrêter les cours même si c'était mon année de terminale et qu'à la fin de l'année je passais mon bac. En effet, ce n'est pas avec une pression comme celle-ci qu'un élève pourra travailler en sérénité et réussir à avoir son bac en fin d'année. Après avoir beaucoup discuté, l'infirmière ma dit que le foulard que je portais 'posait problème et restait très significatif!!!!") The "bac" is the high school exit exam that all students take. There is no U.S. equivalent.

²⁴⁸ BHIKHU PAREKH, RUNNYMEDE TRUST, *Introduction to THE REPORT OF THE COMMISSION ON THE FUTURE OF MULTI-ETHNIC BRITAIN* (2000), available at <http://www.runnymedetrust.org/projects/meb/reportIntroduction.html>.

²⁴⁹ Paula Monteburano, *The French Ban on Islamic Headscarf, an Interview with Hassan El-Najjar*, AL-JAZEERAH & QUÉ PASA'S WKLY. CHILEAN MAG., Feb. 24, 2004, <http://www.aljazeera.info>.

²⁵⁰ Simon Kuper, *Trouble in Paradise: Once a Bastion of Liberal Values, the Netherlands Is Struggling to Accept Its Large Muslim Population. And the Whole World Is Watching*, FIN. TIMES (London), Dec. 4, 2004, at 24.

²⁵¹ Monteburano, *supra* note 249.

final analysis, it is coercion, not integration."²⁵² Thus, the headscarf ban has its price: the exclusion of a number of young Muslim girls who will be removed from the public schools which may be their only chance to escape from the cage that segregationists plan for them.²⁵³

What the French government seems to undervalue is the fact that the school is actually an ideal place to start the fight against racial discrimination through educating students to respect religious and ethnic differences.²⁵⁴ "It [is] the only way to teach the young on the questions that cause anger, to disinfect the wounds . . . of Islamic-Judeophobia."²⁵⁵ Perhaps one day the government will see the exclusion of a student from school based on their dress as a "misfortune for national education."²⁵⁶

Even though the headscarf ban may be legal under French law, and secularism may be upheld under European law as well, the ban may nonetheless constitute a psychic human rights violation. If the French government is not ready to lift the ban at this time, or if ever, it might consider whether there is any way to remedy this type of spirit injury. For example, it might consider encouraging other sorts of cultural displays by immigrants, such as the U.S. Black History celebration which permits African Americans to celebrate their culture in public institutions such as secondary schools. While this type of singling out based on ethnicity or culture has not been the "French" way in the past, it might be considered by a society that has failed to incorporate its minorities, with perhaps dangerous current and future consequences. Another option might be to offer or encourage Arabic among the foreign languages in secondary schools, or offer or mandate a course on Islam along with other world religions. Universities might augment their curriculum as well.

²⁵² *Id.*

²⁵³ Sylvie Arsever, *Sous la laïcité, les traditions chrétiennes*, LE TEMPS (Fr.), Dec. 18, 2003, available at 2003 WL 74879203.

²⁵⁴ COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME, LA LUTTE CONTRE LE RACISME ET LA XENOPHOBIE: 2001 RAPPORT D'ACTIVITE 112 (2001).

²⁵⁵ Reda Benkirane, *L'islam de France entre deux universalismes*, LE MONDE (Fr.), Dec. 12, 2003, at 13, available at <http://www.archipress.org/reda> ("[C]'est la] seule manière d'instruire les jeunes sur les questions qui fâchent, pour désinfecter les plaies . . . de l'islamo-judéophobie.").

²⁵⁶ Nicolas Weill, *La loi sur le voile à l'école divise le camp laïque*, LE MONDE (Fr.), Jan. 17, 2004, at 7.

C. Empowerment

Muslim females have remained relatively silent in the headscarf debates due to their lack of educational, economic, political, and legal empowerment. While ninety-two percent of French are registered to vote, only thirty-seven percent of Muslim citizens have registered to vote.²⁵⁷ There is no breakdown of voting patterns by gender within this community. There is only one Muslim representative in the French National Parliament, Mansour Karmadine. He felt caught between religion and civic duty during the recent debates over the headscarf, stating:

I am the only Muslim representative [in the National Assembly], but in my representative capacity, I am not Muslim, even if in private, I profoundly am I do not accept that religion occupies all of my life. I am not more interested than other representatives in the issue of Muslims in France. In my position, the spirit has never come to me to invoke my religion in the realm of my political life²⁵⁸

Given that he appears to have assimilated French values on the separation of church and state, Karmadine is unlikely to be able to represent the voices of those Muslim women who desire to maintain Islamic dress in a public school.

Another sign of Muslim women's political disempowerment was shown when the Stasi Commission, investigating the state of *laïcité* in France, only invited one French Muslim woman who wears a headscarf to give testimony out of 150 witnesses.²⁵⁹ The witness stated that the ban would not end the isolation and discrimination that Muslims feel and would only fan the flames of extremism. Her voice was clearly drowned out in the sea of those expressing support for the then-proposed law.

We hope that as more Muslim girls and women gain higher education in the future, more may choose or be able to join the French body politic rather than remain outside of it or on its fringes. The higher the educational level of these women, the more possibilities for them to earn or access economic, political, and legal resources for their individual and

²⁵⁷ Savage, *supra* note 142, at 36.

²⁵⁸ Christophe Deloire, *Dieu, la France et les politiques*, LE POINT (Fr.), Jan. 16, 2004, at 22 ("Je suis le seul député à être musulman, mais quand je suis député, je ne suis pas musulman, même si, en privé, je le suis profondément Je n'accepte pas que la religion occupe toute ma vie. Je ne me suis pas plus intéressé que les autres députés aux questions des musulmans de France. Dans ma circonscription, il ne m'est jamais venu à l'esprit d'invoquer ma religion dans le cadre de ma vie politique").

²⁵⁹ Fekete, *supra* note 206, at 3.

group benefit. If the French government is able to listen to the voices from all corners, it “may be able to break away from the pessimistic zero-sum game and move toward a genuine pluralism that allows women to make their own free choice whether to wear the headscarf or not.”²⁶⁰

CONCLUSION

This Article hopes to make a contribution to the global understanding of women in different societies by world traveling to figuratively lift the veil on the recent French ban on conspicuous religious symbols in public schools. Part I gave a brief history on the Muslim *hijab* and its acceptance in France. The 1989 Headscarf Affair indicated the state’s ambivalence on the issue, permitting schools to make their own decisions on the matter. Part II emphasized the diverse views of Muslim girls and women, some of whom support the ban on headscarves and some of whom do not, which enabled us to give voice to a marginalized group within French society. These women will continue to face discrimination based upon their gender, religion, nationality, language, class, and other identities. Whether citizens or not, whether headscarf wearers or not, these women deserve to have their views known, especially on an issue that disproportionately affects them and their community. Part III concluded with some modest suggestions. Considering the legal choices of other jurisdictions, contemplating remedies for spirit injury, and empowering Muslim females are options that France and other societies might consider in the future. As American Critical Race Feminist outsiders to French society, we will not presume to choose for Muslim females or others in that nation what is suitable for them. From our own ethnocentric perspective, which is based on respect for diversity as opposed to assimilation into a melting pot, we hope that France will someday see the value of inclusion of the multiplicity of voices of all its peoples, whether they are of the majority religion/culture or not.

Perhaps the 2005 riots will serve as a wake-up call for French society, much as the 1960s riots in U.S. cities did for American society.²⁶¹ France’s future as a nation depends on young Muslims, both female and male, who will work to help support a nation that still hopes to embody the French slogan: *liberté, égalité, fraternité* — liberty, equality, brotherhood. Let’s make sure that also includes sisterhood.

²⁶⁰ Marthoz & Saunders, *supra* note 16, at 63.

²⁶¹ See Davis R. Francis, Nat’l Bureau Econ. Res., *How the 1960s’ Riots Hurt African-Americans* (Sept. 2004), <http://www.nber.org/digest/sep04/w10243.html>.
