
Patriarchy as the exclusive domain of the other: The veil controversy, false projection and cultural racism

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This article critically analyzes the (mis)use of feminist language and rhetoric in measures restricting the right to wear traditional female Muslim clothing in various European jurisdictions. It posits that this mobilization of female symbols is, in the first place, part of a strategy of exclusion and of cultural homogenization which aims at anchoring European identity in secularized Christianity, while at the same time reinforcing the systemic nature of gender oppression. The use feminist language in the struggle against the veil moreover, can be interpreted according to the pattern of false projection. In the Dialectic of Enlightenment Adorno and Horkheimer describe false projection as the phenomenon which enables majority cultures to project on minorities some features of their own which they seek to hide from themselves. In this light, Muslim women come to embody the projected visions of Islam as “the” patriarchal Other, which is a particularly useful device for purpose of hiding an unresolved conflict within Western civilization.

Witches were pursued in the regions of the Alps and Pyrenees mountains;
in Spain they searched for Jews.

Because it was considerably easier to recognize Jews than witches,
Jews soon gave the Inquisition enough to do,
and the number of witches continue to increase.

That is how, at the onset of the XVII century
learned men could state that the situation had gotten out of control;
clearly it was still the Jews who had brought about the Black Death,
but the religious wars could already be seen as disasters conjured up by witches.

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¹ LEENA LANDER, CAST A LONG SHADOW 37 (1995).

1. Introduction: Writing on women's bodies

Women and their bodies, as Seyla Benhabib eloquently puts it, are the symbolic and cultural place where human societies write their moral system.² Thus, intercultural conflicts often focus on practices with strong “moral” dimension, such as veiling, genital cutting (FGM), polygamy, and forced marriages, that involve women: their clothing, their bodies, their legal status.³ In the past decades, much attention has been placed on the gender dimension of intercultural clashes by politicians, legislators, courts, scholars, and the media. Many laws enacted in different Western countries target practices, such as FGM and veiling that affect exclusively women belonging to cultural minorities.

Whatever the answers,⁴ the premise of this debate is that a *conflict* between religious/cultural rights and gender equality potentially exists, and that receiving liberal societies are legitimately empowered to strike a balance between the competing rights of women belonging to minority groups.

In this respect, the controversy over the various Islamic veils constitutes a disturbing exception, in that in this case there is no balancing among conflicting rights. There certainly exists a right to wear the veil. Moreover, it is true that the countless bills, laws, and cases banning or limiting this right in various European jurisdictions allude to the veil's inherent anti-feminist nature. The veil—or particular types of it—has been judged as difficult to reconcile with gender equality, with women's equal value, with their autonomy, dignity, and freedom.

However, wearing the veil, whether voluntarily or not, does not, objectively, violate women's rights. The veil is a piece of fabric,⁵ and, alongside other garments made of fabric, it does not violate rights. In fact, there are no laws in Europe banning or limiting the right of women to wear any particular kind of clothing, even when, as in the case of high heels or exaggeratedly tight-fitting trousers, these may actually harm their health. In liberal societies, many women, from virtually all cultural and religious groups and social classes, undergo tremendous societal, group and/or family pressure to dress one way or another. However, with extremely limited exceptions, liberal societies do not consider articles of clothing, other than Islamic ones, a matter to be regulated judicially or legally.

The reasons for the different treatment of the veil in comparison with “Western” clothing are, of course, complex and multifaceted. An important one has to do with the role of women in pluralistic democracies and with the possibilities and the limitations associated with universalizing gender models and gender norms in societies with

² SEYLA BENHABIB, *THE CLAIMS OF CULTURE: EQUALITY AND DIVERSITY IN THE GLOBAL ERA* 84 (2002).

³ *Id.* at 83.

⁴ For an illuminating overview of this debate, see Ayelet Shachar, *Feminism and Multiculturalism: Mapping the Terrain*, in *MULTICULTURALISM AND POLITICAL THEORY* 115 (Anthony Simon Laden & David Owen eds., 2007).

⁵ See, in this respect, the fascinating implications of the different veils in terms of fashion: Annelies Moors, *Islamic Fashion in Europe: Religious Conviction, Aesthetic Style, and Creative Consumption*, 1 *ENCOUNTERS* 175 (2009).

major cultural disparities. A veiled woman stands in stark contrast to an unveiled, modern woman; her appearance violates socially valued images of Western women. Being covered is likely to be perceived as a woman's refusal to engage in what are taken to be the "normal" (Western) protocols of interaction with members of the opposite sex⁶ and thus, as a violation of the notions of gender hierarchies established within Western social structure.⁷ In this light, the restrictions on the right to wear the veil, forcing Muslim women to "uncover" and look like their Western counterparts, restore normalcy. Thus, to borrow Benhabib's language, the bans and limitations placed on the right to wear the veil, can be regarded as an attempt to inscribe on Muslim women the receiving society's moral system. As section 4 will analyze in detail, Western attitudes towards Muslim women are better captured by what Adorno and Horkheimer describe, in the *Dialectic of Enlightenment*, as the phenomenon of "false projection."⁸ False projection enables majority cultures to project on minorities some features of their own which they seek to hide from themselves. It is remarkable how Muslim women have come to embody the projected visions of Islam as "the" patriarchal Other, which, as my analysis will show, is a particularly useful device for purpose of hiding an unresolved conflict within Western civilization.

By comparing the treatment of Christian and Muslim symbols in European democracies, I have argued elsewhere that the latter militantly pursue a strategy of exclusion and of cultural homogenization which aims at anchoring European identity in secularized Christianity.⁹ In this essay, I contend that the use of feminist language and rhetoric in the measures restricting the right to wear the veil, actually contributes to such strategy, while, at the same time, reinforcing the systemic nature of gender oppression. In my analysis I will refer to the "veil" as a comprehensive concept, comprising all targeted traditional Muslim clothing, such as the headscarf, the *jibab*, the *burqa*, and the *niqab*. This is not to deny or to underestimate the different significances associated with each of them, but rather to indicate how all of them are politically constructed as a single anti-feminist paradigm. Moreover, I will not attempt to decipher the actual significance of veiling practices,¹⁰ but focus exclusively on the perception of the latter in European democracies, and, specifically, on how such perceptions are reflected in bills, laws, and cases regulating the use of the veil.

⁶ JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* 154 (2007).

⁷ *Id.*

⁸ MAX HORKHEIMER & THEODOR W. ADORNO, *DIALECTIC OF ENLIGHTENMENT* (John Cumming trans., Verso, 1997) (1944).

⁹ Susanna Mancini, *The Power of Symbols and Symbols as Power. Secularism and Religion as Guarantors of Cultural Homogeneity*, 30 *CARDOZO L. REV.* 2629 (2009); Susanna Mancini, *The Crucifix Rage: Supra-national Constitutionalism Bumps Against the Counter-Majoritarian Difficulty*, 6 *EUR. CONST. L. REV.* 6 (2010); Susanna Mancini, *The Tempting of Europe, the Seduction of the Cross*, in *CONSTITUTIONALISM AND SECULARISM IN AN AGE OF RELIGIOUS REVIVAL* (Susanna Mancini & Michel Rosenfeld eds., forthcoming 2012).

¹⁰ There is an extremely rich literature attempting to interpret the significances of the different veils. The wide range of aesthetic goals, political ideologies, economic constraints, personal choices, and opportunities that can be provided by the veil, are well represented in *THE VEIL: WOMEN WRITERS ON ITS HISTORY, LORE, AND POLITICS* (Jennifer Heath ed., 2008).

Most Westerners *know* that Muslim women are terribly oppressed.¹¹ Often, this is all they know about Islam, let alone about gender relations in Middle-Eastern societies. Many also think that the West should intervene in defense of Muslim women. The view expressed by Will Hutton, one of Britain’s leading columnists, is, in this respect, exemplary:

Islam is predominantly sexist and pre-Enlightenment. . . . Thus, the West has to object to Islamic sexism whether arranged marriage, headscarves, limiting career options or the more extreme manifestations, female circumcision and stoning women for adultery.¹²

Equally thunderous condemnation of Islam for its outrageous treatment of women comes from both the left and the right, from Christian conservatives as well as from former Muslims who take radical positions against Islam, from the “real” racists, as well as from the intellectual élites.¹³ Irrespective of what side it comes from, the mobilization of female symbols in the vilification of Islam is always rooted in what Edward Said conceptualized as “Orientalism,” that is, the attitude to represent all what is depicted as part of the “Orient” as the reverse of the Occident, and vice-versa.¹⁴ Moreover, in all cases, gender-based equality does not benefit from the victimization narrative. Having said this, not all of the social and political actors who rely on feminist rhetoric in the struggle against the veil, are motivated by the same purposes and concerns. I propose to classify “feminist” anti-veil arguments according to whether they are purely strategic to the achievement of an agenda that is either irrelevant or consciously hostile to women, or whether they are genuinely committed to the advancement of women’s position in society. In Section II, I analyze the first set of arguments that I define as “populist-feminist.” In Section III, I move on to a critical reading of the second set of arguments, that broadly fall under the rubric of “liberal feminism.” Finally, in Section IV, I explain how false projection lurks behind both populist as well as liberal feminist arguments, and ends up bolstering misperceptions of both the Christian Occidental self, as well as of the non-Christian Oriental other.

2. Conquering colonies, conquering women: Populist feminism and the dialectic of the clash of civilizations

The most obvious objective of populist-feminist anti-veil arguments is to reinforce the perception of Islam as backward and barbaric and thus to widen the gap between “us” and “them,” adding fuel to the fire of the clash of civilizations. Instead of regarding “non-Western” customs, such as veiling, as a symptom of cultural diversity, that is, of the plurality of cultural forms, populist rhetoric automatically translates difference

¹¹ Leila Ahmed, *Western Ethnocentrism and Perceptions of the Harem*, 8 *FEMINIST STUD.* 521 (1982).

¹² Will Hutton, *Why the West is wary of Muslims*, *THE OBSERVER*, January 11, 2004, available at <http://www.guardian.co.uk/world/2004/jan/11/religion.uk>.

¹³ Pnina Werbner, *Islamophobia: Incitement to religious hatred—legislating for a new fear?*, 21 *ANTHROPOLOGY TODAY* 5, 6 (2005).

¹⁴ EDWARD SAID, *ORIENTALISM* (1978).

into a clash of values.¹⁵ Thus, an otherwise frankly racist discourse is camouflaged under the dialectic of the “insurmountability of cultural differences.”¹⁶ Once Muslim culture is constructed as incompatible with Western values, Muslims can only choose either to assimilate, by renouncing to their (inferior) culture—including its visible symbols, such as the veil—or leave.

The use of feminist language in populist rhetoric is not accompanied by any serious commitment to gender equality. In this respect, it is analogous to the anti-veil campaigns conducted in the Middle-East by the colonial powers, that is, by systems that theorized the natural superiority of men over women and relegated the latter to a situation of social and legal inferiority. Lord Cromer, the founder and president of the English Men’s League for Opposing Women’s Suffrage, vehemently condemned how Islam treated women, in his capacity as British consul general in Egypt from 1883 to 1907. While Christianity “elevated” women, Cromer thought, Islam “degraded” them:¹⁷

It was Islam’s degradation of women, expressed in the practices of veiling and seclusion that was “the fatal obstacle” to the Egyptian’s “attainment of that elevation of thought and character which should accompany the introduction of Western civilization.”¹⁸

Similarly, in Algeria, the French strategy of unveiling aimed at the affirmation and consolidation of colonial rule, that is, of a typically “European principle of government, based on an ideal of transparency and visibility.”¹⁹ One of the most illustrative examples of the symbolic dimension of the veil in Algeria is the description provided by Marnia Lazreg of a ceremony that took place in Algiers in 1958. A group of rebellious generals organized a demonstration to assert their will to keep control over Algeria. To produce evidence to the French government that the local population was in agreement with them, the generals gathered together a few thousands native men from nearby villages, along with a few women who were solemnly unveiled by French women, as a demonstration of loyalty to France.²⁰

As Leila Ahmed puts it, the ideas of feminism in the colonial era “functioned to morally justify the attack on native societies and to support the notion of comprehensive superiority of Europe.”²¹ Analogously, today’s appeal to gender equality

¹⁵ Maleiha Malik, *Feminism and its “other”: Female Autonomy in an Age of Difference*, 30 *CARDOZO L. REV.* 2613 (2009).

¹⁶ Etienne Balibar, *Is there a “Neo-Racism”?*, in *NATION, CLASS, AMBIGUOUS IDENTITIES* 17, 21–22 (Etienne Balibar & Immanuel Maurice Wallerstein eds., 1991), drawing the difference between cultural and biological racism. As an example of cultural racism, see how Samuel Huntington explains that the failure of “Mexicans and other Latinos” to integrate in the American societies is due to “irreconcilable cultural differences” with “American identity,” and specifically to Latino’s cultural values, namely “[l]ack of initiative, self reliance and ambition, and little use for education,” in Samuel Huntington, *The Hispanic Challenge*, *FOREIGN POL’Y REV.* 30 (March–April 2004).

¹⁷ LEILA AHMED, *WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE* 155 (1992) [hereinafter *WOMEN AND GENDER*].

¹⁸ *Id.* at 153.

¹⁹ MEYDA YEGENOGLU, *COLONIAL FANTASIES: TOWARDS A FEMINIST READING OF ORIENTALISM* 56 (1998).

²⁰ MARNIA LAZREG, *THE ELOQUENCE OF SILENCE: ALGERIAN WOMEN IN QUESTION* 135 (1994).

²¹ AHMED, *WOMEN AND GENDER*, *supra* note 17, 155.

ennobles anti-Muslim racist bigotry, channeling it in an acceptable discourse that can be upheld by respectable political and institutional actors. Thus, populist anti-veil arguments have begun to make their appearance in official documents and courts' decisions. For example, in *Dahlab v. Switzerland*,²² the European Court of Human Rights emphasized that wearing the Islamic headscarf could not be easily reconciled with the message of tolerance, respect for others and, above all, equality and nondiscrimination on the ground of gender, that constitute the core values of a democratic society.²³ Similarly, in *Sahin v. Turkey*,²⁴ the Court stated that gender equality is recognized as one of the key principles underlying the European Convention and a goal to be achieved by member States of the Council of Europe. In the name of gender equality, the Court then proceeded to legitimize, respectively, the dismissal of a teacher from a Swiss school and the expulsion of a medical school student from the Istanbul University, for peacefully wearing a headscarf.²⁵ In 2005, in Holland, a parliamentary majority consisting of mainstream as well as populist right-wing parties and the Christian Democrats, supported a bill to ban the full veil, according to which:

The *burqa* . . . is diametrically opposed to modernity. It expresses the rejection of essential Western values and norms, including the equality of men and women. . . . The *burqa*, then, is a symbol of the oppression of women. . . . Hence, wearing a *burqa* . . . in the public space is contrary to the rule of law in a democracy.²⁶

The proposed resolution drafted by the French National Assembly in preparation of the enactment of the law of 2010, banning full-face veils in public places, also heavily relies on unproven assumptions and on the dialectic of the clash of civilizations. The drafters “*know*—despite being contradicted by all available data²⁷—that this

²² *Dahlab v. Switzerland*, App. No. 42393/98, Eur. Ct. H.R. (2001).

²³ *Id.* (quoting the Federal Court of Switzerland) (internal citations omitted).

²⁴ *Sahin v. Turkey*, App. No. 44774/98, 44 Eur. H.R. Rep. 5 (2007).

²⁵ The absurdity of the Court's reasoning is stressed by Justice Tulkens in her dissenting opinion:

I fail to see how the principle of sexual equality can justify prohibiting a woman from following a practice which, in the absence of proof to the contrary, she must be taken to have freely adopted. Equality and non-discrimination are subjective rights which must remain under the control of those who are entitled to benefit from them. “Paternalism” of this sort runs counter to the case-law of the Court. Moreover, if wearing the headscarf really was contrary to the principle of the equality of men and women in any event, the State would have a positive obligation to prohibit it in all places, whether public or private (diss. op., 12).

²⁶ Quoted by Annelies Moors, *The Dutch and the Face-Veil: The Politics of Discomfort*, 17 *SOCIAL ANTHROPOLOGY/ ANTHROPOLOGIE SOCIALE* 393, 402 (2009). The bill also points out that a prohibition can put an end to the ‘pressure’ exerted on Muslim women to wear the full veil. A recent study conducted in the Netherlands diametrically contradicts such assumptions: not only about fifty percent of fully veiled women are “ethnic” Dutch converts, but, together with the other fifty percent, many of those women report that they have been confronted with family members or husbands who were opposed to their face-veiling. *Id.* at 403.

²⁷ See the research done by anthropologist John Bowen, a world authority in comparative social studies of Islam in *Student Life*, <http://www.studlife.com/news/2009/09/25/france-asks-anthropologist-to-testify-on-burqa-debate/>.

degrading garment goes hand in hand with the submission of women to their spouses, to the men in their family, with the denial of their citizenship.”²⁸ Moreover,

[t]he evidence gathered . . . shows the difficulties and the deep unease felt by people who every day are in contact with the public. . . . Barbarity is growing. Violence and threats are frequent . . . conflicts degenerate particularly in the hospitals, as in the case of the Women’s hospital in Bron, where a man refused to have his wife attended by a male doctor during her child-delivery. This is not acceptable, and each time such an attack takes place, it is our living together based on the Spirit of the Enlightenment that is violated.²⁹

While the language of this passage—and in particular the juxtaposition of “barbarity” and the “Enlightenment”—is nothing but another callous assertion of the incommensurability of Occident and Orient, the reference to the child-delivery incident casts light on a less evident strategy pursued by populist-feminist anti-veil rhetoric. At first glance, the only correlation between the child-delivery incident and the necessity to ban the full veil is that both mirror the subjection of Muslim women within their backward culture—something colonizers certainly felt strongly about. In Egypt, in fact, Lord Cromer did not only fight against the veil. He also discouraged the training of women doctors, and, when confronted with the preference among local women for being treated by women, declared that “[t]hroughout the civilized world, attendance by men is the rule.”³⁰ Historians, however, have abundantly shown the sexual politics implications of this “rule”—the domination of the male operator on the female patient—particularly in the field of gynecology and obstetrics.³¹ Today’s growing presence of women in this branch of medicine is seen as part of an empowering process, through which women re-gain control over the physiology and pathology of their sexuality and reproduction. Hence, refusing a male physician can, and often is, articulated as a feminist claim. The importance attributed by the French Assembly’s Report to the Bron hospital incident, thus, cannot be explained according to Lord Cromer’s assumption: nowadays, attendance by men is no longer synonymous with the “civilized world.”

To understand the most profound nexus between the proposed veil ban and the emphasis placed on the Bron hospital event, one has to take into account the strong symbolic significance of childbirth. Women “make a critical contribution to the transmission of collective identity,” since they reproduce future members of their

²⁸ Assemblée Nationale, Rapport d’information no. 2262, Au nom de la mission d’information sur la pratique du port du voile intégral sur le territoire national, 26 janvier 2010, at 14 (my translation) [hereinafter Rapport d’information no. 2262]. Paradoxically, in 2008, the French Conseil d’État denied fully veiled Faiza M. French nationality for adopting a radical practice of her religion (manifested in her wearing the *niqab*) that was considered incompatible with basic French values, particularly with the principle of gender equality. Conseil d’État [CE] [highest administrative court] May 26, 2008 (Fr.), available at <http://www.conseil-etat.fr/cde/fr/selection-de-ecisions-du-conseil-d-etat/seance-du-26-mai-2008-lecture-du-27-juin-2008-.html>.

²⁹ *Id.* (my translation).

³⁰ AHMED, WOMEN AND GENDER, *supra* note 17, at 153.

³¹ See, e.g., the insightful work by ORNELLA MOSCUCCI, THE SCIENCE OF WOMEN: GYNECOLOGY AND GENDER IN ENGLAND, 1800–1929 (1990).

collectivity and, being children's primary caregivers, transmit the group's social norms, culture, and traditions to future generations.³² As Ayelet Shachar poignantly notes, etymologically, the word "nation" derives from the Latin verb "nascere," to be born.³³ Colonizers quickly understood that, if they wanted to destroy the structure of the native colonial societies, together with their capacity for resistance, they first had to "conque[r] the women," as Franz Fanon put it, "find them behind the veil, where they hide themselves, and in the house where the men keep them out of sight."³⁴ Using Edward Said's concept of "latent Orientalism," which suggests that the orient is at once the object of knowledge and the object of desire, one can say that Muslim women occupy, in the Western mind, the side of the unconscious, of desires and of fantasies.³⁵ Thus, unveiling these women and baring their private sphere, that is, the place where new members of the group are born and raised, enabled colonizers to fulfill their "fantasies of penetrating the inaccessible world of the other, of domesticating, and thus, controlling" it.³⁶ The same dynamics applies today, and the juxtaposition of the Bron child-delivery event and the veil is a mirror of it. The refusal by Muslim women to determine themselves—their bodies, their private spheres—according to Western fantasies is felt as an intolerable form of resistance because it frustrates the most cherished of desires: that of making the Orient an object of possession.

3. Liberal feminism and the political use of women's bodies

As I mentioned above, the use of feminist language in the struggle against the veil is by no means the monopoly of camouflaged xenophobes. There is also a secular, liberal, and progressive anti-veil discourse which usually targets only the most covering kind of veils (*jibab*, *burqua*, and *niqab*) and/or the wearing of traditional Islamic clothing by schoolchildren. Unlike the populist discourse, the liberal feminist one is genuinely committed to gender equality, understood, however, as a singularly Western value. Liberal feminists reason in terms of equality, individual freedom, and oppression. They view Islam, alongside other traditional religious cultures, as suffused with practices and ideologies concerning gender that endorse and facilitate the control of men over women.³⁷ The disparities of power between the sexes within Islam determine that male members are those who are in a position to determine and articulate the group's beliefs, practices, and interests. This limits the possibility of women belonging to such culture to live with human dignity equal to that of men, and to

³² AYELET SHACHAR, *MULTICULTURAL JURISDICTIONS: CULTURAL DIFFERENCES AND WOMEN'S RIGHTS* 56–57 (2002).

³³ *Id.*

³⁴ FRANTZ FANON, *Algeria Unveiled*, in *THE NEW LEFT READER* 164 (Carl Oglesby ed., Grove Press, 1969) (1959).

³⁵ YEGENOGLU, *supra* note 19, at 58.

³⁶ *Id.* at 58.

³⁷ Susan Moller Okin, *Is Multiculturalism Bad for Women?*, *BOSTON REVIEW*, October–November 1997.

live as freely chosen lives as they can. The veil, or certain types of it, thus represents unjust in-group power dynamics.³⁸

In the past two decades, liberal feminism arguments have been the target of much postmodern, postcolonial and, broadly speaking, “multicultural” criticism. Roughly, liberal feminism has been accused of being culturally imperialistic,³⁹ of reenacting the errors of orientalist thoughts,⁴⁰ of obscuring the forces that actually shape culture, and denying that women have agency within patriarchy;⁴¹ of not taking into account that all cultures are differently patriarchal, as well as characterized by resistance to patriarchy.⁴² Thus, liberal feminism doesn’t do justice to the heterogeneity of minority women, ignoring, for example, the rich theological work being done by female Muslim scholars.⁴³ Also, politically, liberal feminism is hardly a successful strategy, due to the taint, imparted to it by colonizers, of having served as an instrument of domination, which rendered it “suspect in Arab eyes,”⁴⁴ and produces the automatic placement of feminists on the uncomfortable side of the “West.” Moreover, speaking specifically of the veil, to assume that the latter is just a symbol of domesticity and subjugation, demonstrates little knowledge not only of Islam, Islamic law, and colonization, but also little sensitivity to the dynamics of immigration and integration. Françoise Gaspard and Farhad Khosrokhavar provide an attempt to decipher one of the possible significances of the veil which highlights its fascinating implications:

[The veil] mirrors in the eyes of the parents and the grandparents the illusions of continuity whereas it is a factor of discontinuity; it makes possible the transition to otherness (modernity), under the pretext of identity (tradition); it creates the feeling of identity with the society of origin whereas its significance is inscribed within the dynamic of relations within the receiving society. . . . it is the vehicle of the passage to modernity within a promiscuity which confounds traditional distinctions, of an access to the public sphere which was forbidden to traditional women as a space of action and the constitution of individual autonomy.⁴⁵

Such critiques provoked the smoothing of the most “Western patriarchal”⁴⁶ elements of liberal feminism and its absorption of a certain degree of cultural sensitivity. Yet, the essence of the liberal feminist argument is still highly problematic. Take the

³⁸ See, e.g., the letter in the *Elle* magazine in December 2003, signed by sixty prominent French women (intellectuals, actresses, academics, and politicians), including the former Minister for Women’s Rights Yvette Roudy, in support of a ban on the veil. The letter stated that “[t]o accept the Islamic veil at school and in the public administration is to legitimize a visible symbol of the submission of women in the places where the state must be the guarantor of strict equality between the sexes.” *Le magazine Elle lance un appel contre le voile*, *ELLE*, December 5, 2003.

³⁹ IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990).

⁴⁰ YEGENOGLU, *supra* note 19.

⁴¹ Leti Volpp, *Feminism versus Multiculturalism*, 101 *COLUM. L. REV.* 1181 (2001).

⁴² *Id.*

⁴³ See, e.g., *WINDOWS OF FAITH: MUSLIM WOMEN SCHOLAR-ACTIVISTS IN NORTH AMERICA* (Gisela Webb ed., 2000); AMINA WADUD, *QUR’AN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN’S PERSPECTIVE* (2d ed. 1999).

⁴⁴ AHMED, *WOMEN AND GENDER*, *supra* note 17, at 153.

⁴⁵ FRANÇOISE GASPARD & FARHAD KHOSROKHAVAR, *LE FOULARD ET LA RÉPUBLIQUE* 44 *et seq.* (1995), quoted by BENHABIB, *supra* note 2, at 97.

⁴⁶ Azizah al-Hibri, *Is Western Patriarchal Feminism Good for Third World/Minority Women? (A response to Susan Okin’s/Is Multiculturalism Bad for Women?)*, *BOSTON REVIEW*, October–November 1997.

opinion delivered by Lady Hale of the House of Lords in the *Begum* case.⁴⁷ Lady Hale justifies the refusal by a school to admit a pupil wearing a *jibab* on the ground that:

[a] dress code which requires women to conceal all but their face and hands, while leaving men much freer to decide what they will wear, does not treat them equally. . . . If a woman freely chooses to adopt a way of life for herself, it is not for others, including other women who have chosen differently, to criticise or prevent her. . . . [T]he sight of a woman in full *purdah* may offend some people, and especially those Western feminists who believe that it is a symbol of her oppression, but that could not be a good reason for prohibiting her from wearing it. But schools are different. Their task is to educate the young from all the many and diverse families and communities in this country in accordance with the national curriculum. Their task is to help all of their pupils achieve their full potential. This includes growing up to play whatever part they choose in the society in which they are living. . . . Like it or not, this is a society committed, in principle and in law, to equal freedom for men and women to choose how they will lead their lives within the law. Young girls from ethnic, cultural or religious minorities growing up here face particularly difficult choices: how far to adopt or to distance themselves from the dominant culture. A good school will enable and support them.

Lady Hale, despite the effort to distance herself from the liberal feminist argument, cannot ultimately abandon an exclusively Western-centered model of gender emancipation. She attributes to “Western feminists” the belief that the veil is a symbol of oppression, and denies their right to judge a woman’s choice to wear it. However, she herself observes that the *jibab* does not treat women equally and that preventing pupils from wearing it at school is part of a strategy aimed not only at educating children according to gender equality, but also at helping Muslim girls to choose between “their” culture and “ours,” that is, between patriarchy and freedom.

What is most troubling about the liberal anti-veil argument, is the equation—candidly expressed by Lady Hale—between “uncovering” and “liberating” women. This equation reflects, I think, the unconscious internalization by liberal feminists of Western gender roles and gender hierarchies, and, specifically, a major ambiguity having to do with the relationship between freedom, autonomy, and sexual openness.

The French parliamentary report on the *burqa* mentioned in section 1 above, refers to the full veil as to an “assault on women’s dignity and on the affirmation of *femininity*,” linking the latter to the visibility of the physical body, and using the concept of dignity in providing normative assumptions to traditional gender norms. The report contains many other statements of this kind. However, none compares to the expert’s testimony provided by philosopher Élisabeth Badinter, who seemed intentionally to sexualize the meaning of the full-veil:

It would be wrong to compare fully veiled women to cloistered nuns, because the latter were cloistered and invisible to others, whereas fully veiled women are often married, sometimes mothers, and they aim at imposing themselves in the public space without identity, without

⁴⁷ Regina (Shabina Begum) v. Governors of Denbigh High Sch. [2006] UKHL 15, [2007] 1 AC 100 (H.L.) (appeal taken from Eng.). §§ 96 and 97. The case is made particularly convoluted by the circumstance that the school in question had adopted a particular uniform policy that admitted the *shalwar kameeze*, which is slightly less covering than the *jibab*.

body, skin, in short, erasing all signs of their humanity. I can not help seeing in their attitude an expression of a pathological contradiction: on the one hand, they refuse to show their face under the pretext that they do not want to be the subject of un-pure looks . . . on the other hand, they indulge in a true exhibition of themselves, with everyone staring at these unidentified objects. By arousing curiosity, these women attract glances that they would probably not attract had they faces been uncovered—in short, they become the objects of a fantasy. Being looked at without being seen and being able to watch the other without being watched, satisfies a triple perverse pleasure: the pleasure that derives from exercising a sort of omnipotence on the other, an exhibitionist pleasure and a voyeuristic one. So when I hear women explaining that the full veil makes them feel good and protected—but protected from what?—I believe that what they say is true, but I think these women are very sick and I do not think we may have to determine ourselves according to their pathology.⁴⁸

Badinter powerfully demonstrates the accuracy of Joan Scott's deconstruction of the headscarf debate. Scott, in her book *The Politics of the Veil*, contends that it was not the absence of sexuality but its presence that was being remarked within the controversy. By asserting the incomparability between clustered nuns and fully veiled women on the basis of the latter's status as wives and mothers interacting in the public sphere, Badinter suggests that nuns are justified to hide themselves because of their asexual character and of the confinement of their choice within the private sphere. In contrast, "wives" and "mothers" (i.e., sexually active women) must interact with men in the public sphere according to the Western system of gender relations. This means, however, that it is men who confer identity to women, being able to *see* them as sexual beings.⁴⁹ The (assumed) refusal by fully veiled women to act according to this pattern, leads for Badinter to unacceptable results: a new form of empowerment in which women exercise their power outside of a system of accepted rules and experience non-conformist ("perverse") forms of pleasure as a result. However, these "perverse" forms of pleasure seem nothing but the other side of the same coin. The exhibition of the female body, its reduction to a sexual object and the trivialization of explicit sexuality are "normal" features of Western societies. It is not unreasonable to suspect that some women experience pleasure in showing their uncovered (or partially covered) bodies to covered men. Not to talk about striptease and peep shows, where the naked female body is exposed to a public of clothed men, with the aim of sexually arousing the latter. Aren't these kinds of relationships between the sexes equally unbalanced? And aren't the kind of pleasures that result from them equally perverse? In this light, the ban on the veil seems to be targeted not for the emancipation of women, but precisely to reinforce gender-related stereotypes dictated by dominant structures in Western society, that is, societies that glorify sexual expressions. Feminist theorists, including Catharine MacKinnon, have argued that the public sexualization of women constitutes a patriarchal response to the increased entry of women into the public sphere, and particularly into the work market.⁵⁰ The hostility towards the veil thus is due to its interpretation as a tool of resistance by women to public sexualization, and thus

⁴⁸ Rapport d'information no. 2262 *supra* note 28, at 335 (my translation).

⁴⁹ SCOTT, *supra* note 6, at 158.

⁵⁰ CATHARINE A. MACKINNON, *TOWARDS A FEMINIST THEORY OF THE STATE* 195 *et seq.* (1989).

to Western patriarchy. Moreover, as Marion Iris Young pointed out, the sexualization of advanced industrial societies has produced a blurring of the boundary between types of persons who are respectable and those who are not. During the Victorian age, morality repressed and devalued sexual expression, at least for respectable people. Women, Blacks, disabled people, religious and sexual minorities were systematically depicted as lacking the primary virtue of the civilized, respectable, Christian white male: self-mastery.⁵¹ Conversely, today, specifically for women, sexuality has come to define respectability. The image of the “good” (respectable) Western woman is that of a woman who openly enjoys her body and her sexuality. As oppression derives, at least in part, from an ideal of respectability,⁵² one can say that the veil struggle is symptomatic of contemporary Western strategies of oppression.

Of course, by the same token, one can contend that the veil is mainly a reaction to the West, one that “leads nowhere but to a renewed focus on the body as a natural limitation of a woman’s life.”⁵³ In this light, the sociologist Marnia Lazreg, in her book *Questioning the Veil*, argues that Muslim women should *not* wear the veil because it ultimately reduces them to their biological body and denies their autonomy in their body, because it casts them as the embodiment of Western illness.⁵⁴ This is a plausible argument, one that enriches the debate and certainly merits attention. However, alongside other less sophisticated anti-veil arguments, it cannot become the rationale for legislative and judicial veil bans. One thing is for an intellectual to advance arguments concerning the empowering or demeaning nature of the veil for women; another thing is for a democratic system to rely on such arguments to restrict fundamental freedoms. A liberal democracy should not be concerned whether citizens exercise their individual rights for self-empowering purposes. This is a question that liberalism leaves to each individual’s conscience. But the ban on the veil suggests that women have only one way to exercise their rights *correctly*, and it regulates them accordingly. That is, it makes a political use of women’s bodies.

4. Projecting patriarchy onto the other

In the *Dialectic of Enlightenment*,⁵⁵ Theodor Adorno and Max Horkheimer used a well-known psychoanalytic mechanism to explain the origins of anti-Semitism: false projection. In projection, a subject attributes impulses, which he will not admit as his own, even though they are, to an object—the prospective victim. Projection entails a construction of a subject’s most intimate experiences as hostile: by projecting them outward, onto others, the subject destroys the intolerable within himself.⁵⁶ If the

⁵¹ According to Ornella Moscucci, “muscular Christianity” was the goal, attainable through strict mental and physical discipline. See *Clitoridectomy, Circumcision, and the Politics of Sexual Pleasure*, in *SEXUALITIES IN VICTORIAN BRITAIN* 63–65 (Andrew H. Miller & James Eli Adams eds., 1996).

⁵² Young, *supra* note 39, at 139.

⁵³ MARNIA LAZREG, *QUESTIONING THE VEIL: OPEN LETTERS TO MUSLIM WOMEN* 122 (2009).

⁵⁴ *Id.* at 123.

⁵⁵ *Supra* note 8.

⁵⁶ *Id.* at 187.

projected impulses are socially taboo impulses, projection also allows the subject to fulfill subconscious repressed desires: this kind of projection is defined as “morbid.”⁵⁷ Adorno and Horkheimer argue that in Fascism, these pathological behaviors are made political: “the object of the illness is deemed true to reality; and the mad system becomes the reasonable norm in the world and deviation from it a neurosis.”⁵⁸ Accordingly, the portrait of the Jews that nationalist anti-Semites offered to the world was in fact their own self-portrait.⁵⁹

“What” impulses and/or taboos are actually projected onto Jews by anti-Semites, depends on the religious, political, and historical contexts in which anti-Semitism operates. Voltaire’s anti-Semitism, for instance, has been depicted as “a partly unconscious, partly conscious cloak for his anti-Christian statements.”⁶⁰ In this section, I contend that the veil struggle can be interpreted according to the pattern of projection. A subject—the receiving liberal society—projects one of its structural features (patriarchy) onto an object—a cultural minority. Taking into account that, under the pressure of feminism, patriarchy has come to be construed as hostile to liberalism,⁶¹ projection allows the receiving liberal society to symbolically destroy the intolerable within itself. Patriarchy, however, is not only an “intolerable” feature of liberal societies, but, also, a social taboo. In Freudian terms, patriarchy is the “uncanny,” that is, nothing new or alien, but something which is familiar and old-established in the liberal mind and which has become alienated from it only through the process of repression.⁶² Thus, by projecting patriarchy onwards, onto the illiberal other, the receiving society fulfills its repressed patriarchal desires.

The works of Susannah Heschel and Judith Plaskow have shown how, in the past, patriarchy has been defined by certain streams of feminism as the special domain of Judaism.⁶³ One stream is a reductionist current of German feminism, according to which Nazism is an extreme form of patriarchy. These feminists argued, in the first place, that patriarchy emerged with the victory of masculine monotheism over the previous matriarchal religion, which they regard as the fault of the Hebrew Bible. Thus, “[t]he perennial accusation of Jews as slayers of God/Jesus was translated anew into Jews as slayers of the Goddess.”⁶⁴ In the second place, these feminists contended

⁵⁷ *Id.* at 186.

⁵⁸ *Id.* at 87.

⁵⁹ *Id.* at 168–169.

⁶⁰ PETER GAY, *VOLTAIRE’S POLITICS* 353 (1959).

⁶¹ A more radical feminist critique has also powerfully argued however that the Enlightenment *even in theory* promotes a fraternity among men, which excludes women from power, thus making genuine equality for women structurally impossible. See generally CAROL PATEMAN, *THE SEXUAL CONTRACT* (1988).

⁶² Sigmund Freud, *The “Uncanny”*, in *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD, VOLUME XVII (1917–1919): AN INFANTILE NEUROSES AND OTHER WORKS* 217 (James Strachey ed. and trans., 1955).

⁶³ Susannah Heschel, *Configurations of Patriarchy, Judaism, and Nazism in German Feminist Thought*, in *GENDER AND JUDAISM, THE TRANSFORMATION OF TRADITION* 149 (Tamar Rudavsky ed., 1995). Interestingly, Heschel views the failure of German feminism to provide a responsible analysis of Nazism and anti-Semitism as connected to the rise on anti-Semitism within the German left (*id.* at 137).

⁶⁴ Riv-Ellen Prell, *Anti-Semitism*, in *ENCYCLOPEDIA OF WOMEN AND RELIGION IN NORTH AMERICA*, Vol. II 588, 596 (Rosemary Skinner Keller, Rosemary Radford Ruether, & Marie Cantlon eds., 2006).

that the commandments of the Old Testament demanded certain *behaviors* rather than *beliefs*, giving birth to a morality of obedience to the authority of God rather than one based on consideration of right and wrong. Subsequent developments in Judaism supposedly shored up the authoritarian approach, producing a religion characterized by legalism and absence of personal responsibility. Of course, this construction added little to traditional anti-Semitic stereotypes, depicting Jews as unscrupulous and indifferent to ethics, but observant of, and guided by, minute religious laws.⁶⁵ However, these “German feminists . . . have drawn the unique conclusion that Judaism’s patriarchy is analogous to the morality of National Socialism, and that even the Jewish victims of Nazi crimes were by implication victims of their own religion.”⁶⁶

Christian feminism in the 1970s and 1980s also portrayed Judaism as “the” patriarchal religion *par excellence*, and Christianity as a feminist corrective to it. According to Judith Plaskow, such assertions—based on a sloppy and a-historical scholarship—by reducing the complex textual tradition of Judaism to a monolithic assertion of patriarchy and portraying Judaism as the religion that imposed domination over women, ultimately aimed at adding “a new slant to the old theme of Christian superiority.”⁶⁷ Projecting Christian patriarchy onto the Jewish Other, in fact, enabled Christian feminism to perpetuate “traditional Christianity’s negative picture of Judaism by attributing sexist attitudes to Christianity’s Jewish origins, at the same time maintaining that Christianity’s distinctive contributions to the ‘woman question’ are largely positive.”⁶⁸ The anti-Semitic intent of this kind of scholarship clearly emerges if one compares it to the outstanding work of Elisabeth Schüssler Fiorenza, a world’s authority in Christian feminist theology, who radically reversed the perspective of the relationship between anti-Semitism and patriarchy. According to Schüssler, it was the subjugation of the Jews to an inferior status that laid the groundwork for Western Christianity’s defense of the fundamental inferiority of women and slaves. “Christian biblical theology must recognize,” writes Schüssler, “that its articulation of anti-Judaism in the New Testament goes hand in hand with its gradual adaptation to Greco-Roman patriarchal society.”⁶⁹

The analogies of anti-Semitic feminist discourses with today’s mobilization of female symbols in Islamophobic rhetoric are striking. In the Islamophobic discourse,

⁶⁵ *Id.* at 591.

⁶⁶ Heschel quotes several sources, including GERDA WEILER, *ICH VERWERFE IM LANDE DIE KRIEGE* (1984), according to whom: “The victorious march of the deuteronomist ideology in Judeah accomplished the radical oppression of women. . . . [The history of Israel shows] how this people leaves the tolerant *Weltanschauung* of its mothers, how it demonises the penetrating love of matriarchal religion, splits off destructive aggression and fights for dominance in the Newar East with a brutal extermination program” (*id.* at 138).

⁶⁷ Judith Plaskow, *Christian Feminism and Anti-Judaism*, in *THE COMING OF LILITH: ESSAYS ON FEMINISM, JUDAISM AND SEXUAL ETHICS 1972–2003* 89 (Judith Plaskow & Donna Berman eds., 2005). See also Susannah Heschel, *Anti-Judaism in Christian Feminist Theology*, 5 *TIKKUM* 25 (1990).

⁶⁸ Plaskow, *supra* note 67, at 89.

⁶⁹ Elisabeth Schüssler Fiorenza & David Tracy, *The Holocaust as Interruption and the Christian Return to History*, 175 *CONCILIUM* (“The Holocaust as Interruption”) 86 (1984). See also Elisabeth Schüssler Fiorenza, *The Bible, the Global Context, and the Discipleship of Equals*, in *RECONSTRUCTING CHRISTIAN THEOLOGY* (Rebecca S. Chopp & Mark Lewish Taylor eds., 1994).

the assumed subjugation of women is often used to elide modern Islam to National Socialism, and to associate the morality of Islamic law to that of Nazi-Fascist laws. The examples are innumerable, and include public intellectuals, politicians, journalists (think of the award-winning Italian Oriana Fallaci),⁷⁰ and feminist activists, such as the Somali-born Dutch Ayal Hirsi Ali, according to whom:

Islam is the new fascism. Just like Nazism started with Hitler's vision, the Islamic vision is a caliphate – a society ruled by *Shari'a law* – in which women who have sex before marriage are stoned to death, homosexuals are beaten, and apostates like me are killed. *Shari'a law* is as inimical to liberal democracy as Nazism.⁷¹

Not surprisingly, Hirsi Ali views the veil as “a constant reminder to the outside world of a stifling morality that makes Muslim men the owners of women and obliges them to prevent their mothers, sisters, aunts . . . from having sexual contact.”⁷²

Furthermore, just as stereotypes of Judaism's patriarchy and authoritarianism continued older motifs prominent in modern anti-Semitic ideology, today's stereotypes of Islam's patriarchy and authoritarianism continue traditional myths concerning the “Oriental” mind, and Oriental despotism which are deeply rooted in Christianity. Gender-based stereotypes have been crucial both in anti-Semitic discourses, as well as in shaping the imaginative geography that divides Occident and Orient and confirms the superiority of the Christendom. In the nineteenth and the twentieth centuries, missionaries systematically relied on the depiction of Jesus as a liberator of women who broke out of the Jewish tradition, in their effort to convert Third World women, by equating the subordination of women in their native tradition with the inferiority of their religion.⁷³ Thus, there is nothing new in using the subordination of women to celebrate the superiority of Christianity as a *religion*. Today's “feminist” argument within the frame of the Islamophobic discourse, however, postulates the superiority of

⁷⁰ According to Fallaci (a world-class political interviewer whose subjects included Yasir Arafat, Golda Meir, Indira Gandhi, Haile Selassie, Deng Xiaoping and Henry Kissinger):

I am convinced that the situation is politically substantially the same as in 1938, with the pact in Munich, when England and France did not understand a thing. With the Muslims, we have done the same thing. . . . Look at the Muslims: in Europe they go on with their chadors and their burkas and their djellababs. They go on with the habits preached by the Koran, they go on with mistreating their wives and daughters. They refuse our culture, in short, and try to impose their culture, or so-called culture, on us. . . . I reject them, and this is not only my duty toward my culture. Toward my values, my principles, my civilization. It is not only my duty toward my Christian roots. It is my duty toward freedom and toward the freedom fighter I am since I was a little girl fighting as a partisan against Nazi-Fascism. Islamism is the new Nazi-Fascism. With Nazi-Fascism, no compromise is possible. No hypocritical tolerance. And those who do not understand this simple reality are feeding the suicide of the West.

See Margaret Talbot, *Oriana Fallaci directs her fury toward Islam*, THE NEW YORKER, June 5, 2008, available at http://www.newyorker.com/archive/2006/06/05/060605fa_fact?currentPage=all.

⁷¹ Ayaan Hirsi Ali, *Interview by David Cohen*, EVENING STANDARD, February 7, 1997, available at <http://www.islamophobia-watch.com/islamophobia-watch/2007/2/7/violence-is-inherent-in-islam-it-is-a-cult-of-death.html>.

⁷² AYAAN HIRSI ALI, THE CAGED VIRGIN: AN EMANCIPATION PROCLAMATION FOR WOMEN AND ISLAM 35 (2006).

⁷³ KWOK PUI LAN, POST-COLONIAL IMAGINATION AND FEMINIST THEOLOGY 95 (2005).

Christianity in its secularized forms, that is, not as a belief system, but as a historical and cultural tradition. This is even more absurd because Christianity, alongside all monotheistic religions, is open to a variety of interpretations, whereas historical traditions are determined by facts. These, in the Christian tradition, include, for example, the Council of Macon of 581, where bishops put much time and energy in debating whether women, unlike animals, had a soul. In other words, one can seriously sustain that the *true* interpretation of Christianity is a feminist interpretation, and that the fathers of the Church, from Saint Paul to Tertullian (“Woman, you are the gate to hell!”),⁷⁴ to Saint Augustine were wrong. But one cannot seriously contend that women have been “elevated” in the Christian historical and cultural tradition, because this is radically contradicted by historical evidence.

However, many veil-related laws and cases draw on this unsustainable assumption. This is true, for example, of the laws enacted in various German *Länder* (Baden-Württemberg,⁷⁵ Saarland,⁷⁶ Hesse,⁷⁷ Bavaria,⁷⁸ and North Rhine-Westphalia)⁷⁹ that prohibit civil servants from wearing Islamic symbols but specifically permit Christian ones, including the nun’s habits.⁸⁰ As a Bavarian ministry official stated, unlike the nun’s habit, the headscarf can be interpreted as a political symbol that denies the equality of women.⁸¹ The Bavarian Constitutional Court upheld the Bavarian law in 2007,⁸² on the basis that “Christianity” does not coincide with the Christian faiths, but rather with values that, albeit rooted in the Christian tradition, have become part of the common inheritance of the Western civilization. According to the Court, religious freedom can be limited in the name of “constitutional values” that pupils must learn. In the case at hand, the Court held that the legislator legitimately gave prevalence

⁷⁴ TERTULLIAN, TREATISES ON MARRIAGE AND REMARRIAGE: TO HIS WIFE. AN EXHORTATION TO CHASTITY AND MONOGAMY (William P. Le Saint trans., Paulist Press, 1951) (“In pain shall you bring forth children, woman, and you shall turn to your husband and he shall rule over you. And do you not know that you are Eve? God’s sentence hangs still over all your sex and His punishment weighs down upon you. You are the devil’s gateway; you are she who first violated the forbidden tree and broke the law of God. It was you who coaxed your way around him whom the devil had not the force to attack. With what ease you shattered that image of God: Man! Because of the death you merited, even the Son of God had to die. . . . Woman, you are the gate to hell.”)

⁷⁵ *Gesetz zur Änderung des Schulgesetzes*, April 1, 2004, and *Gesetz zur Änderung des Kindergartengesetzes*, February 14, 2006.

⁷⁶ *Gesetz Nr. 1555 zur Änderung des Gesetzes zur Ordnung des Schulwesens im Saarland (Schulordnungsgesetz)*, June 23, 2004. In the explanation to the draft law, it is stated that the regulation is not limited to headscarves, however, the wearing of Christian and Jewish symbols remains possible.

⁷⁷ *Gesetz zur Sicherung der staatlichen Neutralität*, October 18, 2004.

⁷⁸ *Gesetz zur Änderung des Bayerischen Gesetzes über das Erziehungs- und Unterrichtswesen*, November 23, 2004.

⁷⁹ *Erstes Gesetz zur Änderung des Schulgesetzes für das Land Nordrhein-Westfalen*, June 13, 2006.

⁸⁰ Hum. Rts. Watch (citing the explanatory comments in the Bavarian government draft law, *Gesetzesentwurf der Staatsregierung zur Änderung des Bayerischen Gesetzes über das Erziehungs- und Unterrichtswesen*, Bavarian parliament, 15th election period, Drucksache 15/368, Feb. 18, 2004).

⁸¹ *Id.*

⁸² Bayerischer Verwaltungsgerichtshof [BayVGH] [Bavarian Higher Administrative Court], Jan. 15, 2007, No. Vf. 11-VII-05, available at <http://www.bayern.verfassungsgerichtshof.de/>.

over individual religious freedom to the need to protect the “teaching objectives” and the “credible transmission of fundamental values” from the “danger” posed by clothes that clearly mark a religious (i.e., non-Christian) belonging. Said differently, the nun’s habit is admissible because it represents the woman-elevating Christian-Occidental tradition, while the headscarf is banned because it embodies the Oriental degradation of women and undermines the teaching and transmission of fundamental values.

One must conclude that a miracle occurred, since the headscarf turned one of history’s most profoundly misogynist traditions into a woman-elevating trajectory. This seems to uphold the argument advanced by Meyda Yegenoglu in her book *Colonial Fantasies: Towards a Feminist Reading of Orientalism*. According to Yegenoglu, “[i]n the construction of the Oriental other is the West desire to set boundaries for itself as a self-sustaining, autonomous and sovereign subject.”⁸³ Hence, Orientalism’s appeal derives from its ability to structure the very object it speaks about and from its capacity to articulate a convincing discourse of the other, thus establishing the identity of the subject that characterizes the identity of the other. In this light, Western feminism’s universalistic foundations have been, and continue to be fed by concealing the context out of which the Western subject is comparing herself to its non-Western counterpart.⁸⁴ Thus, Western feminism reproduces the core flaws of Orientalism, because “the Western subject (irrespective of the gender identity of the person who represents the Orient) occupies not only the position of the colonial, but also a masculine subject position.” Accordingly, Western feminism (and the Western self more generally) reaches its path to autonomy through engagement in a process of differentiation with its non-Western (Oriental) Other.⁸⁵

In other words, disguised as an accusation and projected onto the prospective victims, patriarchy becomes the exclusive domain of the other, while at the same time enabling the Western self to establish its own identity. Thus, as my analysis has sought to prove, the use of feminist arguments in anti-veil measures contributes to the strengthening of the (imagined) identitarian boundaries (Christian/Occidental versus Muslim/Oriental), as well as to the reinforcement of (real) gender oppression, by enabling a political use of women’s bodies. These two outcomes are strictly intertwined, as sex and gender play a key role in identity-related dynamics. As posited by Seyla Benhabib, the construction of the self and the other, the struggle over identity, is linked to sexual difference.⁸⁶ In the veil struggle, sexual difference demarcates the line between the self-portrait offered by the self and the portrait that the latter offers of the other; that is, between the Western, gender-egalitarian self against the Oriental and patriarchal other.

However, neither the real self, nor the real other, *are* as they are portrayed. The other is not what a subject distinguishes itself from, and vice versa. Misogyny and gender oppression cross ethnic, religious, cultural, and geographical boundaries,

⁸³ YEGENOGLU, *supra* note 19, at 14.

⁸⁴ *Id.* at 59.

⁸⁵ *Id.* at 90 *et seq.*

⁸⁶ BENHABIB, *supra* note 2.

preventing the drawing of clear-cut lines. There is no such thing as a monolithic “Muslim world” in which women are “monstrously oppressed,”⁸⁷ any more than there is a single “Christian world” in which women are fully liberated. The last time an Italian judge applied a provision⁸⁸ which excused honor killing, was in 1981. The trial, as it invariably happened in analogous cases, ended with great applause from the public, who enthusiastically supported the accused for the way he exemplified how a true man should act. Having said this, when Italians migrated to America, Switzerland, Germany, or France, Italian women, many of whom had the habit of covering their head in public, were never prevented from dressing the way they chose, even if that reflected their patriarchal country of origin.

It is beyond dispute that many predominantly Muslim countries, and particularly those ruled by religious law, pose especially acute problems in terms of the treatment of women. Focusing on how “Muslim culture” is inscribed in Muslim immigrant women, however, is a way to displace genuine criticism of those societies and legal systems for their oppressive norms and practices. The examination of the cultural matrix of gender oppressive practices falls within the expertise of anthropologists, not that of judges and legislators. It is the oppressive practices, irrespective of whether they have roots in history, geography, culture or religion that should be targeted by the law, not their byproducts as symbolized on women’s bodies. And if the Western legal system is seriously committed to gender equality, it should ensure that all girls and women, from all cultures and religions, fully enjoy their rights to education, to work, to participate and to be represented, instead of demonizing some of them for embodying in their way of dressing values that are looked down upon by Western societies, even though like values have by no means yet been uprooted from the latter.

Blaming Islam for patriarchy does not free the “Occident” from its roots in it, nor does it, by the same token, dislodge it from the “Orient.” It just continues a well-known standard rhetoric, one that, as Yael Tamir put it, “leads us to condemn other societies while minimizing the deficiencies of our own. Hence it obstructs fruitful cross-cultural criticism, and fosters social hypocrisy, perhaps even moral obtuseness and parochialism.”⁸⁹

⁸⁷ Ahmed, *Western Ethnocentrism*, *supra* note 11.

⁸⁸ Article 587 of the Criminal Code (repealed by Law no. 442 of 5 August 1981) stated:

Whoever causes the death of a spouse, daughter or sister when discovering the latter’s illegitimate sexual relations, and in the state of anger determined by the offense caused to his honor or that of his family, shall be punished by imprisonment 3 to 7 years (my translation).

⁸⁹ Yael Tamir, *The author’s reply to critics of her article Hands Off Clitoridectomy*, BOSTON REVIEW, October–November 1996.