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Contents

Regimes of Accommodation, Hierarchies of Rights

Monique DEVEAUX

University of Guelph

This chapter seeks to illuminate the social and political context in which legislation aimed at regulating the wearing of the niqab in Quebec – Bill 94 – arose. In doing so, it offers a critical analysis of the public framing of what came to be known as the "niqab affair," and proposes an alternative approach to mediating conflicts over religious and cultural norms. Drawing on the work of philosophers Étienne Balibar and Wendy Brown, I suggest that the prevailing assumption that the niqab represents a deep division between pre-modern, traditional, and religious norms and customs on the one hand and a modern, emancipated and secular way of life on the other obscures the backdrop of racialised identities and civic identity-building that fueled the niqab controversy. I also draw on feminist and postcolonial accounts of the putative tensions between feminism and multiculturalism – such as those by Himani Bannerji, Anne Phillips, and Sawitri Saharso – to illuminate some troubling aspects of the public presentation of the niqab dispute.

Official justifications of Bill 94, I argue, were predicated upon oversimplified interpretations of two closely related principles, those of sexual equality and personal autonomy (including the idea of choice). These interpretations are troubling chiefly because they ignore the complex and contested nature of these norms in culturally diverse societies like Canada. What is needed instead to help negotiate *genuine* problems of multicultural accommodation is a more politically inclusive, democratic, and deliberative approach to adjudicating instances of conflicting norms. Such an approach, which I sketch in the final section of the chapter, aims to avoid unhelpful and harmful cultural essentialism as well as to broaden our understanding of the meaning of, and requirements for, personal autonomy and sexual equality in multicultural contexts.

1. A Manufactured Conflict?

Philosophers and sociologists have played a central role in contemporary political debates about the social and legal accommodation of religious and cultural practices in multicultural liberal democratic states. In Canada, Charles Taylor, Will Kymlicka, Gérard Bouchard, James Tully, Melissa Williams, and Avigail Eisenberg are among the many thinkers who have contributed to public discussions about whether – and how – to legislate on issues relating to minority cultural and religious practices. Well-meaning and respectful of differences, these thinkers have too often assumed that cultural conflicts giving rise to dilemmas of accommodation are a reflection of deep-seated moral and religious differences, rather than disputes arising in response to concrete socioeconomic and political circumstances. This framing unfortunately obscures the strategic, political character of many cultural disputes, causing us to neglect numerous essential questions, such as: Why has a particular custom or arrangement come under public scrutiny at this time? How has the state contributed to the making of the conflict or crisis? Who is supporting the practice and who is opposing it, and why? What are the relative power positions of the supporters and dissenters? And what channels are there for (internal) dissent, and for contesting and (if necessary) amending the custom in question (Deveaux, 2006)? Views of cultural tensions that emphasize deep cultural cleavages risk falling back onto an essentialist treatment of non-European cultural groups living in Western states (Narayan, 1998; Dhamoon, 2009; Phillips, 2010) in which the actions of the 'Other' are always overdetermined by culture. Indeed, as Anne Phillips argues, "an exaggerated language of cultural difference has lent itself to ethnic reductionism, cultural stereotyping and a hierarchy of 'traditional' and 'modern' [...] Cultures have been misdescribed as organized around static defining values [and] misrepresented as more distinct from one another than they really are" (2010: 4).

Such a problematic framing of incidents involving cultural accommodation is readily apparent in a number of disputes over cultural practices in Canada, from the case of proposed sharia courts in Ontario in 2004 to highly publicized criminal cases of alleged honour killings in Ontario and British Columbia. These disputes, like that concerning the niqab, are readily and troublingly portrayed by both mainstream media and politicians as evidence of profound and even incommensurable differences between the minority religious or cultural group in question (often recent immigrants) and the European host society. It is therefore important to note the immediate political context in which the proposed Quebec legislation regulating the wearing of the niqab arose, for it serves to caution us against taking the official justification of the bill at

face value and goes some distance in explaining the provincial and national media's presentation of the issue. In particular, there is reason to view the announcement of Bill 94 as an opportunistic attempt to appease nationalist sentiments in Quebec and so to reverse the waning popularity of the province's reigning Liberal political party by reclaiming some of the populist terrain occupied by the Parti Québécois. The legislation was introduced just days after the publication of a declaration by public intellectuals and political figures in support of a secular Quebec, prominently displayed in *Le Devoir*; it also followed much badgering and grandstanding by the Parti Québécois in the National Assembly demanding a charter of secularism for the province. That the bill subsequently met with the approval of a large majority of Quebeckers would seem to further confirm the charge of political opportunism, as would the timing of its announcement – a week before the decidedly unpopular austerity provincial budget was released – ushering in regressive taxes and new healthcare premiums.

But while the immediate political context may go a long way towards explaining the timing and content of this bill, the broader identity politics of which it is a part is also highly significant. In particular, it appears that veiling regulations, as a central component of what we might call, echoing Michel Foucault, "technologies of multicultural governmentality" (1991), play a not-insignificant role in the construction of a modern Quebec national identity. Foucault's idea of governmentality refers to the historical development of the modern state's interest in, and techniques of, governing its citizens' relations to "customs, habits, ways of acting and thinking, etc." (1991: 93); these "tactics" of the state, as Foucault calls them, extend beyond the use of law to include a range of normalizing practices associated with such modern institutions as schools, prisons, hospitals, the family, and so forth (1991: 95). Extending this notion of governmentality to an examination of Quebec's evolving civic identity may prove fruitful. This identity, as numerous commentators have noted, newly embraces the values of secularism or *laïcité* and sexual equality; restrictions on the religious clothing of women perceived to be members of communities lagging in gender equality are of course perfectly poised to represent these two principles. The conscious development of a "modern" civic identity that eschews religious norms yet is oddly nationalistic parallels developments in Western Europe. In a recent op-ed piece in the *New York Times*, Jürgen Habermas relates the growing backlash against Muslim immigrants in Germany to the resurgence of the ideal of *leitkultur*, a "guiding national identity" that explicitly appeals to common, ethnically German values. This account of German citizenship and identity treats recent immigrants, especially Muslims, as a hostile cultural foil. As Habermas writes,

the idea of the *leitkultur* depends on the misconception that the liberal state should demand more of its immigrants than learning the language of the country and accepting the principles of the Constitution. We had, and apparently still have, to overcome the view that immigrants are supposed to assimilate the 'values' of the majority culture and to adopt its 'customs' (2010).

The process of identity-building in Germany that Habermas describes is analogous, it seems, to that currently taking place in Quebec: both are framed in the language of civic values, and both depend crucially on the demarcation of the norms of the host society from those of recent immigrants. The proposed Charter of Values rolled out by the provincial government in 2013 also plays on these differences between citizens of French descent and racialized newcomers. As Habermas's comment suggests, the power relations between new immigrants and German nationals are reflected in the assumption that the former should conform to prevailing principles and practices as a sign of respect for the host society. Similarly, the wording of Bill 94 and the public announcements made on its behalf make it clear that there can be no disagreement or room for interpretation where Quebec's (pre-determined) core values are concerned.

The power dynamics that underpin the legislation as well as the province's evolving regime of multicultural accommodation more generally have been shaped by significant background structural inequalities between the cultural and racial majority and certain of Quebec's racial and religious minorities. Race is of course absent from the wording of the bill, just as it was largely absent from the Bouchard-Taylor Commission's report (2008) on reasonable accommodation a few years earlier. This in itself is not surprising: as a number of critics of Canadian-style multiculturalism note (Mills, 2007; Hooker, 2009; Dhamoon, 2009), explicit talk of race is often eschewed by Canadian commentators, who prefer to stay on the more comfortable terrain of language and culture. Bannerji has aptly named this neutralized vision of relations of power that marks much Canadian political theorizing about cultural recognition, "innocent pluralism" (2000).

And yet, the immediate backdrop to the bill is one of pervasive and significant inequalities in employment and in social and political life more generally, in Quebec. This is particularly the case among the North African immigrant communities from which the niqabi hail. According to the provincial government's statistics, North and West African immigrants and Quebeckers of Afro-Caribbean descent have much greater rates of unemployment than the general population, *despite higher levels of educational attainment, on average* (17.1 per cent unemployment for blacks compared with 8.2 per cent for the general population, using

2005 statistics;) the discrepancy for North African immigrants is even higher: 17.5 per cent and 27.2 per cent for Moroccan and Algerian immigrants, figures which jump to 33.6 per cent and 35.4 per cent for those who immigrated to Quebec less than five years ago (Lenoir-Achdjian *et al.*, 2009).

Almost entirely absent from the public discussion of Bill 94, this quite relevant backdrop would seem to belie one of the key justifications of the bill: the commitment to norms of state neutrality *vis-à-vis* religious and other minority groups. Despite the government's purported secularism and policy of non-discrimination towards ethno-cultural, racial and religious groups, practices of cultural racism have arguably emerged which serve to characterize the attitudes and customs of certain immigrant groups as pre-modern or uncivilized and the norms and laws of Quebec society as modern and evolved. Unlike earlier forms of racism in which race and color are the explicit object of focus, this "new racism" is, as Étienne Balibar has suggested, in one sense "without races" (2007: 163 and 2008: 1638): it is more of a "cultural" or "differential" racism with religion at its core, and distances itself from conventional racist discourse that emphasized skin colour and blood lines. This new racism readily and insidiously invokes representations of racialized immigrants as having social attitudes and values different from and incompatible with those of the nation, and frequently references religious practices and even putatively inferior aptitudes. While the wording of Bill 94 does not, of course, directly single out practicing Muslims, it nonetheless draws attention to a stereotyped version of this community with its reminder that "accommodations" must be consistent with the right of gender equality and the principle of religious neutrality (II, 4). Coupled with its insistence that government workers and those accessing public services "show their face" (II, 6), the bill clearly aims to convey a stern (and pedantic) message to Muslim women who wear the face veil. If we needed any confirmation of the cultural condescension that accompanied the proposed legislation, Jean Charest's frank comments to the media following the bill's introduction provided ample clarification: "Two words: uncovered face. The principle is clear".

The process by which Quebec seeks to define its evolving national identity is then, arguably, one that depends upon the use of recent immigrants – and especially Muslims – as a cultural and racial foil. And indeed, this is a pattern that commentators on contemporary European identity building have also noted (Meer *et al.*, 2008). The frequent rhetorical appeal to the Quebec Charter of Human Rights and Freedoms in defense of the niqab bill puts new citizens on notice that these principles override any cultural norms that may be in tension with them, at the same time as it signals the difference and otherness of niqab-wearing

women. The singling out of this one racialized community – Muslims – women. The singling out of this one racialized community – Muslims – for a lesson and directive in Quebec's values of secularism and sexual equality, has been a common theme in the media coverage as well as much public sentiment surrounding the bill. To a significant extent, then, Quebec's current national identity is taking shape through its construction of, and subsequent struggle against, what Balibar calls "un ennemi intérieur" (2007: 169): namely, the racialised Muslim immigrant that (allegedly) does not share the same values as native Quebecois. This idea of the "outsider within" is reinforced not only by Bill 94, but by other government initiatives as well: consider, for example, the proposal to add a second sexual equality clause to the Quebec Charter of Rights, urged by the *Conseil du statut de la femme du Québec* (CSF), so as to ensure that sexual equality be clearly understood to *trump* religious freedom.[1] A still more prominent example is the unabashedly didactic *Déclaration sur les valeurs communes de la société québécoise*, set forth in late 2009 by the Quebec Ministry for Immigration, which prominent-ly features the principles of formal sexual equality and separation of religion and state among the seven featured core values that it declares new and prospective immigrants must accept.[2] The subsequent proposed Charter of Values retains this mistaken insistence on the neutrality of Québec culture as contrasted with newcomers' values and practices.

The construction of a new Quebec national identity committed to secularism (or *laïcité*) and sexual equality is thus achieved in part by identifying a common social threat – the newcomer who fails to respect Quebecois values – and also by marshalling a multi-tiered response to that threat. The language of security and identification so central to Bill 94 is not, I think, incidental here: for this new civic identity to take shape, a process of internal exclusion is needed, one whereby certain customs, and by extension the persons that practice them, are deemed beyond the scope of reasonable accommodation. The public act of excluding that which cannot be accommodated – that which cannot be "harmonized" – is therefore crucial. In Quebec, as in Europe, we see the affirmation of a form of citizenship that claims to be at odds with deep religiosity, as well as with the cultural apartness with which it is thought to be intertwined. Both are depicted as in some sense pre-modern, and consequently as a threat to the prevailing way of life in the host society.

We may ask, is it possible to set aside the more troubling elements of Quebec's national identity – specifically, those that have taken shape in

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1   See the CSF's *Gazette des femmes* (Sept.-Oct. 2007), p. 23.

2   http://www.immigration-quebec.gouv.qc.ca/fr/avantages/valeurscommunes/index.html. Sirma Bilge also notes that since January 2009, new arrivals are expected to sign this declaration of values (2010: 207).

opposition to racialised, immigrant Others – and simply defend its loftier aspects, including its ostensible commitment to diversity? This is not easily done: Bill 94 and the rhetoric surrounding its defense invoke some of the troubling aspects of the framework of "reasonable accommodation" that is so distinctive of Quebec's official approach to social diversity. Like the policy of "interculturalism" proposed by the Bouchard-Taylor Commission report as Quebec's alternative to multiculturalism, "reasonable accommodation" – along with its strategy of "harmonization" – does not just describe an official policy but also represents a deeply normative approach to the possible and actual points of friction between racialised immigrant minorities and the putative secular and liberal Quebec state. As we have seen, the official discourse of state accommodation includes within it an appeal to a national identity formed in opposition to the internal or internalized enemy: the Muslim would-be citizen. As David Theo Goldberg explains, "state personality, its purported character, is predicated on the character of state practices and what the state stands for" (2002: 246); and in Canada as elsewhere, this personality has been shaped through racial structures, practices and policies that are not always transparent. Bill 94, and instruments like the *Déclaration des valeurs communes* – including its most recent iteration, the Charter of Values –, set out in a categorical fashion what the key values are in this socially diverse society, and insist on particular interpretations and rankings of these values that can brook no disagreement. At a minimum, the "outsider within" needs re-education in the principles and norms of secular Quebec society, and may even require strict exclusion from the public sphere (as in the symbolic exclusion of the niqab.) The government's approach to creating this disciplinary legislation makes sense when seen in this light. Importantly, the consequences of this disciplinary approach to regulating the custom of the niqab are far-reaching: as Goldberg argues, once the state begins to institutionalize the oppositional national identity it affirms, it effectively magnifies and extends the racial character of the state:

> It marks the space of the social not just in racial colors but in a threatening hue by rendering the state of exclusions to what one might call the character, the 'personality' of state condition itself. *The state of social life takes on a particular character as a consequence, a disposition towards people defined as and in terms of population or group belonging* [...] The particular definitions of race by the state and articulations of racist exclusions through the modalities of class, gender, and national belonging characterize state personality, what the state 'looks' and 'acts' like, its very 'demeanor' (2002: 245).

A fuller understanding of the context and framing of the niqab law in Quebec, including the racial character of the state that enacted it, is thus

crucial to any normative evaluation of the justice of such a piece of legislation. This requires, at a minimum, asking: *who* is it that is pressing the niqab as an issue for legislation, and why might they be doing so? What issues might Muslim communities prefer to see on the political agenda? How might the background power asymmetries of different racial and religious communities in Quebec shape the content and justification of the emerging civic identity? And how have they shaped the terms of the public debate about the niqab? Above all, a full understanding requires that we not accept at face value the provincial government's insistence that discussions about racialised identities and racism are simply not relevant to Bill 94, or to the province's project of "reasonable accommodation" more generally. Such an understanding also demands that we look beyond justifications that stress the protection of putatively core values of secularism, religious freedom, sexual equality, and state security, and instead consider the broader aims of governmentality associated with the bill.

2. Gender Equality and the Hierarchy of Rights

One of the key initial justifications of Bill 94 and similar legislation in France and Belgium is that the niqab is at odds with the principle of women's sexual equality because it is a tangible symbol of women's subordination to men. In the time since the legislation was announced in March 2010, this reason has arguably developed into the government's main defense of the ban, more important even than the principle of secularism and concerns about security. It is therefore important to reflect on the role that this principle plays not only in the niqab affair, but also in the process of national identity building more generally. Which particular interpretation of this norm is insisted upon in the debate over the niqab? And what alternative visions of gender equality are excluded from it? And what underlying conceptions of culture may be shaping the gendered stereotypes about Muslim women and men so prevalent in public debates over the niqab? I want to offer some preliminary thoughts in response to some of these questions, but also to say why legislation to prohibit what are ultimately contested and multivalent gender-based practices like head and face veiling holds serious implications for multicultural democracies. In the absence of meaningful consultation with the affected communities the assertion of the primacy of sexual equality and secularism – understood in very particular ways – creates a dubious *hierarchy of rights* within an already exclusionary regime of multicultural accommodation.

The appeal to gender equality as a reason to oppose minority cultural practices in liberal states is reflective of a broader trend: as Anne Phillips and Sawitri Saharso have noted, this appeal to the rights of women

has even "come to play an important role in the current retreat from multiculturalism," in culturally plural liberal democratic states (2008: 292). (Compare the justification offered for similar bans adopted by Syria and Egypt, which highlight political and security concerns related to Islamic fundamentalism.) Portraying Muslim women as thoroughly "saturated" by religion in debates over religious clothing, or as essentially *defined* by their religiosity (Brown, 2013), this move also depends upon an essentialist view of culture, particularly in connection with the roles of women (Phillips, 2007: 8-9). Where countries have produced documents similar to Quebec's *Déclaration des valeurs communes*, aimed at new immigrants, gender equality is high up in the list of the defining civic values singled out: in Denmark, new arrivals must actually sign a contract "stating that they accept the principle of gender equality, and recognize that female circumcision and forced marriage are officially illegal," according to Phillips and Saharso (2008: 293).

In a sense this emphasis on the behaviour and status of women immigrants is to be expected: many a commentator has noted the way that women have historically been seen to "embody the nation" as well as to represent particular aspects of cultural "Otherness." As Meer *et al.* argue, "Women [...] become the signifiers of national differences in the construction, reproduction and transformation of national categories [...] It is women who come to 'embody' the nation as such" (2010: 85). As a consequence, women's status can, in some circumstances, become a flashpoint in the process of national identity formation, particularly when that identity is perceived to be under threat. Just as the secular/religious distinction can be understood as marking the modern state off from pre-modern society in debates about accommodation, so can we see the sexual equality/sexual subordination binary being used to solidify the state identity or state personality – in Goldberg's sense – in places like France, Belgium, Germany, and Quebec. The marking off of Muslims as in some way pre-modern is rarely made fully explicit. But as Sherene Razack notes in her discussion of the shari'a law controversy in Ontario, "the eternal triangle of the imperiled Muslim woman, the dangerous Muslim man and the civilized European" is never far from the surface of these discussions (2007: 5).

Significantly, the conception of sexual equality invoked by the bill and its proponents highlights *formal* but not *substantive* equality, in the sense that it requires sameness of treatment for men and women. This interpretation, as Sirma Bilge argues, apparently holds that women's physical separation from men – for religious or other purposes – necessarily implies the subordination of women (2010: 220). By contrast, the Canadian Charter of Rights and Freedoms quite clearly supports a substantive definition of the principle of sexual equality, according to

which women's *actual* and realizable opportunities for equal participation in different sectors of life are seen to be equal – that is, opportunities for education and employment, social and political participation, and equality in the critical services that support these, such as healthcare and childcare. This discrepancy in interpretations of the norm of sexual equality could well generate future legal challenges if the bill passes: for example, Beverly Baines has suggested that we could see a constitutional challenge to the niqab ban on the grounds of its discriminatory *impact* on some women (2010). Indeed, there is some evidence that countries with particularly strong anti-sex-discrimination laws and institutions have been less likely to introduce veiling restrictions precisely because of the concern that they would face legal challenges from gender equality and non-discrimination laws (Sauer, 2009).

The ironic prospect that the niqab ban could be challenged by appeals to sexual equality laws stands as a powerful reminder that this norm is not reducible to a single meaning or application, but is multivalent and contested along social, political and legal dimensions, even within a single polity like Quebec. Banning the religious garb that some women opt to wear could easily be seen as impeding the goal of sexual equality. The insistence on a single definition and application of sexual equality becomes still more problematic when it is accompanied by the demand that this norm be given automatic legal precedence over the principle of religious freedom. The addition of a second sexual equality clause to Quebec's *Charter of Human Rights and Freedoms* is troubling from this point of view, because it did not follow wide consultation with different cultural communities. Both the legitimacy and the effectiveness of a given hierarchy of rights is in question if it ignores the diverse and contested interpretations of these norms in Quebec's multicultural society. A sounder and more genuinely democratic way to proceed would be to invite stakeholder citizens to openly discuss, in public forums, how they understand these values and their relation to other norms, and how they think such values can best be integrated and institutionalized both in government institutions (and legislation) and civil society. At a minimum, any proposed legislation to amend or ban a cultural or religious practice requires extensive consultation with the communities that stand to be most affected by such a law, both during the drafting process and once it has been tabled; the architects and defenders of Bill 94 have not, however, invited this kind of wide consultation.

3. Contested Understandings of Autonomy and Choice

To open up a conversation about the meaning and application of sexual equality in a diverse society is not tantamount to a call to repeal existing gender equality protections; nor does it imply that the state should ignore gender-based social practices that are harmful or discriminatory. It does, however, require that the legal and political discussions about practices that may be detrimental to women in a given society be made much broader in scope: such discussions should include not only analysis of (minority) cultural and religious traditions, but of mainstream social practices, government programs, problems of discrimination in employment and housing, and so forth. This broader view of the circumstances and structures that may shape or constrain women's lives in problematic ways also requires that we expand our inquiry into the conditions for, and forms of, women's autonomy and choice. While not seeking to dismiss the importance of women's capacities for independence or to relativize the concepts themselves, a number of postcolonial feminist theorists have suggested that the prevailing assumption that women who practice highly gendered customs have little or no agency is simply untenable. In the case of veiling, for example, Uma Narayan argues that only two possibilities are typically imagined: "In the prisoner of patriarchy model, the veil is entirely imposed on the woman – she veils because she must. In the dupe of patriarchy model, she veils because she completely endorses all aspects of the practice" (2001: 419). These overly simple alternatives cannot, of course, be the only responses to a practice as varied, multifaceted, and contested as veiling. The sheer array of different religious, social and political contexts in which veiling arises should caution us against thinking in such dichotomous terms. That the stereotypes that fuel the dupe and prisoner of patriarchy models are limiting was amply evident in the 2004-5 furor over whether sharia arbitration should be permitted under Ontario's 1991 *Arbitration Act*, an option already available to some other religious communities (Jews, Catholics, etc.). As Avigail Eisenberg notes, the media and feminist organizations alike

> repeatedly characterized [sharia] as coercively imposed on women, without any explanation of whether this coercion is endemic to the practice or an abuse of it. In large part, racist rhetoric and stereotyping filled the gap left by the absence of accountable information about the nature of religious arbitration and its importance in Islam (2009: 48).

While hard questions about the use of coercion to secure adherence to religious practices must, of course, be asked, it is also important to acknowledge arguments (both practical and principled) in support of this form of religious accommodation.

That assumptions about Muslim women's agency or lack thereof should arise in the context of the niqab debate in Quebec and elsewhere is not surprising; women's capacities for independence and self-expression are quite reasonably taken to be a component of sexual equality. But as illustrated by the widespread use of the motif of choice

In exploring these and related questions, it is arguably better to invoke a procedural, rather than substantive, conception of autonomy. Whereas the latter fills in the substance of a subject's choices with a normative script, the former places the focus on an individual's capacities and opportunities to live a life in keeping with their own reflective values. A procedural account of autonomy does not require that one's choices depart dramatically from those of one's family or community, though it does of course recognize these choices too as expressions of autonomy (often with difficult consequences). That is, it does not conflate autonomy with a caricatured form of self-determination as individual sovereignty (Deveaux, 2006: 160). Instead, it begins from a broader account of agency that allows us to see that reflection on one's values and attachments necessarily come in various degrees, and may consist not only in rejection but affirmation (and everything in between). But it would be a mistake to think that this rather minimalist, procedural conception of autonomy lacks the critical capacity to help in the adjudication of disputes over controversial – and possibly harmful – practices. Rather, as I have argued (2006: 174), this conception requires that in their everyday lives, women must be able to resist and reshape roles and expectations that are oppressive to them without fear of repercussions such as physical threats and harm. Formal respect for the procedural autonomy of women in religious communities would mandate certain protections against such harm, as well as support services funded by the liberal state whose aim would be to empower vulnerable women. If they are to resist, revise, and reform aspects of their cultural traditions, women's procedural autonomy must therefore be respected and protected.

Conclusion: Inclusion and Deliberation

In this chapter, I have tried to show that Bill 94 arose in a political context in which a new national and civic identity has also been taking shape, one that upholds norms of secularity and (a particular account of) sexual equality and opposes these to religiosity and traditional gender roles. This opposition has helped to reinforce the (implicit) status of certain immigrants, particularly Muslims, as racialised "Others" in Quebec society. I have also argued that sexual equality and autonomy (or choice) are more complex principles and capacities than proponents of the niqab ban acknowledge. When viewed in a more properly nuanced light, they do not readily or automatically justify legislation along the lines of Bill 94. One of the lessons I hope to have drawn out with this discussion is that it is unhelpful – indeed, counterproductive as well as undemocratic – to invoke norms of sexual equality and autonomy as simple trump cards in a multicultural society such as Canada. These norms in particular, so important to debates about women's status, are

by *defenders* of the niqab and veil, the principle of autonomy is not an obvious trump card for those seeking to restrict the wearing of the niqab. Many proponents of Bill 94 have sought to portray the niqab as a custom that is both imposed on women (though sometimes obscured by a false consciousness) and one that serves as an enduring symbol of their lack of choices and opportunity. But not only does this characterization make it difficult to account for the legal efforts of women in Canada to protect their right to wear the veil (or niqab), it narrowly equates personal autonomy with the (selective) *rejection* of religious or cultural practices. In connection with this point, Saba Mahmood has argued that by locating women's agency in visible portrayals of *resistance* to social and religious strictures we will tend to overlook the possibility of embedded agency, as exercised in "traditional" contexts (2005). To counter this bias, Mahmood urges us, rightly in my view, to explore "different modalities of agency whose operations escape the logic of resistance and subversion of norms" (2005: 167).

The problem of "adaptive preferences" – wherein a person's wants and choices adapt to their constrained circumstances – is surely a real one, but as explanations go, it is far from comprehensive. In insisting that veils or niqabs or burqas necessarily symbolize women's subordination to men and their lack of autonomy, Bill 94 paints Muslim women who wear the niqab with a single brush and ignores their diverse interpretations of the practice and reasons for adopting it. According to this view, either they submit to it without appreciating its implications, or they think, falsely, that they "choose" it – a choice presumably invalidated by their false consciousness. Neither explanation can satisfactorily make sense of recent legal and political activism by women who want to wear the niqab, however; examples of such activism have sprung up in Quebec as well as Ontario, where recently a woman successfully appealed a lower court decision requiring her to remove her niqab in order to present testimony (cases in the Superior Court and the Ontario Court of Appeal). If there are genuine grounds for concern regarding the niqab's impact on Muslim women's agency, then at a minimum it makes sense to ask a more complex set of questions regarding their participation in the custom, rather than rushing to judgment. What reasons are women themselves giving to explain why they wear the niqab? What value – religious, cultural, political? – do they invest in this custom? What opportunities, activities, and domains are closed to women who don the niqab, and why? Are these activities a source of significance, without which women cannot readily lead lives they have reason to value? And are they essential to women's legal sexual equality, broadly construed?

multifaceted and frequently contested: do we endorse formal/legal, or substantive, sexual equality? If so, what precisely must the latter consist of? What aspects and expressions of personal autonomy are most valuable, and how are they best supported and protected? None of these are questions that can be answered *a priori*, in my view, without wide consultation with the affected communities. To the extent that racial and religious minorities are not included in processes of multicultural policy formation about matters that directly concern them, subsequent legislation fails the normative test of democratic legitimacy (and is also unlikely to be effective in practice).

Democratic deliberation about contested social practices can range from informal community consultation over proposed government legislation to public hearings to specially designed community political dialogues. All of these are time-consuming and face many possible objections, of course. Depending on how inclusive the process is, some voices may be weighted too heavily and some may be muffled. Critics may also object to a public deliberation about contested practices on the grounds that it singles out minority arrangements for special scrutiny and reinforces the impression that integration is wholly the responsibility of these communities.[3] And of course deliberation may *not* lead to consensual outcomes – hence, the need for negotiation and compromise. But from the standpoint of normative concerns about democratic legitimacy in societies with extensive cultural, racial and religious diversity, I can think of no more just alternative than inclusive political deliberation, or what I call a "deliberative approach to conflicts of culture."

Where something like this process has been tried it has been valuable for several reasons (Deveaux, 2006). First, invited consultation with a full range of perspectives within minority communities, as well as more extensive frameworks of public deliberation, help to bring to light the issues and problems that different sectors of the affected communities perceive to be important. The picture that emerges may and often does contrast sharply with the one that politicians imagine. Were this to be tried in Quebec, my hunch is that Muslim women would emphasize many other issues over the niqab: the lack of facilities or support for victims of domestic violence, unemployment and lack of access to job training and housing, and so forth. In elevating the issue of the niqab above all others, the state discounts women's own accounts of the sources of their vulnerability.

Second, when it is properly executed, democratic consultation and deliberation goes a long way towards restoring broken trust and expos-

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3   This assumption is made in media commentaries about contested practices, as Meer, Dwyer and Modood suggest in "Embodying Nationhood," p. 100.

ing false stereotypes and assumptions. The inclusion of affected communities signals respect for minority citizens' values and perspectives, and should, in my view, be seen as vital to the legitimacy of any subsequent proposed legislation. In a context in which niqab-wearing Muslim women are simply assumed to be oppressed and are not invited to deliberate about the meaning of this symbol, the mutual respect presupposed by Quebec's signature strategy of "interculturalism" is not much in evidence, nor is the attitude of receptivity or "openness to the Other" which the Bouchard-Taylor report (2008: 242) cites as key civic virtues.

Finally, on pragmatic grounds, an inclusive, deliberative democratic approach to dealing with conflicts of culture can help policymakers to draw on the wealth of experience and expertise of minority community organisations that have often grappled for much longer with the problems at hand. For example, in the United Kingdom, the government began an inquiry into forced marriage nearly a decade ago, and after numerous dissatisfying steps towards legislation began to invite women's organizations to participate in the process, particularly Muslim and South Asian groups and those focused on issues of domestic violence. This consultation was not merely symbolic; one of the most long-standing British groups dedicated to activism on behalf of women of color (the Southall Black Sisters) participated in the process of drafting and revising the proposed bill, and their work and that of related groups was critical in shifting many of the early misconceptions about forced and arranged marriage. Such inclusion also served, ultimately, to bring about a more effective piece of legislation – the *Forced Marriage (Civil Protection) Act of 2007* – and greater awareness of the kinds of strategies and state and community supports necessary to implement it.[4]

The suggestion that we move to a more consultative, democratic and deliberative framework for deciding what – if any – reforms are called for in response to particular social practices, may go too far, for some, yet for others, not far enough. To the former I would say we need to think hard about what a vibrant democracy should look like in a multicultural society – and to consider how immigrant citizens too can contribute to debates about contested customs as well as to the shaping of the broader principles affirmed by the host society. To the latter, I readily concede that we need to acknowledge the danger of lending legitimacy to structures that are permeated by troubling assumptions about minority communities, unexamined attitudes of entitlement, and institutionalized power asymmetries. But there have been some surpris-

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4   As Anne Phillips and Moira Dustin note in their discussion of this case, "the greater involvement of women's NGOs in formulating strategies and initiatives helps secure better ways to tackle abuses of women without inadvertently promoting abuses of 'culture'" (Dustin and Phillips, 2008: 420).

ing outcomes where a deliberative approach has been adopted. Nor need formal deliberation and government consultations replace the grassroots political activism that has been so instrumental in bringing forward gender issues in immigrant and minority communities (such as honour-related violence and forced marriage.) And while the niqab is notably *not* one of the issues that Muslim women's groups in Canada (or in Europe) have pressed, women's groups have nonetheless mobilized in impressive ways to mount responses to the proposed veiling regimes – in many cases forging cross-cultural links and solidarities.[5] Their activism seems to me to echo a weariness with the current preoccupation with veiling practices, a weariness best captured I think by the anthropologist Lila Abu-Lughod, who asks: "Could we not leave veils and vocations of saving others behind and instead train our sights on ways to make the world a more just place?"[6] (2002: 789)

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[5] In Belgium, according to one report, "the hijab affair has to some extent […] provoked the 'interculturalization' of white feminist organizations that had not previously addressed the issue of cultural and religious diversity among women in Belgium. Some organizations inspired by the philosophy of active pluralism, are gradually engaging in intercultural dialogue and incorporating principles such as inclusive neutrality into their visions and activities" (Coene and Longman, 2008: 302-21).

[6] My thanks to Omid Payrow Shabani for helpful comments on this chapter.