

What's in a Headscarf?

In memory of Susan M. Okin

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The French law banning “ostentatious” religious symbols, including Islamic headscarves, or *hijab*, in public schools has been met with domestic protest and criticisms from human rights groups and Muslim communities. Among supporters, some defend the ban as an appropriate response to rising ethnic and religious tensions (which may be responsible for recent incidents of backlash against Muslims, and a rise in anti-Semitism, including Muslim students denying the Holocaust as taught in history classes). Some feminists object to the headscarf as a religious symbol of women’s oppression, while some Muslim women find the *hijab* liberating and that it enables them to assert their distinct identity. Others argue that the French Constitution enshrines secularism, which mandates educating French youth secular republic values and the removal of all religious symbols from public space. Such efforts are challenged by citing incidents in which some students demanded exemption from courses on the biology of human reproduction and sex-segregated physical education on grounds of their religion. Critics, however, find the ban discriminatory and in violation of religious freedom, the principle of tolerance, and cultural pluralism.

By protecting equal rights to freedom of expression, association, and conscience, France’s liberal secular constitution must also promote religious tolerance and pluralism, and yet this constitutional framework is inevitably *intolerant* of violations of these and other fundamental principles. How does a liberal society negotiate the problem of minority groups wishing to uphold *illiberal* practices (if wearing the headscarf can be characterized as such)? Just how pluralistic and tolerant is the liberal society required to be? To wrestle with these questions, one must ask how much weight to give to pluralism and tolerance when balanced against liberal democratic commitments. But such an assessment quickly gets into complex matters of judgment and balancing competing values.

Consider, first, the liberal commitment to pluralism, to the protection of moral, cultural, or religious diversity. Arguments that defend the desirability of diver-

sity typically suggest ways to mitigate the perceived conflict between pluralism (along with religious freedom and cultural diversity) and other values—a conflict apparently triggered by the dispute over the proposed French ban on “ostentatious” religious symbols.

Particular Reasons, General Principles

One such argument in favor of pluralism is moral particularism. This is the view that the relevant factors or reasons for determining the rightness of an action (say, the ban on the headscarf) vary according to circumstance. Such a ban can thus be right in one situation, but wrong in another and, typically, one finds

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more than one morally relevant factor when assessing the ban’s rightness. Moral particularists would urge us to consider more factors than simply a general moral principle (for instance, religious freedom, multiculturalism, or equality) as relevant in assessing the legislative ban. Either the principle of religious freedom or secular republicanism alone is considered insufficient. More situational factors must be considered. For instance, for moral particularists, it is relevant to inquire whether wearing the headscarf in public schools erodes important secular republic values and institutions, or whether Muslim girls are necessarily unfree in their worship as a consequence of the ban on headscarves in public schools. One cannot make an appropriate assessment of the ban without investigation of these claims.

Though generally in favor of pluralism, the moral particularist does not necessarily oppose the ban on the ground of religious freedom or multiculturalism. She opposes making judgments guided by principles

alone. If a symbolic article of cloth turns out to be so significant for people identified with the relevant tradition, such that a ban would seriously harm or undermine the welfare of the affected group, then moral particularists might oppose such a ban. However, the particularist may also support the ban if it is demonstrated that the display of such a symbol has (due to changing circumstances) become an affront to the French society's efforts to uphold liberal democracy. One changing condition might be that the events of September 11, 2001 and its aftermath (as well as the expanding immigrant Muslim population and existing anti-Semitic attitudes in France), which have created rising tensions. Such tensions might have become dangerously inflammable, necessitating the ban on the display of religious symbols.

Equal but Different

Another argument for pluralism is grounded in the principle of equality of opportunity for citizens to exercise their rights, combined with the notion of

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equal respect *without regard* to their cultural traditions and religious affiliations. This principle reflects historical lessons that failures to show equal respect toward minorities contributed to discrimination and mistreatment. Those Muslims who find wearing headscarves an important part of their identity can point to this line of argument against discrimination. They can contend that the French state, in legislating this ban, denies their equal freedom to practice their religion and denies them equal respect, which may fuel discrimination against them and their marginalization in French society.

Those who defend pluralism and hence oppose the ban on the ground of *equality*, however, must address the problem of accommodating cultural practices that perpetuate *inequality*. To insist that girls wear headscarves, as some feminists argue, is to allow parents and authorities in the Muslim community to force girls to wear this symbol of women's subjugation. One way to justify endorsing equality of cultural groups and their right to religious freedom without at the same time endorsing their unequal treatment of their own members is, as political theorist Will Kymlicka has proposed, to insist that groups enjoying certain immunities

or privileges (such as special prayer time away from class or work, or exemption from military service, or in this case, allowing religious authorities to enforce the wearing of headscarves) must let their members to opt out of practices that may infringe upon their rights and liberties guaranteed by the larger society's constitution and laws. Thus, a woman who chooses not to wear the *hijab* must not be forced to do so by religious authorities. But girls are minors, whose parents, as it is stipulated in the Universal Declaration of Human Rights, decide their religious upbringing and education.

Special privileges or exceptions (unequal treatment) for members of certain religious or social groups in a liberal democratic society, Kymlicka argues, can generally be defended on the ground that such arrangements are necessary for minority or historically mistreated or otherwise vulnerable groups to exercise their equal constitutional or citizen rights. Thus, some affirmative action programs in the US, which introduce inequalities, can be defended on ground that they level the playing fields for historically mistreated groups.

It is unclear whether permitting headscarves in public schools offers any special privileges or whether such "special" treatment is warranted on grounds of leveling any previously unleveled playing fields—e.g., due to past discrimination or historical mistreatment. To respond, opponents of the ban might argue that it may result in *future* discrimination against all Muslims by stigmatizing their religious practices.

The headscarf ban may prompt some Muslim parents to withdraw their children from public schools, possibly boosting the burgeoning of Muslim schools. Such an exodus has serious repercussions for the

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French society's efforts to promote equal citizenship and secular republicanism among its growing immigrant population through its education system. Students educated in Muslim (or other religious) schools may receive less instruction on secular liberal republican values if instruction leaves out certain important events in human history or the biology of human reproduction. On the other hand, some parents would find no option but forgoing the economic benefit of public education, which may leave them disadvantaged—unless they give up, forced by state policy and their financial situation, their choice for their chil-

dren's religious upbringing. These consequences on promoting equality must be considered in assessing the overall impact of such a legislative ban.

Choices and Options

Yet another argument in favor of pluralism is the principle of liberal choice. This seems to be the argument my colleague William Galston makes when he contends that pluralism is intrinsic to liberalism: "Liberalism requires a robust though rebuttable presumption in favor of individuals and groups leading their lives as they see fit, within a broad range of legitimate variation, in accordance with their own

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understanding of what gives life meaning and value." The liberal choice argument for pluralism elaborates what Galston calls "the principle of expressive liberty." Kymlicka also argues along this line that diverse cultural traditions are good for a liberal society because diversity provides options and allows citizens to make meaningful choices among valuable ways of life. Kymlicka applies this understanding to his defense of protections for minority communities—specifically, native indigenous communities—within a liberal society.

The liberal choice-based argument for pluralism, however, may work in favor of the French ban. Such an argument entails clear limits to the scope of diversity and multiplicity. It does not demand liberal citizens to surrender their constitutional and human rights to their religious or indigenous communities. It is the safeguard of these rights (including the freedom of choice) that gives purpose to the preservation and protection of these communities in the first place. As soon as a community ceases to offer any meaningful options for liberal citizens—or worse, undermines the liberal choices of citizens (i.e., the community's members)—it loses the *raison d'être* for protection by the liberal state.

Yet the tension between promoting the options the Muslim ways of life offer *and* securing the rights to liberal choices of citizens (in this case, women and girls) is unlikely relieved due to its involvement of minors. While one could argue that the Muslim way of life offers citizens one more option for meaningful choices, this option may carry with it the price that some chil-

dren might be raised in ways that close their minds to alternative options or stunt the development of their capability to make choices.

Unreasonable Pluralism

Yet another argument for pluralism is the cognitive argument articulated by the philosopher John Rawls. He recognizes that we may have to accept human cognitive limitations—"the burdens of reason." Such burdens are responsible for unavoidable differences in perspectives and evaluative assessments—even if we are sufficiently informed and make the best judgments we can. Such reasonable pluralism is a human condition. Rawls further argues that we ought to accommodate reasonable pluralism because it is a lesser evil than political efforts to coerce people into moral agreement, which often have meant the use of brute force. Given our bloody human history of atrocities, violence, war, and repression, Rawls concludes that protecting reasonable moral pluralism is prudent—warranted by practical reasons.

This argument is not readily adoptable as a defense of moral *cultural* pluralism. What concerned Rawls are disagreements between reasonable, deliberative, and critically reflected moral judgments. Existing cultural or religious diversity can hardly be characterized as reasoned or reasonable moral disagreements. For instance, moral culture—understood for the sake of argument as a body of inherited informal moral knowledge embodied in traditions and socially transmitted in communities—is not necessarily a body of deliberative, well-informed, critically reflected, reasonable moral judgments. Moral judgments formed on bases of faiths and beliefs in divine commands out of this world may fit this description even less comfortably.

For the sake of argument, let us assume that cultural diversity evidences reasonable disagreement. Let us see where this might take us. One criterion Rawls may suggest we to use to assess whether a group qualifies for protection in a just liberal state is that the views, judgments, or beliefs of reasonably disagreeing individual members are protected within the group. This reading of Rawls reveals a rather strict scope for diversity and plurality. The state would not measure up to Rawls' criterion if it permits diversity characterized by unreasonable pluralism. Meanwhile, any reasonable disagreements (even if they concern the Holocaust, or evolutionary human biology, or women's inferiority) must be tolerated by the just liberal state, unless their potential to incite harmful acts is evidential and imminent.

This brief tour of the selective arguments that can be made in favor of pluralism or multiculturalism suggests that pluralism is not a first-order ethical principle. It is premised on and limited by competing or

more fundamental values. One is unlikely to make prudent judgments in the abstract—relying on a principle like pluralism—about the French ban on “ostentatious” religious symbols in public schools without first answering a host of questions about the specific situations relevant to the ethical assessment at hand.

The Intolerance of the Principle of Toleration

Supporters of the ban argue that the Muslim headscarf symbolizes anti-liberal views about women’s inferiority that must not be tolerated. This position seems to presume an equivocation of tolerance with “acceptance.”

Toleration as a moral disposition or a policy neither demands *acceptance* of, nor *indifference* toward, tolerated views. It demands putting up with those views while permitting condemnation of them as wrong, misguided, or objectionable. To condemn *and* to take action to forbid the expression of views that one considers unacceptable is to step beyond the bounds of tolerance. Although “toleration” is commonly thought of as “acceptance,” “indifference,” or “making no judgment,” it is an evaluative, judgmental disposition or policy. The synonym of tolerance is *restrained moral*

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indignation. Tolerance is a praiseworthy temperament, a virtue, though intolerance is not necessarily a character defect or a bad policy. Toleration prescribes a *policy of patient forbearance in the presence of something that is disliked or disapproved of*. It is a cognitive disposition between *acceptance* (or endorsement) and *indifference* (or neutrality). In ordinary language practices, we tend to ignore these subtle differences partly because we think we can tell what the speaker means in a particular context. But in policy debates, equating toleration with either acceptance or indifference blinds us to important distinctions useful for making policy assessment.

It is important then to clarify that *to tolerate x means to view x as wrong, to disapprove of x, and to condemn actions implementing x, yet to adopt a policy to put up with the expression of x*. To tolerate a belief (e.g., about women’s inferiority), as some feminists see symbolized by the *hijab*, is to have taken a side in judging such beliefs as being *wrong*, yet at the same times adopt the policy of putting up with the beliefs thus expressed.

Notice the distinction between responses to *views* and responses to *actions*. In ordinary language, we talk

about toleration not only of views but also of actions. However, as we say that we are tolerant of, say, the practice of wearing the headscarf, we normally mean that we judge that the practice poses little harm or that its alternative—such as banning the practice—may result in more harm. In such a case, we are not using “toleration” in the strict sense of “condemning,” but “putting up with.” It would be morally perverse to condemn an action with harmful consequences and yet at the same time put up with it.

The French policy of intolerance toward the display of “ostentatious” religious symbols in public schools may be valid if one produces evidence that the views they symbolize or the acts of displaying them clearly have harmful consequences. This would be a more plausible course of argument for the ban than, say, arguing that the views symbolized by the practice are *wrong* or objectionable. This is because, even if one finds them wrong or untrue, the principle of toleration demands one put up with them. (When the French government defended expelling radical Islamic clerics on ground that their preaching of wife beating, stoning, and women’s subjugation was incompatible with French republican ideas of human rights and equality, it is on the defensive for breaching tolerance. The government would have a stronger case if it limited its argument to contend that such speech acts incite violence against women.) Likewise, denials of the Holocaust, which is against French law, could also be prohibited on the grounds not that such expressions are false or wrong, but that they have harmful consequences. (The French government, however, is yet to establish the connection between the illegal act of denying the Holocaust and its ban on the *hijab* and other religious symbols). Meanwhile, schoolchildren should be taught methods for critically examining evidence and refuting false or wrong assertions, rather than being sheltered from such assertions. One must give evidence for presumed harmful consequences, evidence that must be presented to the public and evaluated by experts.

Citizens of a liberal democratic society committed to toleration of diverse cultures (or religions) are not reduced to indifference or the inability to act in the face of practices or expressions that are demonstrably harmful. In such cases, the liberal state is committed to protecting citizens’ life, liberty, and rights is not violating the principle of tolerance when it acts intolerantly toward such practices and expressions. It is acting on the imperative of preventing harm. In cases where the potential harms are publicly contested, the tolerance principle alone is insufficient to guide moral judgment.

An evaluative inquiry of the moral standing of such a policy as the French ban on the ostensible display of religious symbols in public schools is limited if the inquiry applies the normative tools of pluralism and

Truth v. Justice: The Morality of Truth Commissions

Robert I. Rotberg and Dennis Thompson, Editors

The truth commission is an increasingly common fixture of newly democratic states with repressive or strife-ridden pasts. From South Africa to Haiti, truth commissions are at work with varying degrees of support and success. To many, they are the best—or only—way to achieve a full accounting of crimes committed against fellow citizens and to prevent future conflict. Others question whether a restorative justice that sets the guilty free, that cleanses society by words alone, can deter future abuses and allow victims and their families to heal. Here, leading philosophers, lawyers, social scientists, and activists representing several perspectives look at the process of truth commissioning in general and in post-apartheid South Africa. They ask whether the truth commission, as a method of seeking justice after conflict, is fair, moral, and effective in bringing about reconciliation.

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296 pages
\$55.00 Cloth
\$18.95 Paper

Princeton University Press
www.pup.princeton.edu
Available at bookstores or directly
from the publisher:
Tel.: 609-258-4900
FAX: 609-258-6305

tolerance alone. An evaluation of this and other more complex policy issues inevitably requires us to draw upon a host of other competing norms such as equality of liberties and rights, liberal choices, harm prevention, and democratic deliberation. When equal protection of citizens' lives, their basic security and liberties are reasonably perceived as under threat, insisting on the moral priority of pluralism and tolerance is to lose sight of their liberal purposes. However, such judgments are highly demanding on informed assessments of comparative harms of alternative courses of action on various parties involved. Where even informed assessments fail to bring consensus, it is crucial to defer to democratic procedural decisions, which require informed, critical public deliberation.

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Sources: Elaine Sciolino, "Ban Passed on Religious Symbols in Schools," *The International Herald Tribune*, February 11, 2004; Human Rights Watch, "France: Headscarf Ban Violates religious Freedom," February 27, 2004; Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton University Press, 1999); J. P. Dancy, "Moral Particularism," *Stanford Encyclopedia of Philosophy*, online at <http://plato.stanford.edu/entries/moral-particularism>; Galston, William A. *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge University Press, 1991); Kymlicka, Will *Contemporary Political Philosophy: an Introduction* (Oxford University Press, 1990); Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995); Hans Oberdiek, *Tolerance: Between Forbearance and Acceptance* (Lanham : Rowman & Littlefield Publishers, 2001); Maurice Cranston, "Toleration," *The Encyclopedia of Philosophy* (Macmillan and Free Press, 1972); J. Budziszewski, *Tolerance: Liberalism and the Necessity of Judgment* (Transaction publishers, Rutgers: 2000) Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Harvard University, 2002); Seyla Benhabib, *The Claims of Culture : Equality and Diversity in the Global Era* (Princeton University Press, 2002).