

COMMENTARY

THE ELEPHANT IN THE ROOM: A COMMENTARY ON STEVEN GEY'S ANALYSIS OF THE FRENCH HEADSCARF BAN

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I. INTRODUCTION

When the Islamic Army of Iraq kidnapped two journalists in Iraq and demanded an end to the headscarf ban in French schools in exchange for the journalists' release,¹ it became evident that the ban was no ordinary law. A domestic decision designed to protect individual religious liberty in France has had an impact both within and well beyond French borders.² The French law, enacted in early 2004, prevents elementary, middle,

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1. *A Tragic Twist of the Scarf*, *ECONOMIST*, Sept. 4, 2004, at 49. Though there are important differences between them, in this Commentary I use the terms *hijab*, headscarf, and veil interchangeably.

2. *See id.* (citing protests against the French law in Egypt, Beirut, Cairo, Tehran, Gaza, and Amman).

and high school students from openly manifesting symbols of religious affiliation. Included in the ban are not only Muslim headscarves, but also oversized Christian crosses and Jewish yarmulkes. The law states: “In the public elementary schools, middle schools and high schools, the wearing of tokens or clothing by which students openly manifest a religious affiliation is forbidden.”³

In this Commentary, I comment on Professor Steven Gey’s examination of the French law. Professor Gey looks at the law’s enactment by the French Parliament as a means to discuss the relationship between government, religion, and personal liberty in spiritual matters. Among other issues, Professor Gey considers the difference between U.S. and French articulations of religious freedom and each government’s role in this regard.

Professor Gey’s goal is to consider how the “government [can] best foster a tradition of spiritual and intellectual liberty among its young citizens.”⁴ In short, what is the best way to ensure that citizens have religious freedom? For Professor Gey, the merits of the law rest on whether it promotes religious freedom. In partially defending the French law, he concludes that forcing student exposure to ideas outside of the family enhances individual religious liberty.⁵ In this analysis, the French law is a positive step on the road to individual religious freedom.⁶ Unencumbered by the family’s dictates—such as wearing religious symbols—students are open to a larger menu of choices, enabling them to reach their own decisions about their religious pursuits. Thus, the French measure fosters the freedom to choose a religion.

Professor Gey’s analysis and conclusions are meticulous, well thought out, and well considered. He persuasively makes the case that the government’s insistence on individual freedom from powerful religious institutions will create an enlightened citizenry. Indeed, the argument he presents is elegant and interesting because it is not, at first blush, intuitive. His argument convincingly lays out the noble motivation behind the French law—the right of the individual to choose religion freely. Furthermore, Professor Gey demonstrates that the decision

3. CODE DE L’EDUCATION art. L. 141-5-1 (Fr.).

4. Steven G. Gey, *Free Will, Religious Liberty, and a Partial Defense of the French Approach to Religious Expression in Public Schools*, 42 HOUS. L. REV. 1, 4 (2005).

5. See *id.* at 16, 51 n.198 (“I am . . . convinced that the French approach . . . does accomplish its purpose of increasing the girls’ religious freedom.”).

6. See *id.* at 16 (asserting that the French law “may seem a beacon of hope for [French girls’] own religious freedom”).

behind one's religious preference is an important one; it is so important that it requires an environment free of pressure, familial or otherwise.⁷ However, his discussion sidesteps the most controversial and timely questions raised by the French proscription. His analysis becomes a diversionary discussion that ignores the elephant in the room. It is like having a serious illness, yet obsessing about fall fashion. Interesting, but it does not go to the heart of the matter.

Just as Professor Gey suggests that his defense of the French law is partial, the arguments presented here are not to be construed as favoring the wearing of the *hijab* in the French school system. Rather, this Commentary takes advantage of the opportunity to look at the logic and consequences of the arguments offered by Professor Gey.

Professor Gey's treatment of the issue is symptomatic of a historic problem, part of a larger polemic between cultures that appear different—such as those with a tradition of veiling and those without this tradition. The problem lies in the conversation that they have with each other and with who gets to establish the contours of that conversation. In addressing the headscarf ban and looking at the implications of the government's role in furthering individual religious liberty, Professor Gey assumes a very powerful position in which he formulates debate on the topic. His views and the cultural values that emanate from his discussion set the tone and tenor of the conversation. At its core, this is a problem of power and its imbalance: The powerful have the privilege of determining how we look at the world, and the less powerful can only respond. By making this an occasion for an exchange on religious liberty, we risk overlooking other, more important considerations—considerations that may impede the goal of the French law as presented by Professor Gey.

When I first heard about the headscarf issue in France, it was not religious liberty that came to mind. Rather, in the post-9/11 world, I thought first of the troubled relationship that parts of Islam have developed with the rest of the world. In the wake of the French action, few outside of France applaud the ban as an instrument through which individual religious liberty can be furthered. It may be that religious liberty is an actual benefit, yet one cannot overlook the more troubled reaction to the French initiative. Although some observers perceive this as a question of the protection of French secularism, the more animated and

7. See *id.* at 18-47 (criticizing American jurisprudence that allows parents a "right to choose a religious lifestyle for the child").

agitated response has centered on the affront to “Islam”⁸ that this measure makes. Why doesn’t everyone applaud the French initiative? Doesn’t everyone want individual religious liberty? Doesn’t everyone want the right to choose?

In this Commentary on Professor Gey’s position, I take up three issues regarding the enactment of the French law. First, the French ban of the headscarf can be understood as the culmination of a long, sometimes contentious history between Muslims and those who colonized them. More specifically, it is the history of the Orientalist’s treatment of Muslim women and the *hijab*, often in furtherance of political and economic objectives unrelated to women, that is at play. This history, often fraught with oppositional conflict, must be a part of any discussion of the law’s implication. This history is the elephant in the room. Devoid of historical context, the reaction to the law and its intended purpose is little understood. Consequently, the manner in which this law plays out and whether it is understood as a means to further religious liberty or to bash Muslims is shaped by prior historical relationships.

Second, Professor Gey addresses an inherent paradox in the law, but not in the way that I would have expected.⁹ He states that the law clearly limits religious expression yet that the limitation exists to protect spiritual and intellectual freedom from coercive religious measures imposed by local communities.¹⁰ Essentially, the state protects individuals from societal pressures to conform to one religion. That approach suggests that although the law may be coercive, the coercion can be forgiven because it goes towards a greater goal: individual religious freedom. Thus, it is the ends and not the means that are important. I would pose the paradox differently. By forcing the abandonment of the headscarf to protect individual liberty, is not the government just another patronizer of these young women? As one French Muslim woman put it, “They say our fathers and brothers force us to be veiled—which is not true—but they expect us to put up with the paternalism of government.”¹¹ Another woman shaved her head

8. I place the word “Islam” in quotes to designate that there is no one universal understanding behind it. See EDWARD W. SAID, *COVERING ISLAM* 44–45 (1997) (explaining the different understandings of Islam).

9. See Gey, *supra* note 4, at 10, 16, 48–52 (“There is an obvious paradox inherent in the notion of a government fostering the intellectual independence of its new citizens by instilling in those new citizens a package of state-approved social values.”).

10. *Id.* at 16.

11. Alex Duval Smith, *Muslim Anger Mounts as Headscarf Ban Becomes Law*, *OBSERVER* (London), Feb. 1, 2004, at 25.

to satisfy both her religious and legal obligations.¹² Therefore, the second issue that I address is the use of women as pawns in a larger patriarchal picture, with particular emphasis on Muslim women.

Third, according to my reading of the argument advanced by Professor Gey, the degree to which individual religious liberty is promoted is paramount here. Therefore, that is the measure by which this law should be evaluated. In a sense, then, the basic question is whether religious paraphernalia obstructs the road to religious liberty. Underlying the French rationale as set forth by Professor Gey, the headscarf acts as a blinder to other religious possibilities by placing a veil of rigid adherence to one faith on its wearer. Thus, forcing the wearer to remove the headscarf illuminates other choices for the wearer, who is thereby set on the path to religious liberty. Under this scenario, the law will work something like this: a young French Muslim girl who was previously shrouded in the *hijab* removes it to go to school. By removing her cover, she is suddenly more receptive to other ideas regarding matters of faith and can now freely choose among them. This reasoning indicates a woeful lack of understanding about the *hijab* and Islam.

Furthermore, two worrisome assumptions arise with respect to the above scenario. The first is that the headscarf and other displays of religion are, in fact, about religion. It may be that the decision to wear the veil, whether it reflects the girl's or her family's wishes, does not have as much to do with religious adherence as it does, for example, with the socioeconomic conditions under which the Islamic community lives in France. The second assumption is that the *hijab* is all that stands in the way of the liberty to choose one's faith freely. In reality, the "veil" is a small part of that which Islam contemplates. Thus, the third issue concerns the extent to which the law can effect its asserted purpose if the current trend towards veiling has less to do with religious adherence than with other social, political, and economic issues—and whether forced removal of the *hijab* is sufficient, or even necessary, to pursue the path to religious freedom.

12. CBBC Newsround, *Headscarf Ban Girl Cuts Off Hair*, at http://news.bbc.co.uk/cbbcnews/hi/world/newsid_3710000/3710134.stm (Oct. 2, 2004).

II. ELEPHANT IN THE ROOM

A. *What Is the Historical Context for the French Law?*

Professor Gey writes that “the new French law prohibiting students from displaying religious symbols in schools is part of a long secularist constitutional and political tradition, and cannot be reduced to mindless Muslim bashing.”¹³ But it has. Assume for a moment that the French law *is* intended solely to protect and advance an individual’s right to freedom of religious preference. Why, then, is it instead perceived by so many as part of a campaign to malign Muslims? In short, why doesn’t everyone see it the way the French seem to? One would expect universal support for any measure to further religious liberty.

The law does not operate in a historical vacuum. In fact, I argue here that the success of the law’s honorable intent as articulated by Professor Gey is obstructed by the history that precedes it.

Very few would disagree that the coming of Islam to Arabia in the 600s was a major historical turning point for that region and beyond. Although “Islam’s” theological contributions were momentous in offering a religious worldview, its political and social consequences were responsible for changing the face of much of the world. In this same vein, no less critical a turning point for the region and its inhabitants was the arrival of Europeans in the eighteenth century.¹⁴

In 1798, a young, ambitious French general set sail on his flagship, *L’Orient*, to Egypt, then an Ottoman province.¹⁵ The leaflets that accompanied Napoleon Bonaparte’s arrival, written by his spin team, claimed that he was there as a “servant of Allah and of the Ottoman Sultan” to free Egypt from a regime that had become dominant there.¹⁶ Later, it became clear that his mission was less about rescue than control. Napoleon’s swift military victory showed how far Europe had come.¹⁷ He succeeded in occupying Egypt for three years, an event that showcased European achievements, especially in science and military

13. See Gey, *supra* note 4, at 10.

14. See WILLIAM L. CLEVELAND, A HISTORY OF THE MODERN MIDDLE EAST 50 (1994) (explaining the devastating effect European manufactured goods had on the economy of the Ottoman Empire).

15. MAX RODENBECK, CAIRO 151 (1998).

16. This reference is to the Mamluks’ rule of Egypt. *Id.* at 151–52.

17. See *id.* at 152–55 (detailing the French invasion of Egypt and the military innovations that French troops used).

technology.¹⁸ One Egyptian man, a learned scholar and chronicler of these events, observed that the French laughter at Egyptian backwardness not only hurt but also indicated that the French considered Cairo and all of its traditions part of a “freakish exhibition.”¹⁹ Napoleon’s departure left a shaken country whose self-esteem was severely undermined. Cairo was not only battered physically but morally as well.²⁰

If Napoleon’s occupation opened the door for Europe, then, to continue the analogy, in moved the British. British holdings in India made access to Egypt strategic, and their extended stay from 1882 to 1956 left an undeniable imprint on Egyptian nationalism and Egypt’s views toward Europe.²¹ By 1882 Egypt had gone bankrupt, indebted to European moneylenders for expenditures on a failed effort to recreate Europe in Egypt.²² The reign of Ismail the Magnificent, the ruler who ran Egypt into bankruptcy, is especially telling. He was king of Egypt from 1863 to 1879 and is considered to have been a “foolish spendthrift.”²³ His “objective was nothing less than the complete Europeanization of Egypt in as short a time as possible.”²⁴ He commissioned the Italian composer Verdi to write the opera *Aida* for the opening festivities of the Suez Canal, which was completed under his reign.²⁵ He is believed to have said, “My country . . . is no longer in Africa, it is now in Europe.”²⁶

Having bankrupted Egypt, Ismail’s extravagance forced the British to occupy Egypt in order to manage the debt.²⁷ It is the British stay on the Nile that best illustrates the point of this Commentary. Lord Cromer, the British Consul General, left Victorian England to preside over the occupation of Egypt.²⁸ He possessed

quite decided views on Islam, women in Islam, and the veil. He believed quite simply that Islamic religion and society were inferior to the European ones and bred inferior men. . . . “The European is a close reasoner; his statements of fact are devoid of ambiguity; he is a natural logician,

18. *Id.* at 154.

19. *Id.* at 152–56.

20. *Id.* at 157.

21. See CLEVELAND, *supra* note 14, at 99–105, 291–94.

22. See RODENBECK, *supra* note 15, at 94–95.

23. *Id.* at 92.

24. CLEVELAND, *supra* note 14, at 92.

25. *Id.* at 93–94.

26. *Id.* at 92.

27. *Id.* at 94–95.

28. See *id.* at 99–104 (describing the tenure of Lord Cromer from 1883 to 1907).

albeit he may not have studied logic; he loves symmetry in all things . . . his trained intelligence works like a piece of mechanism. The mind of the Oriental on the other hand, like his picturesque streets, is eminently wanting in symmetry. His reasoning is of the most slipshod description.”²⁹

Reading this, one is struck by an immediate irony: Lord Cromer is talking about the Egyptians, who had developed a thriving civilization well before England existed. Lord Cromer’s views, including his denigration of local culture, were both necessary and politically expedient. British conclusions about Egyptian inferiority served the colonial enterprise—theirs was a civilizing mission, after all. Suffice it to say here that Lord Cromer’s reflection on the local culture was a further cut in the wounds inflicted by Napoleon. The wounds get bigger.

A faltering Ottoman Empire and its Egyptian province faced with the entry of Europe had little choice but to begin an intensive campaign to catch up with Europe. With little exception (mostly offered by Islamic reform movements such as those of Afghani and Abduh³⁰), the leadership agreed on Western-style modernization. Having agreed on how to move ahead, a program of exchange with Europe began that included sending students to European capitals for schooling.³¹ These students came back equipped with European affectations, if not more profound Enlightenment political and social principles. Furthermore, it was expected that these “French knowers” would return to assume leadership positions.³² At this juncture, local elite interests dovetailed with the European ones.

Two examples are illustrative. Turkey’s founding father, Atatürk, acted as if he could not move the country away from Ottoman Muslim tradition fast enough.³³ In his rush to include Turkey among the membership of civilized nations, he moved the new state’s capital from the great city of Istanbul to Ankara.³⁴ But that shift was just the beginning. The “laws of God” (*Shariah*), whose implementation provided the Ottomans with governing legitimacy for well over 600 years, were swiftly

29. LEILA AHMED, *WOMEN AND GENDER IN ISLAM* 152 (1992) (quoting 2 EARL OF CROMER, *MODERN EGYPT* 146 (1908)).

30. See CLEVELAND, *supra* note 14, at 118–21.

31. *Id.* at 77.

32. See *id.* at 79–80.

33. See *id.* at 168–69 (describing the speed with which Atatürk implemented his reforms).

34. *Id.* at 168.

replaced by secular European laws.³⁵ More to the point, because Atatürk considered hats with brims the “headgear of civilized nations,” wearing the fez became a criminal offense.³⁶ Although Atatürk’s reforms did not directly prohibit the veil, the environment that he promoted certainly encouraged its abandonment, and in 1932 a Turk was crowned Miss Europe, illustrating the degree of social change that had occurred.³⁷ On the veil issue, Atatürk declared,

In some places I have seen women who put a piece of cloth or a towel or something like that over their heads to hide their faces, and who turn their backs or huddle themselves on the ground when a man passes by. What are the meaning and sense of this behaviour? Gentlemen, can the mothers and daughters of a civilised nation adopt this strange manner, this barbarous posture? It is a spectacle that makes the nation an object of ridicule.³⁸

Similar events were occurring in nearby Iran. In 1921, a distinguished colonel in the Cossack Brigade, Reza Khan, marched on Tehran with 3000 men.³⁹ By 1923 he had assumed the position of prime minister and suggested that the existing Iranian monarch “might enjoy [an extended] European vacation.”⁴⁰ Two years later, Reza Khan replaced that ruler and became the Shah—king of the oldest monarchy on earth.⁴¹ Thus began the Pahlavi dynasty.⁴²

As Iran’s head of state, Reza Shah appeared unburdened by second thoughts regarding his commitment to adopting Western ways—at least the superficial ones. Paradoxically, in adopting forced Westernization, he seemed to overlook the freedom of choice that is implicit in Western principles of governance, especially concerning personal dress. “In 1928 a law was passed that required males to dress in the European manner, and in 1935 the wearing of a hat became compulsory.”⁴³ Reza Shah’s reforms did not end there; in 1936 the wearing of the veil was banned.⁴⁴ Qasim Amin, a French-educated upper-middle-class Egyptian lawyer, captured the sentiment reigning at the time in

35. *Id.* at 169.

36. *Id.*

37. *Id.* at 171.

38. AHMED, *supra* note 29, at 164.

39. CLEVELAND, *supra* note 14, at 173.

40. *Id.*

41. *Id.* at 173–74.

42. *Id.* at 174.

43. *Id.* at 175.

44. *Id.* at 175–76.

an influential book that “assumed and declared the inherent superiority of Western civilization and the inherent backwardness of Muslim societies.”⁴⁵

These historical samples demonstrate that the colonial era spawned a tradition in which the native elite considered their own societies inadequate and backward relative to European society. Moreover, this tradition of the native elite is manifest not so much in the reforms these leaders instituted as it is in the manner and motivation behind their implementation. Traditional Muslim society was simply deemed not good enough, and the veil and other customs were considered to symbolize its backwardness. Thus, to do away with the backwardness, these trappings of tradition had to go, even if by force. Another irony presents itself here. There is little doubt that leaders like Reza Khan and Atatürk genuinely believed in the superiority of the West and the appropriateness of that model for their own societies. Yet in their zeal to achieve their desired ends, they often deployed coercion, thus trampling the ideals that underlie the ends in the first place.

Although it may be unintentional, the French law could be construed as a part of that same tradition. More than 200 years after Napoleon’s arrival in Egypt, the French law represents another edict to remove the *hijab*, this time in the interest of religious freedom. The French initiative recalls this history. So although its intent may be the promotion of individual religious liberty, that goal is obscured by historical events. Rather than an attempt to foster individual religious freedom, the French law can be interpreted as an attack on tradition because of its historical context.

Viewed from this historical perspective, it becomes easier to see how enactment of the French law can be seen as a criticism of Muslim culture rather than as a step to promote religious liberty. The French law has encountered a sensitivity that obscures its more noble intent and it has been rejected as “Muslim Bashing.” More simply stated, is it merely coincidence that the French measure was implemented when the Muslim population in France is at an all time high?⁴⁶

45. AHMED, *supra* note 29, at 155.

46. See *France and Its Muslims: A Hot Rentrée?*, ECONOMIST, Aug. 28, 2004, at 43 (reporting that “France is home to Europe’s biggest Muslim population”).

B. If It Quacks Like a Duck . . .

In this subpart, I address what may be an unintended consequence of the French law, with specific reference to the use of Muslim women as pawns in a larger patriarchal struggle. As Professor Gey notes, there is some consensus that the French law targets the Muslim headscarf specifically.⁴⁷ That is, while the law does not single out a particular religion, the political rhetoric surrounding its enactment clearly seems to suggest that the *hijab* is the threat to France's secular tradition.⁴⁸ One need not be a scholar of Islam to know that the headscarf is closely associated with Muslim women and young girls. Therefore, it is not a great leap to assert that the object of the French measure is the *hijab*-donning young Muslim schoolgirl. These features of the French measure open the door to gender considerations and an analysis of the gender implications behind the measure. At its most basic level, the law is about the manner of dress of young girls—that is the issue here. Accordingly, the law presumes that the *hijab* prevents young girls from a more enlightened and freer access to religious choices. Thus, it is their individual religious liberty that Professor Gey suggests will be enhanced by the ban. Or is it?

Here is another way to consider the matter. By forcing girls to abandon the *hijab*, France may satisfy its secularist urge and maintain its sanctity. Yet in requiring that veils be shed, the law disempowers girls. Rather than teaching them about the process of freedom, the law gives them that which it considers to entail freedom. Instead of providing a path to religious freedom through education, where girls can determine for themselves the merits and demerits of their worldviews, the law reaches these conclusions for them. By forcibly removing the *hijab* from these young girls, does not the French measure seem as patronizing and condescending as the families that force them to don the *hijab*? It has not only purported to give young girls freedom, but also defined it for them. There is an obvious paradox in offering religious freedom by constraining choices. In so doing, the law does not provide the girls an opportunity to develop an independent, critical spirit.

Ultimately, the French law may be about the maintenance of France's secularist credentials rather than concern for young

47. Gey, *supra* note 4, at 3 (describing the law as “specifically directed at the headscarves worn by Muslim girls and young women”).

48. *Id.* at 7 (relating statements by French President Jacques Chirac and supporters of the new law that describe the veil as “something aggressive” and as a “visible symbol of the submission of woman”).

Muslim girls' individual religious liberty. This position has historical antecedents as well. A couple of historical illustrations highlight this point.

As outlined above, Atatürk, the father of modern Turkey, instituted a series of reforms intended to establish his country as a modern Western nation. Along with institutionalizing a Western civil code in lieu of the *Shariah*, he amended laws regarding women's dress and conduct.⁴⁹ In so doing, the Atatürk regime could proclaim: "Look, Turkey is modern and one of the civilized nations." Thus, the regime used women to make its point. One author observed that these reforms were merely "simulated images of modernity."⁵⁰ The appearance of modernity existed but beneath that superficial façade—"women's relations with men and their self-definition within the family remained traditional."⁵¹ In this same manner, the French law may succeed in removing the veils *on the head* but not those *in the mind*.

Perhaps more important in the Turkish case, in appropriating the women's agenda, the state impeded women from developing an autonomous consciousness because measures were instigated from above.⁵² Gender scholars refer to this as "state feminism."⁵³ State feminism involves the state expressly supporting and even co-opting a feminist agenda for its own purposes—either to establish political legitimacy or to show its secular character, as were the cases in Egypt and Turkey, respectively.⁵⁴ The problem here is that women's issues, including their social and political rights, "[become] part of a political strategy to enhance the legitimacy of the state. Women's citizenship [is] put in the service of the state's changing political interests[,] . . . transform[ing] gender into a political instrument."⁵⁵ Although women may gain some rights, they "los[e] control of their autonomy as a group with a specific agenda."⁵⁶

49. Mervat F. Hatem, *Modernization, the State, and the Family in Middle East Women's Studies*, in *SOCIAL HISTORY OF WOMEN AND GENDER IN THE MODERN MIDDLE EAST* 63, 78 (Margaret L. Meriwether & Judith E. Tucker eds., 1999).

50. *Id.* (quoting Ayse Kadioglu, *Women's Subordination in Turkey: Is Islam Really the Villain?*, 48 *MIDDLE EAST J.* 645, 653 (1994)).

51. *Id.*

52. *Id.*

53. *Id.* at 77.

54. *Id.*

55. *Id.* at 78.

56. *Id.*

The Egyptian example shows what happens when such a loss of control occurs. The Nasser regime came to power in 1952.⁵⁷ It adopted populist reforms articulated by active feminists, among them the right to vote, the right to run for public office, and equal access to education and employment.⁵⁸ When later regimes encountered political crises, they abandoned these commitments to the feminist agenda.⁵⁹ Political expediency necessitated alliances with Islamist opponents; when these alliances later went awry, both the regime and its opponents used laws regulating women's issues "to maneuver their way out of political crisis."⁶⁰

Another related point needs to be made here. Leila Ahmed, a scholar of Islam and gender, in speaking of the contemporary Arab world, says the debates between advocates and opponents of veiling are

encoded with political meanings and references that on the face of it . . . have little to do with women Similarly, the way in which Arab women are discussed in the . . . media or the academy, and the sense that such discussions often seem to be centrally even if implicitly engaging other matters through the discussion of women—such as the merits or demerits of Islam or Arab culture—also highlighted the importance of taking the discourses themselves as a focus of investigation.⁶¹

Ahmed suggests that underlying the discourse of the veil is much more than at first appears. Indeed, the conversations on the veil and the treatment of Muslim women are a vehicle by which the broader Arab or Muslim societies are evaluated. Ahmed especially finds this to be the case during the colonial period in Egypt: "The idea that Other men, men in colonized societies or societies beyond the borders of the civilized West, oppressed women was to be used, in the rhetoric of colonialism, to render morally justifiable its project of undermining or eradicating the cultures of colonized peoples."⁶²

Ahmed observes that the language of feminism was used by the colonizer to further the colonial endeavor.⁶³ Leveling accusations of injustice and unequal treatment of women

57. *Id.* at 77.

58. *Id.*

59. *Id.* at 77–78.

60. *Id.* at 78.

61. AHMED, *supra* note 29, at 2.

62. *Id.* at 151.

63. *Id.*

strengthened the colonizer's argument that their presence was required to show these inferior people the correct way to manage a society.⁶⁴ This was the case even as the Victorian English men, architects of the colonial thesis, rejected feminist arguments at home.⁶⁵

All this is to say that in regulating the behavior of women by banning the *hijab*, the French law can be understood within the Orientalist context. This means that women are used to express all that is wrong with a culture to justify taking control of that culture. Rather than a means to protect secularism, the French law becomes an evaluation of the immigrant population.

In summary, this subpart raises two questions regarding the French ban of religious symbols. Although the intent of the law may be that outlined by Professor Gey—a way to further individual religious liberty—it may have unwelcome and unintended consequences. The first of these is the disempowering of young girls and women. Rather than allowing the *hijab* wearer to reach her own conclusions via education and other means of raising consciousness, the law dictates what she may and may not do. Second, banning the *hijab* can be understood as a use of women's issues to render an implicit criticism of the immigrant society's culture. The criticism's message essentially speaks to how welcome that society is in France. Put another way, it says, "You can be here, but you have to look more like us."

C. *What You Wear Determines How Much You Care?*

Three related questions are addressed in this subpart. All three involve Professor Gey's argument about the importance of ensuring individual religious liberty and consider whether the French law can be effective in that goal. First, does what you wear determine your degree of openness to religions other than your own? If the French law is intended to liberate the individual so that there is an opportunity for religious preference, is the *hijab* an obstacle? Is it the only obstacle? Second, is the *hijab* a display of religious commitment above all else or are there other, more powerful explanations behind the motivation to wear it? Third, how effective will the French law be if the *hijab* is merely a small part of religious devotion in Islam? Banning the *hijab*

64. *Id.* at 151–52.

65. *See id.* at 151 (describing how Victorian Englishmen "confronted . . . an increasingly vocal feminism" by "corroborating Victorian theories of the biological inferiority of women and the naturalness of . . . the female role of domesticity").

does not mean that other more potent but less obvious manifestations of religious commitment will be abandoned.

One implication behind Professor Gey's interpretation of the French law is that the headscarf is not only an enclosure for the head, but a restraint for the mind as well. The underlying logic behind his argument suggests that by removing the headscarf, its wearer becomes more appreciative of other religions. It strikes me that this requires several leaps in logic (hurdles, actually). I suppose that it is an empirical question, but there is no evidence to suggest that the *hijab*-donned girl is any more or less receptive to new ideas about faith, or anything else, for that matter. I would presume that this is equally true of individuals who wear crosses or yarmulkes. Indeed, each of the three monotheistic religions can be read to require tolerance and open-mindedness. Just because a girl is wearing the *hijab* does not, by definition, mean that she is unreceptive to change. This is a leap that I am unable to make.

What if the decision to wear the *hijab* is primarily influenced by factors outside of religion? Does that change the impact of its removal on attaining individual liberty? Leaving aside the discussion on what the Koranic intention is with respect to veiling, the practice has waxed and waned during the last century.⁶⁶ There have been times when veiling (and religiosity in general) was more prevalent than at other times. For example, those Muslim women who came of age in the 1940s, 1950s, and 1960s witnessed less emphasis on veiling than we see today (at least in urban areas).⁶⁷ In fact, many thought that it was gone for good.⁶⁸

In a flamboyant gesture, an Egyptian aristocrat's daughter "scandalized" Cairo when she tossed her veil publicly at the Cairo train station in 1923.⁶⁹ Hoda Shaarawi, the Egyptian feminist who authored that move, inspired others to the extent that the veil was hardly seen among the upper classes in Egypt a decade later.⁷⁰ Shaarawi's gesture was intended to symbolize the move toward the end of the practice of veiling, though not to the end of adherence to Islam. Shaarawi's legacy is found in the argument made by many women today that they can be fully Muslim

66. See RODENBECK, *supra* note 15, at 208–09, 255–57 (discussing how in the 1920s the veil "had come to be regarded as a brand of backwardness," but now women who do not wear headgear "risk stares and allusive comment").

67. See *id.* at 254–55.

68. See *id.* at 255 (speculating that a former acquaintance would be "shocked" to learn that veils are prevalent in Cairo once again).

69. *Id.* at 208.

70. *Id.* at 208–09.

without a veil.⁷¹ This phenomenon suggests that you can carry your religious convictions *in* your head as much as *on* your head.

In spite of Shaarawi's deveiling, one can hardly deny that there is an increased prevalence of veiling in Egypt and other places where the *hijab* is not state mandated. Compare these two accounts of Cairo, the first from the 1960s and the second from the 1990s:

[Q]uite ordinary shoppers strolled Qasr al Nil Street in bright sleeveless frocks. Rich girls in Heliopolis flicked through *Paris-Match* and wondered if they could get away with this year's even shorter hemlines. Their mothers applied lipstick and clasped pearl chokers over plunging necklines for nights at the opera

But . . . in the 1990s, . . . [t]he dominant style is retro seventh century. The arbiters of fashion are stern sheikhs for whom the models of feminine virtue are the numerous purdahed wives of the Prophet.

. . . Shams al-Barudi, who featured as a prostitute in the most sexually explicit Egyptian film ever made . . . , has publicly renounced her past and donned the veil.⁷²

This observation is not unique to Egypt, where the state is silent on the wearing of the *hijab*. What happened? If the *hijab* is solely a display of religion, why was it ostensibly abandoned and why is it now returning? The religion and its interpretation have not changed on this matter, so what has? It seems reasonable to conclude that there must be other factors influencing the decision to veil. There is wide-ranging speculation concerning the reasons behind the veil's restoration. Some of the reasons are based on economic factors and others have social and political origins. For example, there are those who say that where abject poverty robs self-esteem, what is lacking "on the material scale can be made up for on the moral register."⁷³ Perhaps it is a question of piety making the poverty more palatable. Another more practical explanation is that "a cheap veil solves a closet-ful of problems."⁷⁴ Or, where population density is thick, the veil creates a private space for its wearer. Yet another explanation is that in societies in which prospective mothers-in-law are important

71. See A. Gaffar Peang-Meth, *To Veil or Not to Veil Has No Reflection on Devotion to Islam*, PAC. DAILY NEWS, Dec. 12, 2001, at 16A (insisting that the decision "to veil or not to veil . . . has nothing to do with . . . devotion to Allah").

72. RODENBECK, *supra* note 15, at 255-56.

73. *Id.* at 257.

74. *Id.*

decisionmakers, its “declaration of modesty . . . appeals to prospective mothers-in-law.”⁷⁵

Many women argue that the *hijab* is liberating, freeing them in a number of ways.⁷⁶ It decommodifies the woman’s body by making her less of a marketing target and fashion slave. More interestingly, some women argue that covering facilitates access to public participation, either in the job market or in politics. Mobility is enhanced, this group says, because the wearer is almost always granted automatic deference⁷⁷—a deference that may otherwise be unavailable to these women but that they may gain from the piety assumed to come with veiling.

In addition to religion, there are many other reasons behind the restoration of the veil. These factors often work together, bolstered by religious beliefs. Therefore, if the *hijab* in France or anywhere else is worn for reasons not exclusively religious, can Professor Gey’s argument apply? If the *hijab* offends France’s secular integrity such that it must be eliminated from the public school system, then is it not more effective to address the host of social and economic issues that may lie behind its reintroduction, rather than force its removal?

Finally, the *hijab* is only one of many practices contemplated in Islam. It is not clear to me how the intent of the law is fulfilled by targeting only this small aspect of religious commitment. What about the other duties of a Muslim?

It is important to note that those women and young girls who willingly wear the *hijab* do so after careful consideration of the requirements of their religion. It is not a step taken lightly when it is done freely. This group will not automatically consider other religious choices when they remove the cover. Like Christianity and Judaism, devotion to Islam carries with it a set of beliefs as well as practices. No one practice captures the entirety of any religion or that religion’s influence on its adherent. For the devout Muslim girl, the headscarf is one of many aspects of her commitment. Prayer, fasting, and almsgiving, as well as believing in one God, are all part of her Islamic worldview. Shedding the headscarf will not mean abandoning these other practices, practices that may equally constrain the adherent’s receptivity to other religions, according to the argument offered by Professor Gey. Furthermore, many Muslim women argue that commitment to Islam does not require

75. *Id.*

76. COVERED: THE HIJAB IN CAIRO EGYPT (Women Make Movies, Inc. 1995).

77. *Id.*

the *hijab*. The French law does not reach the group that does not visibly carry religious symbols but is nonetheless as devoted as those who do. The French initiative may succeed in decreasing the visibility of the headscarf in the French school system. However, there is no guarantee that it will achieve the individual religious liberty that it seeks.

On the other hand, if the French law seeks to aid those women who are forced to cover and to liberate them from the oppressive dictates of their communities, the law implies that this group was not convinced of the necessity of covering in the first place. For this group, the law is redundant.

III. CONCLUSION

Three conclusions may be drawn from the foregoing discussion. First, the French law's objective as presented by Professor Gey is obstructed by historical and contextual features omitted from his discussion. Individual liberty is the bull that operates in the china shop of historical precedent. The antecedents that exist in the historical relationship between the colonizers and the colonized are driving the reaction to this law, especially for its intended target, the Muslim community. Second, the enactment of the French measure occasions another example of the colonizer's use of women for its own legitimizing purposes—in this case French secularism. Related to this point is the observation that the law risks disempowering these young women by forcing "freedom" on them. Finally, there is no evidence, theoretically or empirically, to suggest that those who wear crosses, yarmulkes, or headscarves are any less receptive to new ideas than those who do not. The decision to wear the headscarf may have less to do with religious commitment than socioeconomic and identity issues arising from the plight of the Muslim immigrant in France.

The French law and Professor Gey's discussion do, however, provide an excellent opportunity to shape the conversation on a timely and important subject.