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The Law of the Republic Versus the “Law of the Brothers:” A Story of France’s Law Banning Religious Symbols in Public Schools

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*“Simplicity is killing us.”
Malika Zouba, Algerian journalist living in France*

Religious fundamentalisms represent one of the greatest contemporary threats to human rights, including the human rights of women.¹ Yet, this topic remains largely obscured in much of the human rights literature outside of the specialized field of women’s human rights. International human rights scholarship and critique has often instead fetishized issues of identity and portrayed a range of complex socio-

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1. See, *i.e.*, HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 249 (2000). “Fundamentalism” is a term used by parts of the international women’s human rights movement. Here it refers to “political movements of the extreme right, which, in a context of globalization . . . manipulate religion . . . in order to achieve their political aims.” Marieme Hélie-Lucas, *Dossier 23/24: What is Your Tribe? Women’s Struggles and the Construction of Muslimness*, WOMEN LIVING UNDER MUSLIM LAWS, 2001, available at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\\$87\)=i-87-2789](http://www.wluml.org/english/pubsfulltxt.shtml?cmd$87)=i-87-2789). One advantage of the language of fundamentalisms is that it speaks across religious boundaries about movements within many traditions, including Christianity, Hinduism, Islam and Judaism. Note that those interviewed here often used the French terms “*Islamistes*” and “*intégristes*” to refer to the movements they described. The author alone is responsible for the specific language used in the English translation as most interviews were conducted originally in French, and translated by her into English.

political questions as simple matters of difference and individual rights to freedom of religion. No topic has more thoroughly manifested these shortcomings than the regulation of headscarves in French public schools.

In the polarizing post-September 11 environment, many international human rights advocates and other critical voices have understandably been concerned with not appearing to be “Islamophobic”² or to buy into the Bush Administration’s failed terrorism narrative. To avoid these pitfalls, such voices have often responded with a thin anti-racist account of the headscarf controversy in France, an account simply pitting a racist French state against headscarved Muslim girls who are being hampered from expressing their individual religious beliefs.³ In this narrative, the mass of white French citizens support the law, while the undifferentiated “Muslims” oppose it. All of the internal politics and debate among Muslims, and those of Muslim, North African, and Arab heritage, on this topic are thereby “disappeared.” The aim of this Chapter is to complicate the simplified human rights story of the 2004 French Law on Religious Symbols (“the 2004 Law” or “the Law”),⁴ and to place the issue firmly within the context of contemporary struggles over and with religious fundamentalisms.

2. The term “Islamophobia” denotes hostility toward Islam and Muslims generally, and has been argued to be a part of European society since the Eighth Century. See COMMISSION ON BRITISH MUSLIMS AND ISLAMOPHOBIA, *ISLAMOPHOBIA: ISSUES, CHALLENGES AND ACTION* 7–8 (2004), available at <http://www.insted.co.uk/islambook.pdf>. Undoubtedly, discrimination against people of Muslim origin has been a grave challenge to human rights in the era of the “War on Terror.” See Combating Defamation of Religions, Comm’n on Human Rights Res. 2004/6, ¶¶ 6, 16, U.N. Doc. E/CN.4/RES/2004/6 (Apr. 13, 2004). However, some prominent dissidents of Muslim heritage have staunchly criticized the concept of Islamophobia as “confus[ing] criticism of Islam as a religion and stigmatization of those who believe in it.” See, e.g., *Writers Issue Cartoon Row Warning*, BBC NEWS, Mar. 1, 2006, available at <http://news.bbc.co.uk/1/hi/world/europe/4763520.stm>. These criticisms of the term “Islamophobia” are shared by some interviewed here. See discussion at note 63.

3. For example, see Peter Danchin, *Suspect Symbols: Value Pluralism as a Theory of Religious Freedom in International Law*, 33 YALE J. INT’L L. 1, 21–25 (2008); Jane Freedman, *Women, Islam and Rights in Europe: Beyond a Universalist/Culturalist Dichotomy*, 33 REV. INT’L STUDIES 29–44 (2007); JOAN SCOTT, *THE POLITICS OF THE VEIL* (2007); Johnathan Sugden, *A Certain Lack of Empathy*, HUMAN RIGHTS WATCH (July 1, 2004), available at <http://www.hrw.org/english/docs/2004/07/01/turkey8985.htm>; *Memorandum to the Turkish Government on Human Rights Watch’s Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf*, Human Rights Watch Briefing Paper, 26–29, 37–38 (June 29, 2004), available at http://hrw.org/backgroundunder/eca/turkey/2004/headscarf_memo.pdf [hereinafter *Memorandum to the Turkish Government*].

4. Law No. 2004–228 of March 15, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 17, 2004, p. 5190, available at <http://www.legi-france.gouv.fr/WAspad/UnTexteDeJorf?numjo=MENX0400001L>.

This human rights law story is told primarily through conversations conducted in 2007 with women's rights activists, journalists, religious figures, and scholars of Muslim, Arab or North African heritage living in France who support the Law on Religious Symbols. Their voices have mostly been left out of the Anglophone version of this debate, and they provide particular insights into the difficult questions raised.⁵ This Chapter does not purport to represent the full spectrum of opinions in the Muslim population or in France generally concerning the 2004 Law.⁶ The opposition of some Muslims to the French ban on religious symbols in public schools has already been highly publicized. Telling the often overlooked "other" side of the story demonstrates that the policy debate about headscarves in school is not just a question of identity, but of political choices with political consequences. The voices of those interviewed here should also serve as a reminder that, in the field of human rights, we need to be wary of making easy assumptions about the correlation between identity and opinion and that we cannot proceed blind to context.

This story also underlines the need to complexify the concept of identity whenever we address it. Identity is multi-faceted, shifts over time and place, and may be affected by politics and context in a range of ways. It is not necessarily immutable. This is made clear by the words of a North African woman activist recounted to the author during this research. She reportedly said, "When I arrived in France I was told I was an immigrant. Then I became Moroccan. And now we are all called Muslims, whether we are practicing or not."⁷

5. Opinions critical of the Law have already received a great deal of airtime and can be found elsewhere in the literature. *See, for example*, the interviews of veiled girls and women conducted in Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil? Muslim Women, France and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743 (2006) and FRANÇOISE GASPARD & FARHAD KHOSROKHAVAR, *LE FOULARD ET LA RÉPUBLIQUE* (1995).

6. Most of those interviewed here are of North African or Arab origin and from regions that have historically produced the largest Muslim and Arab immigration to France. Some seventy percent of France's Muslim population of 5–6 million are from Algeria, Morocco and Tunisia. *See Muslims in Europe: Country Guide*, BBC NEWS ONLINE, Dec. 23, 2005, available at <http://news.bbc.co.uk/2/hi/europe/4385768.stm>. This significant North African presence in part explains the interrelationship between developments in the Maghreb and France that many of those interviewed here describe. Note, however, that the French Muslim population is becoming increasingly diverse as Turkish and South Asian immigration increases. The use of the term Muslim "population," rather than Muslim "community" in this Chapter is a deliberate choice intended to reflect this frequently overlooked diversity. *See* Saleh Bachir and Hazem Saghieh, *The "Muslim community": A European invention*, openDemocracy, Oct. 16, 2003, available at http://www.open-democracy.net/conflict-terrorism/community_2928.jsp.

7. One estimate suggests that of the approximately five million members of what is called France's Muslim community, only 700,000 are actually practicing Muslims. *See* John

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Many of those interviewed stressed the importance of precision in describing the 2004 Law. They felt that the Law’s scope had been overblown by its opponents. Concerned with setting the record straight, they wanted to make clear that under the 2004 Law, the headscarf, and any other “ostentatious” religious symbols of any denomination, are banned only in public schools.⁸ The Algerian journalist and activist Malika Zouba—who lives in France—stressed, “[pro-veil] activists make people believe that the veil has been banned everywhere.”⁹ It is not prohibited in any other public space or even in public universities.

The 2004 Law may be translated as follows: “In [primary] schools, junior high schools and high schools, signs and dress that conspicuously show the religious affiliation of students are forbidden.”¹⁰ It was adopted on March 15, 2004, and entered into force in September 2004, just in time for the start of the school year. The broader effect of the Law, including on Sikhs in France, merits consideration but lies beyond the scope of this Chapter, which focuses solely on the relationship between the 2004 Law and the headscarf. Given the approach taken by the European Court of Human Rights in *Şahin v. Turkey*,¹¹ it is most likely that the Court would find the French law to be in accordance with the European Convention on Human Rights. In *Şahin*, the Court found Turkey’s ban on Islamic headscarves and beards in public universities

Lichfield, *So were the French right all along?*, THE INDEPENDENT (London), Oct. 19, 2006 at 36.

8. Note that even prior to the adoption of the 2004 Law, civil servants were prohibited from displaying religious symbols, including the veil, while carrying out their official duties.

9. Interview with Malika Zouba, in Paris, France (June 8, 2007) (notes on file with the author). Only the first quote from an interview will be footnoted. Each subsequent quote from the same individual is drawn from the same cited interview, unless otherwise noted.

10. This translation is from *French Lawmakers Overwhelmingly Back Veil Ban*, MSNBC, Feb. 10, 2004, <http://www.msnbc.msn.com/id/4231153/print/1/displaymode/1098/>. The relevant portion of the original French law reads: “Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.” Law No. 2004–228 of March 15, 2004, *supra* note 4.

11. *Leyla Şahin v. Turkey*, App. No. 44774/98, Eur. Ct. H.R., Fourth Section (June 29, 2004). The judgment was affirmed by the Grand Chamber in *Leyla Şahin v. Turkey*, App. No. 44774/98, Eur. Ct. H.R. (Nov. 10, 2005), *available at* <http://www.echr.coe.int/echr>. The Court’s approach here has been criticized by some in the human rights world. *See, e.g.*, Sugden, *supra* note 3 and *Şahin*, App. No. 44774/98, at ¶ 11 (dissenting opinion of Judge Tulkens). For a defense of the reasoning in *Şahin*, *see* Karima Bennoune, *Secularism and Human Rights: A Contextual Analysis of Headscarves, Religious Expression, and Women’s Equality Under International Law*, 45 COLUM. J. TRANSNAT’L L. 367–426 (2007).

not to be a violation of human rights. The Court emphasized the particular importance of secularism to the protection of human rights in the Turkish context and the margin of appreciation to be afforded governments in matters concerning the relationship of religion and state.

In French schools, the controversy that led to the adoption of the 2004 French Law erupted in September 1989 when three girls were expelled from a high school in Creil for refusing to remove the *foulard islamique*,¹² which their principal found to contravene the principle of *laïcité*.¹³ *Laïcité*, a particularly French notion of secularism, is a basic principle governing the French state about which there appears to be a high degree of public consensus.¹⁴ It was forged in the historic battle over the role of the Catholic Church in France that culminated in the 1905 Law separating church and state.¹⁵ Following the Creil controversy, in November 1989, the Conseil d'État¹⁶ ruled that the wearing of religious symbols in schools did not per se contradict the principle of *laïcité*. According to that ruling, displaying such symbols in school contravened *laïcité* only when the symbol as worn constituted an act of pressure, provocation, or proselytizing, or threatened the rights of another student, or otherwise disturbed public order. Between 1989 and 1994, three ministerial circulars attempted to clarify the matter further. The first held that teachers should determine the acceptability of symbols like the headscarf on a case-by-case basis; the second reaffirmed secularism in public schools; and the third suggested the permissibility of banning “ostentatious” religious symbols, including the headscarf.

12. The *foulard islamique*, known in Arabic as the *hijab*, covers the hair, neck and shoulders, and often the outer rim of the face. It is sometimes accompanied by a long dark cloak, or *djilbab*, which conceals the shape of the body, and it is sometimes worn with gloves. The even more restrictive *niqab* covers everything but the eyes. Famously, the *burka* hides even those. Joan Scott has argued that the headscarf and the veil are not the same thing and that the difference between these terms is elided in discussions of the 2004 Law. Joan Scott, *Symptomatic Politics: The Banning of Islamic Headscarves in French Public Schools*, 23 *FRENCH POLITICS, CULTURE & SOC'Y* 106, 108 (2005). Nevertheless, these two terms appear interchangeably for stylistic reasons in this Chapter. Though the author recognizes that each of the named garments is distinct, this range of clothes—chosen for their “modesty”—raises many similar issues.

13. On the history of the Law, see the detailed exposition in Hanifa Chérifi, *Rapport à monsieur le ministre de l'éducation nationale de l'enseignement supérieur de la recherche, Applications de La Loi du 15 Mars 2004 Sur le Port des Signes Religieux Ostensibles dans les Établissements d'Enseignement Publics*, 30–33 (July 2005) [hereinafter Chérifi Report].

14. For further information, see HENRI PENA-RUIZ, *SECULARITY AND THE REPUBLIC* (2007).

15. Law of Dec. 9, 1905 *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], Dec. 11, 1905 (concerning the separation of church and state), available at <http://www.assemblee-nationale.fr/histoire/eglise-etat/sommaire.asp#loi>.

16. The Conseil d'État is the highest administrative court in France, with final jurisdiction over cases involving executive actions. It also serves a range of legislative, administrative and judicial functions.

However, far from resolving the matter, the controversy only grew, particularly subsequent to the media coverage of the first episode. By 1994, some 3000 girls were seeking to wear the headscarf in French schools. During that period, the issue was dealt with largely on a case-by-case basis, usually involving negotiation. For some, this represented the ideal way to resolve such disputes. For others, this produced a piecemeal approach that, they argue, resulted in more girls being excluded from school for wearing headscarves before the adoption of the 2004 Law than were excluded after it came into effect. Many teachers and principals were unsure how to proceed. Numerous disputes arose, complete with strikes both by those supporting the veil and by teachers opposing it, and protracted administrative proceedings. When girls faced problems in schools for wearing headscarves, they were vigorously supported by Muslim fundamentalist organizations which campaigned for the “right to veil.”¹⁷

These Muslim fundamentalist organizations enthusiastically promoted their agenda among high school students in particular. Girls facing discipline for seeking to veil in school were often given great media attention and regarded as heroes by their supporters. Some girls veiled because they wanted to or believed it to be an expression of their religious beliefs. Others wore the headscarf because they were coerced by family members, neighbors or others in the community. Some veiled out of teenage rebellion against teachers or more liberal parents, some to express protest against the French state or international events like the Iraq war. Others donned the veil to express pride in their heritage, or because they had internalized misogynist views about modesty, or to gain respect, or because they clearly supported a theocratic agenda, and many for a combination of some or all of these reasons.¹⁸ Regardless of the individual motivations, for many teachers, the resulting disputes were terribly difficult to resolve. One such fracas in 2000 concerned an eight-year-old girl whose Iranian father and French mother wanted her to go to school veiled. When this possibility was rejected by her teachers, she was moved to a different school.

In July 2003, in light of what some interpreted as mounting attacks on the principle of *laïcité*, French president Jacques Chirac created the Stasi Commission. This body included some prominent individuals of Muslim heritage, and its mandate was to investigate the application of *laïcité* in France and make recommendations to the President. In its December 2003 report, the Commission recommended, *inter alia*, the

17. Chérifi Report, *supra* note 13, at 32.

18. For discussion of the range of motives claimed by school girls seeking to wear the *foulard islamique*, see Wing, *supra* note 5, and GASPARD & KHOSROKHAVAR, *supra* note 5.

adoption of a law banning religious symbols in schools—a law similar to the one subsequently adopted in 2004.¹⁹

When the Law was promulgated, some of its opponents predicted that near civil war would result in France. International reaction was highly charged. Some human rights groups criticized the Law using rights-based arguments.²⁰ Meanwhile, a group calling itself “The Islamic Army in Iraq” abducted two French journalists on August 20, 2004, and these hostages were shown on Al Jazeera pleading for President Chirac to lift the headscarf ban and save their lives. The abduction produced a backlash among Muslim opponents of the ban in France, many of whom felt it was a matter for the population of France to decide without outside interference—especially of such a coercive and violent nature.

On the first day of the academic year in fall 2004, a total of 240 religious symbols appeared in schools. All were Muslim headscarves except for two Christian crosses and one Sikh turban.²¹ Of these, only seventy students refused to remove the symbol in question. Subsequently, during the first weeks of the school year, the number of religious symbols in schools slowly rose. However, the Law’s supporters largely viewed the process of implementing the ban as a success. For example, Hanifa Chérifi, an education expert of Algerian origin who authored the official report on the implementation of the Law for the French Minister of Education in July 2005, stressed the importance of the preparation of the teacher corps and the seriousness of the dialogue that was carried out with students.²² According to the Minister of Education’s 2004 implementation circular for the Law, dialogue was always to precede discipline.

Ultimately, during the 2004–2005 academic year, forty-four students were suspended for wearing the headscarf and three for wearing the Sikh turban, usually after long processes of dialogue and negotiation with students and families were exhausted (according to Chérifi, that is nearly 100 fewer than the number of students who were expelled in 1994–95 under the previous educational policy.) Another ninety-six students are reported to have either transferred to private schools, enrolled in correspondence courses or left school (only those over sixteen). The analogous numbers for the subsequent school years are difficult to

19. COMMISSION DE RÉFLEXION SUR L’APPLICATION DU PRINCIPE DE LAÏCITÉ DANS LA RÉPUBLIQUE, RAPPORT AU PRÉSIDENT DE LA RÉPUBLIQUE (Dec. 11, 2003) available at <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>.

20. See, e.g., *France*, in AMNESTY INTERNATIONAL, ANNUAL REPORT 2005, available at <http://web.amnesty.org/report2005/fra-summary-eng>; Press Release, Human Rights Watch, *France: Headscarf Ban Violates Religious Freedom* (Feb. 27, 2004), available at <http://hrw.org/english/docs/2004/02/26/france7666.htm>.

21. Chérifi Report, *supra* note 13, at 11.

22. *Id.* at 7–10.

obtain as there has been no official follow-up to the Chérifi report.²³ While the expulsions and departures are a most unfortunate result, the numbers were much lower than predicted. Furthermore, these statistics do not quantify the number of girls who, thanks to the Law, felt less coercion in school because the ban reinforced their personal choice not to wear the headscarf, despite familial or community pressure to do so. Concern in human rights circles has been almost exclusively for the welfare of those girls seeking to veil, with little thought to the human rights of those who did not wish to be coerced into doing so.

The story of the politics surrounding the 2004 Law requires careful decoding. Supporters of the Law come from across the political spectrum, including both the truly Islamophobic and members of the far-right with an anti-immigrant agenda, and principled champions of secularism, leftwing anti-fundamentalists and progressive women’s rights campaigners including many of Muslim and North African heritage. Some *beur*,²⁴ immigrant and Muslim organizations—such as the Council of Democratic Muslims, and the Federation of Amazighe (Berber) Associations of France, as well as some women’s rights groups with significant North African membership like *Ni Putes, Ni Soumises* (Neither Whores, Nor Submissives), and anti-racist groups like *S.O.S. Racisme* and *Africa 93*—came out in support of the Law in the name of women’s rights, integration and secularism. The Law’s opponents are also diverse, including Muslim fundamentalists, some practicing and secular Muslims, some on the left and the far left, and some human rights activists and feminists. Most often, these opponents characterize the Law as a violation of religious or academic freedom, an expression of racism, or simply a bad idea. Much like the nasty debates about legal regulation of pornography and prostitution among feminists, the debate about the 2004 Law has been highly polarized and divisive. However, it has not followed the simple lines of white French (pro) versus Muslim (con), as has been painted in much of the English-language literature. Like many human rights stories, this is a debate that goes beyond identity and one that is heavily grounded in the Law’s context.

***Understanding the French Law on Religious Symbols
in Context: Feminist and Anti-Fundamentalist
Stories about the 2004 Law***

The Core Question of Fundamentalism

In most of the stories told about the 2004 Law by those interviewed for this Chapter, the single most important factor was the emergence of

²³. A British news report in October 2006 claimed that by then only forty-five Muslim girls in France had “been forcibly excluded from school for refusing to bare their heads.” Lichfield, *supra* note 7.

²⁴. This term, adopted from Parisian slang for “Arabs,” refers to persons of North African/*maghrebi* descent who have grown up in France.

Islamic fundamentalism both internationally and in France. In the era of globalization, these stories conceptualize the debate as one that is inherently transnational. What happens in Algeria,²⁵ Iran, Lebanon, or other countries on these issues has tremendous significance in France. Hence, for many of the experts interviewed here, the growth and power of religious extremist movements, both internationally and in France, and their stance vis-à-vis women's rights imbue the struggle over headscarves in schools with particular political meaning. This should complicate the human rights response. In France, the ideology of the Muslim Brotherhood²⁶ has permeated numerous civil society associations and federations, becoming a powerful force. Hanifa Chérifi has argued that these groups have chosen to focus on questions of identity that have a powerful resonance with a young generation suffering from the failures of integration.²⁷ The fundamentalists seek the implementation of their own repressive version of Islamic law over Muslim populations and countries, advocate the separation of the sexes, oppose women's human rights and equality, and have sometimes used or advocated violence to achieve these ends or to punish those who oppose their agenda.

For Algerian journalist Mohamed Sifaoui, famous for having infiltrated Al Qaeda in France,²⁸ the contemporary issue of the veil in French schools can only be understood in the context of the rise of fundamentalist Islam.²⁹ Though certain forms of veiling such as the old-school *haik* (a

25. Throughout most of the 1990s, a violent struggle raged between the Algerian government, backed by the military, and armed fundamentalist groups seeking to create a theocratic state. The fundamentalist project of creating a theocratic state in Algeria represented a particular assault on basic human rights, including the rights of women. In practice, both sides committed atrocities, but the fundamentalists particularly targeted secularists, intellectuals, journalists, artists, women activists and unveiled women for assassination and carried out large scale massacres of villagers. As many as 200,000 people may have lost their lives during the conflict. See, *i.e.*, Hugh Roberts, *Under Western Eyes: violence and the struggle for political accountability in Algeria*, MIDDLE EAST REPORT, 39–42 (Spring 1998); MAHFOUD BENNOUNE, *ESQUISSE D'UNE ANTHROPOLOGIE DE L'ALGÉRIE POLITIQUE* (1998); Louisa Ait-Hamou, *Women's Struggle Against Muslim Fundamentalism in Algeria: Strategies or a Lesson For Survival?*, in *WARNING SIGNS OF FUNDAMENTALISMS* 117–124 (Ayesha Imam et al. eds., 2004); and, *Compilation of Information on the Situation in Algeria*, WOMEN LIVING UNDER MUSLIM LAWS, No. 1 March 1995 (on file with author).

26. Founded in Egypt in 1928 by Hasan al-Banna, the Brotherhood views its own radical interpretation of Islam as a comprehensive way of life and political system.

27. *ISLAM Rencontre* (Interview with Hanifa Cherifi), SOCIÉTÉ, Nov. 20, 2001, available at http://www.humanite.fr/popup_imprimer.html?id_article=253771.

28. See MOHAMED SIFAUI, *MES "FRERES" ASSASSINS: COMMENT J'AI INFILTRÉ UNE CELLULE D'AL-QAIDA* (2003).

29. Interview with Mohamed Sifaoui, in Paris, France (June 8, 2007) (notes on file with the author).

loose white silk cloak worn with a lace kerchief over the lower face) were advocated by some North African traditionalists, the wearing of the *foulard islamique* was taken up by fundamentalist groups as part of their broader agenda.³⁰ Sifaoui traces this back to the late 1980s, a time which also corresponds to the rise of fundamentalist groups in Algeria. The liberal former Mufti of Marseille, Soheib Bencheikh, who is now director of that city’s *Institut Supérieur des Sciences Islamiques*, agrees with Sifaoui. Bencheikh underscores that, “[w]e are not talking about any veil. We are talking about an Iranian-style or Saudi-style garment; sometimes even worn with gloves. This is the avant-garde of a creeping ideology.”³¹ Dress became symbolically important and powerful in the political struggle within the Muslim population. Some of the young, male fundamentalists began to wear long robes and skull caps, and to grow prominent beards. As *beur* anti-racist activist Mimouna Hadjam joked, “they looked like the representatives of God on earth. You with your Western outfit, how can you compete?”³²

Making a clear distinction between traditional or practicing Muslims and those for whom Islam is part of a political project aimed at theocracy, Sifaoui carefully delineates that, “this is not a question of Islam, but of Islamism.” Chérifi has also warned of the danger of confusing someone who is merely a believer with a fundamentalist.³³ This mistake is to be avoided, but not by pretending fundamentalism does not exist. Sifaoui criticizes not only those who fail to recognize fundamentalism, but also those “on the other side in the extreme right who say that the Qu’ran is all about violence. We must find a balance.” For him the Qu’ran is an important and valuable source of spirituality, but not of law or politics. Lalia Ducos, a retired Algerian beautician and feminist who has lived in France for many years, points to the tremendous confusion in public discourse in the post September 11 era between Arabs, Muslims, fundamentalists and even terrorists. In her view, this has had a very negative impact on young people of Muslim or Arab heritage in France.³⁴

30. Note that the *foulard islamique* is not a traditional garment for North Africans or for many of Muslim heritage from other parts of the Muslim world. See Marieme Hélie-Lucas, *International Veils*, WOMEN LIVING UNDER MUSLIM LAWS, Oct. 23, 2006, available at [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-539225](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-539225).

31. Interview with Soheib Bencheikh, in Marseille, France (June 11, 2007) (notes on file with the author).

32. Interview with Mimouna Hadjam, in Paris, France (June 12, 2007) (notes on file with the author).

33. *ISLAM Rencontre*, supra note 27.

34. Interview with Lalia Ducos, in Paris, France (June 8, 2007) (notes on file with the author).

Zazi Sadou, a well-known women's rights advocate and founder of the *Rassemblement Algérien des Femmes Démocrates*, also sees the problem of headscarves as grounded in the emergence of fundamentalism. "The first generation [of North African women immigrants to France] came in traditional clothes with perhaps a small scarf over part of their hair. But the first Islamic veil appeared in France at exactly the same time as the rise of the Islamic Salvation Front (FIS) in Algeria."³⁵ Making a literal connection in this regard, Mimouna Hadjam, who works with the anti-racist NGO Africa 93 in the northern Paris *banlieues*,³⁶ said that in those neighborhoods, fundamentalist activists became particularly visible in 1991 and 1992.³⁷ This occurred as the Algerian government cracked down on such groups and individuals at home and many fled to France, where they gained asylum more easily than did their secular opponents.³⁸ Hadjam exclaimed, "I am all for the right to asylum, but why did these guys get visas when women in danger [from the fundamentalist groups] could not get them?"

For Sifaoui, the Islamic veil is a symbol of militancy, regardless of the individual motivations of the women wearing such garb. The underlying fundamentalist political agenda is linked to the effect of the veil on personhood. In his estimation, "A woman under a burka or veil whose face or head we cannot see . . . has been reduced to a thing." He asks, "Is uniforming Muslim women a good idea?" According to Sifaoui, this is the ultimate form of depersonalization.

The choice in France is stark, as Sifaoui sees it. "Either we leave our Muslim fellow citizens at the mercy of the fundamentalists and suffer the consequences. Or we help our Muslim fellow citizens to join the train of modernity, even while staying attached to their traditions." Meanwhile, as he describes it, on the other side, groups like the *Union des Organisations Islamiques de France* (UOIF) and the *Conseil Européen des Fatwas et de la Recherche*—which issues *fatwas*, or Islamic law rulings, concerning Muslims throughout Europe—have been pushing ceaselessly for Muslim women in Europe to wear the veil in all contexts.

³⁵. Interview with Zazi Sadou, in Marseille, France (June 11, 2007) (notes on file with the author).

³⁶. This term, which roughly translates as "suburbs," now refers specifically to the "depressing, outer-city high-rise housing estates which have become identified with France's working-class and multiethnic postcolonial populations." Carrie Tarr, *Maghrebi-French (Beur) Filmmaking in Context*, in *BEUR IS BEAUTIFUL: A RETROSPECTIVE OF MAGHREBI-FRENCH FILMMAKING 2* (Cineaste 2007).

³⁷. For a more detailed account of Hadjam's views on the headscarf controversy in the context of fundamentalism, see Mimouna Hadjam, *L'Islamisme contre les femmes partout dans le monde*, *PENSAMIENTO CRÍTICO*, Oct. 6, 2004, available at www.pensamientocritico.org/mimhad0405.htm.

³⁸. See LEILA HESSINI, *FROM UNCIVIL WAR TO CIVIL PEACE: ALGERIAN WOMEN'S VOICES* 19 (1998).

For an example of the strident advocacy of veiling to which Sifaoui refers, consider the *fatwa* issued by the *Conseil Européen des Fatwas et de la Recherche* regarding the duty of Muslim women and girls in Europe to cover their heads. It proclaims:

We are determined to convince the Muslim woman that covering her head is a religious obligation. God has prescribed this modest dress and the scarf for the Muslim woman so that she can be distinguished from the non-Muslim woman and the non-practicing woman. Thus, by her dress, she presents herself as a serious and honest woman who is neither a seductress nor a temptress, who does no wrong either by her words or by any movement of her body, so that he whose heart is perverse cannot be tempted by her³⁹

The *Cercle d'Étude de Réformes Féministes*, a French women's group that studies and promotes women's rights, commented on this *fatwa*.

The first of the reasons cited [for women to cover] is the visibility of the Muslim woman, and making an obvious distinction between her and other women. The marking of distinction which constitutes discrimination or makes discrimination possible . . . is understood here as a positive objective. Moreover, it is about marking the difference from, or even the superiority over, other women who are neither “serious nor honest” or who “do wrong”⁴⁰

Lalia Ducos, who is currently an activist with the group *20 Ans Barakat*,⁴¹ also traces the evolution of the hijab question in France to the rise of Algerian fundamentalist groups, drawing a long historical arc. For her, this history is crucial to understanding the situation today. She stresses the grim reality that many Algerian women and others have paid with their lives for not wearing the veil. To illustrate, she tells the story of Warda Bentifour, an Algerian teacher who was killed in front of her students by an armed fundamentalist group during the 1990s conflict in Algeria for refusing to veil. Many Algerians in France support the Law, she argues, because they “have fled fundamentalism and atrocities [in Algeria] and don't want to see the same problems reproduced in their country of asylum. . . .” Soheib Bencheikh, who is also of Algerian origin, echoes the sentiment that, especially those who come from countries that have seen the rise of fundamentalism (Algeria, Iran,

39. *Conseil Européen des Fatwas et de la Recherche*, fatwa No. 6, in *Recueil de Fatwas*, Série No. 1, AVIS JURIDIQUES CONCERNANT LES MUSULMANS D'EUROPE 7 (2002) available at www.c-e-r-f.org/fao-180bis.htm, along with commentary on the *fatwas* by the *Cercle d'Étude de Réformes Féministes* [translated by the author].

40. *Id.*

41. This organization focuses on the reform of discriminatory family law in North Africa, and in Algeria in particular. For more information, see <http://20ansbarakat.free.fr/>.

etc.), recognize the danger.⁴² Such immigrants and refugees warn that, based on their experiences in their home countries, if the fundamentalists are victorious in schools, this problem will only spread.

Education is a deliberate target of fundamentalist struggle within many religious traditions around the world.⁴³ For example, American science teachers now reportedly shy away from teaching evolution to avoid disputes with Christian fundamentalists.⁴⁴ Given this centrality of education in fundamentalist strategy, Marieme Hélié-Lucas, an Algerian sociologist who now lives in France, agrees with Bencheikh and others that the danger is not only the Muslim fundamentalist demand to allow the headscarf in schools, but that this is only the first of escalating demands. As she says, the fundamentalists “always start with women. That is a weak point because everyone is prepared to trade women’s rights.”⁴⁵ As she and others view it, the demand for “the right to veil” is part of a broader fundamentalist agenda to force Muslim children to eat *halal* meat in school, to keep Muslim schoolchildren out of physical education, co-educational swimming and situations involving *mixité* (mixing of the sexes), and even to restrict or change curricular content, especially in the sciences, a demand familiar to Americans. Furthermore, for Hélié-Lucas, if one gives in on the question of the headscarf in school, this will strengthen the hand of the fundamentalists in achieving these other goals, and demanding even more.⁴⁶ As she notes ironically, the fundamentalists claim “the right to be different, and then the right to persecute those who want to be different [from them].” Indeed, for Asma Guénifi, a psychologist who volunteers with the women’s group *Ni Putes, Ni Soumises* (Neither Whores Nor Submissives), the insertion of the veil in schools is part of an Islamist project that has as its goal a society based on separation between the sexes.⁴⁷ Sadou also adjures that

42. See, for example, CHAHDORTT DJAVANN, *BAS LES VOILES!* (2003).

43. See, e.g., KEVIN PHILLIPS, *AMERICAN THEOCRACY: THE PERIL AND POLITICS OF RADICAL RELIGION, OIL, AND BORROWED MONEY IN THE 21ST CENTURY* (2006), CHETAN BHATT, *LIBERATION AND PURITY: RACE, NEW RELIGIOUS MOVEMENTS AND THE ETHICS OF POSTMODERNITY* 242–244 (1997) and Karima Bennoune, “A Disease Masquerading as a Cure”: *Women and Fundamentalism in Algeria, An Interview with Mahfoud Bennoune*, in *NOTHING SACRED: WOMEN RESPOND TO RELIGIOUS FUNDAMENTALISM AND TERROR* 75, 80, 88 (Betsy Reed ed., 2002).

44. Cornelia Dean, *Evolution Takes a Back Seat in U.S. Classes*, *N.Y. TIMES*, Feb. 1, 2005, at F1.

45. Interview with Marieme Hélié-Lucas, in Marseille, France (June 11, 2007) (notes on file with the author).

46. On a related note, for a view of the adoption of the Law as a blow to the Muslim fundamentalist movements in France, see the comments of Nadia Chaabane from the Association of Tunisians of France in *ASFAD, FACE AUX INTEGRISTES, FACE AU SEXISME, DIX ANS DE LUTTE POUR LES DROITS DES FEMMES DU MAGHREB, ICI ET LA-BAS* 65 (2005).

47. Interview with Asma Guénifi, in Paris, France (June 12, 2007) (notes on file with the author).

if the veil is normalized in school, the fundamentalists will then move on to their next demand—perhaps the banning of sex education. It is the failure of critics of the Law to see this context that is most disconcerting to those interviewed here.

Ducos expressed her great frustration with those such as the anti-racist organization *Les Indigènes de la République*, who justly criticize racism in France but fail to equally critique Muslim fundamentalism. She also articulated her dismay that anti-fundamentalist voices do not get a hearing in the media. Malika Zouba, a journalist who was forced to flee Algeria during the 1990s and now has asylum in France, notes that “if you demonstrate against the cartoons of the Prophet Mohamed⁴⁸ you’ll get shown on TV, but if I demonstrate against the Family Code,⁴⁹ I won’t get any attention.” Hélié-Lucas, who founded the network of Women Living Under Muslim Laws, notes that there had been very few demonstrations of veiled women against the Law inside France, and many demonstrations in support of the Law, including by people of Muslim heritage. However, precisely the opposite has been portrayed by the media outside of France. Furthermore, both Sifaoui and the Tunisian-born anthropologist Jeanne Favret-Saada maintain that what Muslim fundamentalists say, including about the question of women and the veil, needs to be studied carefully and made widely known.⁵⁰ They argue that these groups have played on the lack of knowledge of their ideology and strategy, especially in liberal and human rights circles.

Indeed, a common theme for progressive anti-fundamentalist *beurs*, Muslims, and North African immigrants who support the Law is their frustration with some Western leftists, liberals and human rights advocates who they feel do not support them—their logical counterparts—in the struggle against fundamentalism. These particular left, liberal and human rights voices are seen not to recognize both that the fundamentalists’ project for Europe is antithetical to their own professed values

48. This refers to the cartoons of the Prophet Mohamed published in Denmark in 2005 that sparked worldwide protest and controversy. See JEANNE FAVRET-SAADA, COMMENT PRODUIRE UNE CRISE MONDIALE AVEC DOUZE PETITS DESSINS (2007).

49. Here she refers to Algeria’s gender discriminatory family law which has been the subject of a protracted struggle by the women’s movement. For more information see Karima Bennoune, *Between Betrayal and Betrayal: Fundamentalism, Family Law and Feminist Struggle in Algeria*, 17 ARAB STUDIES QUARTERLY 51 (1995) and Karima Bennoune, *The International Covenant on Economic, Social and Cultural Rights as a Tool for Combating Discrimination Against Women: General Observations and a Case Study on Algeria*, 184 INT’L. SOC. SCI. J. 351, 360–363 (2005).

50. Interview with Jeanne Favret-Saada, in Marseille, France (June 11, 2007) (notes on file with the author). For these two authors’ most recent written contributions to that end, see FAVRET-SAADA, *supra* note 48, and MOHAMED SIFAOU, COMBATTRE LE TERRORISME ISLAMISTE (2007).

and is central to the headscarf debate.⁵¹ Developing this critique, Favret–Saada identifies some Muslim fundamentalist groups as important allies of the Catholic Church in its opposition to women’s rights and homosexuality.⁵² This Catholic Church social project is often clearly opposed by those same Western leftwing, liberal and human rights figures. However, Mohamed Sifaoui argues that such linkages are overlooked. He explains to French leftists and “*droits de l’hommes*” that “the Muslim fundamentalists are *our* extreme right.” As Favret–Saada acerbically notes, “the Islamists are happy to meet Europeans who are so naïve . . . and talk only about [religious] discrimination.” Zazi Sadou opines that “those who see [the Law] only as racism do not understand fundamentalism and the pro-veil campaign of the fundamentalists. Hence, they understand the veil only as a cultural sign, but not as an ideological uniform.” It is perhaps logical that this political matrix is more visible to critics of Muslim heritage than to Western liberals and human rights advocates. As Mimouna Hadjam explains, “We did not discover Islamic fundamentalism on September 11, 2001. We have been living with it for 20 years.”

Interestingly, though sharing much of the analysis of the other commentators, Zouba specifically views the headscarf as not only a question of fundamentalism but also a trope for the desperate situation of many immigrants and their children in the French *banlieues* (slums where many Muslim populations live). She sees it as “a way to have an identity in a country where you are blocked, where you do not exist.” Though she is a vigorous opponent of the veil, as well as a supporter of the Law, she also understands headscarving in France as a way for the dispossessed to widen the gap between themselves and the rest of society in protest, “to frighten them with our veils.” Ultimately, paradoxically, it is a way for them to render discrimination against themselves more visible.⁵³ At the same time, she also underscores the influence of fathers, brothers, and of mosques on girls who veil. And she too points a finger at the Iranian revolution and Algerian fundamentalist groups in explaining how the demand to veil in schools became such a big issue when it was

51. For further elaboration of this key point, see also *Statement to the World Social Forum*, WOMEN LIVING UNDER MUSLIM LAWS, Jan. 20, 2005, available at [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-103376](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-103376) and Marieme Hélié-Lucas, *The Enemy of My Enemy is Not My Friend: Fundamentalist Non State Actors, Democracy and Human Rights*, WOMEN LIVING UNDER MUSLIM LAWS, Sept. 3, 2006, available at [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-544539](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-544539).

52. See Carla Power, *The New Crusade: Fighting for God in a secular Europe, conservative Christians, the Vatican and Islamic militants find a common cause*, NEWSWEEK, Nov. 8, 2004, available at <http://www.newsweek.com/id/55637/page/2>.

53. For a more detailed exposition of Zouba’s thoughtful views on the subject, see Malika Zouba, *Un débat difficile et miné: Voile et dépendance*, 59 CONFLUENCES MÉDITERRANÉE 33 (Fall 2006).

not so for earlier generations of Muslim immigrants. Similarly, Bencheikh, who does indeed identify the headscarf as "a subject of ideology," also recognizes that it may be the "clothing of the poor," as it "hides whether you have had your hair done or have fashionable clothes."

As these analyses might suggest, Hélie-Lucas and others blame the failures of the French state for the success of fundamentalist movements in France. "Like in Algeria, when the French state refuses to provide services, the fundamentalists rush in, and they also provide their ideology. When the state is not doing its job, it leaves space to these fascist organizations." She and others particularly highlight the terribly high, disproportionate rate of unemployment in the *banlieues*, which creates a fertile ground for fundamentalist recruitment and conditions ripe for the manipulation of legitimate grievances. While the general rate of unemployment in France is at about ten percent, it is reported to be at least fifty percent among youth in the *banlieues*.⁵⁴ Sifaoui points out that all of this has allowed the fundamentalists to say to Muslims in France, "Look, we told you the French would not consider you citizens. Come back to us and we will defend you." Favret-Saada comments that if the Socialists in power in the 1980s had responded effectively to the demands of the anti-racist and immigrant rights movements at the time of the *Marche des Beurs*,⁵⁵ the Muslim fundamentalists could never have been so successful in Diaspora populations in France. Ducos warns ominously that it is very dangerous not to resolve these pressing social problems. Her point has been hammered home dramatically by the renewal of urban violence in the *banlieues* in November 2007.⁵⁶

The Difficult Question of Racism

This brings us to the question of the role of racism in the dynamics surrounding the Law. Many in the international human rights community, as well as other commentators, have dismissed the ban on religious symbols in public schools (usually referred to simply and mistakenly as the ban on headscarves) as a manifestation of French racism, xenophobia, or exclusionary conceptions of citizenship, particularly in the post-

54. See *Crisis in France*, BUSINESS WEEK, Nov. 21, 2005, available at http://www.businessweek.com/magazine/content/05_47/b3960013.htm.

55. On Dec. 3, 1983, 100,000 people marched in Paris for equality and against racism and police violence. This movement was notable for its progressive coalition of blacks, *beurs* and whites. See Boris Thiolay, *Vingt ans après la Marche des beurs*, L'EXPRESS.FR, Dec. 3, 2007, available at <http://www.lexpress.fr/info/societe/dossier/integration/dossier.asp?ida=412853>.

56. See Hugh Schofield, *The hyper-president's biggest problem*, BBC NEWS, Nov. 28, 2007, available at <http://news.bbc.co.uk/2/hi/europe/7116978.stm>.

September 11 world.⁵⁷ Even a well-known supporter of the Law like Fadela Amara, a founder of *Ni Putes, Ni Soumises* who became France's Urban Affairs Minister in 2007, has warned that "the issue of the veil has become for some a new political argument for stigmatizing Muslims and the *banlieues*."⁵⁸ France has a terrible history of colonialism and colonial manipulation of the concept of women's rights in many of the countries like Algeria, from which its Muslim immigrants came. In today's France, racism against those who originate from such countries and their descendents persists and constitutes a systemic obstacle to their enjoyment of human rights. How should this affect the thinking and advocacy strategies of the human rights community concerning the 2004 Law? While some restrictions on religious expression are consonant with human rights law, according to the UN Human Rights Committee, permissible restrictions cannot be "imposed for discriminatory purposes or applied in a discriminatory manner."⁵⁹

On the other hand, Chérifi claims that, despite the stereotypical portrayals of the views of Muslims in France in the international media, a majority support the Law. For others, like Mimouna Hadjam, whose human rights career began in the French anti-racist movement working against discriminatory police violence in the 1980s,⁶⁰ racism against Muslims, Arabs or immigrants is too simple an explanation for the adoption of the Law. Certainly, in her opinion, racism endures in France, especially in the field of employment, though she feels that discrimination is a problem shared by the working class of any background. Despite her view that racism is not the motivation for the Law, she recognizes that veiled women and girls are indeed sometimes the target of discrimination. For example, she stressed that if she found out that a veiled girl had been attacked by racists on a train, she would be the first one to defend her.

Echoing a common refrain among many of those interviewed for this Chapter, Malika Zouba argues that rather than the 2004 Law being racist, it is racist to assume that the veil is "naturally" to be found on Muslim and North African women's heads. "Yes, racism here is a real problem," she concedes, "and you have to be careful not to be used by the Islamophobes. But, allowing another discrimination [veiling] is not

57. See, e.g., Leti Volpp, *The Culture of Citizenship*, 8 THEORETICAL INQUIRIES IN LAW 571 (2007) and JOAN SCOTT, *supra* note 3.

58. FADELA AMARA & SYLVIA ZAPPI, *NI PUTES, NI SOUMISES* 107 (2003) (author's translation).

59. U.N. Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993).

60. This violence proved deadly and sparked widespread unrest. See FAUSTO GIUDICE, *ARABICIDES: UNE CHRONIQUE FRANÇAISE 1970-1991* (1992).

fighting discrimination. Banning the veil is not against Islam. It is against discrimination against girls [and women]." Jeanne Favret-Saada cautions that the actual racism against immigrants in France "does not mean that a victim of racism is incapable of being himself an oppressor." Furthermore, Zouba argues that the real struggle against all forms of discrimination begins with the Law, but must not stop there. Otherwise, "the Islamophobes will have won." As she explains:

My struggle goes beyond the veil. It starts with the struggle against the veil, but does not stop there. Otherwise, I am looking at my community as a racist, if I am blind to other suffering and discrimination besides the veil. Any youth with an Arab name applying for a job will have a 15–20% chance of actually getting it. (I am being optimistic here.)

This recalls Leti Volpp's important point that the Stasi Commission made many other recommendations for improving the situation of Muslims in France beyond the adoption of the Law, including the creation of an anti-discrimination authority and the adoption of official school policies against racism. So far, the Law on Religious Symbols is the only recommendation to be adopted by the legislature.⁶¹ Zouba also points out that, while opposing the scarf and the coercion sometimes used to purvey it, one has to be very careful not to perpetuate the stereotype of all immigrant Muslim men in the *banlieues* as "thieves, rapists and veilers" [*voleurs, violeurs, voileurs*].⁶² She is clear that she wants nothing to do with those "who are on my side [of the headscarf issue] because it gives support to their prejudices against Muslims."

Those interviewed expressed diverse opinions about the very concept of what is called "Islamophobia."⁶³ Zouba uses the term "Islamophobia" freely, and Ducos has used it in her writing. In contrast, Hadjam is uncomfortable with the word, as she considers the concept an artificial construct. Hélié-Lucas rejects it altogether, preferring instead to speak of racism. She absolutely agreed that racism in France needs to be fought, but as a form of discrimination, not as Islamophobia. She sees the use of the notion of "Islamophobia" as a hallmark of the fundamentalist strategy. "When one confronts the fundamentalist agenda, they [fundamentalists and their supporters] say that what you are doing is

61. Volpp, *supra* note 57, at 593. President Sarkozy and Minister Fadela Amara have recently promised a controversial new "Marshall Plan for the *banlieues*" that is supposed to improve life in the suburbs by promising more law enforcement, employment, transportation and better schools. See Tracy McNicoll, *Fadela Amara: Madame Marshall Plan*, NEWSWEEK, Mar. 1, 2008, available at <http://www.newsweek.com/id/117816>.

62. She borrowed this framework from Thierry Leclère, *En stigmatisant les garçons des cités, le mouvement Ni putes ni soumises a-t-il faussé le débat?*, TÉLÉRAMA, Numéro 2865 2004–12–11.

63. See discussion above, *supra* note 2.

against Islam.” The concern with the concept of Islamophobia largely emanates from the fear that it may confuse legitimate criticism of a religion or religious practices with discrimination against adherents of the religion. Bencheikh, a former Mufti with a religious education from Al Azhar University in Cairo,⁶⁴ describes the problem as follows: “We must preserve the debate on religion itself, but protect Muslims from attacks.” While religious discrimination is a real problem, spurious allegations of such prejudice must not be allowed to disable human rights-based critique of what is claimed to be religious practice when it violates the rights of women or others.

The Meanings of the Veil

At the heart of this debate is the meaning of the headscarf itself. Some, like U.S. academic Joan Scott, have imputed positive significance to the veil, perhaps in an attempt to counter prejudice against Muslims in the West.⁶⁵ However, for those interviewed here, the meaning of the veil was almost unfailingly negative. Hanifa Chérifi comprehends the headscarf as the visible sign of inferior status for women which affects the dignity of the person. For Sifaoui, “the Islamist veil clings to the body and becomes a part of the personality.” According to him, in the *banlieues*, some adolescent boys and their fathers, having listened to radical Imams telling them that their women must veil, pushed their sisters and daughters to do so. Some other girls then decided to veil of their own volition, so as to not be treated as prostitutes or “loose” in their neighborhoods. For many, the veil, often accompanied by baggy clothing, became a kind of *laissez-passer*, allowing a girl to go out or to move around safely (Zouba calls it a kind of “visa”). This underscores the point that the *banlieues* had become a zone governed not by the law of the republic, but rather where individual men in the community enforced the “law of the brothers.” The headscarf was one way women and girls could negotiate and avoid punishment under this informal “law.” Often girls are said to change clothes at the borders of their neighborhoods. In fact, Zouba says that “ironically, the veil is a means to do what is prohibited. It makes it possible to go out with boys, for example, because you are anonymous.”

In recent years, in the *banlieues*, Zouba argues that “the law of the brothers has prevailed.” Lalia Ducos explains that, even before the 2004 Law, “in the *cités*,⁶⁶ there was a law imposed by men on women. Girls

⁶⁴. Founded in 988 A.D., Al Azhar is one of the most prestigious centers of Islamic learning in the world.

⁶⁵. See Scott, *Symptomatic Politics*, *supra* note 12, at 106, 116, and SCOTT, *THE POLITICS OF THE VEIL*, *supra* note 3.

⁶⁶. This term refers to the large apartment complexes found in the *banlieues*.

did not dare to dress freely. [Under this ‘law,’ girls] had to veil and wear big baggy clothes to hide their shape. This was the only way to be left alone in the daily life of a woman.” Such unofficial “laws” raise basic questions about democracy for Hélie–Lucas. She asks, “are we having laws that are not voted on by the people?” The strength of the informal “law” constraining women’s choice about dress suggests that a lack of government restrictions on headscarves may not actually produce the result seemingly desired by many of the 2004 Law’s opponents: for women to be able to wear what they choose. In this context, the formal 2004 Law may be understood as a way to counter this parallel “law” of brothers, fathers or neighbors. Hence, for some women of Muslim or North African heritage who support the 2004 Law, its adoption represents the government fulfilling a basic democratic obligation that it had neglected previously. This flags a larger concern about the government’s abdication of responsibility for human rights in the *banlieues*. Hadjam says, we “need the state to be engaged [in the *banlieues*].” Ducos actually is concerned that the government is not fully implementing the 2004 Law now, leaving some girls without protection from coercion. Such a perspective is almost never heard in English language accounts of the headscarf issue.

While the Islamic veil is particularly associated with and promoted by fundamentalist movements, veiling in general is also the product of traditional ideas about female virtue and male lust and sexual agency—ideas that are all too familiar to women in many societies. For Zazi Sadou, the veil is most often the product of pressure from fathers and older brothers. Girls are told that wearing the veil is the only way to be respected. “It reassures men that their daughters are proper, even in a liberal Western society. Thus, a woman’s body is used as a symbol of morals. Some men then think, ‘I am a good Muslim because my daughter wears the veil.’” As Asma Guénifi says, “I am Algerian and I am proud of it. But the veil is the submission of women.” This view was repeated by Hadjam.

For Anglophone and academic opponents of the 2004 Law like Joan Scott, the veil may simply be a cloth, and other understandings of it are somewhat hysterical.⁶⁷ However, for Asma Guénifi and others, “the scarf is not just a cloth. It is an ideology.” Malika Zouba also explains the issue in terms of the trajectory of women’s rights. She asks:

Why should we accept this going backward? . . . My father veiled my two [older] sisters and my mother. This was a way of telling the French, ‘we are different.’ I was ten at the independence [of Algeria,

⁶⁷. See generally SCOTT, *THE POLITICS OF THE VEIL*, *supra* note 3, and Joan Scott, Presentation at panel on Veiling and the Law, Yale Law School (Oct. 31, 2007) (notes on file with the author).

in 1962] and never wore the veil. I should have been veiled at the age of 13 or 14, but I was not. Why? My country made a step forward. I went to school and university [in Algeria]. This is quite different from my two older sisters. My two younger sisters also went to school. . . . However, in the 1980s [after the Iranian revolution] we began to go backwards.

The “duty” to veil is drawn from interpretation of religious texts by Islamists, according to Lalia Ducos, and as Malika Zouba emphasizes, these are mostly interpretations by men.⁶⁸ Some girls may become convinced that such “modesty” is the only way to save their souls. From a religious point of view, Bencheikh asserts that veiling is not one of the five pillars of Islam; therefore it can be limited. Interpretation and re-interpretation of religious doctrine over time and subject to context are key themes for him. A Muslim fundamentalist once told the author of this Chapter that there is no such thing as interpretation, an idea common to many fundamentalisms. On the contrary, for Sifaoui and Bencheikh, the meaning of the veil must be carefully rethought in the contemporary French context. Sifaoui suggests that wearing it in France has paradoxical results. Whereas the veil was originally intended to “protect” women from the gaze of men and strangers, in the West it draws the gaze and garners attention. In a radical rethink, Bencheikh suggests that it is school itself that serves today as the functional equivalent of the veil historically. Education is now the best way to protect one’s daughter and ensure her safe future.⁶⁹

One of the concerns of those who oppose the 2004 Law is that by banning the headscarf in schools the Law stigmatizes veiled girls and women in French society. However, supporters of the Law turn this argument on its head, postulating that the wearing of the veil in school by some stigmatizes other unveiled girls as bad Muslims, a view confirmed by the fatwa from the *Conseil Européen des Fatwas et de la Recherche* quoted above.⁷⁰ While certainly not the fault of individual veiled women, in the broader social context, “not-being-veiled is a condition that can only exist in the presence of veiling.”⁷¹ Not-being-veiled has led to a range of terrible consequences for women and girls, including social stigma, family pressure and violence, attacks in the community, and even death. Young *beur* women in the *banlieues* have been attacked and gang raped, in the ritual known as the *tournante*, and

68. On the myriad of interpretations of women’s rights under Islamic law, see *Knowing Our Rights: Women, family, laws and customs in the Muslim world*, available at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\\$87\)=i-87-16766](http://www.wluml.org/english/pubsfulltxt.shtml?cmd$87)=i-87-16766).

69. See SOHEIB BENCHEIKH, MARIANNE ET LE PROPHÈTE: L’ISLAM DANS LA FRANCE LAIQUE 144–145 (1998).

70. *Conseil Européen des Fatwas et de la Recherche*, *supra* note 39.

71. Bennoune, *Secularism and Human Rights*, *supra* note 11, at 426.

even murdered for wearing miniskirts, appearing “loose,” or being disobedient.⁷² Algerian school-girls were gunned down by the Armed Islamic Group in the 1990s for refusing to cover their heads—something that is well known among Algerians living in France.⁷³

Scholars like Scott or Volpp who oppose the 2004 Law often argue that for some girls, the veil is simply a personal choice and should be respected as such. Some of those interviewed here are willing to recognize the possibility that veiling is a choice in a limited number of cases, but emphasize that the Law preserved a wide field for the expression of that choice. As Guénifi says, “We respect the choice. You can wear the veil anywhere, except in public school.” Hadjam, too, stresses that the Law “does not keep a girl from veiling in the street.” Furthermore, given that headscarves are not banned in universities, for her, “the reasoning of the French Law is that at 18, a girl can choose.” Sadou evinces the view that “when you are 20 or 30 you can say it is a choice, but these are not adults. These are minors, children in school.”

Others problematize the notion of free choice in this context. “Don’t tell me the veil is a choice,” says Lalia Ducos. “There are a million ways to manipulate the spirit to wear the veil.” “I question the word ‘choice,’” agrees Malika Zouba. “It seems a girl has the choice. But she did not decide. Men decided she should wear the veil and she is following their views. Maybe not her father or brother, but at the mosque, on Arab TV where they have sermons all day long.”

Others have argued that, paradoxically, the headscarf may be a way for girls to rebel against more liberal or assimilated parents. For Favret-Saada, those who see the headscarf in school as merely a harmless sign of such adolescent revolt “do not see that in rebelling against their parents [this way], they end up with something worse than their parents.” Similarly, Sifaoui posits that it is wrong to think that the veil is a way of opposing rules; he says, “the veil is a way of following rules, submitting to rules.” For others, it may be both at the same time, a phenomenon perhaps magnified by the 2004 Law.

The Contextual Approach to Restrictions on Headscarves in Public Education

To ground the interviews on the 2004 Law conducted in France in the framework of human rights law, this section summarizes the rele-

72. See French Muslims Fail to Enter Mainstream and Suffer from Poverty, Discrimination and Sexism, National Public Radio broadcast (Feb. 26, 2003); SAMIRA BELLIL, *DANS L'ENFER DES TOURNANTES* (2002); AMARA & ZAPPI, *supra* note 58, at 5–7.

73. See KARIMA BENNOUNE, *S.O.S. ALGERIA: WOMEN’S HUMAN RIGHTS UNDER SIEGE*, in *FAITH AND FREEDOM: WOMEN’S HUMAN RIGHTS IN THE MUSLIM WORLD* 184, 187 (Mahnaz Afkhami ed., 1995).

vant human rights norms and the contextual approach to evaluating headscarf regulation in light of these norms. Tackling this issue as a matter of human rights requires the rationalization of conflicting rights claims, those based on freedom of religion and those based on sex equality.

Freedom of religion is a fundamental human right. Article 9(1) of the European Convention on Human Rights, to which France has adhered, sets out that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.⁷⁴

As Bencheikh, former Mufti of Marseille, began his interview, “Muslims, like all others, have the right to exercise their religion in beauty and dignity.” However, this right to religious freedom also includes the right to be free of religion if one chooses. Moreover, expression of religious belief can be subjected to some limitations under human rights law itself, as the *Şahin* case reminds us. According to Article 9(2) of the European Convention,

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁷⁵

At the same time, sex equality is also a fundamental human right, and one from which no derogation is permissible.⁷⁶ The Convention on the Elimination of All Forms of Discrimination against Women, to which France is also a state party, requires that states “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”⁷⁷ On an even more ambitious note, the Convention mandates states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination

⁷⁴. Eur. Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 9(1). This right is also protected by the Int’l Covenant on Civil and Political Rights (ICCPR) art. 18; Int’l Covenant on Civil and Political Rights, Dec. 16, 1966; S. Treaty Doc. No. 95–20, 999 U.N.T.S. 171.

⁷⁵. Eur. Convention on Human Rights, *supra*, note 74, at art. 9(2).

⁷⁶. The ICCPR requires states to respect and ensure the rights set out in the convention on the basis of equality between women and men and prohibits derogations that involve discrimination on the basis of sex. *See* ICCPR, *supra* note 74, at arts. 2–4.

⁷⁷. Convention on the Elimination of All Forms of Discrimination against Women, art. 2(e), Dec. 18, 1979, 1249 U.N.T.S. 13.

of prejudices and customary and all other practices which are based on . . . the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁷⁸

Human rights law offers insufficient guidance on resolving conflicts between the right to religious freedom and the right to gender equality. In practice, as Marieme Hélie-Lucas comments, all too often women’s rights give way in the face of religious justifications for sex discrimination. There has been some—mostly vague—mention of the intersection of women’s equality and religion in recent standards. For example, the U.N. Commission on Human Rights in 1998 urged states to “take all necessary action to combat hatred, intolerance and acts of violence, intimidation, and *coercion* motivated by intolerance based on religion or belief, including practices which violate the human rights of women and discriminate against women.”⁷⁹ The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, “stresse[d] the importance of . . . the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.”⁸⁰ In its 2000 General Comment on gender equality, the U.N. Human Rights Committee extolled the idea that freedom of religion “may not be relied upon to justify discrimination against women. . . .”⁸¹

Furthermore, as many of those interviewed here contend, the mainstream human rights movement has failed to come to terms with the meaning of the human right to freedom of religion in the face of political movements that deploy religious arguments—and do so to support political projects that aim to curtail the rights of others. Both universal and regional human rights instruments prohibit the misuse of human rights to destroy the rights of others.⁸² Analyzing these complex norms is further complicated by what are indeed racist and xenophobic discourses on headscarves, fundamentalism, terrorism and women’s rights in the Muslim world, discourses which have proliferated since 9/11. Yet, often human rights narratives only recognize the religious freedom issue and

78. *Id.* at art. 5(a).

79. Comm’n on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination or Belief*, Res. 1998/18, ¶ 4(c), U.N. Doc. E/CN.4/1998/18 (Apr. 9, 1998) (emphasis added).

80. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 22, U.N. Doc. A/CONF.157/23 (July 12, 1993).

81. U.N. Human Rights Committee, *General Comment No. 28: Equality of Rights Between Men and Women (Art. 3)*, ¶ 21, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

82. See, e.g., Eur. Convention on Human Rights, *supra* note 74, at art. 17, and ICCPR, *supra* note 74, at art. 5.

in its most simple iteration, reducing the very real complexities of headscarf regulation in schools to a more comfortable—and false—simplicity.

Given these tensions and conflicts, the subject of government restrictions on the wearing of veils and other “modest” garments in public education is too complex to give rise to an easy bright line rule for compatibility with human rights norms.⁸³ While a bright line rule seems more objective and easier to apply, it produces a formalistic approach blind to the complex reality on the ground. Instead, a contextual approach enables a thick analysis and maximizes the ability to effectively address particular challenges to human rights in a specific context.

Using the contextual approach, human rights advocates weighing restrictions on “modest” garments for Muslim women and girls in public schools under international law should look carefully at the meanings and impact of the symbols in context. In doing so, they should consider a range of factors, including the impact of the garments on other women (or girls) in the same environment; coercion of women in the given context, including activities of religious extremist organizations; gender discrimination; related violence against women in the location; the motivation of those imposing the restriction; religious discrimination in the given context; the alternatives to restrictions; the possible consequences for human rights both of restrictions and a lack thereof; and whether or not there has been consultation with impacted constituencies (both those impacted by restrictions and by a lack of restrictions on such garments). Though this formula forces consideration of a multiplicity of issues, this matrix also enables a truly intersectional approach more likely to produce substantively rights-friendly results for the greatest number of women and girls in the long run.

The first question to ask is whether the wearing of the religious symbol causes, magnifies, or otherwise constitutes discrimination against women in that particular locale. If it does not, obviously restrictions on the symbol are not justifiable on these grounds. If it does, the second

⁸³. For further discussion, including of the relevant international human rights law, see Bennoune, *Secularism and Human Rights*, *supra* note 11. The difficulty in establishing a bright line rule on the regulation of religious symbols has been recognized by the U.N. Special Rapporteur on freedom of religion. She has suggested a sophisticated approach to the regulation of religious symbols involving the consideration of a range of general criteria to balance the competing rights at stake. The first category of “aggravating indicators,” such as discriminatory intent, suggest incompatibility of particular attempts to regulate religious symbols with human rights law. An alternate list of “neutral indicators” indicate that the restrictions in question may not violate human rights standards, including when “the language of the restriction . . . is worded in a neutral and all-embracing way,” or when “the interference is crucial to protect the rights of women. . . .” *Report of the Special Rapporteur on freedom of religion or belief*, U.N. Doc. E/CN.4/2006/5 (Jan. 9, 2005) at 11–19, 17–18 (prepared by Asma Jahangir).

question to ask is whether the specific restrictions are likely to violate freedom of religion, especially on discriminatory grounds. If the answer is no, and the restrictions are otherwise in accordance with human rights law (including the requirements that they are necessary to protect the rights of others, proportionate and prescribed by law), they should be deemed acceptable under the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and other relevant standards.⁸⁴

If the answer to both questions is yes, i.e., where both discrimination against women and against Muslims is at play, the situation becomes more difficult to resolve. There, the deciding factor ought to be coercion. The state should not interfere with the right of adults to dress as they please in public schools, unless coercive social forces (in the family or the community) that mandate the use of the veil or other forms of “modest” dress are active to that end in the location. In such a situation, the state can interfere to protect women from coercion, and is actually mandated by human rights law to do so. This principle is important for human rights advocates to remember, given that all too often what are deemed religious or cultural rights take precedence over women’s rights when the two are seen to conflict. For girls, a lower standard for what constitutes coercion can apply, given their greater sensitivity to peer pressure and less-developed agency.

Mainstream human rights advocates who focus traditionally on state conduct more than on the impact of non-state actors on human rights may have a tendency to overlook the human rights imperative to check coercion by non-state groups in the community, such as fundamentalist organizations. Given this emphasis, the mainstream human rights movement is prone to respond only to one dress code (the state’s restrictions on the headscarf) but not the other (pressure to cover from family, community and social movements).

In any case, gender-sensitive and anti-racist education and community dialogue must accompany any restrictions. Furthermore, any constraints on dress must be imposed with religious and, where relevant, racial and ethnic sensitivity. However, this issue cannot be seen as involving religious freedom alone. Gender equality remains at the heart of the matter. Human rights law requires states to act affirmatively to end discrimination against women. This prescription must be remembered, along with what human rights law says about religious freedom.

84. France is a state party to a number of related international human rights treaties, including the ICCPR (accessed to in 1980), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1983), the Int’l Convention on the Elimination of All Forms of Racial Discrimination (accessed to in 1971), the Convention on the Rights of the Child (ratified in 1990) and the Eur. Convention on Human Rights (ratified in 1974).

Critique of the Human Rights Response to the 2004 Law

Both Amnesty International and Human Rights Watch, along with a number of other international human rights groups, like the International Federation of Human Rights (FIDH), have been outspokenly critical of the French Law.⁸⁵ Moreover, some prominent international human rights lawyers⁸⁶ have been involved in recent cases defending the “right to veil” at school. One example is the recent case in nearby England in which the father of a twelve-year-old-girl unsuccessfully sought for her to be able to wear the *niqab*, which covers the full face, to school.⁸⁷ These positions taken by some international human rights advocates were strongly criticized by many of those interviewed for this law story.

For example, Chérifi retorts that the problem of the veil in school should not be understood simply as a question of women dressing the way they want to, but rather as a symbol of a status that subordinates women. She asks, “Do we defend this lower status for women in the name of human rights? Liberty does not mean you have to allow everything. Some human rights NGOs do not have a historical perspective on this question.” Lalia Ducos feels that some human rights advocates have forgotten how this issue came to be a controversy, focusing on it, mistakenly, as a question of respect for culture and diversity. Even a religious leader like Bencheikh warned that human rights advocates should not “use liberty against liberty, as a sort of Trojan Horse.”

Sifaoui is even more critical of the positions of human rights detractors of the 2004 Law and avers that some positions seem to reflect the attitude that “human rights are good for me, but for Muslims to oppress their women is fine because it is written in a holy book.” In his view, those human rights groups that are critical of the Law do not seem to realize the consequences of their positions on these issues. He agrees that “we must be very attached to individual liberty.” However, for Sifaoui, “the choice also involves taking into consideration the freedom

^{85.} See, e.g., AMNESTY INTERNATIONAL, *supra* note 20, and HUMAN RIGHTS WATCH, *supra* note 20.

^{86.} For example, lawyers associated with London’s prestigious Matrix Chambers, a group known for its human rights expertise, have been involved in several such cases.

^{87.} *British girl, 12, loses fight to wear full-face veil at school*, AGENCE FRANCE PRESSE, Feb. 21, 2007. The garment implicated in this case is distinct from the headscarf, which does not cover the entire face. However, as noted above, this range of “modest” clothes raises some similar issues. Moreover, some women’s rights advocates fear escalating claims for “modest” clothing in schools. Today this is a live issue. Several other European countries now struggle with whether to allow the burka, which covers even the eyes, in school. See, e.g., *Germany Mulls School Uniforms, Burka Ban*, UNITED PRESS INT’L, May 8, 2006.

of others.” This view was echoed by an unveiled Turkish woman engineer who stressed that, “when I see women all covered up like that, I feel pressure.”⁸⁸

The rights of non-veiled Muslim girls are just as implicated in this controversy as the rights of girls who wish to veil. As Hélié-Lucas submits, the claims move rapidly from “the right to veil” to the right to beat up those who do not.⁸⁹ This reality is often overlooked by human rights critiques, which focus only on the individual wishing to veil and not on those around her. In fact, according to many of those interviewed for this Chapter, one of the most important constituencies supporting the Law consists of unveiled Muslim girls who wish to be free from pressure to veil in school. During the collection of input for the preparation of the Stasi Commission Report, Zazi Sadou spoke to many unveiled school girls who argued that public school was their best chance to emancipate themselves. Sadou says many appealed to the Stasi Commission to recommend a law against the headscarf in school, saying: “We are the silent majority. Our brothers will force us to wear the veil if you leave us alone in the face of pressure from family and community.” Soheib Bencheikh further emphasized the constraints placed on many unveiled Muslim girls to induce them to veil. “They are menaced, threatened.” This coercion, in his view, leads many unveiled Muslim girls to support the Law. “It is possible that non-Muslim women tolerate [the presence of the veil in school], but not that [unveiled Muslim women] do.”

For some secular North African supporters of the 2004 Law, the human rights arguments for the veil in school are a kind of cultural relativism, ironically emanating from a human rights movement putatively committed to universality. Some interviewed here see it as a failure of the human rights movement to appreciate the importance of secularism for human rights. Hadjam and others perceive some of the mainstream human rights stances on the headscarf as a manifestation of post-colonial guilt. Zouba, an ardent defender of universality, says,

Of course I understand that human rights activists are torn. The problem is that those women and girls who are forced to wear the veil are not appearing in the same human rights reports.⁹⁰ All

88. Comments of Turkish woman engineer, in Istanbul, Turkey (June 15, 2007) (notes on file with the author).

89. According to Hélié-Lucas, just this sort of violence has been visited upon children for not following religious dietary restrictions at school. See, e.g., *Union des Familles Laïque, Un enfant de huit ans tabassé pour avoir mangé du porc à la cantine de l'École*, Mar. 14, 2007, available at, <http://www.ufal29.infini.fr/spip.php?article739>.

90. For example, in Amnesty International's 2005 Annual Report, the only criticism of dress codes for women is in the entry on France which notes the restrictions on religious symbols in schools. Neither Saudi Arabian nor Iranian provisions that penalize women for

attacks on human rights should be denounced, provided that you are not denouncing an attack on human rights by allowing another attack on human rights.

Conclusions About the 2004 Law

As noted, most of those interviewed for this Chapter supported the 2004 Law, though their explanations for their support varied. Chérifi supported the Law without reservation and, while recognizing that the French government had much more to do to make amends for its historic failures toward immigrants, she believed that the 2004 Law's implementation has been a success. For her, this success is based on the spirit of the Law, the universality of its approach which does not target any one religion, and the extensive preparations carried out before the Law entered into force.

Sifaoui raises a question of proportion. Of the five million Muslims in France, only 3000 or so had sought to wear the veil in school, and of these only a small number left school rather than give it up.⁹¹ He asks if the secularism of the entire society should be called into question for such a small minority of girls. Ultimately, for him, the concept of *laïcité* and the 2004 Law that defends it are about *vivre-ensemble*, an idea designed to enable France's diverse population to live together.⁹² Sifaoui's conclusion about the Law seems to be based both on his views about the discriminatory nature of the veil itself, as well as on his committed secular republicanism (the latter views coexist with his being a practicing Muslim). For him, personal choices are inherently limited in a public space like the public school, which "belongs to everyone." Here the young person is not a Muslim or a Christian, but simply a student among students, and among whom one does not distinguish on the basis of religion. Zazi Sadou strongly supports the Law as a way to protect girls who do not wish to veil and as a means to fight against fundamentalism. She also approves of the 2004 legislation because, "the intrusion of all religious symbols, especially the headscarf, represents the invasion of public space by religious practice."

"Among feminists, we were split over the Law," says Lalia Ducos. "Some thought it would be discriminatory. At first I was shocked. Then I realized that it was an epic struggle between republican laws and those who oppose them." Ducos stressed that most veiled girls did not leave school after the Law went into effect, but rather removed their scarves

failing to cover, including through internationally unlawful corporal punishments, are enumerated as specific concerns. See AMNESTY INTERNATIONAL, *supra* note 20.

91. For a discussion of available statistics, see *supra* text at notes 21–23.

92. This can be translated as "living together in a spirit of cooperation or coexistence," a concept often emphasized in French public discourse.

at school. When asked if she believes the 2004 Law takes the right approach, Malika Zouba said, "I guess so. At least you can prevent some of the girls from being veiled, which is a major victory. If 10% of the would-be-veiled girls could escape, then I agree with the Law. Even veiled, I am glad to see a woman in the street; but I ask, is there anything I can do before she wears the veil?"

Jeanne Favret Saada was against the Law initially and, like Françoise Gaspard whose views are summarized below, preferred negotiated solutions to such problems. However, when the issue became a major political contest, and when pro-veil groups like the *Union des Organisations Islamiques de France* and others organized a huge campaign for veiling in school and against the proposed law, "you had to stop the epidemic of veils in schools." If the government had yielded, it would have represented a major victory for those [pro-veil, fundamentalist] forces, in her view. She hopes that the Law can afford some protection to girls who are coerced into wearing the veil. As she said, "If it concerns a girl who gives in to the neighborhood, at least they [fundamentalist activists, members of community and family] cannot bother her in class."

Marieme Hélie-Lucas initially wondered if a new law was needed and if instead the 1905 Law on the separation of church and state would suffice. The old Law, which was in no way targeted at Muslims, but rather concerned the Catholic Church, could simply have been applied to the current problem in schools. As she says, "You do not have a particular religious identity when you are training to be a citizen of the Republic." Ultimately, she has become a supporter of the 2004 Law. Her support comes in part from concern about decreasing secularism in France and about more young people trying to wear not only the headscarf, but also other religious symbols like the *kippah* (Jewish skullcap) and the cross in school.

In the words of Soheib Bencheikh, a codified law is useful because, "once the Law was adopted, there was no more controversy." He stresses that "the choice to be French means to respect the law." Turning to French history, he argues that many young Muslims "do not know how much the Third Republic did to liberate science and knowledge from the domination of the Jesuits" and how much of a struggle had occurred to secularize education in the Christian context. For him, this is an important part of the backdrop to the 2004 Law. He, too, was particularly struck by how few girls have continued to insist on wearing the veil in school since the adoption of the Law.

Marc Saghie, a Lebanese journalist living in Paris, proposes that the French government should not have dealt with the veil in school generically as a religious symbol, but rather directly as a question of discrimi-

nation against women.⁹³ Indeed, there has been some slippage between the arguments that has perhaps contributed to criticism of the Law. One position in the debate is to defend *laïcité* in principle from the interjection of all religious symbols in schools (the veil being, of course, the most prominent and widespread). The alternate view expressed is that the Law is justified because the veil is discriminatory, girls need to be protected from it in school, and the only acceptable way of doing so is by banning all religious symbols equally. Sometimes, as noted above, these arguments are interwoven. For Ducos and Sifaoui, the 2004 Law is clearly about the veil, though Ducos particularly recognized that it was helpful to put the proscription in the context of regulations on the symbols of other religions as well. By contrast, Chérifi posits the Law as a universal construct to defend *laïcité*, which is about all religions equally. However, Sadou submits that “even here [in France] it is presented as a law against the veil.” Asma Guénifi laughed at her own gaffe in referring to it as “the Law against the scarf,” saying, “Even I make the mistake. It is the Law against religious symbols.”

In any case, there have been difficult consequences for some of Muslim and North African heritage who have come out in support of the Law and against fundamentalism, like those interviewed here. Mohamed Sifaoui was reportedly attacked by fundamentalists linked to Algerian armed groups in Paris on June 13, 2008, and a civil society campaign currently seeks to convince the French state to renew his police protection.⁹⁴ According to Guénifi, “We have been called racists, unbelievers and against our own culture. We received death threats and phone threats.” For a woman who had lost her brother to the fundamentalist armed groups in Algeria during the 1990s, these threats carried a particular resonance. The organization with which she works, *Ni Putes, Ni Soumises*, was initially divided over the ban. However, its members realized that the consequences for their own struggles for women’s rights would be very negative if the Law was not adopted. “We are fighting for *mixité* (the mixing of the sexes); we are fighting for girls to have the same opportunities, the same rights.” For her, the advocates of veiling in France were the same kind of fundamentalists as in Algeria, such as her fundamentalist neighbor who had pressured her to wear the *djilbab* during the 90s. “We refuse this male chauvinist project. We refuse the separation of men and women and the crushing of a woman so she does not exist anymore.”

⁹³. Interview with Marc Saghie, in Paris, France (June 12, 2007) (notes on file with the author).

⁹⁴. See SIAWI (Secularism is a Women’s Rights Issue), *France must ensure police protection for Mohamed Sifaoui*, August 19, 2008, available at <http://www.siawi.org/article/507.html> and Mohamed Sifaoui, *Mon agresseur formellement identifié*, June 15, 2008, available at <http://www.mohamed-sifaoui.com/article-20459573.html>.

However, for *Ni Putes, Ni Soumises*, the veil itself is not the sole priority. Similar to the view expressed by Zouba, the 2004 Law is important to the organization, but only one issue among many to be addressed. The activists of *Ni Putes, Ni Soumises* are organizing in the *cités* and *banlieues*, working on human rights education for girls, providing legal information, opposing forced marriages and FGM, working to support women survivors of domestic violence and also supporting the rights of women back home in their countries of origin.⁹⁵ In regard to the latter task, Ducos argues that the struggles of Diaspora women in France can indeed have an important impact on women’s struggles in their countries of origin. The same was true of the Algerian independence movement historically—support for independence flourished among Algerian migrant workers in France. Many of those interviewed here emphasized that the debate about the headscarf should be understood in its regional and transnational contexts.

Mimouna Hadjam explains that her organization, Africa 93, did not initially take a position calling for a law on religious symbols in schools. This was due to skepticism about the social efficacy of legislation, because in the group’s experience “laws against racism have not ended racism.” However, the group came out in favor of the Law in December 2003 when they saw the Islamist demonstrations against it. “It scared me. If these people saw that the Law did not pass, they would have thought they had won.” She expressed that many progressive women like her in her working class neighborhood were very afraid that the Law would not pass. Still she stresses that, “For us the Law is not a panacea. It is a minimum. We want anti-sexist education in school, from the very beginning.” Moreover, Hadjam cautioned that she was indeed concerned about what would happen to the veiled girls themselves in the wake of the Law’s adoption. “The expulsion of a girl [from school] is a failure.” Still, she concludes that, overall, the Law has been a success. Finally, she also recognizes that the Law may mean very different things to different people. “I have a feminist vision of the Law. Chirac had a republican vision.” When asked if she thought the ban had increased fundamentalist pressure on women, as some have suggested, she said, “It clarified things, which always heightens tensions. Women’s struggle always increases social tension, as de Beauvoir wrote.”

A Brief Rejoinder from Françoise Gaspard

Just as many Muslims and North Africans support the ban on religious symbols in schools, complicating the simplistic narrative critiqued above, some non-Muslim French oppose it. Françoise Gaspard is a prominent French sociologist who carried out groundbreaking research

95. For more information on these projects, see <http://www.niputesnisoumises.com>.

on the views of veiled girls in French schools. She is also the current member of French nationality on the U.N. Committee on the Elimination of All Forms of Discrimination against Women. Though a staunch critic of veiling itself, she opposed the 2004 Law, thinking that “it was counter-productive” and could result in the “double stigmatization of girls and Islam.”⁹⁶ Gaspard preferred that the matter of headscarves be dealt with through negotiation with individual girls in school, for example, asking them in class to lower their scarves to their shoulders as a matter of politeness. For her, this should be “a social debate, not a legal question.” However, even she feels that it should be forbidden to cover the face, for “it is useful in a society to see the face.” Moreover, she completely accepts that teachers should not be able to wear headscarves to school out of respect for neutrality as this could seem like a kind of pressure.

As to the escalating demands of the fundamentalists on other issues in school, Gaspard was adamant that children should not be able to refuse to take certain classes or to be exempt from sports on religious grounds. Her primary concern was the exclusion and self-exclusion of veiled girls from school. She also questioned what progress could have been made by the Law when, in her view, there might not be any veils in school, but many veils remain visible outside school in the same neighborhoods. Furthermore, she believes that fundamentalist pressure on women has gotten worse because of the debate; though overall she speculates that a progressive Islam is gaining on fundamentalist movements.

Interestingly, even an opponent of the Law like Gaspard believes that the question is settled for now in France. “The answer is not abrogation of the Law. It is dangerous to re-open the question now. We must live with it.” The best way of doing this, for her, is to directly support girls themselves. For her, the question of fundamentalist pressure on unveiled girls is a complicated one. She too feels that, in France, “We have left power to the bearded ones [the fundamentalists] and they made the law [in the neighborhoods].” During the 2007 presidential elections, several veiled girls told her they would vote for Nicolas Sarkozy because he would bring order and, in their words, they were “tired of our brothers bringing order.”⁹⁷

Still, like many of the Law’s opponents, Gaspard views the debate over the headscarf that led to the Law as a reflection of the “xenophobia

96. Interview with Françoise Gaspard, in Paris, France (June 10, 2007) (notes on file with the author).

97. President Sarkozy has been criticized, however, for a past pattern of tolerating and cooperating with fundamentalist organizations like the *Union des Organisations Islamiques de France*. Claude Askolovitch, *Les Illusions perdues de Sarkozy*, NOUVEL OBSERVATEUR, Feb. 14–20, 2008, at 24.

of the general French population,” and in particular, its fear of immigration by previously colonized peoples. To thoroughly examine the 2004 Law, one must give serious consideration to the arguments made by its supporters, such as those discussed here, as well as those made by thoughtful opponents like Gaspard.

Some Final Thoughts on the Contexts of the Headscarf Debate

The presentation of the female body remains a contentious issue across many cultures. Like all societies, France is complex and these issues are contested. In keeping with her universalist leaning, Malika Zouba frames the headscarf debate in both the specific and global contexts. “The veil is linked to the supremacy of Muslim men. All over the world, men attempt to dominate women. And all throughout the world, women struggle against this. Male domination is not specific to Muslims. It is universal, as is the struggle of women for greater freedom.” It is helpful to understand the headscarf debate in this broader context too. Indeed, it is to this global reality Zouba describes that the Beijing Declaration responds when it proclaims that “Women’s rights are human rights.”⁹⁸

One can continue to imagine a world in which women can wear what they choose and can do so in substantive equality.⁹⁹ This seems to be the concern of some who oppose the Law. Yet, the question is how to apply international human rights standards so as to ensure that women can wear what they choose in the actual contexts in which women live, like in France. In the context of fundamentalist, community or familial pressure on women to cover, pressures that some women may indeed internalize, the removal of government restrictions on headscarves in school may not necessarily lead to the freedom or enjoyment of human rights that one imagines.

As the interviews in this Chapter indicate, some feminists of Muslim and North African origin argue that the wearing of headscarves by some girls in schools, especially schools with a high percentage of Muslim students, can indeed have a negative impact on the human rights of other Muslim girls. Moreover, allowing such “modest” garments to be

98. Beijing Declaration, adopted by the Fourth World Conference on Women, ¶ 14 (September 15, 1995). This declaration was adopted in 1995 by governments around the world at the U.N. Fourth World Conference on Women in Beijing.

99. Substantive equality “addresse[s] the realities of context and determine[s] equality and discrimination against women in terms of eliminating disadvantage in result.” SAVITRI GOONESEKERE, THE CONCEPT OF SUBSTANTIVE EQUALITY AND GENDER JUSTICE IN SOUTH ASIA 13, available at <http://www.unifem.org.in/PDF/The%20Concept%20of%20Substantive%20Equality%20-final%20-%2031-12-07.pdf>. This concept is embodied in the Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 77, arts. 1 and 3. Substantive equality is often defined in opposition to formal equality, which stresses identical treatment instead of equality in result.

worn in schools risks leaving girls vulnerable to coercion aimed at pressuring them to do so—coercion that has been documented in many instances in France. Thus, some limits on the wearing of headscarves in school in this particular context may indeed be required by human rights norms guaranteeing substantive gender equality. Such restrictions also come within the exceptions to the right to express religious belief as found, *inter alia*, in Article 18(3) of the International Covenant on Civil and Political Rights. Therefore, they are consonant with human rights law. Human rights critics of the French law usually reject this possibility out of hand, but such a legal approach may produce more substantive enjoyment of human rights by women in France's Muslim population in the long run.

There is no question that finding the right balance for addressing the issue of headscarves in school in the contemporary moment is incredibly difficult and requires one to tightrope walk over perilous waters, making use of a vocabulary heavily laden with political meaning. One must somehow find a space for opposition to fundamentalism and racism, to sex discrimination and religious or ethnic discrimination, to the Muslim far right and the French far right. This requires an anti-racism which is unabashedly feminist, a feminism which is unequivocally anti-racist and a thick analysis of human rights. In today's world, it is perhaps convenient to take a narrow anti-racist or religious freedom position on the Law, looking at it through only one human rights lens. Zouba characterizes this attitude on the part of some human rights advocates as follows: "They want to fight origin discrimination, so let [the girls] wear the veil as a kind of [anti-racist] corrective, because they don't want to deal with this other problem [of discrimination against women]. This is the only discrimination they want to tackle." The stories told here about the 2004 Law make clear that such limited approaches are mistaken. The struggles for women's equality and against religious extremism must also be factored into any useful human rights analysis of these headscarf regulations.

Moreover, the failure of human rights forces to comprehend and respond forcefully to the menace of religious fundamentalisms—in this particular manifestation, to Muslim fundamentalist pressure on women and girls to cover—needs to be addressed. This deficiency makes one particularly sympathetic to the Law's supporters quoted here. Clearly, we need a human rights account of religious extremism, and that account needs to be brought to the center of our analysis of the 2004 Law.

As this law story comes to an end, it is worth pondering Hadjam's admonishment of the French progressives in her local government who funded Muslim fundamentalist associations, but not her anti-racist and anti-fundamentalist group, Africa 93. She said: "I am a counter-weight

to [fundamentalism]. I represent feminism and secularism, yet you do not support me.” This is a pattern that is all too often replicated elsewhere. It is imperative for human rights advocates to find thoughtful ways to support those who are working democratically for human rights and against fundamentalism within Muslim countries and Diaspora populations, like those interviewed here.¹⁰⁰ Collectively, their endeavors represent one of the most important human rights struggles of our time.

100. A similar engagement is needed with their counterparts who organize against fundamentalisms in other religious traditions. *See, e.g.*, RIGHTS & DEMOCRACY (INTERNATIONAL CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT), FUNDAMENTALISMS AND HUMAN RIGHTS, REPORT OF THE MEETING, Montréal, 12–14 May 2005, *available at* http://www.dd-rd.ca/site/_PDF/publications/fundamentalism_hr.pdf.