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Problematizing “Autonomy” and “Tradition” with Regard to Veiling: A Response to Seval Yildirim

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“If you unjustly thought that it is in your right to prevent free Muslim women from wearing the face veil, is it not our right to expel your invading men and cut necks?”

Bin Laden¹

A recent New York Times editorial characterized the 2010 decision by the French Senate to ban face-covering veils as “government-enforced bigotry.” Readers reacted by either applauding the French move (seen as “helping some of the most powerless women participate more fully as equal citizens”²), or by condemning it in the strongest terms — actually comparing the French to the Taliban.³ These responses reflect the polarization of public opinion when it comes to such matters. They also relate to themes raised in Yildirim’s paper, namely, veiled Muslim women “seeking to participate in public space,” and the role of states in regulating dress codes.

In “liberal democracies,” the focus of Yildirim’s article, the question of religious freedom is increasingly associated with a wide range of issues.⁴ Debates related to Muslim women’s dress, specifically, often pit religious freedom, individual liberty, and cultural rights against women’s rights and gender equality.⁵ My response to Yildirim’s discussion of national and international legal responses to “headcoverings” does not concentrate on legal aspects, but rather on gendered practices and their ideological roots. While Yildirim focuses on Turkey (especially cases before the Turkish Constitutional Court and the European Court of Human Rights), I adopt a more global lens, recognizing that whilst historical and socio-political specificities are crucial to grasp the nuances of each context, these questions nevertheless relate to issues affecting our world at large. After summarizing Yildirim’s insights, I discuss two main aspects of her argument: “headcoverings” as an expression of personal religious identity, and “headcoverings” with respect to tradition. To assert that veiling cannot be apprehended solely as a private choice, I then consider the ways state and non-state actors promote veiling in various settings. My closing points address the need to distinguish “covered girls” from adults, and the risks linked to defining human rights as a Western project.

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1. Maïa De La Baume, *New Bin Laden Tape Threatens France*, N.Y. TIMES, Oct. 28, 2010, at A13.
 2. Brian Fuchs, Letter to the Editor, *The French Ban on Wearing a Full-Face Veil in Public*, N.Y. TIMES, April 18, 2011, at A22.
 3. Azhar Hussain, Letter to the Editor, *The French Ban on Wearing a Full-Face Veil in Public*, N.Y. TIMES, Apr. 18, 2011, at A22.
 4. Recent examples include: the status of polygamous marriages (France, U.K. and Canada, regarding Muslim and Mormon communities), the ritual slaughter of animals (U.S. and Holland, regarding the Santerian community and Jewish and Muslim communities), and the refusal by taxi drivers to service passengers carrying alcohol (U.S., regarding Somali Muslims).
 5. Rachel Rebouché, *The Substance of Substantive Equality: Gender Equality and Turkey’s Headscarf Debate*, 24 AM. U. INT’L L. REV. 711, 732 (2009) (analyzing how gender equality arguments were used in the Turkish veil debate to reach opposite conclusions).

I. “Inadequacy” of International Human Rights Law and the Complexity of Veiling

One of Yildirim’s premises is that human rights law fails to grasp the complexity of meanings attached to veiling, a question that has long been politically charged. She relates this “inadequacy” to three main factors, two of which I highlight here. The first is that international human rights law reflects a legacy of Orientalist biases, characterized by Western superiority and the intent to police the “Other”, seemingly for his or her own good. Another factor is linked to national-security discourses arising in the post 9-11 context. These reinforce the pervasive “saviorship” rhetoric mentioned above and contribute to a racialized and gendered portrayal of all Muslims.⁶ Yildirim is right to point out that stereotyping is prevalent, with Muslim men seen as sexist, violent potential terrorists, and Muslim women seen as oppressed, submissive to patriarchal norms, and in need of rescue.⁷

This general analysis — gendered assumptions about “Muslims” reinforced by a “West is best” theme, and how these may influence the human rights framework — informs Yildirim’s review of court cases. She criticizes recent jurisprudence in Turkey as evidence of the court’s “paternalism” and “general bias against Islam as a religion of inequity”,⁸ and argues for less state intervention regarding dress codes. However, her contention that the state has become “increasingly regulatory and punitive”⁹ in dealing with individual behavior may be overstated. While Turkish cross-dressers and transgender individuals can surely attest to the coercive powers of the state, whose policies with regard to dress are indeed gendered, this is not a recent development. Historical legal documents confirm the Ottoman authorities’ long-standing interest in regulating clothing. A 1725 Imperial Edict warned “certain brazen women” who had “the audacity of lifting the veil of virtue” of the severe penalties they faced (including exile).¹⁰ In contrast, Atatürk exhorted women to abandon the veil in the 1920s. Hence, the Turkish state does not appear “increasingly punitive” — rather, it imposes strict, but varying, guidelines according to its fluctuating interests.

There is more to draw from: Yildirim also explores the various ways “women’s hair” is framed, pointing at the multi-layered understandings attached to veiling practices and discourses. She warns of politicians who instrumentalize veiling to justify their ideological

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6. This portrayal is popular among Western conservatives, including prominent scholars such as Bernard Lewis, and fuels anti-immigrant rhetoric. See Michael Talent, *Islam in Europe: A Defense of the Burqa Ban*, COUNTERPOINT, <http://counterpoint.uchicago.edu/archives/autumn2010/IslamF10.html> (last visited Dec. 20, 2011). It also fuels anti-Muslim xenophobia in other countries. See Shaikh Azizur Rahman, *Hindu Group Pushed for Hijab Ban*, BULLETIN (Aug. 21, 2009, 2:08PM), <http://forum.mpacuk.org/showthread.php?t=43721>.
 7. For a historical perspective on the biased portrayal of Middle Eastern women, see Willy Jansen, *Dumb and Dull: The Disregard for the Intellectual Life of Middle Eastern Women*, 3 THAMYRIS 237 (1996); see also MALEK ALLOULA, *THE COLONIAL HAREM* (Myrna Godzich and Wlad Godzich trans., University of Minnesota Press 1986).
 8. Seval Yildirim, *Global Tangles: Laws, Headcoverings and Religious Identity*, 10 SANTA CLARA J. INT’L L. 52 (2012).
 9. *Id.*
 10. *Dress Codes and Modes: Women’s Dress in some Muslim Countries and Communities*, WOMEN LIVING UNDER MUSLIM LAWS, <http://www.wluml.org/sites/wluml.org/files/Turkey.swf> (last visited Dec. 21, 2011).

projects and geo-strategic endeavors. Importantly, she also stresses that while various “political movements have made a cause of woman’s hair”,¹¹ “not all Muslim women cover for the same reasons, nor do they cover in the same manner.”¹² Yet throughout her article, Yildirim emphasizes veiling primarily as individual expression of piety, and as respect of tradition. This dual focus needs to be re-examined, as it apparently undermines the broader range of meanings she previously outlined (from veiling as oppression, to veiling as a resistance strategy against parental, state or community control).

II. Problematizing Religious Identity and Individual’s Choice

Given the deeply-held assumptions about Muslim women being systematically oppressed, it is necessary to stress that some women have agency — e.g., are able to assign emancipatory meanings to veiling, or to subvert processes that are fundamentally discriminatory. But it is equally important to identify gendered power dynamics. Malaysian advocate Zainah Anwar, former head of Sisters in Islam, recognizes that androcentric interpretations of religious traditions produce mechanisms of control over women’s bodies, which do not apply to men. Anwar evokes the resulting tensions at play in everyday life:

I wish the state would leave women’s heads alone. However, when it comes to the *burqa* or *niqab* (face covering), I find myself conflicted about the role of the state in this. Personally, I find the *burqa* really disturbing. [I wonder] at the sight of Arab men in shorts and sleeveless T-shirts walking . . . with their wives all enveloped in black. Why does he have the freedom to dress appropriately for a holiday in our hot and humid climate, while the wife is sweating underneath her layers of clothing . . . I see not freedom of choice here, but oppression and discrimination at work.¹³

Yet, the women Yildirim refers to “dare to cover their hair out of piety”¹⁴: they do so for “religious purposes.”¹⁵ They “seek a place in the public sphere without sacrificing their belief”¹⁶ and simply express “an individual choice based on belief and faith.”¹⁷ Here, veiling is posited as solely reflecting one’s personal religious identity: the individualized “covered Muslim woman” appears abstracted from social constraints and political trends. But identity is not formed in a vacuum: individuals’ behaviors are not to be conceived as divorced from social practices and political ideologies. Various scholars (from Foucault and Butler, to Lacan and Wendy Brown) have criticized the liberal idea of an autonomous individual and elaborated on the issue of subject formation. Yildirim does not seem to entertain the view that individuals are the products of social relations: the notion of free choice dominates her argument. Her insistence on “the religious-covered Muslim woman as an intelligent, self

11. Yildirim, *supra* note 8.

12. *Id.*

13. *SIS Founder Zainah Anwar Answers Your 10 Questions*, THE STAR (May 14, 2011), <http://biz.thestar.com.my/news/story.asp?file=/2011/5/14/business/8655019&sec=business>.

14. Yildirim, *supra* note 8.

15. *Id.*

16. *Id.*

17. *Id.*

aware agent making meaningful choices about her body,”¹⁸ suggests a free-standing social actor, free from coercion and external influences.

However, liberal democracies are not immune to the rise of the religious right globally (Muslim and otherwise). In this context, one cannot afford to maintain an insular perspective — and so, we must acknowledge that veiling is also part of a theocratic political project which expresses itself through “ocular, corporeal, and spatial aspects.”¹⁹ Indeed, “in Turkey, one of the arguments widely used against the headscarf is that it has been appropriated as a political symbol, so the desire to wear it is not a disinterested one. . . . The Muslim body becomes, for actors of Islamism, a site of resistance to secular modernity.”²⁰ Yildirim appears to minimize the stakes — and the influence — Muslim fundamentalists have in promoting veiling and in defining outward signs of piety. She denounces the Turkish state’s “partial, prejudiced [views] against Islam and what Islamic symbols mean.”²¹ The Muslim religious right’s discourses incorporate similar arguments and “use Islamophobia to silence opposition,” as Mona Eltahawi has noted.²² Referring to the French ban on face-veil, the Egyptian columnist remarked: “Some have tried to present the ban as a matter of Islam vs. the West. It is not. Many Muslim women — despite their distaste for the European political right wing — support the ban precisely because it is a strike against the Muslim right wing.”²³ Recent jurisprudence, including at the European Court of Human Rights (ECHR) level, reflects this concern: the increased influence of extremely conservative religious actors in the public arena and the shrinking of secular spaces.

Through her exclusive focus on individual practices, Yildirim succeeds in countering the biased portrayal of veiled women. But by giving prominence to women’s agency above all other factors, she does underplay the Muslim right’s political agenda (as well as the pressures to cover themselves that many women face, including in liberal democracies). She denounces the “problematic theme run[ning] through” Turkish jurisprudence where the *hijab* is identified as “a political and religious symbol and not just an individual choice based on belief and faith.”²⁴ Yildirim’s emphasis on “personal choice” overlooks the fact that Islamist ideologies and movements often seem, at first, a “mere presence in a society—appearing as but one of the many “options” for religious observance or affiliation — [which transforms itself] into a source of compulsion and ultimately, violation.”²⁵ The currents within Islam seeking to promote a theocratic project rely on multiple strategies, including the promotion of

18. *Id.*

19. Nilüfer Göle, *Islam in Public: New Visibilities and New Imaginaries*, 14 PUB. CULTURE 173, 190 (2002).

20. *Id.* at 181, 189.

21. Yildirim, *supra* note 8.

22. Mona Eltahawy, *Rending the Veil — With Little Help*, WASHINGTON POST, July 17, 2010, at A13.

23. *Id.*; see also Karima Bennoune, *The Law of the Republic Versus the Law of the Brothers: Muslim and North African Voices in Support of the French Law on Religious Symbols in Public Schools*, in HUMAN RIGHTS ADVOCACY STORIES 155 (Deena Hurwitz, Margaret L. Satterthwaite, & Doug Ford eds., 2009).

24. Yildirim, *supra* note 8.

25. *Dhaka Plan of Action*, WOMEN LIVING UNDER MUSLIM LAWS (WLUML), 5 (1999), available at <http://www.wluml.org/node/451>.

specific dress codes. One key justification with regard to veiling centers on upholding and respecting tradition, an argument that should be further investigated.

III. Problematizing Veiling as “Tradition”

Yildirim criticizes the view according to which “the only liberated woman is one who rejects tradition and religion.”²⁶ This formulation is problematic, in part because it indicates she may endorse the implicit correlation between (inward) piety and public performance of (outward) “Muslimness,” as advertised by a specific dress code.²⁷ Also, uncovering one’s hair is clearly associated with distancing oneself from “tradition.” This suggests an uncritical acceptance of discourses produced by the Muslim religious right. While such discourses commonly emphasize the need to respect “tradition,” they fail to elaborate about which traditions are being upheld and which ones are disregarded in the process. Therefore, the very notion of “tradition” needs to be scrutinized.

The Women Living Under Muslim Laws’ “*Dress Codes & Modes*” exhibition documents the geographical and historical diversity of female clothing across Muslim contexts: traditional garments and “headcoverings” are indeed varied, even within Muslim communities. But with the spread of a global “Muslim uniform” for women, the range of styles has narrowed over the last few decades. The only dress code, which is branded Muslim throughout the world, is the *hijab* (or the emerging *niqab*) — while the colorful suits of Northern Malaysia, the loose Bangladeshi *dupata* or the Malian *boubous* are increasingly rejected from what constitutes acceptable, “traditional” norms. In others words, one particular tradition is selected and carefully promoted as the true expression of Muslim religious beliefs. The fact that this particular form of veiling originates from Saudi Arabia and Iran — two countries keen on exporting their model of an “Islamic society” — should alert us to the links between its increased popularity and the political goals pursued by Islamist groups. The veiling phenomenon of the last decade is less about young women single-handedly endorsing “tradition” than it is the result of concerted (rhetorical and financial) efforts on the part of the Muslim right.

In spite of their diversity, Islamist groups generally aim to effect broad ideological and societal changes.²⁸ Their efforts involve active networking and the exportation of selected “traditions” from one Muslim context to another. As must be noted, some of these models “do not necessarily have any relation to the religious customs or traditions of the women upon whom these proscriptions regarding dress, private space, domesticity and sexuality are imposed.”²⁹ The promotion of a specific female dress is part and parcel of this larger strategy — as a result, the *hijab* or *niqab* trends often have no basis in the traditions of the countries

26. Yildirim, *supra* note 8.

27. Are we to conclude that Muslim women who do not veil are less pious?

28. See Cassandra Balchin, *Towards a Future without Fundamentalisms: Analyzing Religious Fundamentalist Strategies and Feminist Responses* (Feb. 18, 2011), <http://www.awid.org/Library/Towards-a-Future-without-Fundamentalisms2>.

29. Awaaz South Asia Watch (2006), *The Islamic Right – Key Tendencies*, <http://www.centreforsecularspace.org/sites/default/files/Bhatt,%20Islamic%20Right%20Key%20Tendencies.pdf>.

where they are being enforced and adopted. This development is not new and has been documented in different locales where traditional dress codes were either outlawed or replaced by *hijabs*. Sudan, Sri Lanka, and Malaysia provide examples where states or local authorities have been complicit in “importing tradition” while allowing the dismantlement of their own traditions. In Sudan, following the coup led by the National Islamic Front in 1989, the “Islamic Dress Law” effectively banned the traditional Sudanese women’s dress (called the *toab*). The new so-called “Islamic Dress” was identical to the Iranian model — not surprisingly since Iran had in fact financed the mass production of these uniforms. Sri Lanka provides another example: in 1983, at a time when Iran was securing economic deals and oil exports, the Iranian government donated 50,000 *hijabs* to Sri Lanka. More recently, in Malaysia, the north-eastern state of Terengganu promulgated in 2004 that “Muslim women will have to wear a headscarf drawn tightly about the face,” and there were indications at the time that the “traditional loosely draped Malay headscarf will be banned.”³⁰

The promotion of the *hijab* as the genuine “religious clothing,” one that truly deserves to be stamped with an authenticity label, takes place across the world. Commentators focusing on issues of veiling in liberal democracies may chose to apprehend the veil as an expression of resistance to Islamophobia, or as a personal strategy to overcome strict family rules — all of which are relevant observations. Researchers, however, cannot be blind to the politics at play in both Muslim-majority countries and countries of immigration, nor to the fact that veiling serves as a flagship to an Islamist agenda. Yildirim herself points out (albeit in relation to the impact of 9-11 on the perception of Muslims) that “covered hair must be viewed in light of the power dynamics surrounding international and various national politics”³¹ — a point I could not agree with more. In the following section, I provide examples of recent attempts to impose dress codes on women. Highlighting the trend towards veiling in Muslim contexts puts into perspective the notion that free choice is to be taken for granted. Indeed, debates and developments in Muslim-majority contexts do affect Muslim minorities and migrant populations in the West as well.

IV. Enforcing Dress Codes: The Role of State and Non-State Actors

Yildirim states that “one fact overlooked by many who speak of the oppression of the headcovering is that only two states mandate headcovering by law — Iran and Saudi Arabia.”³² This statement does not reflect the scope of existing legislations or policies, often enacted at regional or city level, which require veiling. Selected examples drawn from the last few years show to what extent women’s lives are affected by this trend, in contexts ranging from Asia, Central Asia, Africa, and the Middle East. In all these settings, the pressure to enforce dress codes is led by Islamist actors.

30. Jonathan Kent, *Malaysian City Rules on Women*, BBC NEWS, <http://news.bbc.co.uk/2/hi/asia-pacific/3368115.stm> (last updated Jan. 5, 2004).

31. Yildirim, *supra* note 8.

32. *Id.*

In the Malaysian state of Terengganu, the main city of Kuala Terengganu had, in 2004 (at a time when the Islamic Party of Malaysia (PAS) was in power), “imposed its own dress code for non-Muslim women working in the private sector.” Salahuddin, a spokesman for PAS’ Youth section, clarified in a press statement the party’s take on individuals’ rights and duties: “The question of violating basic human rights does not arise when enforcing the compulsory rule of covering the *aurat* (parts of the body that should not be exposed according to Islamic belief).” Salahuddin added that it was “not a matter of rights but of responsibility to adhere to rules set by Allah.”³³ In a similar development in Chechnya in 2006, the Chechen government started “demanding that female state workers wear headscarves,” with local women fearing their careers would be in jeopardy.³⁴ The argument that veiling is a religious duty enacted by god, or the threat to lose one’s job, are already potent incentives to adopt specific dress codes.

Some women also face physical intimidation or legal pressure to conform. For example, “[i]n 2010, the Chechen government expanded its ‘virtue campaign’ . . . Men in security force vehicles assaulted women who weren’t ‘covered enough’ — who didn’t wear headscarves, long dresses, long sleeves — with paintball guns.”³⁵ Testimony of victims of these assaults attest to the increased bullying women have confronted recently. Depending on the context, attacks can be indiscriminate (directed at any random woman in the streets), or targeted, as in the case of UN employee Lubna Ahmed Al Hussein. A Sudanese, she was prosecuted for wearing trousers and sentenced to 40 lashes in July 2009. The basis of her conviction relates to Article 152 of Sudanese criminal code which prohibits “dressing indecently” in public, a charge that carries a punishment of 40 lashes and a fine. She is far from being the only woman affected by indecency laws. According to the director of police, in 2008 in Khartoum State alone, 43,000 women were arrested for clothing offences.³⁶

It is necessary to acknowledge the disproportionate impact of dress code enforcement mechanisms on women. Not only is the so-called “Muslim dress” specifically for females (while men can disregard “tradition” and adopt the style of “modernity”), but the tactics that are used — legal or otherwise — also primarily affect women. A 2010 report by Human Rights Watch records this gender imbalance in Indonesia. The report documents “two local Sharia-inspired laws [that] regulate Islamic dress and association between members of the opposite sex” in Aceh province. Researchers note that

[a]lthough the law requiring Islamic attire applies to men and women, it is much more onerous for women, who constitute the overwhelming majority of those reprimanded by the

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33. Kazi Mahmood, *Malaysian City Imposes Islamic Dress Code on Women*, ISLAM ONLINE (Jan. 10, 2004), <http://www.freerepublic.com/focus/f-news/1055499/posts>. This measure also “bans anything that is considered moderately revealing clothing to sexy attires in public and private departments.”
34. *Chechnya Starts Demanding Women Wear Headscarves*, WOMEN LIVING UNDER MUSLIM LAWS (WLUML) (Mar. 10, 2006), <http://www.wluml.org/node/2868>.
35. *Annual Report 2010: Urgent Action Fund for Women’s Human Rights*, URGENT ACTION FUND, 6 (2010), http://urgentactionfund.org/assets/files/annual_reports/UAF_Annual_Report_Web_2010.pdf; see also *You Dress According to Their Rules—Enforcement of an Islamic Dress Code for Women in Chechnya*, HUMAN RIGHTS WATCH (Mar. 10, 2011), <http://www.hrw.org/reports/2011/03/10/you-dress-according-their-rules>.
36. Lubna Hussein, *When I Think of My Trial, I Pray My Fight won’t be in Vain*, THE GUARDIAN (Sept. 3, 2009), <http://www.guardian.co.uk/commentisfree/2009/sep/04/sudan-woman-trousers-trial>.

Sharia police. While the law requires men to cover their body between the knee and the navel, Muslim women must cover the entire body, except for hands, feet, and face.³⁷

The role played by non-state actors also needs to be mentioned briefly. While their accountability is often disregarded by human rights mechanisms, the conduct of non-state actors does have human rights implications. By taking it upon themselves to “protect modesty and morality”, they often create significant challenges to women’s human rights. Whether representatives of private institutions (including religious ones) or self-appointed guardians of community values, their ability to enact rules that affect the population at large has been recognized. The term “Non-state legal orders” (NSLOs) refers to:

norms or institutions — often viewed as having the force of law by those subject to them — that claim to draw their moral authority from contemporary or traditional culture or customs or religious beliefs and practices rather than from the political authority of the state. In some cases NSLOs flourish because the formal state legal order is alien, irrelevant or absent . . . NSLOs may also draw their legitimacy from resistance to the state’s legal order or from reforms that strengthen the informal justice sector.³⁸

Examples where non-states actors have forced women to veil include Algeria in the 1990s³⁹—where the feminist “[a]ward of women’s resistance against fundamentalism and against forgetting” was given posthumously to Katia Bengana, a 17-year-old assassinated for refusing to wear the *hijab*. Sanctions have been less drastic in France, but the pressure to cover exercised by relatives or community members has been documented.⁴⁰ Similar developments occurred within the Indian Muslim community in the aftermath of the 2002 Gujarat massacres, and more recently in 2010 when the “largest Islamic Indian seminary rule[d] that it is unlawful for women to work or interact with men if they do not wear veils.”⁴¹ Sri Lanka also witnessed an increase in veiling practices in the east of the country, linked to the rising influence of Wahhabism (often imported by overseas workers back from Saudi Arabia). “[I]n recent years local women have come under growing pressure from conservatives. They are now urged to cover their faces in public, something that had not

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37. *Indonesia: Local Sharia Laws Violate Rights in Aceh: Restrictions on Association, Dress Deny Autonomy and Are Used Abusively*, HUMAN RIGHTS WATCH (Dec. 1, 2010), <http://www.hrw.org/news/2010/11/29/indonesia-local-sharia-laws-violate-rights-aceh>; see also *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*, HUMAN RIGHTS WATCH (Nov. 30, 2010), <http://www.hrw.org/sites/default/files/reports/indonesia1210WebVersionToPost.pdf>.
 38. INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, WHEN LEGAL WORLDS OVERLAP: HUMAN RIGHTS, STATE AND NON-STATE LAW, SUMMARY 3 (2010), available at http://www.ichrp.org/files/summaries/42/135_summary_en.pdf.
 39. A leader from the Algerian Islamic Armed Group, Abou El Moundhir, announced in 1997 (in the London-based newspaper *Al Djamaa*) that the GIA (Groupe Islamic Armees) had a “duty” to “eliminate immodest or debauched women.” Numerous murders of unveiled women were hence religiously justified. AL DJAMAA (London), 1997. For a documentation of the Islamist violence during those years, see RESEAU WASSILA, LIVRE BLANC: TMOIGNAGES DE VIOLENCES CONTRE LES FEMMES ET LES ENFANTS (2002), available at <http://reseauwassila.com/Livre%20Blanc%20reduit.pdf>.
 40. 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 (2007).
 41. Shaikh A. Rahman, *Indian Protest at Muftis' Ban on Women at Work*, THE NATIONAL (May 21, 2010), <http://www.thenational.ae/news/worldwide/south-asia/indian-protest-at-muftis-ban-on-women-at-work?pageCount=0>.

previously been the cultural practice there.”⁴² In Colombo, female students report being pressured to veil on university compounds: male peers want them to conform to the ideal of a “good Muslim woman” arguing that they “represent the community.”⁴³ As dress codes are constructed as a marker of piety, veiled women can themselves be involved in affecting non-veiled women, by setting a standard that a “good Muslim woman” is covered. In this context — and because the control of women is a cornerstone of fundamentalist politics — conservative clerics feel entitled to use their authority to police women’s behavior. For example, a Sunni mufti from Australia commented on a 2006 rape case, “compar[ing] women who didn’t wear the *hijab* to uncovered meat left out for wild cats.”⁴⁴ Such rhetoric (an Islamist twist on a patriarchal classic) is proof that liberal democracies are not immune to this type of propaganda. The impact on young girls is worth examining briefly.

V. Gender Equality and Increased Evidence of Early Veiling

I would nuance Yildirim’s claim that “the hair-covered Muslim woman [is] forced at the periphery of socio-political formations.”⁴⁵ There is evidence backing her point, and it is not my intention to minimize the rise of very real anti-Muslim sentiments, especially post 9-11. Yet Yildirim’s single focus on the victimization of veiled women diverts from another reality: the increased acceptance of veiling throughout the world over the last couple of decades. Concomitantly, the concept of freedom of religion is being used by ultra-conservative Muslims (along with Western actors, often complicit or dismissive of the politicization of religion) to justify legal “accommodations” of various kinds.⁴⁶ Feminist theorist Gila Stopler, among others, questions the implications of these developments for gender equality, and their relative dismissal in current debates. She compares the “voluminous literature of liberalism” that advocates “religious rights” and “equality of religious groups,” with the striking dearth of attention given — even in legal-feminist writing — to “how the relationship between religion and the state in liberal democracies affects the equality rights of all women.”⁴⁷ Stopler’s argument is that “the relationship between patriarchal religion and the state in liberal democracies adversely affects the rights of all women, and that liberal states cannot live up to

42. Swaminathan Natarajan, *Sri Lanka Police Investigate Attack on Teenage Girls*, BBC NEWS (June 28, 2011), <http://www.bbc.co.uk/news/world-south-asia-13948979>.

43. Interview with Neloufer De Mel, Colombo-based Professor, (Oct. 20, 2010).

44. Elsa McLaren, *Muslim Cleric Triggers Outrage by Blaming Women for Rape*, TIMES ONLINE (Oct. 26, 2006), <http://www.timesonline.co.uk/tol/news/world/article614114.ece>. Note that the mufti was later suspended for his views.

45. Yildirim, *supra* note 8.

46. Such legal accommodations have multiplied in various Western contexts. For a mapping of recent trends, see *The Struggle for Secularism in Europe and North America*, WLUML DOSSIER 30-31 (Mariem Hélie-Lucas ed., July 2011), available at <http://www.wluml.org/sites/wluml.org/files/WLUML%20dossier%2030-31%20v2.pdf>.

47. Marie Ashe, *Women’s Wrongs & Religious Rights: Stories from Canada* (forthcoming 2011) (manuscript at 50) [hereinafter Ashe 2011]; see also Marie Ashe, *Beyond Nomos and Narrative: Unconverted Antinomianism in the Work of Susan Howe*, 18 YALE J.L. & FEMINISM 1 (2006) (regarding this unbalance in feminist liberal-legal writing and in law-and-literature discourse) [hereinafter Ashe 2006].

their commitment to women’s equality without significantly changing their relations with patriarchal religions.”⁴⁸

In terms of the veil specifically, demands for its accommodation in the private and public sectors have been granted in various liberal democracies. For example, in 2004 in Australia, the *hijab* was incorporated in the uniform of Victoria state police.⁴⁹ In 2009, the Metropolitan Police in London also accepted the *hijab* as an option for Muslim women serving in the force. The retailer IKEA had agreed to a similar move in 2005, offering in some of its stores a branded *hijab* to its female Muslim staff.⁵⁰ Similar demands arise in the educational, health or judicial systems, in sports arenas, etc. The “tendency to claim an ‘Islamic’ identity, represented symbolically by the wearing of ‘Islamic dress’”⁵¹ must be seen as part of a deliberate strategy, largely promoted by a political constituency representing ultraconservative schools of thoughts within Islam.

Nevertheless, Yildirim focuses on individuals — asking that societies “let the individual girls and women define for themselves [what] constitutes dignity in their lives.”⁵² Some European-based groups endorse a similar perspective, bringing together teenagers who argue should decide for themselves what dress codes they wish to adopt.⁵³ Yildirim also denounces the “court’s idea of gender equality [that] robs the *hijab* wearing girl, children, and women of any meaningful choice of control over their bodies.”⁵⁴ One may wish to make a distinction between teenagers and adults, and young girls — all of whom are conflated in Yildirim’s quote. Given the strong influence of conservative non-state actors at the community level — and if veiling is defended, as in Yildirim’s argument, as a choice, an expression of resistance, a sign of agency from an adult perspective—one wonders how this framework applies to a child with necessarily less negotiating power.

The fact is that, across various Muslim communities, veiling of young girls is on the rise. A 2010 testimony from Egypt reflects a reality that applies to many other contexts: “Anyone walking on the streets of Egypt will notice a phenomenon that wasn’t so evident only a year ago: the increasing numbers of little girls (and by “little,” I mean as young as eight years old) wearing headscarves and *abayas*.”⁵⁵ An effective way to convince young girls, and their parents, about the necessity to appear “modest,” is often through the marketing of role

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48. Gila Stopler, *The Liberal Bind: The Conflict Between Women’s Rights and Patriarchal Religion in the Liberal State*, 31.2 SOC. THEORY AND PRAC. 191, 191 (2005); see also Ashe 2011, *supra* note 47.
 49. Lorna Edwards, *Making Hijab Part of Victoria Police Uniform*, THE AGE (Nov. 27, 2004), <http://www.theage.com.au/news/National/Making-hijab-part-of-Victoria-Police-uniform/2004/11/26/1101219743263.html?from=moreStories&oneclick=true>.
 50. Alison Campsie, *IKEA Store’s Hijab for its Workers*, THE HORNSEY JOURNAL (Sept. 8, 2005).
 51. Lalia Ducos, *Personal Status and Bilateral Agreements: A Blow Against Secularism (Laïcité) and the Rights of Foreigners and Citizens of Maghrebian Origin in France*, WLUML DOSSIER 30-31, 87, 89 (July 2011), available at www.wluml.org/sites/wluml.org/files/WLUML%20dossier%2030-31%20v2.pdf.
 52. Yildirim, *supra* note 8.
 53. See, e.g., BOEH! (Baas over Eigen Hoofd), <http://www.baasovereigenhoofd.be/>; see also Don’t Touch My Veil (Blijf van mijn hoofddoek), <http://www.baasovereigenhoofd.be/> (Belgium).
 54. Yildirim, *supra* note 8.
 55. Baher Ibrahim, *This Trend of Young Muslim Girls Wearing the Hijab is Disturbing*, THE GUARDIAN (Nov. 23, 2010), <http://www.guardian.co.uk/commentisfree/belief/2010/nov/23/muslim-girls-wearing-hijab>.

models. Especially the marketing of “culturally appropriate” toys — enters “Fulla,” the Muslim version of Barbie, wearing a black coat and head scarf. This doll is heavily promoted on children’s TV channels: one commercial introducing a new line of doll clothes admonishes “When you take Fulla out of the house, don’t forget her new spring *abaya*!” A clerk at a toy store in Damascus says: “Fulla gives girls a more Islamic character to emulate, and parents want that.”⁵⁶ Makhmud Aripov, the imam of the Nabijon Haji Mosque in Osh, Kyrgyzstan, would surely approve. Aripov told EurasiaNet that “Wearing a *hijab* secures a woman’s chastity, and a lack of *hijabs* results in divorces. A mother wearing a *hijab* serves an example for her daughter, which will help secure her honour.” Whether the veiling of young girls is seen as evidence of increasing conservatism, of an early and undue sexualization process, or a sign of modesty is disputed. But that children have less ability to decipher and contest dominant discourses remains a fact.

VII. Conclusion

The issues raised by Yildirim (questions surrounding “women who cover their hair” and “seek to participate in public space in liberal democracies”) are timely. Pakistani scholar Farida Shaheed raises a point relevant to the debate: “The question that needs to be answered is whether the adoption of a physical veil enhances or reduces the scope for social change for women and the circumstances leading to one or the other.”⁵⁷ However, Yildirim’s chosen remedy — centered on minimizing state intervention — relies on the false premise that all veiled women exercise free choice and that none face coercion.

It is a reality that human rights law does not offer a framework that is fully adequate in balancing freedom of conscience and substantive equality. But this is not, as Yildirim suggests, because international human rights law is inherently defective due to its Western liberal roots. In fact, the notion of human rights as a Western construct is disputed by Islamic scholars and women’s rights advocates in Muslim communities and beyond. It is necessary to deconstruct this assumption, along with the claim that secularism is essentially Western. Especially as Egyptian democrats are attempting to challenge Article 2 of the (Mubarak-era) Constitution, which states that “the Islamic Sharia is the source of legalization in Egypt.” This provision has long been criticized by local human rights organizations and feminist activists precisely because of the gender biases associated with most mainstream interpretations of Muslim laws.

Interestingly, the human rights arena has become a forum where fundamentalists (of all persuasions) increasingly use religion and culture to lobby successfully. In spring 2011, the UN Human Rights Council debated a resolution on “combating defamation of religions/combating religious hatred and denigration of religions,” which seeks to protect “venerated personalities” from criticism, and to protect religions and religious symbols from

56. Katherine Zoepf, *Barbie Pushed Aside in Mideast Cultural Shift*, THE N.Y. TIMES (Sept. 22, 2005), http://www.nytimes.com/2005/09/21/world/africa/21iht-journal.html?_r=4.

57. Farida Shaheed, *Women, Religion and Social Change in Pakistan: A Proposed Framework for Research - Draft*, WLUML DOSSIER 5-6, Dec. 1988-May 1989, at 41-42, available at www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/dossier5-6/D5-6.pdf.

“vilification”.⁵⁸ A coalition of civil society organizations warned that “the concept of ‘defamation’ or ‘denigration of religions’ is counterproductive to global efforts to combat discrimination against religious minorities and serves to entrench repression and violence against non-believers and political dissidents.”⁵⁹ It also advocated for the recognition that “religious beliefs, ideas and systems should not be exempt from discussion, debate or even sharp criticism, whether from internal or external commentators.”⁶⁰ Finally, this coalition highlighted the “growing consensus that the concept of ‘defamation of religions,’ and similar terminology, undermines and distorts existing international human rights guarantees on freedom of expression, freedom of religion and non-discrimination.”⁶¹ These are hotly contested issues — but Yildirim’s arguments can appear one-sided. A more balanced approach will need to acknowledge both the increased Islamophobia in the West and the strategies used by fundamentalist forces to promote their political agenda. While we ought to recognize the multiplicity of meanings attached to the veil by individual women, we also must identify the growth of fundamentalisms in liberal democracies and the fact that “gender subordination is often deeply implicated in the emphasis on women covering their bodies.”⁶²

If legal answers may appear relatively inadequate to deal with the complex issues of religion and equality, it is in part because there are no uncontested interpretations of religion. In addition, legal mechanisms do not acknowledge intra-minority group dynamics, their internal debates, or dissenting voices. Should we conclude that “ironically, in order for the state to be right in its codification of the demands of substantive gender equality, it must ignore or simply override the nuanced and contested internal arguments within religious communities themselves”?⁶³ This would likely ignore that “people are bearers of both culture and rights: acceptance of one does not imply rejection of the other. Both are contested terrains, subject to constant shifts and negotiation.”⁶⁴ Indeed, human rights law is itself an evolving, dynamic framework, which over time reflects different views and concerns. As Sudanese scholar An-Na’im has pointed out: “Religious freedom can [not] be advanced in isolation of other fundamental human rights,”⁶⁵ including the human rights of women.

58. *Advocacy Letter: “Defamation” and “Denigration” of Religions at the 16th Session of the United Nations Human Rights Council*, ARTICLE 19 (Mar. 10, 2011), www.article19.org/resources.php/resource/1731/en/defamation-and-denigration-of-religions-at-the-16th-session-of-the-united-nations-human-rights-council.

59. *Id.*

60. *Id.*

61. *Id.*

62. Karima Bennoune, *Obama in Cairo: The Religionising of Politics*, WLUML DOSSIER 30-31, July 2011, at 233-234, available at <http://www.wluml.org/sites/wluml.org/files/WLUML%20dossier%2030-31%20v2.pdf>.

63. Peter Danchin, *Whose Rights? Which Equality? A Reply to Professor Bennoune*, OPINION JURIS (June 9, 2008), <http://opiniojuris.org/2008/06/09/whose-rights-which-equality-a-reply-to-professor-bennoune/>.

64. *When Legal Worlds Overlap: Human Rights, State and Non-State Law*, 4 INT’L COUNCIL ON HUMAN RIGHTS POLICY (Nov. 10, 2010), http://www.ichrp.org/en/zoom-in/when_legal_worlds_overlap.

65. Abdullahi Ahmed An-Na’im, “Good Intentions” Alone Are Not Enough! SOCIAL SCIENCE RESEARCH COUNCIL, THE IMMANENT FRAME: SECULARISM, RELIGION AND THE PUBLIC SPHERE (Mar. 1, 2010, 11:00 AM), <http://blogs.ssrc.org/tif/2010/03/01/good-intentions/>.