



July 2011

## DOSSIER 30-31

# The Struggle for Secularism in Europe and North America

عوانيتي زبيراش مسام قوانيبي

Women Living Under Muslim Laws

النساء في ظل قوانين المسلمين

Femmes sous lois musulmanes



July 2011

# **DOSSIER 30-31**

## **The Struggle for Secularism in Europe and North America**

### **Dossiers:**

#### **Journal of Women Living Under Muslim Laws**

The dossiers explore a broad range of discourses, interpretations and strategies of women on issues of feminism, nationalism, internationalism and religion.

عنوانيڻي زيڻ اش مسام قوانيڻي

Women Living Under Muslim Laws

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The dossiers are an occasional publication of the international solidarity network of Women Living Under Muslim Laws. Conceived as a networking tool, they aim to provide information about lives, struggles and strategies of women living in diverse Muslim communities and countries.

Women's groups may freely reproduce material, however we would appreciate acknowledgements. For those articles previously published in other journals, permission should be sought directly from them.

Information contained in the dossiers does not necessarily represent the views and positions of the compilers or of the network Women Living Under Muslim Laws, unless stated. The dossiers are meant to make accessible the broadest possible strands of opinion within varied movements/initiatives promoting greater autonomy of women. The dossiers seek to inform and share different analysis and experiences.

WLURL runs a very popular website in English, French and Arabic which is updated regularly with news and views, calls for action and publications. For more information please visit [www.wluml.org](http://www.wluml.org)

Regional Coordination Offices are in Senegal (Africa and Middle East) and Pakistan (Asia) and are responsible for coordinating network activities in their respective regions:

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The International Coordination Office (ICO) facilitates coordination between networkers.

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# To Rhonda Copelon

## **Who died in May 2010**

### **Human rights lawyer and women's rights advocate**

Virtually alone in the human rights community, she dared to support secular democrat Algerians struggling against a theocratic project of society, while they were being exterminated by fundamentalist armed groups.

White, American, Jew, lesbian – she was everything that fundamentalists in our countries teach the youth to hate. However it was she and she alone who, facing being disavowed by her colleagues in human rights organisations, worked relentlessly and took risks in support of victims of fundamentalists; she alone who dared take to court the Islamic Salvation Front and its representative in the US.

For her, it was a courageous and very lonely struggle.

*The control of capital over bodies, its strong will to reveal their market value, does not at all reduce their control by religious law and the theological will to make them disappear. The ways of oppression are as numerous and inexhaustible as those of god are mysterious. The poor dialectic of main and secondary contradictions, forever revolving, already played too many bad tricks. And the 'secondary enemy', too often underestimated, because the fight against the main enemy was claimed to be a priority, sometimes has been deadly.*

Daniel Bensaïd, 'La République imaginaire' ('The imaginary Republic'), Chapter 2 in *Fragments mécréants : Mythes identitaires et république imaginaire* ('Unbelieving fragments: identity myths and imaginary republic'), Paris: Éditions Lignes et Manifestes, 2005

### **I was shot by my secondary enemy**

*Totally caught into my struggle against the main enemy  
I was shot by my secondary enemy  
Not from the back, treacherously, as his main enemies claimed  
But directly, from the position it had long been occupying  
And in keeping with his declared intentions that I did not  
bother about, thinking they were insignificant.*

Erich Fried, in *Cent poèmes sans frontière* ('A hundred poems without borders'), Paris: Christian Bourgeois, 1978

*Poem quoted by Daniel Bensaïd*

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# What is WLUMML?

Women Living Under Muslim Laws is an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam.

For more than two decades WLUMML has linked individual women and organisations. It now extends to more than 70 countries ranging from South Africa to Uzbekistan, Senegal to Indonesia and Brazil to France. It links:

- Women living in countries or states where Islam is the state religion, secular states with Muslim majorities as well as those from Muslim communities governed by minority religious laws;
- Women in secular states where political groups are demanding religious laws; women in migrant Muslim communities in Europe, the Americas and around the world;
- Non-Muslim women who may have Muslim laws applied to them directly or through their children;
- Women born into Muslim communities/families who are automatically categorised as Muslim but may not define themselves as such, either because they are not believers or because they choose not to identify themselves in religious terms, preferring to prioritise other aspects of their identity such as political ideology, profession, sexual orientation or others.

Our name challenges the myth of one, homogenous 'Muslim world'. This deliberately created myth fails to reflect that:

- Laws said to be Muslim vary from one context to another;
- The laws that determine our lives are from diverse sources: religious, customary, colonial and secular.

We are governed simultaneously by many different laws: laws recognised by the state (codified and uncodified) and informal laws such as customary practices which vary according to the cultural, social and political context.

## How did WLUMML start?

WLUMML was formed in 1984 in response to three cases in Muslim countries and communities in which women were being denied rights by reference to laws said to be 'Muslim' requiring urgent action. Nine women from Algeria, Morocco, Sudan, Iran, Mauritius, Tanzania, Bangladesh and Pakistan came together and formed the Action Committee of Women Living Under Muslim Laws in support of local women's struggles. This evolved into the present network in 1986. The network is guided by Plans of Action which are reviewed periodically. For more information please see the WLUMML website at [www.wlumml.org](http://www.wlumml.org)

## **What are WLUML's aims and focus?**

The network aims to strengthen women's individual and collective struggles for equality and their rights, especially in Muslim contexts. It achieves this by:

- Breaking the isolation in which women wage their struggles by creating and reinforcing linkages between women within Muslim countries and communities, and with global feminist and progressive groups;
- Sharing information and analysis that helps demystify the diverse sources of control over women's lives, and the strategies and experiences of challenging all means of control.

WLUML's current focus is on the three themes of: fundamentalisms, militarisation, and their impact on women's lives, and sexuality. As a theme, violence against women cuts across all of WLUML's projects and activities.

## **How is WLUML organised?**

WLUML's open structure has been designed to maximise participation of diverse and autonomous groups and individuals as well as collective decision-making. WLUML does not have formal membership and networkers are a fluid group of individuals and organisations who maintain regular two-way contact with the network.

The Board of Directors and Council comprises 20–30 women and men involved in aspects of cross-regional networking within WLUML for a significant period of time. They take primary responsibility for developing and implementing the Plans of Action.

The International Coordination Office (ICO) has primary responsibility for facilitating coordination between networkers. Regional Coordination Offices are in Pakistan (Asia) and Senegal (Africa and Middle East) and are responsible for coordinating network activities in their respective regions. Although legally and financially autonomous, they are key components of WLUML. Based on their connections with networkers, and their knowledge and understanding of networkers' activities and contexts, the ICO and Regional Offices ensure that the relevant people in the network are meeting, strategising, planning and acting so as to support each other and thereby strengthen local, regional and global effectiveness.

## **What are WLUML's principles?**

WLUML focuses on laws and customs and the concrete realities of women's lives. This includes the often diverse practices and laws classified as 'Muslim' (resulting from different interpretations of religious texts and/or the political use of religion) and the effects these have on women, rather than on the religion of Islam itself.

The network consciously builds bridges across identities – within our contexts and internationally. We are especially concerned about marginalised women.

This includes non-Muslims in Muslim majority states, especially where spaces for religious minorities is rapidly dwindling; Muslim minorities facing discrimination, oppression, or racism; women whose assertions of sexuality – including but not limited to sexual orientation – are either criminalised or are socially unacceptable.

WLUML recognises that women's struggles are interconnected and complementary, and therefore has a commitment to international solidarity.

WLUML actively endorses plurality and autonomy, and consciously reflects, recognises and values a diversity of opinions. Individuals and groups linked through the network define their own particular priorities and strategies according to their context.

The personal has always played an important part in the work of WLUML, which values the solidarity and active support that the networkers extend to each other by way of personal links.

## **What does WLUML do?**

### **Solidarity and alerts**

WLUML responds to, circulates and initiates international alerts for action and campaigns as requested by networking groups and allies. WLUML also provides concrete support for individual women in the form of information on their legal rights, assistance with asylum applications and links with relevant support institutions, psychological support, etc.

### **Networking and information services**

WLUML puts women in direct contact with each other to facilitate a non-hierarchical exchange of information, expertise, strategies and experience. Networking also involves documenting trends, proactively circulating information among networkers and allies, generating new analysis, and supporting networkers' participation in exchanges and international events. While WLUML prioritises the needs of networkers, it also selectively responds to requests for information from, for example, academics, activists, the media, international agencies and government institutions.

### **Capacity building**

WLUML consciously builds the capacity of networking groups through internships at the coordination offices, and exchanges, trainings and workshops.

### **Publications and media**

WLUML collects, analyses and circulates information regarding women's diverse experiences and strategies in Muslim contexts using a variety of media. It translates information into and from French, Arabic and English wherever possible. Networking groups also translate information into numerous other languages.

## What is WLUML?

An active publications programme produces:

- A theme-based dossier – an occasional journal which provides information about the lives, struggles and strategies of women in various Muslim communities and countries;
- A quarterly newsheet on women, laws and society by Shirkat Gah, WLUML Asia Regional Coordination Office;
- A biannual newsletter on women, laws and society by the WLUML International Coordination Office (ICO);
- Occasional papers – specific studies and materials which, for reasons of length or style, cannot be included in the dossier series;
- Other publications on specific issues of concern such as family laws, women's movements, initiatives and strategies, etc.

For more information and to download WLUML publications, please visit [www.wluml.org/english/publications.shtml](http://www.wluml.org/english/publications.shtml) WLUML runs a very popular website in English, French and Arabic which is updated regularly with news and views, calls for action and publications: [www.wluml.org](http://www.wluml.org)

## Collective projects

Collective projects have included topic-specific initiatives that arise out of the shared needs, interests and analysis of networkers. Networking groups and individuals are free to participate, or not, according to their needs and capacity, and collective projects have involved from three to over 20 networking groups and lasted from a few months to 10 years. Projects are principally coordinated and implemented by networking groups or individual networkers in their respective countries or communities; the coordination offices provide facilitation when necessary.

Collective projects have included training sessions, workshops, research for advocacy, meetings and exchanges around specialised topics. Previous projects include:

- Exchange programme (1988);
- Qur'anic interpretations meetings (1990) and for West African networkers (2002) and Francophone West Africa (2004);
- Women and Law in the Muslim world programme (1991–2001);
- Feminism in the Muslim World Leadership Institutes (1998, 1999 and 2007);
- Gender and displacement in Muslim contexts (1999–2002);
- Initiative for Strengthening Afghan Family Laws (INSAF) (2002–present);
- The Feminist Dialogues (2006–present);
- The Violence is Not Our Culture Campaign – formerly the Global Campaign to Stop Killing and Stoning Women! (2007–present).

*Marieme Hélie-Lucas*

## Introduction

Volume 30–31 of the WLUML dossiers addresses a burning issue: the specificity of the struggle that women – be they Muslim or ‘of Muslim descent’ – are waging in Europe and North America, and the way in which their struggle and their strategic decisions are perceived elsewhere, outside the context.

This dossier is intended for all those women and men who, due to lack of easily accessible adequate information or over-saturation of misinformation on the struggles of women from migrant descent in ‘the West’, do not understand all that is at stake and do not dare support us:

- Women in the Muslim world, particularly those linked through the network Women Living Under Muslim Laws (WLUML) who, intoxicated by the sole discourse of victimisation on ‘Muslims in the West’ do not *also* see the rise of fundamentalism that we have to combat *too*. Our struggles are not different from theirs.
- Activists on the left in Asia and Africa who stick blindly to the theory of the main enemy, and who, by not defending them, abandon at the same time all the democratic forces, anti-racist forces and progressive forces from migrant descent – despite the fact that those are victimised twice: victims of racism on the one hand and of fundamentalism on the other – as well as women in general. We support their struggles, they should support ours.
- Activists on the left in the West, who have opportunities to see what is happening, and what we struggle for and against, but do not find in themselves enough freedom to think anew the categories of analysis that would account for new situations and struggles, and new forces face-to-face.
- Grass roots activists in human rights organisations everywhere in the world, so that they demand from their international headquarters that the fundamental human rights of those who, believers or unbelievers, defend secularism (*laïcité*) are not defended less than followers of religions – which is the case at the moment. The unremitting support that human rights organisations gave to fundamentalists and to them only, when they were persecuted by states – in my experience, for the past three decades, at least – compared to the abandonment to which they left anti-fundamentalists who were persecuted and assassinated by fundamentalist non-state actors is beyond understanding, beyond common sense and beyond the ethics of human rights.

The problems we are confronting are both multiple and enormous. Among others, here are major obstacles we face.

It is absolutely true that migrants and people from migrant descent face racism and discrimination, or at the very least are being marginalised, in Europe, regarding

housing, jobs, etc. This has been equally true for preceding waves of migration which were not coming from Muslim countries: for instance there were pogroms against Italian workers in France, as can be seen in this dossier in the section on France. Most of the activists for women's rights from Muslim descent are *also* engaged into social struggles in defence of migrant populations. At no point do they betray their community – far from that. It is also true that one witnesses the rise of a traditional xenophobic far right everywhere in Europe and in North America. All immigrants suffer from it regardless of their origin (including those of European origin, as demonstrated by the recent *manu militari* expulsion of Romanian and Bulgarian citizens out of France<sup>3</sup>), but in countries where the majority of immigrants come from Muslim countries, there are some dangerous shortcuts in the making and a confusion between the geographical origin of these immigrants, their presumed religion and their being potentially dangerous.

It follows suit that when we speak against the growing rise of Muslim fundamentalism, we are accused of being sold out to governments, labelled racist, or 'Islamophobic'<sup>2</sup>, as if one could not struggle at the same time against both the traditional extreme right and the new fundamentalist extreme right.

What is problematic, in short, is not what we do for women's rights, for secularism and against the rise of fundamentalism, but where we do it. Should we wage these same struggles in our countries of origin, we would get support or at least we would not be accused in the same way.

Progressive forces in Europe are afraid to get into the same situation and to be labelled 'Islamophobic' and racist. Bending to both the pressure from fundamentalists (a tactic we know well for they use the same one to silence us in our countries) and to the guilt feelings inherited from the colonial past, progressive forces fear above all to confront Muslim fundamentalists (and not other fundamentalisms), as they know that fundamentalists will accuse them to be 'against Islam', as they claim they are Islam and the only legitimate representatives of the true Islam.

It follows suit that numerous organisations of civil society, including women's rights organisations, who struggle against anti-women and anti-secular (*laïques*) actions of Christian or Jewish fundamentalism in Europe, keep cowardly quiet in front of similar actions of Muslim fundamentalism.

The interview that Rhonda Copelon ('United States' section) gave me for this dossier, a few months before she died, underlines the different reactions that she received when she confronted Christian fundamentalists and when she confronted Muslim fundamentalists, and the solitude and moral suffering that she endured.

We also face the worldwide trend of treating social and political problems at national level by religious remedies, a trend that is reinforced by various UN organisations which reinforce it and sometimes even initiate it: it is now imams that are called by governments to solve difficulties in the suburbs, prevent riots and jacqueries. We stand that social and political problems should be dealt with through social and

political means, and leave it to religious people to deal with religious problems of individuals, and not that of nations.

Salafi fundamentalist groups (for proselytisation and combat) are the only ones with enough means (in terms of people and of financial availability) to attend to this request for mediation; they are the ones who benefit from the naivety – or the perversity – of the UN and of governments. These groups thus take, with the blessing of authorities, an essential place in indoctrination and control of the youth of migrant descent and build for themselves a mass of manoeuvre which give them political weight *vis-à-vis* the state. From this vantage point, it becomes easier for them to negotiate and undermine secularism (*laïcité*), in the name of religious rights.

Last but not least, we are invaded by grossly undefined concepts, such as ‘the’ culture, ‘the’ religion, which are rapidly taken on both by human rights organisations and by the UN, without any attempt to define them further.

It is in the name of respect and tolerance (the ultimate human rights words) of ‘the’ ‘other’s’ culture that we are demanded not to criticise or oppose practices that are against fundamental human rights, such as ‘honour’ crimes that are growing in numbers in Europe, forced marriages, domestic violence, etc. However, one displays more hatred for other cultures by accepting the idea that these cultures are inherently violent and anti-women... than by understanding that, like everywhere, it is specific individuals and specific groups that are violent, anti-women and reactionary. Quoting the slogan of an international coalition: “Stop killing and stoning women: violence is not our culture”.

It is also in the name of tolerance and respect of ‘the’ religion of the ‘other’ that we should not criticise and oppose fundamentalist interpretations of religion, such as those that choose to see women die in delivering a child rather than allow her to abort, or those which seclude women at home or under a portable *zenana* (veil), or which justify that women are beaten or killed when they want to get out of it.

By essentialising culture and/or religion, any criticism addressed to one specific element of this culture or that religion will be equated to an attack against ‘the’ culture, ‘the’ religion. And we will be accused of lacking respect and tolerance, i.e. of violating the human rights of others.

Numerous ideological confusions prevail, among which the most harmful to us is the confusion between defending fundamental rights for all, including those of fundamentalist perpetrators (the right to be free from torture, illegal detention, extrajudicial killings, etc.) – an imprescriptible right that we support for everyone – and to grant fundamentalists the legitimacy of human rights defenders, to give them a political platform from where they can propagate their views of a theocratic society.

Those are not small obstacles... *Dossier 30–31* aims at clarifying those elements of our situation and of our struggle, which are not accounted for in the media.

This dossier gives a voice – nearly exclusively – to women of migrant descent originating in Muslim majority countries: we pointed above to the fact that confronting anything that has to do with Islam and its most conservative interpretations is extremely problematic in ‘the West’, and that women confronting Christian or Jewish fundamentalism, for instance, do not suffer the same limitations as we do. We want to deal here with *our* problems, not the problem of fundamentalism or secularism in general. For doing that, we are prepared to be accused of singling out Muslim fundamentalism.

Moreover, the WLUML dossiers – which reflect the diversity of women in this network, believers, agnostic, atheists, that are all working for the defence of women’s rights, with different strategies that are adequate to the specific circumstances in which women live – only dedicated one dossier in the past 25 years specifically to the issue of secularism. However more and more women, certainly in this part of the world, realise that women’s rights have to do with secularism (*laïcité*) – not that *laïcité* would solve everything, but it is an indispensable protection against the rise of religious fundamentalism that threatens women’s rights.

Finally, the development of migration towards Europe and North America, the increasing number of women among those migrants or descendants of migrants, as well as the fast-growing number of fundamentalist preachers in this part of the world, all this constitutes a brand new phenomenon and we must keep the activists in our network informed. Moreover, we have no access to the media in Europe and in North Africa: media would rather portray fundamentalist women (if possible veiled to the brim) who seem to be, to their eyes, both more ‘exotic’ and more legitimate representatives of *difference*, than a secular woman, even if she is a believer. Difference and diversity are double-edged concepts; we should never forget that they have been used by reactionary forces to maintain in their difference – by force – peoples and categories of population.

What lies behind ‘respect for difference’ is the deep desire that the ‘*other*’ remains different, a desire that was spelt out by the traditional European extreme right when Le Pen in France and Haider in Austria lent verbal support to the Islamic Salvation Front in Algeria.<sup>5</sup> Quite recently, I heard an Algerian man, a migrant, publicly declare that he was tired of being “under culture arrest”, a superb concept he forged on the model of “under house arrest” – which he may have been under during the liberation struggle of Algeria that ended 132 years of colonisation; he was old enough for having gone through this experience.

However, despite this decision, some authors may also refer to other religious fundamentalisms; besides, it was decided that secularism and fundamentalism in the former Yugoslavia will be addressed here, on the one hand for comparison (we are not the only ones to suffer and confront religious fundamentalism in Europe) and on the other hand because this example allows for better understanding how interactions between different religious fundamentalisms erode democracy. In former Yugoslavia, orthodox fundamentalism, supported by Milošević, was

instrumental in the rise of Muslim fundamentalism, for instance in Bosnia and in some Serb enclaves. Moreover, the exemplary internationalism of secular feminists in former Yugoslavia, beyond cultural, ethnic and religious divisions, is a source of inspiration for all of us.

It was also decided that this dossier will not present a rapid overview of as many Western countries as possible – with one article on each country – but rather will include several articles on each of the small number of countries that were selected, to look at the same problems from different perspectives.

The articles presented in this dossier are a mix – a complementary mix, we hope – of analysis and voices from the field (most of the authors could wear both hats of analyst and activist, even if they chose to select one of them in this volume!). Very diverse trends are represented, from believing in Islam to atheism – as is the rule in our network – but all the authors hold the principles of secularism (*laïcité*) and of women's rights, and thus oppose fundamentalism.

## Endnotes

1. France: in August 2010, some odd 9,000 Roms had been expelled since the beginning of the year. One hundred and thirty cities in France organised demonstrations on 4 September 2010 and launched a citizens' call for action (<http://forumdesdemocrates.over-blog.com/ext/http://nonalapolitiquedupilori.org/>).
2. A list of locations of demonstrations on 4 September is available at: [www.humanite.fr/03\\_09\\_2010-la-liste-des-rassemblements-du-4-septembre-452706](http://www.humanite.fr/03_09_2010-la-liste-des-rassemblements-du-4-septembre-452706)
3. 'Islamophobia': this term has been coined by Muslim fundamentalists who use it with much success to prevent any criticism to be made of them. One should not forget that the first victims of fundamentalists are other Muslims, whether in our countries of origin or in Western countries. However, Islamophobia now increasingly refers, in the media for instance, to discriminations against migrants from Muslim countries, i.e. to xenophobia and racism, rather than referring to an attack on the religion of Islam *per se*. It is therefore an extremely perverse term (in the original meaning of *per vertere*) that one should avoid using when dealing with social and political problems.
4. On the difficulty of identifying the 'same' in the 'other', on the ideological construction of 'otherness', see: Marieme Hélie-Lucas (1999), 'What is your tribe? Women's struggles and the construction of Muslimness', in Courtney W. Howland, *Religious Fundamentalism and the Human Rights of Women*. New York: St Martin's Press (also available at [www.wluml.org/node/343](http://www.wluml.org/node/343)).
5. In the mid-1990s, when Le Pen was President of the National Front and Haider was President of the freedom Party.



*Marieme Hélie-Lucas*

## **A Definition of *Laïcité*/Secularism**

Secularism/*laïcité* is understood in this volume as the separation between religion and the state. Below are excerpts from 'France: Secularity and the republic' by Henri Pena-Ruiz.<sup>1</sup>

This is how secularism was conceived at the time of the French revolution, at a time when the Catholic Church overpowered the state and enjoyed enormous privileges (and needless to say, there was no 'Muslim' immigration at the time):

"The secular recasting of the state, initiated in France with the acts of 1881 and 1886, then the Act of separation of Church and State of 9 December, 1905, corresponds to some sort of evidence enclosed in the very etymology of the word: the Res Publica addresses everybody, believers, atheists and agnostics alike and cannot therefore favor anybody...

"In that sense, secularity is akin to universalism, which is the essence of the republic. But it could not occur spontaneously. There had to be a movement to emancipate the current law from any submission to some specific religious persuasion. Hence, the republic is neither atheistic nor religious: it no longer arbitrates between beliefs but arbitrates between actions and is devoted only to the general interest...

"At the same time, the ethical liberty of the private sphere is guaranteed. No conception of what the good life is can monopolize law or illegitimately extend the normative function of the law beyond the interest of the community of citizens...

"The denominational neutrality of the republic cannot therefore be assimilated to a vague ethico-political relativism...

"Secularity was actually introduced in the law with the acts of emancipation from religious supervision of school, public institutions, and then of the State. It is by essence a separation of State and Church, which rules out all Concordat regimes. The official recognition of certain worshipers involves a double exclusion: that of other worshipers and that of non-religious figures of spirituality. It encroaches on the public sphere, alienating it to the domination of religions. It makes no difference to recognize several religions: the alienation of the public field to religious persuasions is none the less patently obvious...

"The 9 December 1905 act opens on two indivisible articles, grouped under the heading, 'Title 1. Principles'.

"Section 1: the Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid

down hereinafter in the interest of public order. Section 2: the Republic may not recognise, pay stipends to or subsidise any religious denomination. Consequently, from 1 January in the year following promulgation of this Act all expenditure relating to participation in worship shall be removed from State, region and municipality budgets.'

"Hence grouped under the same heading, the two first articles of the law are obviously inseparable and are clearly referred to as principles. Religious freedom is but one version of the freedom of conscience (article 1) and is viewed only as a particular illustration of the freedom. Having to coexist with the freedom of choosing to be an atheist or an agnostic, the freedom of opting for a religion obviously belongs to a more general category which is the only one mentioned by the law. Insisting on "religious freedom" is in fact preserving the privilege of a spiritual option when the law henceforth rejects all privileges. This is why section 1 is inseparable from section 2 which stipulates that the Republic does not recognise any religious denomination. This strictly means that it has passed from recognising certain denominations (before 1905, Catholicism, Lutheran and Reformed Protestantism and Judaism) to renouncing all recognition. It is not passing from recognition of some to recognition of all, as a multireligious or communitarist interpretation would have it, but from a selective recognition to a strict non-recognition. This principle of non-recognition is to be understood in its legal sense as confirms the fact that no stipend or direct subsidy may be paid to any church by the State...

"The 1905 Act does not just stipulate that all churches are henceforth legally equal. It extends this equality to all spiritual choices, whether religious or not, by dispossessing the Churches of any public law status. Assigning religions to the private sphere entails a radical secularization of the State. It henceforth declares itself incompetent in matters of spiritual options, and has not therefore to arbitrate between beliefs nor to let them encroach on the public sphere to shape common norms."

## Separation vs equal tolerance

In today's Europe, two conceptions of secularism coexist under one same word in the English language, and this is a source of great confusion: on the one hand the French ideal of *laïcité* i.e. total *separation* of Church and state and total disengagement of the state *vis-à-vis* religions which declares itself incompetent in these matters; and on the other hand the Anglo-Saxon definition of **secularism**, i.e. *equal tolerance* for all religions by the state, and recognition of representations of religions within the state.

As Pena-Ruiz rightly pointed at, while *laïcité* considers only individual citizens, secularism gives birth to communities and communalism. By French standards,

neither the UK, where the Queen is both the Head of State and the Head of the Anglican Church, nor Germany, where the Landers of the Federal state collect religious taxes, nor the US where one swears on the Bible in court – just to give a few examples – could satisfy to the criteria of a secular (*laïc*) state.

The institutions of the Council of Europe are massively adopting the Anglo-Saxon definition of a secular state, and more and more pressure is put on France to adopt it, in the name of human rights and religious rights.

## Secularism and women's rights

Secularism is a necessary but not sufficient condition to women's rights. There is no denying that, historically, secularism per se, secularism alone has not granted full rights to women. However, we can also observe that organised religions in general have been instrumental to the oppression of women.

When the laws are not voted by citizens any more but made in conformity to a supposedly divine prescription, this is the end of democracy, i.e. the power of the people to formulate, express and change their laws according to their will, by voting. And when the laws are religiously inspired, it denies citizenship not only to agnostics and non-believers, but also to believers who read their religion with progressive lenses, and to followers of other non-recognised creeds.

Many 'Muslim countries' experienced and still experience today the rise of fundamentalist forces which pretend to dictate to the state and to citizens their own interpretation of divine law. In the words of Ali Belhadj, the then Vice-President of the Islamic Salvation Front (FIS), announcing on the eve of the December 1991 elections that, should FIS win these elections, there will be no more elections in Algeria under FIS rule: "If we have the law of God, why do we need the law of the people? One should kill all these unbelievers."<sup>2</sup>

It therefore becomes quite obvious why many women of migrant Muslim descent (both Muslim believers and non-believers) in Europe and North America are now on the forefront of the struggle for *laïcité*, i.e. total separation between religions and states.

Throughout this dossier we will use the English word 'secularism', but keeping in mind that we in fact refer to the French concept of secularism, i.e. *laïcité*.

## Endnotes

1. Henri Pena-Ruiz (2005), 'France: Secularity and the republic. A secular recasting of the state: principles and foundations', [www.siawi.org/article17.html](http://www.siawi.org/article17.html)
2. Marieme Hélie-Lucas (2006), 'Women from migrant descent vs Muslim fundamentalists in Europe and North America: struggles and unexpected new obstacles', WLUML, 13 June, [www.wluml.org/node/2825](http://www.wluml.org/node/2825)



*Karima Bennoune*

## The Law of the Republic Versus the ‘Law of the Brothers’

A story of France’s law banning religious symbols in public

***This article\* aims to complicate the human rights narrative about the 2004 French law banning religious symbols in public schools, and to place this issue firmly within the context of contemporary struggles over and with religious fundamentalisms. This human rights law story is based on field research conducted in France, and features interviews with women’s rights activists, journalists, religious figures and scholars of Muslim, Arab or North African heritage living in France who support the law. Their voices have been mostly left out of the anglophone debate on this topic. For many of them, the 2004 law may be understood as a way to counter the parallel, informal ‘law’ of brothers, fathers and neighbours – and fundamentalist groups – who sometimes seek to impose the headscarf and constrain women’s choices about dress. Finding the right balance for addressing the issue of headscarves in school in the contemporary moment is admittedly difficult. However, the concerns raised by those interviewed in this article need to be considered in formulating any human rights account of the 2004 Law.***

“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.<sup>1</sup> Yet, this topic remains largely obscured in much of the human rights literature outside of the specialised field of women’s human rights. International human rights scholarship and critique has often instead fetishised issues of identity and portrayed a range of complex socio-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 polarising post-9/11 environment, many international human rights advocates and other critical voices have understandably been concerned with not appearing to be ‘Islamophobic’<sup>2</sup> 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.<sup>3</sup> 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 article is to complicate the simplified human rights story of the 2004 French Law on Religious Symbols (“the 2004 Law” or “the Law”),<sup>4</sup> and to place the issue firmly within the context of contemporary struggles over and with religious fundamentalisms.

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.<sup>5</sup> This article does not purport to represent the full spectrum of opinions in the Muslim population or in France generally concerning the 2004 Law.<sup>6</sup> The opposition of some Muslims to the French ban on religious symbols in public schools has already been highly publicised. 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.”<sup>7</sup>

## **The French Law on Religious Symbols in public schools: A brief history and overview**

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.<sup>8</sup> 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.<sup>9</sup> 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."<sup>10</sup> It was adopted on 15 March 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 article, 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*,<sup>11</sup> 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 not to be a violation of human rights. The Court emphasised 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*,<sup>12</sup> which their principal found to contravene the principle of *laïcité*.<sup>13</sup> *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.<sup>14</sup> 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.<sup>15</sup> Following the Creil controversy, in November 1989, the Conseil d'État<sup>16</sup> 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 proselytising, 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.

However, far from resolving the matter, the controversy only grew, particularly subsequent to the media coverage of the first episode. By 1994, some 3,000 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 organisations which campaigned for the “right to veil”.<sup>17</sup>

These Muslim fundamentalist organisations 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, neighbours 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 internalised 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.<sup>18</sup> 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 adoption of a law banning religious symbols in schools – a law similar to the one subsequently adopted in 2004.<sup>19</sup>

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 criticised the Law using rights-based arguments.<sup>20</sup> Meanwhile, a group calling itself ‘The Islamic Army in Iraq’ abducted two French journalists on 20 August 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.<sup>21</sup> Of these, only 70 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.<sup>22</sup> According to the Minister of Education's 2004 implementation circular for the Law, dialogue was always to precede discipline.

Ultimately, during the 2004–05 academic year, 44 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 96 students are reported to have either transferred to private schools, enrolled in correspondence courses or left school (only those over 16). The analogous numbers for the subsequent school years are difficult to obtain as there has been no official follow-up to the Chérifi report.<sup>23</sup> 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, left-wing anti-fundamentalists and progressive women's rights campaigners including many of Muslim and North African heritage. Some *beur*,<sup>24</sup> immigrant and Muslim organisations – 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 SOS 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 practising and secular Muslims, some on the left and the far left, and some human rights activists and feminists. Most often, these opponents characterise 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 polarised 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 article, the single most important factor was the emergence of Islamic fundamentalism both internationally and in France. In the era of globalisation, these stories conceptualise the debate as one that is inherently transnational. What happens in Algeria,<sup>25</sup> 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 Brotherhood<sup>26</sup> 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.<sup>27</sup> 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,<sup>28</sup> the contemporary issue of the veil in French schools can only be understood in the context of the rise of fundamentalist Islam.<sup>29</sup> Though certain forms of veiling such as the old-school *haik* (a 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.<sup>30</sup> 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."<sup>31</sup> 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 *keur* anti-racist activist Mimouna Hadjam joked, "they looked like the representatives of God on earth. You with your Western outfit, how can you compete?"<sup>32</sup>

Making a clear distinction between traditional or practising 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.<sup>33</sup> This mistake is to be avoided, but not by pretending fundamentalism does not exist. Sifaoui criticises not only those who fail to recognise 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-9/11 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.<sup>34</sup>

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."<sup>35</sup> Making a literal connection in this regard, Mimouna Hadjam, who works with the anti-racist NGO Africa 93 in the northern Paris *banlieues*,<sup>36</sup> said that in those neighbourhoods, fundamentalist activists became particularly visible in 1991 and 1992.<sup>37</sup> 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.<sup>38</sup> 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 depersonalisation.

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. 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 her..."<sup>39</sup>

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'..."<sup>40</sup>

Lalia Ducos, who is currently an activist with the group 20 Ans Barakat,<sup>41</sup> 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, etc.), recognise the danger.<sup>42</sup> 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.<sup>43</sup> For example, American science teachers now reportedly shy away from teaching evolution to avoid disputes with Christian fundamentalists.<sup>44</sup> 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."<sup>45</sup> 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.<sup>46</sup> 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, 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.<sup>47</sup> Sadou also adjures that if the veil is normalised 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 organisation Les Indigènes de la République, who justly criticise 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 Mohamed<sup>48</sup> you'll get shown on TV, but if I demonstrate against the Family Code,<sup>49</sup> 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.<sup>50</sup> 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 recognise both that the fundamentalists' project for Europe is antithetical to their own professed values and is central to the headscarf debate.<sup>51</sup> 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.<sup>52</sup> This Catholic Church social project is often clearly opposed by those same Western left-wing, 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.<sup>53</sup> 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 not so for earlier generations of Muslim immigrants. Similarly, Bencheikh, who does indeed identify the headscarf as “a subject of ideology”, also recognises 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, Hélié-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 organisations.” 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 10 per cent, it is reported to be at least 50 per cent among youth in the *banlieues*.<sup>54</sup> 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,<sup>55</sup> 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.<sup>56</sup>

### **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-9/11 world.<sup>57</sup> 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."<sup>58</sup> 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".<sup>59</sup>

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,<sup>60</sup> 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 recognises 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 article, 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 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 per cent 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.<sup>61</sup> 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*].<sup>62</sup> 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’.<sup>63</sup> 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 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,<sup>64</sup> 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 US academic Joan Scott, have imputed positive significance to the veil, perhaps in an attempt to counter prejudice against Muslims in the West.<sup>65</sup> 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 neighbourhoods. 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 neighbourhoods. 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*,<sup>66</sup> there was a law imposed by men on women. Girls 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 neighbours. 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.<sup>67</sup> 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 10 at the independence [of Algeria, 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 emphasises, these are mostly interpretations by men.<sup>68</sup> 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 reinterpretation of religious doctrine over time and subject to context are key themes for him. A Muslim fundamentalist once told the author of this article 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.<sup>69</sup>

One of the concerns of those who oppose the 2004 Law is that by banning the headscarf in schools the Law stigmatises 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 stigmatises other unveiled girls as bad Muslims, a view confirmed by the *fatwa* from the Conseil Européen des Fatwas et de la Recherche quoted above.<sup>70</sup> 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.”<sup>71</sup> 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 even murdered for wearing miniskirts, appearing ‘loose’, or being disobedient.<sup>72</sup> Algerian schoolgirls 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.<sup>73</sup>

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 recognise the possibility that veiling is a choice in a limited number of cases, but emphasise 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 problematise 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 summarises the relevant 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 rationalisation 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."<sup>74</sup>

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.”<sup>75</sup>

At the same time, sex equality is also a fundamental human right, and one from which no derogation is permissible.<sup>76</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 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.”<sup>77</sup> 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 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.”<sup>78</sup>

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 UN 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.”<sup>79</sup> 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.”<sup>80</sup> In its 2000 General Comment on gender equality, the UN Human Rights Committee extolled the idea that freedom of religion “may not be relied upon to justify discrimination against women...”<sup>81</sup>

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.<sup>82</sup> Analysing 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 recognise the religious freedom issue and 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.<sup>83</sup> 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 maximises 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 organisations; 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;
- 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 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.<sup>84</sup>

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 organisations. 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.

## **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.<sup>85</sup> Moreover, some prominent international human rights lawyers<sup>86</sup> 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 12-year-old girl unsuccessfully sought for her to be able to wear the *niqab*, which covers the full face, to school.<sup>87</sup> These positions taken by some international human rights advocates were strongly criticised 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 realise 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 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."<sup>88</sup>

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.<sup>89</sup> 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 article, 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 emphasised 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.<sup>90</sup> All 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 article supported the 2004 Law, though their explanations for their support varied. Chérifi supported the Law without reservation and, while recognising 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 3,000 or so had sought to wear the veil in school, and of these only a small number left school rather than give it up.<sup>91</sup> 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.<sup>92</sup> 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 practising 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 realised 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 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 per cent 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 summarised 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 organised 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 neighbourhood, 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 secularise 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 discrimination against women.<sup>93</sup> 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 recognised 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 13 June 2008, and a civil society campaign currently seeks to convince the French state to renew his police protection.<sup>94</sup> 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 organisation with which she works, Ni Putes Ni Soumises, was initially divided over the ban. However, its members realised 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 neighbour who had pressured her to wear the *jilbab* during the 1990s. “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.”

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 organisation, but only one issue among many to be addressed. The activists of Ni Putes Ni Soumises are organising 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.<sup>95</sup> 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 emphasised that the debate about the headscarf should be understood in its regional and transnational contexts.

Mimouna Hadjam explains that her organisation, 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 favour 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 neighbourhood 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 recognises 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 on the views of veiled girls in French schools. She is also the current member of French nationality on the UN 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."<sup>96</sup> 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 neighbourhoods. 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 neighbourhoods].” 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”.<sup>97</sup>

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 of the general French population”, and in particular, its fear of immigration by previously colonised 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.”<sup>98</sup>

One can continue to imagine a world in which women can wear what they choose and can do so in substantive equality.<sup>99</sup> 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 internalise, 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 article 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 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 characterises 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 centre 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.<sup>100</sup> Collectively, their endeavours represent one of the most important human rights struggles of our time.

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## Endnotes

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1. See, i.e. Hilary Charlesworth and Christine Chinkin (2000), *The Boundaries Of International Law: A Feminist Analysis* 249. '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 (2001), 'What is Your Tribe? Women's Struggles and the Construction of Muslimness', *Dossier 23-24*, [www.wluml.org/node/389](http://www.wluml.org/node/389). 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.
  2. The term 'Islamophobia' denotes hostility toward Islam and Muslims generally, and has been argued to be a part of European society since the 8<sup>th</sup> century. See Commission on British Muslims and Islamophobia (2004), *Islamophobia: Issues, Challenges and Action* 7–8, [www.insted.co.uk/islambook.pdf](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, UN Doc. E/CN.4/RES/2004/6 (13 April 2004). However, some prominent dissidents of Muslim heritage have staunchly criticised the concept of Islamophobia as "confus[ing] criticism of Islam as a religion and stigmatization of those who believe in it." See, e.g. BBC News (2006), 'Writers Issue Cartoon Row Warning', 1 March, <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 (2008), 'Suspect Symbols: Value Pluralism as a Theory of Religious Freedom in International Law', 33 *Yale J Int'l L* 1, 21–25; Jane Freedman (2007), 'Women, Islam and Rights in Europe: Beyond a Universalist/Culturalist Dichotomy', 33 *Rev Int'l Studies* 29–44; Joan Scott (2007), *The Politics of the Veil*; Johnathan Sugden (2004), 'A Certain Lack of Empathy', Human Rights Watch, 1 July, [www.hrw.org/english/docs/2004/07/01/turkey8985.htm](http://www.hrw.org/english/docs/2004/07/01/turkey8985.htm); Human Rights Watch (2004), *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, 29 June, [http://hrw.org/backgrounder/eca/turkey/2004/headscarf\\_memo.pdf](http://hrw.org/backgrounder/eca/turkey/2004/headscarf_memo.pdf) [hereinafter Memorandum to the Turkish Government].
  4. Law No. 2004–228 of 15 March 2004, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], 17 March 2004, p.5190, [www.legi.france.gouv.fr/WAspad/UnTexteDeJorf?numjo=MENX0400001L](http://www.legi.france.gouv.fr/WAspad/UnTexteDeJorf?numjo=MENX0400001L)
  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 and Monica Nigh Smith (2006), 'Critical Race Feminism Lifts the Veil? Muslim Women, France and the Headscarf Ban', 39 *UC Davis L Rev* 743; and Françoise Gaspard and Farhad Khosrokhavar (1995), *Le Foulard et La République*.

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 70% of France's Muslim population of 5–6 million are from Algeria, Morocco and Tunisia. See BBC News Online (2005), 'Muslims in Europe: Country Guide', 23 Dec, <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 article is a deliberate choice intended to reflect this frequently overlooked diversity. See Saleh Bachir and Hazem Saghieh (2003), 'The "Muslim community": A European invention', openDemocracy, 16 Oct, [www.open-democracy.net/conflict-terrorism/community2928.jsp](http://www.open-democracy.net/conflict-terrorism/community2928.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 practising Muslims. See John Lichfield (2006), 'So were the French right all along?', *Independent* (London), 19 Oct, 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 (8 June 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 MSNBC (2004), 'French Lawmakers Overwhelmingly Back Veil Ban', 10 Feb, [www.msnbc.msn.com/id/4231153/print/1/displaymode/1098/](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 15 March 2004, *supra* note 4.
11. *Leyla Şahin v Turkey*, App. No. 44774/98, Eur. Ct. H.R., Fourth Section (29 June 2004). The judgment was affirmed by the Grand Chamber in *Leyla Şahin v Turkey*, App. No. 44774/98, Eur. Ct. H.R. (10 Nov 2005), [www.echr.coe.int/echr](http://www.echr.coe.int/echr). The Court's approach here has been criticised 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 defence of the reasoning in *Şahin*, see Karima Bennoune (2007), '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.
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 *jilbab*, 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 *burqa* 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 (2005), 'Symptomatic Politics: The Banning of Islamic Headscarves in French Public Schools', 23 *French Politics, Culture & Soc'y* 106, 108. Nevertheless, these two terms appear interchangeably for stylistic reasons in this article. Though the author recognises 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 (2005), *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 Etablissements d'Enseignement Publics*, 30–33, July [hereinafter Chérifi Report].
14. For further information, see Henri Pena-Ruiz (2007), *Secularity and the Republic*.

15. Law of 9 Dec 1905 *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], 11 Dec 1905 (concerning the separation of Church and state), [www.assemblee-nationale.fr/histoire/eglise-etat/sommaire.asp#loi](http://www.assemblee-nationale.fr/histoire/eglise-etat/sommaire.asp#loi)
16. The Conseil d'Etat 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.
17. Chérifi Report, *supra* note 13, at 32.
18. For discussion of the range of motives claimed by schoolgirls seeking to wear the *foulard islamique*, see Wing, *supra* note 5, and Gaspard and Khosrokhavar, *supra* note 5.
19. *Commission de Réflexion sur l'Application du Principe de Laïcité dans La République, Rapport au Président de la République* (11 Dec 2003), <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>.
20. See, e.g. France, in Amnesty International (2005), *Annual Report 2005*, <http://web.amnesty.org/report2005/fra-summary-eng>; Press Release, Human Rights Watch (2004), 'France: Headscarf Ban Violates Religious Freedom', 27 Feb, <http://hrw.org/english/docs/2004/02/26/france7666.htm>
21. Chérifi Report, *supra* note 13, at 11.
22. *Id.* at 7–10.
23. A British news report in October 2006 claimed that by then only 45 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.
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 largescale massacres of villagers. As many as 200,000 people may have lost their lives during the conflict. See, i.e., Hugh Roberts (1998), 'Under Western Eyes: Violence and the struggle for political accountability in Algeria', *Middle East Report*, 39–42 Spring; Mahfoud Bennoune (1998), *Esquisse d'une Anthropologie de l'Algérie Politique*; Louisa Ait-Hamou (2004), 'Women's Struggle Against Muslim Fundamentalism in Algeria: Strategies or a Lesson For Survival?', in Ayesha Imam et al. (eds), *Warning Signs of Fundamentalisms* 117–124; and WLUML (1995), 'Compilation of Information on the Situation in Algeria', Women Living Under Muslim Laws, No. 1 March (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. Interview with Hanifa Cherifi (2001), 'ISLAM Rencontre', *Société*, 20 Nov, [www.humanite.fr/popup/imprimer.html?id\\_article=253771](http://www.humanite.fr/popup/imprimer.html?id_article=253771)
28. See Mohamed Sifaoui (2003), *Mes 'Frères' Assassins: Comment J'ai Infiltré une Cellule d'Al-Qaïda*.
29. Interview with Mohamed Sifaoui, in Paris, France (8 June 2007) (notes on file with the author).
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 (2006), 'International Veils', Women Living Under Muslim Laws, 23 Oct, [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 (11 June 2007) (notes on file with the author).
32. Interview with Mimouna Hadjam, in Paris, France (12 June 2007) (notes on file with the author).
33. 'ISLAM Rencontre', *supra* note 27.
34. Interview with Lalia Ducos, in Paris, France (8 June 2007) (notes on file with the author).
35. Interview with Zazi Sadou, in Marseille, France (11 June 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 (2007), 'Maghrebi-French (*Beur*) Filmmaking in Context', in *Beur is Beautiful: A Retrospective of Maghrebi-French Filmmaking 2* (Cineaste).
37. For a more detailed account of Hadjam's views on the headscarf controversy in the context of fundamentalism, see Mimouna Hadjam (2004), 'L'Islamisme contre les femmes partout dans le monde', *Pensamiento Critico*, 6 Oct, [www.pensamientocritico.org/mimhad0405.htm](http://www.pensamientocritico.org/mimhad0405.htm)
38. See Leila Hessini (1998), *From Uncivil War to Civil Peace: Algerian Women's Voices* 19.
39. Conseil Européen des Fatwas et de la Recherche (2002), fatwa No. 6, in Recueil de Fatwas, Série No. 1, *Avis Juridiques Concernant les Musulmans d'Europe* 7 available at [www.c-e-r-f.org/fao-180bis.htm](http://www.c-e-r-f.org/fao-180bis.htm), along with commentary on the *fatwas* by the Cercle d'Etude de Réformes Féministes [translated by the author].
40. *Id.*
41. This organisation focuses on the reform of discriminatory family law in North Africa, and in Algeria in particular. For more information, see <http://20ansbarakat.free.fr/>
42. See, e.g. Chahdortt Djavann (2003), *Bas les Voiles!*
43. See, e.g. Kevin Phillips (2006), *American Theocracy: The Peril and Politics of Radical Religion, Oil, and Borrowed Money in the 21st Century*; Chetan Bhatt (1997), *Liberation and Purity: Race, New Religious Movements and the Ethics of Postmodernity* 242–244; and Karima Bennoune (2002), "A Disease Masquerading as a Cure": Women and Fundamentalism in Algeria, An Interview with Mahfoud Bennoune', in Betsy Reed (ed.), *Nothing Sacred: Women Respond to Religious Fundamentalism and Terror* 75, 80, 88.
44. Cornelia Dean (2005), 'Evolution Takes a Back Seat in US Classes', *NY Times*, 1 Feb, at F1.
45. Interview with Marieme Hélie-Lucas, in Marseille, France (11 June 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 (2005), *Face Aux Intégristes, Face Au Sexisme, Dix Ans de Lutte Pour Les Droits des Femmes du Maghreb, Ici et Là-Bas* 65
47. Interview with Asma Guénifi, in Paris, France (12 June 2007) (notes on file with the author).
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 (2007), *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 (1995), 'Between Betrayal and Betrayal: Fundamentalism, Family Law and Feminist Struggle in Algeria', *17 Arab Studies Quarterly* 51 and Karima Bennoune (2005), '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.

50. Interview with Jeanne Favret-Saada, in Marseille, France (11 June 2007) (notes on file with the author). For these two authors' most recent written contributions to that end, see Jeanne Favret-Saada, *supra* note 48, and Mohamed Sifaoui (2007), *Combattre le Terrorisme Islamiste*.
51. For further elaboration of this key point, see also WLUML (2005), 'Statement to the World Social Forum', Women Living Under Muslim Laws, 20 Jan, [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 Hélie-Lucas (2006), 'The Enemy of My Enemy is Not My Friend: Fundamentalist Non State Actors, Democracy and Human Rights', Women Living Under Muslim Laws, 3 Sep, [http://wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-544539](http://wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-544539)
52. See Carla Power (2004), 'The New Crusade: Fighting for God in a secular Europe, conservative Christians, the Vatican and Islamic militants find a common cause', *Newsweek*, 8 Nov, [www.newsweek.com/id/55637/page/2](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 (2006), 'Un débat difficile et miné: Voile et dépendance', 59 *Confluences Méditerranée* 33, Fall.
54. See Business Week (2005), 'Crisis in France', 21 Nov, [www.businessweek.com/magazine/content/0547/b3960013.htm](http://www.businessweek.com/magazine/content/0547/b3960013.htm)
55. On 3 Dec 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 Thioly (2007), 'Vingt ans après la Marche des beurs', *L'Express.fr*, 3 Dec, [www.lexpress.fr/info/societe/dossier/integration/dossier.asp?ida=412853](http://www.lexpress.fr/info/societe/dossier/integration/dossier.asp?ida=412853)
56. See Hugh Schofield (2007), 'The hyper-president's biggest problem', BBC News, 28 Nov, <http://news.bbc.co.uk/2/hi/europe/7116978.stm>
57. See, e.g. Leti Volpp (2007), 'The Culture of Citizenship', 8 *Theoretical Inquiries in Law* 571 and Joan Scott, *supra* note 3.
58. Fadela Amara and Sylvia Zappi (2003), *Ni Putes, Ni Soumises* 107 (author's translation).
59. UN Human Rights Committee (1993), 'General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)', 8, UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July.
60. This violence proved deadly and sparked widespread unrest. See Fausto Giudice (1992), *Arabicides: Une Chronique Française 1970-1991*.
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 (2008), 'Madame Marshall Plan', *Newsweek*, 1 March, [www.newsweek.com/id/117816](http://www.newsweek.com/id/117816)
62. She borrowed this framework from Thierry Leclère (2004), '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.
64. Founded in 988 AD, Al Azhar is one of the most prestigious centres 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*.
67. See generally Scott, *The Politics of the Veil*, *supra* note 3, and Joan Scott (2007), Presentation at panel on Veiling and the Law, Yale Law School, 31 Oct (notes on file with the author).
68. On the myriad of interpretations of women's rights under Islamic law, see WLUML (2006), *Knowing Our Rights* 3rd ed. Women Living Under Muslim Laws, [www.wluml.org/node/588](http://www.wluml.org/node/588)

69. See Soheib Bencheikh (1998), *Marianne et le Prophète: L'Islam dans la France Laïque* 144–145.
70. Conseil Européen des Fatwas et de la Recherche, *supra* note 39.
71. Bennoune, 'Secularism and Human Rights', *supra* note 11, at 426.
72. See National Public Radio broadcast (2003), 'French Muslims Fail to Enter Mainstream and Suffer from Poverty, Discrimination and Sexism', 26 Feb; Samira Bellil (2002), *Dans L'Enfer des Tournantes*; Amara and Zappi, *supra* note 58, at 5–7.
73. See Karima Bennoune (1995), 'SOS Algeria: Women's Human Rights Under Siege', in Mahnaz Afkhami (ed.) *Faith and Freedom: Women's Human Rights in the Muslim World* 184, 187.
74. Eur. Convention on Human Rights, 4 Nov 1950, 213 UNTS 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, 16 Dec 1966; S. Treaty Doc. No. 95–20, 999 UNTS 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), 18 Dec 1979, 1249 UNTS 13.
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), UN Doc. E/ CN.4/1998/18 (9 April 1998) (emphasis added).
80. World Conference on Human Rights, 14–25 June 1993, 'Vienna Declaration and Programme of Action', 22, UN Doc. A/CONF.157/23 (12 July 1993).
81. UN Human Rights Committee (2000), 'General Comment No. 28: Equality of Rights Between Men and Women (Art. 3)', 21, UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March.
82. See, e.g. Eur. Convention on Human Rights, *supra* note 74, at art. 17, and ICCPR, *supra* note 74, at art. 5.
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 recognised by the UN 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 (2005), UN Doc. E/ CN.4/2006/5, 9 Jan, at 11–19, 17–18 (prepared by Asma Jahangir).
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).
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. Agence France Presse (2007), 'British girl, 12, loses fight to wear full-face veil at school', 21 Feb. 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 *burqa*, which covers even the eyes, in school. See, e.g. United Press Int'l (2006), 'Germany Mulls School Uniforms, Burka Ban', 8 May.
88. Comments of Turkish woman engineer, in Istanbul, Turkey (15 June 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 (2007), 'Un enfant de huit ans tabassé pour avoir mangé du porc à la cantine de l'Ecole', 14 March, [www.ufal29.infini.fr/spip.php?article739](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 penalise women for 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 emphasised in French public discourse.
93. Interview with Marc Saghie, in Paris, France (12 June 2007) (notes on file with the author).
94. See SIAWI (Secularism is a Women's Rights Issue) (2008), 'France must ensure police protection for Mohamed Sifaoui', 19 Aug, [www.siawi.org/article507.html](http://www.siawi.org/article507.html) and Mohamed Sifaoui (2008), 'Mon agresseur formellement identifié', 15 June, [www.mohamed-sifaoui.com/article-20459573.html](http://www.mohamed-sifaoui.com/article-20459573.html)
95. For more information on these projects, see [www.niputesnisoumises.com](http://www.niputesnisoumises.com)
96. Interview with Françoise Gaspard, in Paris, France (10 June 2007) (notes on file with the author).
97. President Sarkozy has been criticised, however, for a past pattern of tolerating and cooperating with fundamentalist organisations like the Union des Organisations Islamiques de France. Claude Askolovitch (2008), 'Les Illusions perdues de Sarkozy', *Nouvel Observateur*, 14-20 Feb, at 24.
98. Beijing Declaration, adopted by the Fourth World Conference on Women, 14 (15 Sep 1995). This declaration was adopted in 1995 by governments around the world at the UN Fourth World Conference on Women in Beijing.
99. Substantive equality "adresse[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, [www.unifem.org.in/PDF/The%20Concept%20of%20Substantive%20Equality%20-final%20-%2031-12-07.pdf](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.
100. A similar engagement is needed with their counterparts who organise against fundamentalisms in other religious traditions. See, e.g. Rights & Democracy (International Centre for Human Rights and Democratic Development) (2005), *Fundamentalisms and Human Rights, Report of the Meeting*, Montréal, 12–14 May, [www.dd-rd.ca/site/PDF/publications/fundamentalism\\_hr.pdf](http://www.dd-rd.ca/site/PDF/publications/fundamentalism_hr.pdf)

*Marieme Hélié-Lucas*

## A South-North Transfer of Political Competence

Women of migrant Muslim descent in France  
– an overview

***This article first gives an overview of migration in France – specifically from Muslim countries – and discusses the social and political context in which Muslim fundamentalists operate within the population of migrant Muslim descent. The second part discusses the attacks led by Muslim fundamentalists against the French state, democracy, secularism, human rights and women's rights, and the similarities with the steps they took in Algeria, and examines the responses – or lack of responses – from progressive social forces. The third part describes the strategies of women of migrant Muslim descent to counter fundamentalism and their leading and vital role in educating feminist and progressive forces in France.***

### Questions of terminology

By 'fundamentalism', I mean political forces, ranging from conservative to extreme right, using religion to gain political power. In Catholic as well as in Muslim contexts, these forces may aim at replacing the laws of the country – voted by the people, therefore changeable by the will of the people – by ahistorical, unchangeable 'divine' laws, defined and interpreted by fundamentalists. It amounts to turning a democracy into a theocracy. This is by no means a religious issue, it is a political one.

These supposedly religious laws should, in fundamentalists' views, apply to all people regardless of their creed and personal faith. It is true of Catholics who, for instance, want to impose bans on contraception and abortion in the laws of countries, regardless of the fact that Catholic women will not have to abort even if the law allowed it. It is true of Muslims who, for instance, want to impose separate and specific family laws that curtail women's rights, while Muslim women who do not wish to oppose, for instance, unilateral divorce (repudiation) by their husband may still abide by his wish and accept his decision before the court. In other words, a permissive law does not force anyone to use it. A repressive law restrains everyone's freedom.

The term 'Muslim' is commonly used everywhere in Europe to refer to ethnic origin – in France, mostly to North Africans and Turks. It is turning a faith into a 'race'. The historical precedent is that of 'Jews' – a scary prospect of racism for us all. In this

article, the term 'Muslim women' applies strictly and exclusively to women whose declared faith is Islam.

The qualification 'Muslim' is abusively applied to women who migrated from Muslim countries, and even to those whose parents or grandparents migrated from Muslim countries. Presuming faith on geographical origin, considering that anybody born in a Muslim family or Muslim country is a Muslim believer, partakes to essentialist thinking.

Moreover, it is an insult to both believers and non-believers alike; it denies believers the authenticity of their personal faith by subsuming it to the fate of being born 'here' rather than 'there'; it denies unbelievers freedom of conscience and freedom of thought.

As we will see later in the 'Background' section, recent surveys show that the vast majority of so-called Muslims is largely indifferent to religion and that a notable proportion declares itself with no religious affiliation. I will therefore use terms such as 'of migrant descent' and 'of Muslim descent' to characterise the women whose important contribution to social movements in France that I analyse here.

## **Introduction**

France, as well as the rest of Europe, witnesses the rise of Muslim fundamentalism. It happens in a general context of rising political forces on the right, including various religious rights. In the past two decades Muslim fundamentalist movements opened a new front in Europe and North America, where they apply exactly the same tactics they did in our countries of origin. They use people's legitimate discontent with governments, occupy the political and social vacuum left by failing states and do away with the concept of citizenship in favour of that of communities. They promote – and often impose – religious and ethnic identities, redefine socio-political problems in communal terms, and finally they take steps towards ending secularism.

Migrant women as well as citizens whose parents migrated from Muslim countries to France experienced this phenomenon long before it started in Europe. They have either seen with their very eyes the various steps taken by fundamentalists in their own countries, or have heard about it from their parents or extended families. They know that women are fundamentalists' first targets and that attacking them constitutes a test in the strategy to promote fundamentalist political agenda: will fundamentalists be stopped when they target women, and by whom – or can they advance another pawn, after this one...?

This places people and especially women of migrant Muslim descent in a very privileged situation: for historical reasons, they own a knowledge that other people in France, let alone other women, lack totally. As migrants and their descent are confronted not just with fundamentalism but with discrimination, marginalisation, exclusion and racism in European countries, women have to walk a fine line between

solidarity with their 'community' and building on French secular laws to protect themselves from fundamentalist attacks.

It is precisely because they are aware of the economic and social difficulties that immigrants and citizens of migrant descent face daily in France, that the very political forces that should be women's natural allies against fundamentalism, such as feminists, human rights organisations, the left at large and the anti-globalisation movement, shiver when it comes to opposing Muslim fundamentalism. They wrongly assume that fundamentalism is a religious movement they should respect, and that they represent oppressed people. They are afraid of being labelled 'Islamophobic'. Hence most of them fail, out of cowardice, to support women's rights against Muslim fundamentalists' attacks.

For lack of external support, gradually, women of migrant Muslim descent rely on their own forces: they are more and more vocal, they demand their legal rights, they analyse the rise of Muslim fundamentalism in France in political terms rather than in religious terms, devise new strategies ranging from within to outside religion, and take the lead in important aspects of the struggle as well as in specific battles.

In doing so, they teach progressive forces in France, including feminists, how to address the brand new phenomenon of Muslim fundamentalism in Europe, and to de-link religious issues from social and political ones. This is a vital political contribution to French politics.

Moreover they contribute to drawing attention to the concomitant rise of other religious fundamentalisms in Europe and to the collusion of interests between those. For demands made by one brand of fundamentalists usually benefit from support from the others, across religions, across national boundaries.

Remarkably, they also contribute to the struggle against fundamentalism in Muslim countries: no doubt that if Muslim fundamentalists were to succeed in imposing supposedly religious rules for presumed Muslims in European democracies, it will fire a backlash in our countries of origin.<sup>1</sup>

In this essay, I will first give an overview of migration in France – specifically from Muslim countries – and discuss the social and political context in which Muslim fundamentalists operate within the population of migrant Muslim descent. In a second part, I will discuss the attacks led by Muslim fundamentalists against the French state, democracy, secularism<sup>2</sup>, human rights and women's rights, and the similarities with the steps they took in Algeria. I will discuss the responses – or lack of responses – from progressive social forces. In a third part I will describe the strategies of women of migrant Muslim descent to counter fundamentalism and their leading and vital role in educating feminist and progressive forces in France.

## **Background**

A brief overview of migration to France:

During the 1920s and 1930s, France had a very high migration rate. France had been most affected by the First World War; it had lost 1.4 million young men out of a population of 40 million, while it had the lowest fertility rate in Europe. Migrants mostly came from Europe (Greece, Italy, Yugoslavia, Portugal, Spain, Poland, Russia, Hungary, Czechoslovakia and Belgium); a minority also came from French colonies in Africa and Asia.<sup>3</sup>

After the Second World War, both fertility rate and economic growth were on the rise in France. There was massive industrialisation and need for additional workers. Subsequently during the 1950s, 1960s and up to the 1970s, there was a big wave of immigration, mostly male workers. The majority of migrants came from Portugal and North Africa: one million migrants from North Africa alone, mostly from Algeria.

By the end of the 1970s the end of economic growth resulted in tighter immigration policies. However, throughout the 1970s and 1980s, family reunion was facilitated. It brought in women (the workers' wives) and their children with the aim of settling workers in France. As for the children born of these marriages, all those born on French soil were automatically French citizens at birth; acquisition of French nationality was facilitated for parents of a French child.

As from 1990, the legal definition of 'migrant' is 'a person born foreign in a foreign country'. Census only allows to record legal nationality and country of birth, therefore there is no official record on their descent. In 1999, 36 per cent of immigrants had become French citizens. Estimates give about 10 per cent of French citizens born of a foreign parent.<sup>4</sup>

The law on nationality changed in the 1990s: now children of foreigners born in France remain foreigners until they are of adult age, at which time they can reclaim French nationality with relatively simple procedures, but they no longer acquire it automatically by virtue of being born on French soil.

The 1999 national census shows 10 per cent of French citizens of foreign origin; this percentage is on par with other European countries. It does not account for the children of foreign-born parents, in other words for French citizens of migrant descent, but only for those actually born abroad.

Since the 1990s, there is a fertility upturn (6 per cent growth rate), thanks to women of foreign nationality who account for one third of the total fertility rate (TFR). Binational couples are on the rise (between 18 per cent and 20 per cent).<sup>5</sup>

With the policy of family reunion of the 1980s, the characteristics of migrant populations changed: from nearly exclusively male and massively working class, it is now ageing, feminised and with much higher education. Subsequently the new generations moved to intermediate professions.

To these waves of economic migration, one should add recent political migration: many Algerians saved their lives by migrating to European countries in the 1990s,

at the peak of fundamentalists' terror. This political emigration was instrumental in the resistance to Muslim fundamentalism in France.

Unlike other European countries, France allows no official record regarding ethnicity or religion. The reason for this ban is to protect potentially targeted groups. France keeps the vivid memory of the terrible use that Nazis and their allies in France made of such statistics: it allowed the location, arrest and deportation of Jews during the German occupation of France in the Second World War.

It is therefore difficult to collect data on 'Muslims', but also on 'blacks', 'Arabs', etc. France's official statistics only know two categories: citizens and foreigners. However, sample surveys indicate a high percentage of citizens of Algerian descent, as well as of foreigners from Algeria.

The population of foreign descent was estimated in 1999 at 13.5 million, including 5.5 million migrants' children, 3.6 million migrants' grandchildren and 4.3 million migrants. This means that 23 per cent of the population of France (mainland plus Corsica) is of foreign origin, out of which 21 per cent are from the Maghreb and 2 per cent from Turkey.<sup>6</sup>

The majority of French people had identified as Catholics since the Middle Ages. However, a 2004 survey shows a very important decrease in Church attendance for those who declare themselves believers, while 44 per cent people state not to believe in God (as opposed to 20 per cent in 1947), and 27 per cent state atheism.

Judaism had been the second religion for centuries. But estimations regarding religions in France in 2000 indicate 5–6 million Muslims, one million Protestants, 600–700,000 Jews, 600,000 Buddhists, 180,000 Hindus and 150,000 Orthodox Christians. However none of these surveys enquire about actual personal belief and practice.

A recent study<sup>7</sup> is looking into this question: it shows that out of the French population whose origins are in Maghreb and Turkey, 20 per cent declare themselves with no religion (compared to 28 per cent in the whole French population) and this percentage reaches 25 per cent among French citizens of Algerian descent. Among those from African and Turkish descent who declare themselves to have a religion, 21 per cent rarely attend religious ceremonies (compared to 15 per cent of the whole population). As for those who declare themselves Muslim believers, 21 per cent practice and 79 per cent do not or rarely. These figures match those for Catholics.

The study also shows the level of privatisation of religion among Muslim believers, which is more and more understood as personal faith and not as a social marker of their identity – a trend which facilitates their integration into French society. Only 15 per cent of them would be unhappy if their sons married a non-Muslim, and 32 per cent if their daughter married a non-Muslim (compared to 18 per cent for both sexes in the whole population).

As for secularism, many (54 per cent of the population, 56 per cent of French citizens from African or Turkish origin, and 57 per cent of declared Muslims) see it as a guarantee for Muslims to be able to practise their religion. The word 'secularism' has a positive or very positive connotation for 82 per cent of French citizens from African and Turkish origin; 82 per cent of them and 83 per cent of declared Muslims see secularism as the best way to allow people of different opinions to live together.

Only 3 per cent of French citizens of African or Turkish origin and 5 per cent of declared Muslims would like to send their children to Qur'anic school while 67 per cent want to send their children to a secular state school with no religious teaching. A large majority, 60 per cent of French citizens of African and Turkish origin and 60 per cent of declared Muslims, wish for the headscarf to remain banned in French secular state schools for the following reasons: in secular schools there should be no religious signs; school is for studying only; and the scarf is a sign of women's oppression. However 53 per cent of Turkish origin and 59 per cent of African origin would like to find a solution through dialogue with the veiled girls and their families.<sup>8</sup>

What is clear from these figures is that the population we are concerned with here is quite similar to the rest of the population. Nevertheless all is not so rosy: 79 per cent of French citizens of African and Turkish descent (compared to 62 per cent of the total French population) state that economic differences exist between them and the rest of the population.<sup>9</sup>

Despite a trend towards upward mobility in terms of education and job qualifications, the majority of those employed remains among the lower classes. They are more unemployed: in the population aged 25–59, the rate of unemployment is 16 per cent for all migrants, out of which 26 per cent for migrants from Algeria and 25 per cent of migrants from Morocco, compared to 7.3 per cent in the whole population; this percentage is much higher if one looks only at the youth living in the outskirts of big cities. They are more likely to have difficulties in school: one out of three children repeat a class or more when at least one of their parents is of foreign origin, compared to one out of five for the whole population;<sup>10</sup> 36 per cent of high school dropouts come from the suburbs.

Housing problems remain high and, together with other marginalised sections of the French population (unemployed, *lumpenproletariat*, gypsies, etc.), French citizens of foreign descent are pushed out of cities into the 'suburbs' (which, unlike in the US, do not house the elite).

In 2005, Tokia Saifi, State Secretary on Sustainable Development, reflecting on the riots led by the youth, including many youth of migrant descent, and calling for "a real policy of integration", took a strong stand: she stated that "by not taking into account the problem of discrimination regarding housing and employment, especially as it affects specifically populations of migrant descent and among them particularly the youth, a communal withdrawal has been facilitated and conflicts have been exacerbated".

While the national rate of unemployment is 10 per cent – to which one should add the numerous part-time and temporary jobs that maintain people in very precarious economic situations – she added: “The percentage of unemployment is above 50 per cent in suburbs where families of foreign origin are parked. Fundamentalist movements used the failure of our integration policy to extend their reach.”<sup>11</sup>

Why all these preliminary statistics? Because this data challenges many of the preconceptions one has on ‘Muslims’ in France. It shows that the population of Muslim migrant descent is fairly adjusted to the mores of the whole French population, and as little religious as the others. It should – one hopes – put an end to labelling this whole population as ‘Muslim’, while today no one would dare to label all French as ‘Christians’, even if most of them are of Christian descent. It sets the problem in the socio-economic context where it should be, rather than in religious terms. Fundamentalists’ strategy is precisely to blur boundaries between these conceptual categories.

## **Strategies of Muslim fundamentalists in Algeria**

This is the set-up in which Muslim fundamentalists started operating in France, building on the discontent of the people, on their relative poverty in a context of growing general economic crisis and unemployment, on their housing problems, etc. In the French context where citizenship is the only legal criterion, Muslim fundamentalists slowly attempt to build ‘communities’, i.e. the fragmentation of the people along the lines of ethnicity or religion, thus weakening social movements.

In a country where religious practice, although entirely free, is generally low, including among those of migrant Muslim descent, they attempt to fabricate ‘born-again’ Muslims and to make them feel discriminated against not just in social and economic terms – which they are – but in religious terms. In the name of religion, they put forward demands that question the secular foundation of the French Republic and cannot be met. Each of these demands is a test, a step on which the next step can be built. Much like in our countries of origin, most of their test cases target women.

In Algeria, Muslim fundamentalists’ attacks against women started right after independence in 1962. It is worth giving some details about the steps that fundamentalists took in Algeria because it will allow us to point at the similarities of their strategies in both countries, and to better understand how the numerous women of Algerian descent living in France could immediately identify the fundamentalist project and react to it.

### **Harassment of women outside their homes and curtailing their legal rights**

In the 1960s, fundamentalists started harassing women in the streets and telling them to go back home. They physically attacked women workers on their way to a

factory in Sidi Bel Abbes (west of Algeria); they succeeded in keeping the factory closed for three weeks and it took the army to reopen it and protect the women who worked in it.

They drafted and promoted a reform of the family law, supposedly abiding by divine law, which deprived Algerian women of many rights that they already enjoyed. According to this project, a woman was to lose the right to marry: she had to be given in marriage by her matrimonial tutor; she was to lose the right to divorce: only husbands can initiate divorce; she was to lose the right to full guardianship of children upon divorce, although she may have temporary custody under the supervision of her ex-husband; she was to lose the right to equal share to inheritance; she was to lose the right to work without the permission of her male guardian (*wali*): father, uncle, husband, son or judge, etc; repudiation (i.e. unilateral divorce by the husband outside court regulation) was made legal, as well as polygyny.

Fortunately, under the pressure of progressive forces, the project was stopped before it could be presented to the National Assembly. However, two similarly inspired versions of the same project were drafted and promoted in the 1970s, albeit also not reaching the stage of being voted by the National Assembly; but a fourth one, quite similar to previous ones (minus the permission of the guardian to work), was finally passed in 1984, more than 20 years after independence.

This shows how fundamentalists persist in their project and lobby until they win. It also shows how the reform of republican laws to match their version of 'the' divine law is at the heart of their project. Wisely enough, they first target family laws that affect directly and mostly women, knowing far too well that most governments will trade women's rights for social peace. This is exactly what is happening now in Europe.

### **Physical attacks on women, morality squads and the introduction of 'Islamic' dress; the political role of charities**

In the 1970s, Muslim fundamentalists burnt down the house of a woman living on her own with her children in Ouargla (South of Algeria), accusing her of immorality for living without a male guardian; her youngest child who was handicapped could not escape and died in fire.

They controlled women students going in and out of student hostels, closed the gates at sunset, in total impunity. They threw acid on the legs of girls that were wearing skirts too short for their taste, but also cut long skirts considered too fashionable and painted the legs of women who wore them.

They introduced 'Islamic dress', a new form of veiling for women, Iranian style, unknown in any part of the country. One should say here that the vast majority of peasant Berber women are traditionally unveiled in Algeria and that veiling is rather urban and class-bound. This 'Islamic dress' was distributed for free to female students, together with other forms of support to poor families.

Fundamentalists' charity organisations were wealthy and used food distribution and financial help to request women to cover, men to go to mosques and both sexes to be observant of religious obligations.

**Curtailing of civil rights, the role of preachers and teachers in public denunciation, indoctrination of the youth: emergence of the first Islamic party as leading youth upsurge**

In the 1980s, their fourth project of family code was adopted, despite the outcry from women's organisations and massive demonstrations. To this day, we still suffer under it, despite recent mild amendments.

Thanks to 'democratisation' of the system, i.e. the end of the one-party system and the adoption of multi-party, fundamentalists founded the first religious party: Front Islamique du Salut (FIS, 'Islamic Salvation Front'). After its election at local level, they imposed gender segregation in schools, buses and most public places.

Attacks on individual women regarded as dissidents in their behaviour were numerous. Control of women outside the home grew tight. Preachers denounced them publicly. Under their rule, a man could vote for all the women in his family, by just bringing their electoral card with him.

In schools, fundamentalist teachers, despite official national education programmes, taught creationism rather than Darwinism in biology, as well as other fundamentalist dogma: inferiority of women, hatred of Jews and non-believers. They interrogated pupils about the mores of their families and neighbours, ordering them to spy and denounce them if they drank, did not fast or did not pray, in other words were 'bad Muslims', a branding that, in the next decade, would lead to a death sentence.

In wake of the failure of the state to find any solution to growing housing problems, poverty and unemployment, fundamentalist groups organised relief; they were the first ones on the spot of natural disasters, such as inundations and earthquakes that struck Algeria several times, while the state would take a week before sending the army for relief action. They organised youth camps, martial arts clubs, financial relief for the poorest families, distribution of food, educational support for pupils and students. It seemed their financial means had no limit.<sup>12</sup>

In 1988, due to high unemployment of youth and growing general poverty of ordinary people, there were youth riots in most Algerian cities. Those riots were heavily repressed by the army. Organised troops of what was not yet legalised as the FIS party came out in the open to supervise and guide the youth, and to manipulate the riots to their political benefit. After the riots ended, they occupied huge squares in Algiers, turning them into prayer places and political platforms, holding up normal traffic for weeks. Streets and places at the entrance of mosques were occupied for similar use.

## **War against civilians, enslaving women, terror**

In the 1990s, various fundamentalist armed forces grew out of the FIS: AIS (the armed wing of the FIS, directly affiliated to it), GIA (Islamic Armed Groups), FIDA (which specialised in urban guerrillas), etc. In a context of terrible violence on people (instead of 'civil war', people called it 'a war against the people': it made 200,000 victims during the 2000s), attacks multiplied on women who refused to veil or to obey their orders not to go out of home, not to send children to state school, or to receive treatment in state hospitals.

The reasons for this is that fundamentalists branded the Algerian state '*kofr*' (unbeliever, apostate, a crime liable of death sentence), hence all the state institutions were sort of infected with '*kofrness*' (if one can forgive such a neologism) and whoever used state facilities were allies of *kofr*, hence also punishable by the death sentence!

They also executed women who had occupations they considered immoral such as working as a hairdresser or in beauty salons, and finally women at random, including veiled ones, and practising Muslims. One can actually speak of femicide. In armed fundamentalists' raids on villages, women were slaughtered, burnt, mutilated, tortured, raped, gang-raped and abducted to their military camps to become domestic and sexual slaves.

In the same line as the introduction of a non-customary 'Islamic dress', in these camps, they instituted 'temporary marriage' (*muta'a* marriage) which allows Shiites (while Algeria is a Sunni Maliki country) to marry for a short time, from a few hours to several months or years – a way to 'Islamise' and legitimise in their eyes their numerous rapes on abducted women.

At the beginning of 2000, they inspired and led a pogrom against women workers in Hassi Messaoud (and neighbouring cities), an oil city of Southern Algeria which employed single women migrating for economic reasons from the Northern coast; these women were the only breadwinners for their extended families that remained in the North: following an incendiary preach by the local imam that ordered his troops to "chase the devil out of the town", they were killed, burnt, mutilated, raped...<sup>13</sup>

From these non-exhaustive examples, one can see some similar trends, in nature if not in scale, with what is attempted in Europe: division of people along religious lines, deliberate attempts to pressure the state in order to obtain separate laws for separate categories of citizens, entryist policies in schools, co-opting people through charitable work, pressure on individuals to abide by religious rules regardless of their personal faith, targeting women first and specifically.

## **Strategies of Muslim fundamentalists in France**

Although my focus is on France, I will make occasional references to other European countries where similar actions are being taken and similar trends are developing.

### **Law of the land vs divine law**

In the name of religious rights and cultural rights, fundamentalists try to induce European states to adapt their laws to specific communities: they demand 'religious laws' for 'Muslims'. It amounts to renouncing the idea of one law for all citizens and adopting separate unvoted laws for different pre-selected categories of citizens; citizens would therefore become unequal before the law, some enjoying rights that others will not have, by virtue of their ethnic or geographical origin.<sup>14</sup>

The UK, under Muslim fundamentalists pressure, is in the process of having a parallel court system for family matters.<sup>15,16,17</sup> Why family matters? Why focus on women and not on other aspects of '*shari'a* law', such as the Islamic penal code with *hud* punishment (i.e. amputating the hands of thieves, or stoning adulterers and adulteresses to death)? Because family laws primarily affect women through rights in marriage, divorce, custody of children, inheritance, etc. To keep communities at peace, the British government is trading women's rights to choose by their vote the laws under which their family disputes should be settled.

In Canada, they nearly succeeded in obtaining religious arbitration courts in family matters<sup>18</sup>, and it is only thanks to a formidable front of women from Muslim countries<sup>19</sup> in support of women from Muslim migrant descent within Canada<sup>20, 21,22,23</sup> that this legal provision did not pass.

Step by step, targeting women's rights first, invoking their version of religion, and their selection among the customs and traditions of their countries of origin, the fundamentalist movement uses human rights language and concepts to advance legal changes that are against women's human rights.

### **Gender segregation and physical attacks on women who do not abide by it**

For instance, slowly but surely, they started to impose gender segregation in public spaces or institutions in France.<sup>24</sup> They have already obtained in most French cities the segregation of Muslim women in swimming pools by having separate days or hours reserved for them. They presently make the same demand for sports equipment and stadiums. One is witnessing the first demands for the abolition of coeducation in schools.<sup>25</sup>

Physical attacks on women are more and more visible. Gangs of young males patrol the suburbs to send girls back home and 'punish' them for supposedly 'un-Islamic behaviour', i.e. if they do not abide by boys' rules: breaking these rules includes wearing fashionable clothes, speaking to boys that are not members of the family and stepping out 'after hours' since boys impose a real curfew on girls.

Incidents of stoning to death, acid-throwing or burning alive took place in several cities and made the headlines in the media. For instance, in Marseille, Gofrane Haddaoui, aged 23, was stoned to death; and in Vitry-sur-Seine, a suburb of Paris, Sohane Benziane, a girl aged 17, was burnt to death in the garbage cell

of a housing building.<sup>26,27</sup> Her ordeal was instrumental in the birth of Ni Putes Ni Soumises (NPNS, 'Neither Whores Nor Submissive').

'Punishment' also includes rape and gang rape. A famous case is that of Samira Bellil, gang-raped from age 13, who became a prominent figure of the NPNS<sup>28,29</sup> (which will be discussed later).

Lawyers and judges generally agree to say that there is a growing trend among young perpetrators to fail to understand why they are being prosecuted, as they feel culturally and religiously justified committing these acts.

### **Preachers and social workers**

As mentioned in the 'Background' section, the economic situation of people of migrant descent from North Africa is globally more difficult than the situation of the rest of the population. In the suburbs, Muslim fundamentalists are doing the social work that the French state fails to do: they organise classes to help students with difficulties in school, they open sports clubs, they organise relief for poor families and men in jail. With the package comes the veil for women, and backwards religious teaching. Not only have I witnessed this strategy in Algeria, but also in European countries ranging from Finland to Bosnia.

There have been a number of cases in which the media reported on preachers inducing the youth to challenging French laws on violence against women. The Imam of Venissieux (near Lyon), in 2004, publicly preached for wife-beating as an Islamic prescription; after formal warnings and an endless legal procedure for repeatedly breaking French law, he was finally expelled from France.<sup>30,31,32</sup> The difficulties encountered in the course of the legal process point to the ambiguities of the political leadership of the French Republic *vis-à-vis* Muslim preachers.

The Swiss preacher Tariq Ramadan, on prime time television, was cornered by the then Minister of Internal Affairs Nicolas Sarkozy: he refused to condemn the principle of stoning to death for sex outside marriage, barely supporting the idea of a moratorium that would give time to Muslim clerics to discuss the matter.<sup>33</sup> It was a rare occasion, as Ramadan's usual double discourse (one for the audience of youth of Muslim descent in suburbs: clearly fundamentalist, and one for the French media: more moderate) was not easy to pin down.<sup>34,35</sup>

Under the influence of preachers, claiming cultural and religious rights as their human rights, a small but very vocal minority has undertaken to put into question some basic mores of the French Republic. Men refuse for their wives to be examined by male doctors or taken care of by male nurses in state hospitals.<sup>36</sup> In an already tricky situation where state hospitals are chronically understaffed and do not have enough doctors and nurses, regardless of gender, this is a demand that simply cannot be met. However, men create havoc in hospitals, punching male doctors or nurses who insist on doing their job for the sake of the patient;<sup>37</sup> there have been

several incidents when women in parturition [childbirth] risked their lives, or lost their child for lack of adequate, timely treatment.<sup>38</sup>

Parents refuse that girls attend art, gym and biology classes. They demand the teaching of creationism in state schools.<sup>39,40</sup> Teaching on religions was recently introduced into the curriculum; but while history teachers teach classes on Christianity and Judaism, fundamentalists demand that imams teach classes on Islam in secular state schools.

As in the US or the UK, they demand entirely *halal* meals in school, which sparks reactions from non-Muslims.<sup>41,42,43</sup>

And of course – this made the news internationally – they demand the right to veil girls under age in state schools.<sup>44,45</sup> Because it has been so widely – and so wrongly – publicised, I will have to devote some time to straightening the record on this issue.

### **The veil controversy**

Under fundamentalist guidance, over the past two decades (the first case took place in 1989), a growing number of school girls attempted to wear a veil within the premises of their schools, but usually did not persist. However vocal and however growing in number, in actuality they were never numerous.<sup>46</sup> Considering that this made headlines the world over, one can question the political role of the media's reporting.

Girls – whose mothers and grandmothers were either never veiled (be it in France or in their country of origin), or who happily took off their head-covering when settling in France, or who fought against the fundamentalists' veiling diktat in Algeria in the 1990s at the risk of their lives – accepted this symbol for their 'community' identity under preacher' guidance.

Documentary films by Yasmina Benguigui, a French citizen of North African descent, on the history of migrants from North Africa in France retrieved archives that show how women migrating after the Second World War promptly changed their traditional outfit for working class dresses and made use of French laws to step out of their houses and traditional roles; they entered into the labour force and sent their daughters to school, thus allowing a whole generation of young women of migrant descent to climb the social ladder.

Moreover, the veil that girls wear now in France, as well as in the rest of Europe, has nothing to do with any of the traditional forms of head-covering or veiling worn by their foremothers in their countries of origin; it is entirely untraditional, reinvented and alien.<sup>47</sup>

This phenomenon is clearly a political one, as wearing 'the' veil is neither going back to traditions, nor a straightforward religious prescription. The then Great Mufti of

Marseille, Soheib Bencheikh, now President of the Institute of High Islamic Studies in Marseille and a strong advocate of French secularism, argues that:

“It is for Muslims to tell their brothers in religion that one should avoid making the Prophet ridiculous when interpreting His words. When the Qur’an recommended the veil, its goal was only to guarantee the dignity and the personality of women, with the means that were available at the time of the Revelation. If, today, this very means does not achieve the same goal, then one should not focus on this means but look for a more appropriate one. Paradoxically, today it is schooling that preserves the personality of the young girl and insures her future. It is through education that a woman can defend herself against any attack on her femininity and her dignity. Today, the veil of the French Muslim woman, it is the school, and its secular, free and compulsory education.”<sup>48</sup>

This demand, detached from all their other demands, has been singled out and highlighted. The refusal of the French state to allow head-covering has been described the world over as a proof of discrimination against ‘Muslims’.

It is worth explaining here that, unlike other European countries which define secularism as equal tolerance of the state *vis-à-vis* all religions (states collect taxes for the Church in Germany, one swears on the Bible in court in the US, while the UK’s Head of Church is also Head of State), French secularism refuses any involvement of the state in religious affairs. The state is simply unconcerned with religions. Management of religions is beyond the state’s mandate and competence, as per the laws on secularism passed in 1905 and 1906. It is to believers alone to deal with religions.<sup>49</sup>

Accordingly, the French secular school’s mission is therefore to raise children as equal citizens, living on par with others – and not as representatives of their ‘community’, be it ethnic, religious or political; this is why children and their teachers are required not to wear any sign of political or religious affiliation in primary and secondary state schools. This provision is extended to civil servants who, in their function, represent the secular Republic which treats all its citizens with impartiality regardless of their creeds and opinions.

These are the only two cases in which religious affiliation should not be displayed. At no point is the veil or any other sign of religious affiliation forbidden in France. Beyond these limits, restrictions do not fall within the definition of French secularism; they are considered a violation of rights that courts condemn.<sup>50</sup> Due to growing fundamentalist pressure in schools, the laws of 1905–06 were updated in 2005 to reaffirm that no ‘obvious signs’ of religious affiliation would be accepted in secular schools in France.

One of the successes of fundamentalists’ efficient propaganda is that this law, which equally limits signs of religious affiliation for any religion (whether it is crosses for Catholics, *kippa* for Jewish boys, head-covering for Muslim girls, etc.) and do so for

reasons that are highly protective of the human rights of children under age 16,<sup>51</sup> is now known the world over as 'the law against the veil', and interpreted as proof of 'Islamophobia'!

## Political representation of so-called 'Muslims' in France

Throughout this essay, I deliberately used the term 'fundamentalists' without explaining who they were in France. It is difficult to account for the numerous groups of '*tabligh*' and preachers that exist, or for the charitable organisations officially dealing with cults or services, which one occasionally experience as propagating fundamentalist views; those are often branded 'moderate Muslims' or 'moderate Islamists' (as if the two were to be equated) by the media. It is equally difficult to know where their funding comes from: there is a lack of reliable scholarly research on this issue.

The fact is that 'they' exist and that they prove the cake by eating it: in 2008 alone, Muslim fundamentalists in France made the following steps forward, which could hardly happen by chance and without a concerted effort:

- They obtained in court the annulment of a civil marriage for non-virginity of the bride (that of the groom was not questioned, of course). The lawyer of the husband argued that a contract could be annulled if one of the parties lied about "an essential quality". It was argued that the virginity of the bride was "an essential quality" to the marriage. The state itself appealed the judgment, which was finally reversed on appeal.<sup>52,53,54,55,56,57</sup>
- They obtained for a court hearing to be postponed until the end of the Ramadan fast.<sup>58</sup> Needless to say that courts continue to function during Ramadan in Muslim countries themselves and that no lawyer there would dream to ask a judge to postpone a trial on similar grounds.
- They are presently launching a battle around the right of women to wear total covering from head to toe, including while sitting for exams, or contracting a marriage – without possible verification of the identity of the person.<sup>59</sup>

Taken separately, these incidents may not seem so important; but, placed in the context of similar steps taken in Muslim countries and elsewhere in Europe, and seen as a global strategy for deeply changing European democracies,<sup>60</sup> incidents became test cases in the advancement of Muslim fundamentalist ideology.

For instance, the claim for veiling schoolgirls grew in 2005 in France (prior to it were individual cases only), the claim for alternative religious courts in family matters in Canada in 2006, the (alas successful) claim for parallel 'traditional courts' in 2007 in the UK, not to speak of the response of a (female) judge in April 2007 in Germany to a migrant woman seeking a divorce: she refused to register the woman's demand on the ground that 'Muslim women' in her country of origin could not initiate a divorce on the grounds of wife-beating.<sup>61</sup>

## Responses to the rise of Muslim fundamentalism in France

Before examining the various strategies women use to oppose to fundamentalists in France, we will first look into the context in which they find themselves, with virtually no support from the state or social movements and no means to access media to express their views. We will therefore look into the reactions of the state, of various political and politico-religious groups, of human rights organisations, and of feminists.

### The state

As in Algeria, Muslim fundamentalists build on the discontent of the people. The state's failure to fulfil its social obligations, and the lack of adequate social movements capable of canalising and organising economic and social protest of the youth of migrant descent, gave space to fundamentalists to do the social work the French state did not do in terms of relief to poor citizens, support to school children and students, extracurriculum activities for the youth, etc., i.e. to occupy physically the space of suburbs and to organise their troops. They used, supervised and manipulated the 2005 youth riots in the suburbs of Paris.

For years afterwards, the French state disengaged itself from its responsibilities and abandoned its duties *vis-à-vis* poor, marginalised and jobless citizens of the suburbs: it left a vacancy and allowed Muslim fundamentalist groups to run suburbs as a state within the state, and to actually make law there, to the point that basic services were lacking: police patrols but also postmen, garbage collectors, fire brigades or emergency doctors did not dare step into those areas, especially at night, for fear of being physically attacked. Incidents of stoning, or emergency vehicles being set on fire when these services came to the rescue of people, have been numerous. As in Algeria, fundamentalists identified civil servants with representatives of the '*kofr*' state, and, as such, they were 'punished' for collusion with the state.

Teachers could hardly control pupils and were barely supported when pupils refused to attend some classes or let teachers discuss specific subjects (for instance evolution in biology or women's rights), or when violence erupted and crimes were committed within the premises of the school.

Inhabitants and especially women were abandoned to the rule of various sorts of 'Mafiosi', be they drug dealers, gangs or fundamentalist preacher groups. Girls were not protected when controlled, bullied and attacked by male groups for 'unIslamic' behaviour or dress.

Successive governments, both from the right and from the left, showed lack of political clarity and courage; socialist governments started giving in to demands of fundamentalists in schools, and were lax on the question of the veil: instead of seeing it for what it is, i.e. a political flag for Muslim fundamentalists, they moved back on the application of the 1906 law on secularism, calling on heads of school

to dialogue and negotiate with the girls and their families. Heads of school were left alone to decide single-handedly whether or not to apply the law. But when dialogue did not bring a solution, they were blamed for not handling the situation well.

It is interesting to contrast the destructive communal 2005 riots with the 1983 March for Equality,<sup>62</sup> a secular citizens' political movement, led by a handful of progressive young men of migrant descent, that focused on equal rights for all citizens and that aimed at forcing the state to address social and economic discrimination against citizens of North African descent.<sup>63</sup>

The March for Equality met with great popular success, both from people of migrant descent and indigenous French. But the state did not fulfil the promises it made at the time of the march. For lack of an adequate response from the state, in 10 years' time, social struggles against discrimination fell into the hands of extreme right fundamentalist political groups.

The present French government (right) is now faced with a situation in which it chooses, just like other European countries do, to negotiate with 'religious leaders' as legitimate representatives of a 'community', and to give way to their demands in the name of minority rights. In other words, the policy of French governments for several years has been to disengage themselves and delegate to NGOs, including fundamentalists' ones, tasks that pertain to state obligations. In doing so, they only follow the path Europe is forcing them into: the adoption of a policy of multiculturalism – quickly followed by cultural relativism at the cost of women's rights – and the abandonment of French secularism in favour of a state policy of equal tolerance to all religions. The consequence is the eroding of the concept of citizenship and the creation of the concept of communities, which did not exist in France previously. This is an attack on the founding notion of French secularism that all citizens are equal before the law.

### **The right and the far right**

As with all previous migrations into France, migrants and citizens of migrant descent are seen as competing for jobs. But in times of economic crisis, the conservative right pulls this string with even more success.

On the other hand, the very visible fundamentalist activities of lobbying and mobilising spark a reaction from extreme right and nationalist racist forces in France. They demand the end of emigration, even that acquisition of citizenship be made reversible, i.e. that citizenship could be taken away from those who acquired it recently.<sup>64</sup> It seems that extreme right forces of both fundamentalists and racists work hand in hand, each giving a new impulse to the other: it is particularly clear from their strategic choices that fundamentalists are pushing for more confrontation – as more victimisation of more 'Muslims' by French racists will help draw more people into fundamentalist ranks.

If there is Islamophobia in France (a concept one should use with much care, as racism is wrongly but often labelled 'Islamophobia'; this concept should be used only when Islam as a religion – and not people – is being seen as intrinsically evil), it is in these circles of the political extreme right that it can be found, sometimes.

I will not expand on traditional rightist and xenophobic political forces as their position is well known. However I will point at a new political phenomenon: new secularist organisations were formed in the past few years; they raise their voices against the demands and provocations of Muslim fundamentalists; but they do so in ways that do not distinguish any more between Islam, Muslims, citizens of Muslim heritage and fundamentalists. On many occasions their discourses cannot be distinguished from that of the far right.<sup>65</sup> There is an attempt by the far right to co-opt and corrupt the secular struggle in France.

### **Other religious fundamentalists**

Christian and Jewish fundamentalists generally support Muslim fundamentalists' political demands by way of the media – and vice versa – in the name of freedom of religion guaranteed by the Constitution. Like Muslim fundamentalists, they seek political representation. Catholics see an opportunity to reverse, even if partly, the 1906 laws on secularism that deprived the Catholic Church of its great influence over the state and in education and health services. This law was in fact designed to curtail the political power of the Church within the French state – at a time when 'the Muslim problem' did not exist. But now that Muslim fundamentalists have taken the lead in combating secularism, other religious forces use their combativeness to regain privileges too.

'Religious leaders' are more and more often called by the state to participate in official consultations. Non-elected, self-appointed representatives 'dialogue' with the state on political affairs. What the Catholic Church could not achieve by itself under French secularism is in the process of being achieved by Muslim fundamentalists, thanks to the communalisation of society undertaken by the French state.

President Sarkozy has been giving various signs of a going back on secularism and Church privileges. In a famous discourse in Latran,<sup>66</sup> he stated the "religious roots of France", introduced the concept of '*laïcité positive*' that aims at adopting the point of view of equal tolerance of the state *vis-à-vis* religions, and finally he declared that morality mostly came from religious institutions and that secular school teachers, for lack of access to transcendence and spirituality, will never match priests in the moral education of citizens. Quite recently one of his ministers signed an agreement with the Vatican that gives up on state monopoly over delivering diploma.<sup>67</sup> On both these occasions and many others there was an outcry from French secularists.<sup>68</sup>

## The left

The French left at large (socialists, far left parties and the antiglobalisation movement) fails to defend secularism. For fear of being seen as racists or anti-Islam, they accept the premises of fundamentalist movements, i.e. that social problems should be analysed and dealt with as religious discrimination.

Traditionally anti-state, the left and the far left treated Muslim fundamentalism as a social movement of the oppressed and the legitimate representative of 'Muslims'. To a political analysis of social problems, the left substituted a religious and community approach and fell into the trap of multiculturalism; they implicitly accepted to essentialise 'Muslim culture', to see it as ahistorical and homogeneous, and without consideration for who defines culture and whether it is young progressive women or old male conservative self-appointed religious leaders.

The left failed to see how multiculturalism induced further fragmentation of the people and a weakening of social struggles. The left media followed them, with the notable exception of the daily *l'Humanité* (communist, now representing a numerically very small political force) and the weekly *Marianne* (not affiliated to the socialist party or to the communist party).

The socialist party was the first one to weaken the application of the 1906 law in schools, by making the veiling of girls in state schools a matter of private negotiations between girls, families and heads of schools.<sup>69</sup> It has also been involved in funding of the construction of mosques, while secular laws explicitly forbid the involvement of the state in funding or subsidising any place of worship. It turned a blind eye to the actual theocratic political programme of fundamentalists. Each of their demands was analysed separately, in the light of tolerance, of religious rights or cultural rights.

As for the anti-globalisation movement, both at global level (Porto Alegre 2005, Bombay 2004) and at national levels (France, the UK) it invited Muslim religious preachers.<sup>70</sup>

## Human rights organisations

Human right organisations followed the same line: in the name of human rights, the right to difference, religious rights, cultural rights, community rights, freedom of thought, freedom of conscience, they end up placing women's rights last. They subsume women's rights to other rights, thus creating for us a highly unfavourable hierarchy of rights.<sup>71</sup>

Both the left and human rights organisations implicitly accepted the fundamentalists' claim that anyone from Muslim countries or born and raised in Muslim families is Muslim. This was even denounced by progressive Muslim clerics. In Soheib Bencheikh's words:

“It is difficult and even impossible to say precisely the number of Muslims living in France, whether foreigners or French citizens. Estimations by some journalists are approximate and impossible to verify... These estimations only take into account the geographical origin of the person: anyone coming from Maghreb or West Africa is considered Muslim. Thus is declared Muslim any Turk or anyone from a country where Islam is the religion of the majority.”<sup>72</sup>

Human rights organisations are thus denying women of migrant origin one of the major human rights: freedom of conscience, freedom of belief, freedom of thought. They are denying the mere existence of secular people, agnostics, atheists or even believers who do not choose religion as the main marker of their identity or those who want their faith to remain a private affair – i.e. they are denying basic human rights to the vast majority of presumed ‘Muslims’, as we have seen that those do represent the vast majority of the population of migrant descent.

### **Feminists**

Very much along the same lines, French feminists remained divided as to the analysis of Muslim fundamentalism in France; to the extreme disappointment of anti-fundamentalist women from migrant descent, whether secular or believers, only some feminists put women’s rights first in the hierarchy of human rights, while others seemed not only petrified by the fear of being seen as anti-Islam, but also cornered by the longstanding support of the feminist movement for diversity. Focusing on French colonial guilt in France,<sup>73</sup> but on diversity in other places,<sup>74</sup> they make women from migrant descent, their analysis and their demands for their women’s rights, further invisible.

### **Strategies of women of migrant Muslim descent**

Having been abandoned by the organisations, parties and movements that should have been their natural allies, with limited access to the media, and facing an attempt to be used politically by the far right,<sup>75</sup> women of migrant Muslim descent were put in a situation where they had to take the lead in combating the fundamentalist agenda in France. Based on their prior direct or indirect (i.e. family-based) knowledge of the political agenda and the strategies of Muslim fundamentalists, they not only acted upon the situation in multiple ways, but also produced and still produce numerous analyses, statements, artwork, etc. that actually transfer their competence to a French audience far too easily abused by fundamentalists.

Numerous organisations blossomed. They share a common struggle against Muslim fundamentalists. However, each of them may focus on countering one or several specific aspects of fundamentalists’ attacks. Collectively, these different organisations tackle and cover the whole range of areas where Muslim fundamentalists advance their pawns: from defending women’s rights on the ground to lobbying the state,

as well as European and international institutions, from supporting secularism in schools to actively promoting alternative versions of Islam, from doing ground work with the youth to addressing the ideological uncertainties and the cowardice of the left, the anti-globalisation movement and human rights organisations – while all the time being active against racism and discrimination. Active networking facilitates an informal sharing of tasks, and mutual support in emergency cases.

Women's organisations of migrant Muslim descent operate at three levels: political, conceptual and social movement:

- At political level, they work nationally and internationally; nationally, they lobby the state and defend secularism, internationally they work within the UN system, especially with the CEDAW Commission and the Commission on the Status of Women, and with the various special rapporteurs.
- At conceptual level, they produce knowledge, in the form of political, sociological, historical and philosophical analysis, but also artwork. They challenge the dominant ideology and its subsequent use of terminology.
- At movement level, they disseminate this knowledge with various audiences, from government officials to grassroots. They set up support systems for individual women threatened by or victims of fundamentalist violations, by making their cases public, going to court on their behalf, setting up women's refuges, running awareness campaigns.

Each organisation usually develops several strategies. However, one organisation usually takes the lead nationally by specifically developing expertise in one strategy: I will therefore introduce some of the major women's organisations, focusing on their main strategy or strategies.

### **Forcing the state to fulfil its obligations – the case of NPNS**

As fundamentalists grow in the political and social vacuum left by the French state, an organisation took the lead in developing a strategy to force the French state to fulfil its obligations *vis-à-vis* French citizens of migrant descent.

At national level, this has been the main strategy, in suburbs especially, of a group that developed into a nationwide, then European-wide, organisation: Ni Putes Ni Soumises.<sup>76</sup> Their provocative name typically speaks to the inhabitants of the suburbs: it refers to the alternative left to girls in the suburbs to be either considered as prostitutes – and 'punished' as such – if they lead the normal life of a French girl their age, or to bend to fundamentalist rules of behaviour, dress code, etc. Although NPNS is a gender-mixed organisation, it is predominantly female, it has been set up by a group of women and it has always been led by women. Its very well-known and very vocal first president was Fadela Amara who later became State Secretary under Sarkozy: she was especially appointed to draw a policy for solving social problems in the suburbs.

NPNS firmly locates the problems faced by women of migrant descent into the realm of politics. Initiated in 2003, immediately after the horrible murder of Sohane burnt alive in a garbage cell, NPNS repeatedly challenged the state and forced it to bring the institutions of the Republic back into the suburbs, i.e. to send police patrols, fire brigades and urgent medical help, as well as postmen or garbage collectors. For NGOs to call on the state law and order is not a strategy which is often used in France. NPNS women claim from the state the rights and services they are entitled to as citizens. They do not tolerate any parallel system of justice or policing in the suburbs. Forcing the state's services back there actually cuts the grass under fundamentalists' feet who use the vacuum left by the state to create their own rules and codes of conduct. Thanks to their action, more law and order came back into the affected areas.

NPNS works with several ministries: Foreign Affairs; Justice; National Education, Health, Youth and Sports; Women's Rights and Equality; the Agency for National Cohesion and Equality (ACSE). NPNS also organises debates and makes statements to the press. NPNS published an educational guide on 'respect' and distributed more than 10,000 copies in schools. It also gives conferences and provides trainings on this theme.

At grassroots level, NPNS has a support system for female victims of violence: it runs hiding places for emergency cases, with counselling and orientation; since 2006, there is a temporary housing place for victims of forced marriages that catered to the needs of 16 women, out of whom 12 left the house having acquired personal housing and employment.

NPNS also runs four major ongoing campaigns and actions, with the help of its 40 Committees<sup>77</sup> located in various parts of the country. One campaign is devoted to supporting the 'mothers' in the suburbs, as opposed to the 'brothers' setting the rules and controlling women and girls. This campaign produced two educative visuals showing mother and son interacting.<sup>78</sup>

A second campaign is called Secularism, Equality, Co-education. It links the three concepts as interdependent from one another. In this campaign NPNS states that secularism promotes gender equality and that it is the cornerstone that guarantees the "republican pact"<sup>79</sup> of equality between all citizens. As for coeducation, NPNS supports the laws that promoted the mixing of girls and boys in schools in France. The organisation points to the threat to women's rights by fundamentalists who challenge the very principle of these laws in the name of cultural and religious rights.

A third campaign is the struggle against violence against women. NPNS has been very active in denouncing crimes committed against women that were inspired by fundamentalist ideology. A main achievement of NPNS was to propose a law that was passed by the National Assembly on 13 December 2005: according to this law, when violence is committed against a girl or a woman by a member of her family, this close family tie will be considered by the court as aggravating circumstances;

NPNS also fought legally against forced marriages and marriage under age. A fourth campaign is the struggle against discrimination, sexism and homophobia.<sup>80</sup>

After the murder of Chaharazade in Neuilly-sur-Marne, NPNS organised what they called a “republican Tour de France” against racism and anti-Semitism, pretty much on the model of the Marche des Beurs. Like the Marche des Beurs, they met with huge success and numerous people joined them on the way. Starting 1 February 2003, this Women’s March Against Ghettos and for Equality ended up with 30,000 followers on 8 March. Marchers stopped in 23 towns and villages, to discuss the following themes with the inhabitants: sexuality, rape and collective rapes, discriminations, sexist violations, the republic, ghettos, the weight of traditions, religion and secularism, forced marriages, organised youth gangs, women’s NGOs, femininity in the suburbs, and fundamentalism.

Although none of these violations is specific to fundamentalist groups, all are perpetrated by fundamentalists too. But when NPNS states that it struggles against all forms of discrimination against women, listing specifically: racism, anti-Semitism, misogyny, discrimination, physical and psychological violence, oppressive traditions, as well as pressures to enforce veiling, to quit school, to marry early, to be deprived of choosing one’s husband, to prevent girls from attending biology classes, to enjoy coeducation, to separate women from men in swimming pools and public spaces, to be prevented from living one’s sexual and emotional life, to own one’s body and one’s life, one can see that this long list points at many types of violations that are specific to Muslim fundamentalists in France. NPNS adds that they combat communalism, obscurantism and cultural relativism, which they define as “transforming the right to difference into difference in rights”.

At international level,<sup>81</sup> NPNS opposes cultural relativism and fights for universal rights. NPNS produced a shadow report in 2008 on the situation of women’s rights in France and testified at CSW. NPNS has consultative status with the UN.

### **Challenging forced religious identities – the case of secular Muslims in France and ex-Muslims in Germany and the UK**

These groups developed a strategy that consists in untying faith from ethnic origin and challenging the automatic labelling of ‘Muslim’ for all those born or raised in Muslim countries or Muslim families, or whose ancestors came from Muslim communities. Khedidja Bourcart, Deputy-Major of the City of Paris, points to what she calls a “semantic drift”.<sup>82</sup> Something that would be so obvious if we were talking, say, of European women, who, regardless of the fact that they are living under laws that historically derive from the mores of Christians, would be appalled if they were all labelled Christians, is hardly accepted when it comes to people of migrant Muslim descent. Both believers and unbelievers fight this battle over religious identities.

Women Living Under Muslim Laws (WLUML) has done groundbreaking work in this matter. Since 1984, it has been one of the main conceptual battles of this

international solidarity network (whose international coordination office was based in France for 18 years, and is now in the UK). WLUML defines itself as a non-faith-based organisation and works with women whose lives are shaped and governed by laws said to be derived from Islam – whether they themselves are believing Muslims or not.<sup>83</sup> Twenty-five years later, despite taking stands on numerous occasions, the WLUML network is still frequently described by outsiders as ‘a Muslim women’s network’, and by Muslim fundamentalists as ‘an anti-Islam organisation’... Such is the resistance to delink religion from cultural or ethnic origin.

The first French group to develop specifically this strategy in 2003 was the gender-mixed group, *Musulmans Laïques de France* (‘Secular Muslims of France’),<sup>84</sup> which later changed its name to *Maghrebins Laïques de France* (‘Secular Maghrebians of France’). It is predominantly composed of Muslim believers, men and women, including the Great Mufti of Marseille, Soheib Bencheikh, himself a fierce defender of secularism which he sees as the guarantee for Muslims to believe and practise in France, who nevertheless refuse to be branded Muslims without being asked about their personal faith.<sup>85</sup> Their manifesto clearly challenged the misuse of the concept of Muslim:

“We denounce the culture of hatred and violence in the name of Islam which shows a reactionary thinking. The ongoing surrealistic debate over the Islamic scarf, a true flag of political Islam, the challenging of French secularism, should not blur the fact that the issue is for France and for the French people to refuse and resist the grounding on our soil of an ideology which is dangerous, perverse and moreover lethal for the republic. This ideology is propagated by supposedly representative movements which in fact hijack all Muslims in France. As secular Muslims deeply attached to France, we are the first victims of these manipulations. We should therefore be the *avant garde* and the first ones to react and engage without failing into the defense of the republic, secularism, citizenship and freedom of religious practice for all.”<sup>86</sup>

In wake of the “pressures and manipulations” they suffer from fundamentalists, stating that their “freedom of conscience and their freedom of expression” is called into question, the secular Muslims call on mobilising for “the defence of a modern conception of Islam in agreement with the times, the laws and the values of the republic, in particular secularism and total equality between citizens of both sexes, for the defence of free thinking and individual freedom, against fundamentalism and obscurantism”.

Despite their straightforward stand for secularism, I will not present the defence of secularism as their main strategy: their main conceptual contribution is the challenge of the term ‘Muslim’ applied to non-believers of migrant descent. This initiative was followed by the more radical group *d’Ailleurs ou d’Ici Mais Ensemble* (AIME).<sup>87</sup> Led by a woman, it regroups secularists, agnostics, apostates, atheists, free thinkers and ex-Muslims. It is the first time in France that people define themselves as ex-Muslims.

But it is only after the 'Danish cartoons controversy', with the setting up of the radical gender-mixed organisation in Germany, the Council of Ex-Muslims<sup>88</sup> on 28 February 2007 in Berlin, that the term will become popular. Within months, in June of the same year, a Council of ex-Muslims emerged in the UK. The organisation is expanding to other parts of Europe: it is presently in the making in France. Although the French Council of ex-Muslims is not yet formalised, it inherits and benefits from its predecessors' groundbreaking epistemological work.

If one thinks for one minute that apostasy deserves the death penalty in the eyes of fundamentalists, one can evaluate the risks these people are taking, for the sake of clarifying concepts and standing for their right not to have a faith label imposed on them on the ground of origins. Not only does it breach the taboo of apostasy in Islam, but paradoxically, by its very name, it forces European people not to brand them 'Muslims'.

It is certainly not by accident that both the Councils of ex-Muslims in Germany and in the UK are led by women, both of Iranian descent. Both received death threats after setting up the organisations.

Mina Ahadi, the founder of the Council in Germany, says that she wants to "highlight the difficulty of renouncing the Islamic faith"; she wants the Council to "help women renounce the Islamic faith if they feel oppressed by its laws". Like the Secular Muslims of France before her, she points at the need to "form a counter weight to Muslim organizations that do not adequately represent Germany's secular minded 'Muslim' immigrants". In an interview conducted on the eve of the launching of the Council of ex-Muslims, on 27 February 2007, she clearly points at the responsibility of German authorities:

"The associations pretend they represent everyone and to some extent are acknowledged as such by the German side... I am critical of Islam in Germany and of the way the German government deals with the issue of Islam. Many Muslim organizations, like the Central Council of Muslims in Germany (ZMD) or Milli Görüs, engage in politics or interfere in people's everyday lives... Their aims are hostile to women and to people in general... They want to force women to wear the headscarf, they promote a climate in which girls are not allowed to have boyfriends or go to discos and in which homosexuality is demonized."<sup>89</sup>

In their manifesto entitled 'Together facing the new totalitarianism', the ex-Muslims state that they do not desire to be represented by regressive Islamic organisations and "Muslim community leaders"; they demand freedom to criticise religion, separation of religion from the state and "protection of children from manipulation and abuse by religious institutions".

Maryam Namazie, founder of the Council of ex-Muslims in Britain, said on BBC News on 21 June 2007 that "we are quite certain we represent a majority in Europe and a vast secular and humanist protest movement in countries like Iran." The new

organisation would be a branch of a growing network of secular 'ex-Muslims' who oppose the interference of religion in public life. The new group will be an alternative voice to bodies like the Muslim Council of Britain, she told the BBC, saying that many people who disagree with the opinions of religious leaders are scared of speaking out: "We do not think that people should be pigeonholed as Muslims or deemed to be represented by regressive organisations like the MCB." She urged governments to stop dealing with Islamic organisations that were pushing their values on other people and limiting free speech.<sup>90</sup>

### **Opposing the application in France of foreign anti women legislations – The case of 20 Ans Barakat and A Women's Initiative for Citizenship and Universal Rights (AWICUR)**

Fundamentalist claims for Islamic laws on the grounds of religious and community rights reached France. Many are already demanding what their counterparts in the UK already obtained: so-called *shari'a* courts as a parallel justice system for presumed Muslims. Each community, they say, should be governed by their own laws according to their culture and their religion. Fighting this claim requires dismantling the myth of a uniform Muslim world and of a unique divine Islamic law. It also requires scrutiny of family laws with the filter of women's human rights and universal rights.

As fundamentalists pretend that there is one unique divine law for all Muslims, there was some preliminary work to be done regarding the myth and realities of Muslim laws in various Muslim countries and communities throughout the world. This work was undertaken by WLUML which provided analysis and scholarly articles that help dismantle fundamentalist propaganda regarding the homogeneity of the Muslim world and the myth of one divine law. It ran a 10-year study in 40 Muslim countries – looking at laws affecting women specifically (marriage, divorce, custody and guardianship of children upon divorce, inheritance, freedom of movement, etc.), how different they were from one another from one country to the other, how they are applied specifically to women, what is their origin (whether they come from religious interpretations, customary laws and practices, colonial laws), the coexistence of different systems of law (state, customary, religious) and how and when one legal system supersedes the other.<sup>91</sup> This exercise demonstrated that 'Muslim laws' were extremely diverse from one country to the other, that they grant very different rights to women: from being secluded and given in marriage as a child, to living a fairly autonomous life, working, voting, becoming head of state...

The claim by Muslim fundamentalists in France (and in Europe) that they are entitled to 'the' Islamic law (singular) as part of their religious human rights can now immediately be challenged: which of these diverse existing Muslim laws is 'the' divine law and who is entitled to decide upon it?

We already saw with the case of annulment of marriage for non-virginity of the bride that judges in France are prepared to bend to fundamentalists. France, alas,

does not have the monopoly of diplomatic cowardice. WLUML's scholarly work and active international networking helped, for instance, to prevent a British judge in the late 1980s in London<sup>92</sup> to grant a 'Muslim divorce' to a man, that would have deprived his wife of property and guardianship of their children.

The husband, originally from Nigeria, and the wife, originally from Pakistan, were students in the UK. They met there and married under British law. When the man sought a divorce he claimed he was a Muslim and requested the judge to grant him his 'Islamic rights': the wife, herself a Muslim too, would have been deprived of the guardianship of their daughter and of an equal share to the couple's property. When WLUML wrote to the judge requesting him to refuse and to dissolve the marriage under the very rules under which it had been contracted, he ignored us and gave guarantees to the husband that he would be granted his 'Islamic rights'. But when, thanks to this research, we submerged him with cases of Muslim divorce settlements from many Muslim countries which all granted different rights to the women concerned, when we asked him how he, a British judge, could decide which of all those were an actual Islamic judgment, he understood the complexity of the situation he was going to step into and divorced them under British law. The wife got her share of their common house and guardianship of their daughter.

In France not only do judges take into account what they think is 'Muslim law' (for instance in the abovementioned annulment of marriage), but France – through bilateral agreements and procedures of *exequatur* – introduced the family laws of the Maghreb on its soil, for some of its citizens.

It would be bad enough if it were applied to foreigners, since these laws violate CEDAW to which France is a signatory; but it is also applied to French citizens of migrant North African descent, on the ground that their countries of origin claim them as citizens, even against their will. To give a concrete example, it means that, for instance, if the French-born daughter of a man who migrated to France before she was born marries a man from Algerian origin in France, under French laws, she can be repudiated in Algeria without being informed of it, and that France will officially confirm this 'divorce', its terms and conditions. It is enough for the man to go to Algeria – for instance on summer vacations to visit his parents – and register repudiation there, using his double (French/Algerian) citizenship. His wife will not be informed as she does not live in Algeria. He will get the material benefits of laws that discriminate against women: she will not get alimony, nor a fair share of the couple's properties, nor guardianship of the children, which she would be entitled to had the divorce taken place in France. The legal decision in Algeria is then automatically transcribed onto French registrars, thanks to *exequatur* of judgments between France and Algeria. She will, one day, much to her surprise, receive an official letter from a French judge, stating that France acknowledges the divorce, its terms and conditions.

Hence, a French woman of migrant descent can be informed by mail and by a French judge that she has been unilaterally divorced by her husband in Algeria and

that this judgment is legal and applicable in France. Thus French citizens can be deprived of their legal rights, in France.

As a consequence, Algerian women have taken the lead in linking up the struggle against the Algerian Family Code and the struggle against its direct or indirect application in France. The organisation 20 Ans Barakat took the lead in this struggle, both in France and in Algeria. Established in 2004, 20 Ans Barakat ('20 Years is Enough')<sup>93,94</sup> – a name that refers to the fact that 20 years passed since the adoption of this infamous family code in 1984 – has members and chapters on both sides of the Mediterranean; they persistently denounce cases when women are discriminated through family laws. They have been extremely inventive in their methods of awareness-raising: they were particularly successful with using art. For instance they produced a range of posters that were made by the most prominent Algerian painters (men and one woman) in Algeria, and organised a competition of posters made by women in France. Their biggest success is a song and a video clip against the family code which has been used throughout Algeria and France when there are rallies and demos.<sup>95</sup> Beautifully produced and sung in Arabic, Berber and French – the three languages spoken in Algeria – it is a very moving and forceful work.

France is reluctant to denounce bilateral agreements with North African countries, as it pretends that it protects French citizens living abroad who are entitled to be judged by the laws of their home country. This seems to be a clear discrimination between 'indigenous' French citizens who are entitled to the protection of the state when they live abroad, and French citizens of migrant descent living on French soil who are legally sent back to their 'origins'.

Legal discrimination on French soil using foreign legislations sparked the birth of another organisation that focuses on universal rights: born in 2009, out of both WLUML and 20 Ans Barakat, A Women's Initiative for Citizenship and Universal Rights (AWICUR) is now taking the lead in confronting cultural relativism and demanding one law for all in France. It aims at helping:

"...these French women born into migrant families and those migrant women [who] are confronted to dramatic situations because of the 'implicit' recognition of culture (repudiation, polygamy, forced marriage, FGM, honor crimes)... Instead of egalitarian civil laws, personal status laws justify the inferiorisation of women. In France and in other European countries, we witness a denial of justice towards them and a denial of citizenship."<sup>96</sup>

These examples allow better understanding of the range of possible actions to be taken while fighting against the introduction and application in France of foreign legislations to women of migrant descent in the name of religious rights and cultural rights. Women have to be self-reliant in the wake of European authorities' lack of eagerness to apply their own laws to defend women of migrant Muslim descent. It also underlines the importance of the work done by NPNS, when it forces the French government to take its responsibilities *vis-à-vis* citizens of migrant descent.

### **Production of knowledge, herstory vs myth: documentary and fiction films on and by women of migrant descent – the case of Yasmina Benguigui**

I already mentioned several types of production of knowledge by women of migrant descent: scholarly work; political, sociological, historical analysis; publication of books and articles – such as the WLUML handbook on family laws in Muslim countries, *Knowing Our Rights*, or Women' Against Fundamentalisms' information guide on women's rights in France. They help fight misconceptions about Islam, Muslims, religious law(s), culture and universal rights, and can be used in lobbying and in the media. Moreover, this production needs to be made accessible to activists. Most organisations described here are engaged in some form of production of knowledge from women's perspective. There is a crying need for acknowledging and widely circulating this work. However, media and publishers do not give it sufficient visibility.

I would like here to give prominence to a different type of production of knowledge that reaches out to large audiences: films and telefilms. Artists play a very important awareness-raising role. The song and clip produced by 20 Ans Barakat did more to popularise the struggle of Algerian women against the family code, whether inside Algeria, in France or in Europe, than any written production.

It would not be possible here to name all the artists, film-makers, political humorists and cartoonists, writers and singers of North African descent that contribute individually to enlighten French opinion regarding fundamentalists, among whom are important female figures. Due to colonisation, French is still the main language for most educated people, even if they migrated recently. This indeed facilitates artists' work being circulated between France and Algeria.

Yasmina Benguigui was born in Lille, France in 1957 to Algerian parents. She is the councillor of Paris's mayor on human rights and on struggle against discriminations. She has also been a member of the Haut Conseil à l'Intégration ('High Council for Integration') since 2006.<sup>97</sup> Documentary films by Yasmina Benguigui retracing the history of the first North African women migrants through film archives are a living testimony of the behavioural shift that women had to make over the last decades to bend to Muslim fundamentalists' rules in France. From unveiled working class foremothers running their household, making sure their daughters went to school and climbed the social ladder, their grand-daughters are hunted down by young males in suburbs for 'unIslamic' behaviour and to cover themselves.

Yasmina Benguigui's films had a big impact in France and were seen by many people, both on television and in cinema theatres. Her documentary work on the history of immigration, identity quest and racism through personal testimonies, entitled *Mémoires d'immigrés* (1998 on TV; 2004 in cinema halls), her documentary work in the television series *Women of Islam* (1994) for the France 2 channel and short films such as *12 Ways to Look at Everyday Racism* (2001) received numerous awards. Her 2008 fiction film, *Aïsha*, shows a girl from the suburbs of Paris facing

male violence, forced marriage and discrimination in employment. It was shown on the France 2 channel.<sup>98</sup>

### **Fighting for secularism: the case of Secularism Is A Women's Issue (SIAWI)**

Established in 2007, Secularism Is A Women's Issue (SIAWI) is a network that was set up in response to the shrinking space for secularism in France, as well as in the rest of Europe under the pressure of fundamentalist religious forces.<sup>99</sup> While in France it is Muslim fundamentalism that is the most visible and active in demanding that the state abandons secularism and adopts separate religiously or culturally inspired legislations for different categories of citizens, in Eastern Europe, the Orthodox and Catholic Churches have a prominent role.

SIAWI started in France, on the initiative of Algerian women who witnessed Muslim fundamentalism successes and felt they were going to experience in France the same attacks they had fled from in Algeria. It rapidly expanded in Europe to Serbia, Italy, the UK, as well as in India and now Central and Latin America. It monitors secular space, the rise of fundamentalisms and its consequences on women's rights and democratic freedom, by publishing news items, mostly in English and French, but occasionally also in Spanish, Italian, Portuguese and Serbo-Croatian.

SIAWI's work concentrates on a website that makes visible the resistance of women against the abandonment of secular laws. While many organisations do speak for secularism in their manifestos, it did not coalesce into a movement devoted to its defence. SIAWI pointed to the urgency of setting up a network that would draw attention to the growing threat of religious fundamentalism, and the cowardice of the state, human rights organisations and progressive parties on this issue, and pull together these diverse but occasional efforts made by people and mostly women from migrant descent.

SIAWI launches campaigns in defence of threatened secularists.<sup>100</sup> It initiated a video programme, *Women Speak on Secularism*, where leading feminists from around the world are interviewed on the state of the art regarding secularism in their countries, on the recent rise of religious fundamentalisms and identifying the political forces behind it, and on the backlash against women's rights. This programme aims at raising awareness among women activists on the need to associate secularism and the defence of women's rights, and on the crucial role they can play.

SIAWI took the lead in drawing public attention to the adverse consequences of the first UN resolution 61/164 on 'Defamation of religions and their prophets', and the subsequent resolution of the Human Rights Council A/HRC/4/2<sup>101</sup>: these resolutions resulted from an intense lobbying of the UN by the Organization of the Islamic Conference (OIC), after the Danish cartoons controversy. The recent controversy around Durban II made clear to the world that the OIC is pursuing its intense lobbying of international institutions.<sup>102</sup>

I will discuss in the 'Backlash' section the fact that it is very important to make the voices of women of migrant Muslim descent heard in the worldwide secular movement, for extreme right racist elements in disguise started an entryist policy on apparently secular websites; some of them are advocating that veiled women should be firmly asked to leave or unveil, even in public spaces... This is a far cry from the spirit of French secularism: it is an attempt to hide and justify racist xenophobic reactions.

### **Working on the ground: the case of Africa 93 and of Women Against Fundamentalisms**

Africa 93 is an energising example of what numerous women's groups do at grassroots level in France. It would be wrong to assume that migrant women's organisations work at national or international levels only: hundreds of local groups are working with people, linking the struggle against racism, the struggle for economic and social rights, and the struggle against fundamentalism and for secularism. Africa 93 organises social and political work inside a poor suburb of Paris, to challenge the hegemony of fundamentalist groups over the population as sole providers of services that the state fails to provide. Led by Mimouna Hadjam, a woman very deeply rooted in the North African migrant working class, Africa 93, through activities and various forms of teaching, enhances political analysis that will facilitate resistance to fundamentalists' propaganda, and develops the initiatives and self-reliance of the youth and women.<sup>103</sup>

Located in a popular suburb of Paris that hosts 80 nationalities, which is, in Mimouna's terms, a "zone of ghettoisation" and "economic violence", Africa 93 is a gender-mixed organisation with 90 per cent women. It works with grass roots at the lowest level, locally, in a mix of educational activities and relief programmes: it organises outings for the youth – boys and girls together – and meetings with other youth outside the suburb, movie shows, conferences, debates, concerts, etc. It has a 'cultural café' that attracts lots of young people and women. Africa 93 also lobbies local parliamentarians to solve housing problems and employment of the local population.

Africa 93 fights for women's rights against husband and family violence, and against the family code in Algeria and its repercussions on women in France. It has a very strong anti-fundamentalist stand: Mimouna herself has been physically attacked and the offices of Africa 93 ransacked. There is a lack of state protection for anti-fundamentalist women in France. She is "worried about the return of moral order, and of this religiosity in political discourses".

Numerous organisations monitor and campaign against fundamentalists' activities against women and defend the rights of individual women when they are attacked. It ranges from campaigning against forced marriages or hate speech in mosques to fighting individual cases of women's human rights violations: forced marriages, abduction of children, FGM, etc.

WLUML was the first organisation, since 1984, to initiate campaigns for individual girls married off 'back home' during holidays against their will, children abducted to the country of origin of the father upon divorce, etc. Its wide network in Muslim countries made it possible to track disappeared girls or children, to find free legal aid in the countries of origin, to find hiding places in France, etc. It gave visibility to problems that were not talked of before. Usually relying on the sole will of our networkers, we were often confronted by the diplomatic cowardice of the French state which refused to intervene and rescue their own citizens. On one occasion<sup>104</sup> in the late 1980s, a girl aged 16 (therefore under age), was abducted from a women's refuge, drugged and transported illegally across borders from France to Algeria to be forcibly married there. Her brothers were the ones who abducted her from the shelter; they lived in Toulouse, France; the abduction and drugging crimes were committed on French soil. They were responsible for the illegal border crossing. Only the forced marriage was performed in Algeria.

However, the minister of family affairs (at that time a woman, Yvette Roudy) whom we called upon, responded in writing that "France could not interfere in Algerian internal affairs." This is the response that French authorities gave to a crime committed in France. Diplomatic cowardice has no limit when it comes to protecting the basic rights of female citizens from migrant Muslim descent. It so happened that the girl was sought for and finally located, freed and given an Algerian lawyer who obtained the annulment of her forced marriage; the Algerian authorities gave her a plane ticket to go back to Toulouse – where she was born and raised – as she wished. This was done exclusively thanks to a chain of committed women activists in France and Algeria, when it should have been legally fought by France. This story illustrates the double standards of France, and the fact that women had to rely on their own forces. We have umpteen experiences of this type.

While WLUML was for a long time the only organisation large enough to be able to mobilise internationally on cases of individual women in France or Europe, many other organisations did important work at local level: Femmes Contre les Intégrismes (FCI, 'Women Against Fundamentalisms'), a women's organisation based in Lyon, monitors attacks on women's rights by all religious fundamentalisms and mobilises against them to defend women's rights. FCI produced an excellent information guide for women who are foreigners or from foreign origin living in France, entitled *Madame, vous avez des droits!* ('Madam, you have rights!'). First published in 1999, 15,000 copies of this guide were reprinted for the fourth time in 2008. It states that:

"The principle of equal treatment between citizens and foreigners and the principle of equality between men and women are guaranteed by the French state. But reality and practices often contradict these principles. In practical terms, women of foreign origin are discriminated against. This discrimination is not to be tolerated on French soil."

It urges Europe to use human rights to put limits to religion, and specifically to refuse to apply on their soil foreign family laws that discriminate against women

and to denounce bilateral agreements; to take a stand in various international bodies, such as the UN, against violations of women's rights justified by cultural and religious relativism, specifically to protect women's "physical integrity, freedom of movement, right to choose their partners, against honor crimes, forced marriages, FGM, wherever these crimes are committed and whatever justification for it".<sup>105</sup>

### **Fighting the veil for girls under age in primary and secondary state schools – the case of RAFD**

The main contribution of all the organisations of migrant women and women of migrant descent united together on this issue was to prevent the veiling of girls under age 16 in French state schools when Muslim fundamentalists challenged this legal provision of the 1906 law on secularism.

At the time of the veil controversy in French schools, women of migrant Muslim descent went all-out in defence of secular laws. It is thanks to their sustained efforts that the then socialist government did not give in to the demands of fundamentalists who were largely supported by human rights organisations, while the left hesitated in a cowardly fashion to support women secular activists.

While demonstration after demonstration took place in all main cities of France in support of secularism, while women of Muslim descent were taking all the risks, going public on television, radio and in women's magazines, only two French papers opened their columns to these women (already cited above: *l'Humanité* and *Marianne*).

As for the international media, charmed with the exoticism of 'the Muslims', they filled their pages with reports and images of the only two Paris-based demonstrations of veiled women which, flanked with bearded men, demanded the end of secular laws. Our outspoken statements, demonstrations, etc. were ignored.

Zazi Sadou, the spokesperson of Rassemblement Algérien des Femmes Démocrates (RAFD – '*rafd*' also means 'refusal' in Arabic) took a leading role in this battle in France. Set up in 1993 in Algiers, at the peak of fundamentalists' onslaught on people and specifically on women, RAFD "gathered women who aimed at creating a space for struggle for all women and above all for resisting fundamentalism and terrorism". "Some of the women who set up RAFD were NGO activists but most were housewives and many were in rural areas"; Zazi Sadou defines RAFD as "a women's NGO" composed of "feminists inspired by a feminist vision of politics, with the aim to achieve equality of rights".<sup>106</sup>

To do that, they only relied on their own forces, financial and otherwise: they did not apply for funding; all they needed came from donations of activists and allies. It was all done on a voluntary basis. RAFD undertook many actions in Algeria and, when several of its members took refuge, in France too.

In Algeria, they have an impeccable record of defying fundamentalist armed groups at the risk of their lives. They organised support and relief to the victims of

fundamentalist armed groups, from providing basic utensils to those whose houses had been burnt, destroyed, ransacked, to supporting female school teachers who defied the orders of fundamentalist armed groups and re-opened their classes after attacks on villages, despite the threats, to organising education and training programmes for girls who survived armed fundamentalist raids on their villages. They instituted the Award for Women's Resistance against Fundamentalism and against Forgetting.<sup>107</sup> This award was officially given each year to one or several women resisters – in one occasion post mortem – during a formal ceremony held in a public space in the heart of Algiers, while death threats were issued by fundamentalist groups against them and while both the state and private owners of conference rooms refused to rent space to them, for fear of armed attacks.

When RAFD took action in France too, its first-hand experience of the horrors of fundamentalists' rule over women in Algeria made its contribution invaluable. RAFD undertook circulation of information and lobbying for secular laws. It engaged in the production of publications and films that showed women's resistance to veiling.

RAFD members were invited to speak everywhere in France – and not just in the capital city – and in other countries. They testified endlessly on the fate done to women by fundamentalists when they gain power, dismantling the liberal idea that veiling girls was an innocuous step to be tolerated in the name of respect for the culture or religion of the 'other', producing evidence that it was only a first step on the way to a theocratic state.

Zazi Sadou's testimony to the Stasi Commission showed the parallel in fundamentalist strategies between France and Algeria; she gave first-hand accounts of the dangers of letting such political forces grow and trying to compromise with them in a vain attempt to limit their greed for total power.

Fadela Amara, the then President of NPNS also took a firm stand. A believer herself, she said:

"Today, it is crucial for living together in our country to reaffirm the two principles of secularism and equality between sexes... The veil is not, as they would like us to believe, a religious obligation for Muslim women. This symbol of submission represents the seal of humiliation for women and the marker of a forever-minor status that they try to impose on women... Only a law that will reaffirm these two indissociable principles of secularism and equality between sexes will protect the girls of the suburbs and further protect the status of women."

However, it is Chaddortt Djavann (originally from Iran) who for the first time examined veiling of school girls under the age of 16, in primary and secondary schools, from the angle of the human rights of the girl child. In a powerful essay entitled 'Bas les voiles' ('Down with the veils', but this is also a sailor's call for bringing down the sails on ships), an essay that she submitted to the Stasi Commission, she argues that hiding supposedly erotic parts of their bodies – in that case, their hair –

marks the psyche of the girl child forever, making her responsible for inciting men's lust from an early age and guilty of his misbehaviour and sexual crimes. She stated:

"I am convinced that veiling minors should be forbidden in the whole of the country. In the name of equality between minors of all origins, religions and gender, I demand that the veil on minors, this veil that stigmatizes their female sexuality, this veil whose scars they will bear throughout their lives, be considered as ill treatment."

She was speaking from experience as she herself was veiled from the age of seven in Iran. Direct experience of what we were talking about is what gave such an impact to the voices of migrant women or women of migrant descent. For us all, it was sheer survival and we had to engage all our forces in this battle, otherwise we would experience again in France what we had just fled from in Algeria or in Iran.

It is my deep certitude that this battle will definitely not have been won in France without the dedicated activism of women from migrant Muslim descent. These women do know what we have to lose if France allows fundamentalists to speak for us and make laws that will govern us. We won this battle, facing the silence of the left and the opposition of human rights organisations.

Giving back the floor to ordinary women from migrant Muslim descent, here is what they had to say when they were interviewed by women's magazines:

"The veil is meant to avoid provoking the desire of men. This is a way to alleviate their responsibility and to potentially charge us with guilt – I cannot accept that!" (Meryem, age 23, student in Paris).

"I stand for all mixed spaces: in school, in the swimming pool, in marriage, in the suburbs... otherwise one moves from geographical ghetto to mental ghetto and to communalism." (Farida, 27, social worker, Narbonne)

"When I hear a girl say: The veil protects me, I respond: No, it is the Republic that protects you." (Meriem, 25, lawyer)

"The Muslim woman is not a veiled woman. Under pressure, some women feel that they are not good Muslims if they do not wear it. But everywhere in the world, women fight for their emancipation, just like our mothers have done before us." (Safia, 29, NPNS, Clermont Ferrand)

"I have no problem with my identity. I am a French citizen, of Algerian culture, my religion is Islam. I speak Arabic. I know the history of my family, and I used to go to Algeria on holidays. This prevented me from fantasizing about my country of origin or from having a distorted image of my culture." (Warda, 23, manager, Neuilly)

"Today, the little brothers are the ones who tell their mothers: your daughter must be veiled. This is the culture of the suburbs. What upsets me? That the extremists monopolise the attention of the state and of the media. Nobody

listens to Muslims that do not create any problem, who practice their religion in the private sphere.” (Aicha, 34, social worker, Fontenay Sous Bois)

“I was born in Algeria. I witnessed the rise of fundamentalism. Disoccupied boys who force you to wear a head scarf, mosques that rise like mushrooms, the social discourse, the extremists who pose as victims, etc. They are doing the same thing in France...” (Asma, 28, psychologist, Saint Ouen)<sup>108</sup>

## **Backlash: Threats from fundamentalists and manipulation of women’ struggles by the far right**

I will not expand on threats by fundamentalist groups or individuals: the fact is that, as indicated previously, in broad daylight, secular activists of migrant descent, both men and women, can be attacked in France. Many already take basic precautions, as if having to work underground: not disclosing their private addresses, avoiding having their photo taken, etc. Those who don’t, often face death threats, directly or by mail and email. They receive, just like the case in Algeria, miniature coffins and shrouds in their letterbox. They face verbal and physical attacks.<sup>109</sup> Several cases were mentioned in the course of this article. Clearly, France has not yet taken the full measure of what fundamentalists aim at. France is still hoping to find a compromise with fundamentalists, in the vain hope that their demands will stop and that they will be satisfied. We realise that, just like in our countries of origin, it will take a few assassinations before the international community starts reacting.

The tragedy for us is that, in the wake of the abandonment we suffer from progressive forces, human rights organisations and an important section of the feminist movement, not only do we fight in isolation, but it is the far right that takes up the issue of the rise of fundamentalism.

On the one hand, extreme right political parties, such as the National Front in France and the Freedom Party in Austria, supported the Algerian FIS, in the name of the right for Muslims to be different. One is familiar with the ‘otherisation’ strategy of the extreme right, which ends up with separation policies (such was apartheid).

On the other hand, we are more and more confronted by its attempt to appropriate our struggles by ‘supporting’ us – an entryist policy that the Council of Ex-Muslims in the UK faces at each of its public rallies, or NPNS in some of its regional committees, and that many of us face when speaking to large audiences.

As many organisations of women of migrant Muslim descent locate themselves in the realm of human rights, women’s human rights have been persistently manipulated by all political trends including the far right. A strategy, common to all our organisations, consists in firmly distancing ourselves from the far right.

In denouncing and combating fundamentalists in France, women walk the tightrope and refuse to be co-opted by political forces from the extreme right. They are very

vigilant in refusing any support which in fact manipulates both the aims and the public image of our organisations.

It is for women to set rules that do not allow membership of individuals who join our ranks for reasons we disapprove of.<sup>110</sup> While women from migrant descent are combating fundamentalist political groups that use Islam for political purposes, the extreme right is fighting against an imaginary essentialist Islam, and giving legitimacy to discrimination against 'Muslims' (i.e. people of migrant Muslim descent who are all seen as real or potential fundamentalists).<sup>111</sup> These forces efficiently play on the conceptual confusion between migrants, 'Muslims' and 'fundamentalists'.

As long as progressive people around the world – regardless of Muslim fundamentalists' political agenda, regardless of what they do to women when they are in power – still perceive Muslim fundamentalists as legitimate representatives of the oppressed people facing world imperialism and globalisation, as long as French and European feminists do not dare challenge imposed cultural and religious identities in the name of universal women's rights, women from migrant Muslim descent will have to continue educating European audiences and will keep their leading role in combating the fundamentalism agenda in Europe.<sup>112, 113, 114, 115</sup>

## Endnotes

1. WLUML (2005), Alert for Action: 'Support Canadian Women's Struggle Against Sharia Courts', 7 April: "We are also keenly aware that any victory for conservative forces among Muslim communities in Europe and North America will in this globalised world automatically reinforce fundamentalist groups in Muslim countries and communities elsewhere. This will lead to a backlash against us in contexts where we have had a measure of success in preserving the space for women's and alternative voices. In addition to our sense of solidarity, it is fear of such a development that leads WLUML to express our support for women in migrant Muslim communities in Canada and elsewhere."
2. The French concept of *laïcité* will be translated here as **secularism**. We have to keep in mind that, since 1905, secularism in France (i.e. *laïcité*) implies a total separation between state and Church, while other European countries understand it as equal tolerance by the state *vis-à-vis* different religions. For further discussion of French secularism, see Henri Pena-Ruiz (2005), 'France: Secularity and the republic. A secular recasting of the state: principles and foundations', [www.siawi.org/article17.html](http://www.siawi.org/article17.html)
3. It is not unimportant to remember here that anti-migrants feelings and occasional violence were present at all time. Local groups opposed migrant man power. As early as 1893, a pogrom took place in a part of Southern France, in the salt evaporation ponds near Aigues Mortes, killing nine and injuring hundreds of Italian workers. I personally remember hearing violently derogatory remarks about Italian, Spanish and Portuguese migrant workers when I first visited France as a child in the 1950s – not dissimilar to those one can hear today about Africans (North and South of the Sahara): migrants are traditionally held responsible for unemployment, suspected of being disloyal to France and now additionally accused of religious proselytism. The permanence of such accusations, over time and through migration of different ethnic groups, allows to temper the importance that factors such as 'race', 'colour' or religion may play in anti-migrant feelings.

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7. See note 6.
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9. See note 6.
10. Chloé Tavan (2005), *INSEE Première*, Sep, [www.insee.fr/fr/ffc/docs\\_ffc/ip1042.pdf](http://www.insee.fr/fr/ffc/docs_ffc/ip1042.pdf)
11. Public statement during a debate over girls under age wearing a veil in state schools.
12. Fundamentalists were active in Algeria since independence (1962). There is lack of scholarly research on the early stages of their movement and on the origin of their resources. Nevertheless, fundamentalist organisations already existed in the 1960s: Nahnah led organised sabotage groups who lived underground (he was to become the leader of Hamas in the 1990s), and in the 1970s organised teams of preachers toured the country (*tabligh*). Media said that their financing came from Saudi Arabia and the Muslim Brotherhood.
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16. Joshua Rozenberg (2006), 'Sharia law spreading as authority wanes', *Telegraph*, 29 Nov, [www.telegraph.co.uk/news/uknews/1535478/Sharia-law-is-spreading-as-authority-wanes.html](http://www.telegraph.co.uk/news/uknews/1535478/Sharia-law-is-spreading-as-authority-wanes.html)
17. Richard Edwards (2008), 'Sharia courts operating in Britain', *Telegraph*, 14 Sep, [www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html](http://www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html)
18. The 1991 Arbitration Act allowed for the use of *any* laws in arbitration. It did not differentiate between areas such as commercial or family, and so the Act was permissible for religious communities. There were no Christian groups using the Act for family matters. The Jewish *Beit Din* (religious tribunal) did use private legally binding arbitration for commercial matters and in a year we heard that there were two family issues when the Arbitration Act was used. There were no records of any other arbitral awards. According to the Canadian Council of Muslim Women (CCMW) (private communication, 13 April 2009), the Arbitration Act allowed for the use of private legally binding arbitrations and there were only two Jewish instances that came forward in their research. The CCMW went for *no* religious arbitration. Now of course no religious laws are recognised by the courts.
19. WLUML (2005), Alert for Action: 'Support Canadian Women's Struggle Against Sharia Courts', 7 April, [www.wluml.org/node/69](http://www.wluml.org/node/69)
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44. 'Voile islamique dans les écoles en France', [http://fr.wikipedia.org/wiki/Voile\\_islamique\\_dans\\_les\\_écoles\\_en\\_France](http://fr.wikipedia.org/wiki/Voile_islamique_dans_les_écoles_en_France)
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46. Marieme Hélie-Lucas (2005), 'French Women of Migrant Descent: Between the religious extreme Right and a coward Left', *Gender, Governance and Democracy*, Isis International – Manila, Monograph 1(2).
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48. Soheib Bencheikh (1998), *Marianne et le Prophète: l'islam dans la France laïque*. Paris: Grasset p144: "Ce sont les musulmans qui devraient expliquer à leurs coréligionnaires qu'il faut éviter de ridiculiser Dieu dans l'interprétation de Sa parole. Si le Coran a

*recommandé le voile, c'est dans le seul objectif de préserver la dignité et la personnalité de la femme selon le moyen disponible à l'époque de la Révélation. Si, aujourd'hui, le même moyen ne réalise plus le même objectif, il ne faut pas s'attarder sur ce moyen mais le chercher ailleurs. Paradoxalement, ce qui préserve aujourd'hui la personnalité et assure l'avenir de la jeune fille, c'est l'école. C'est en s'instruisant que la femme peut se défendre contre toute atteinte à sa féminité et à sa dignité. Aujourd'hui, le voile de la musulmane en France, c'est l'école laïque, gratuite et obligatoire."*

49. Henri Pena-Ruiz (2005), 'France: Secularity and the Republic. A secular recasting of the state: principles and foundations', [www.siawi.org/article17.html](http://www.siawi.org/article17.html)
50. Violations on the ground of discrimination are highlighted and fought in court by various human rights organisations such as SOS Racisme, MRAP and AI. A recent case is the condemnation in court of the owner of a guesthouse who requested that two veiled women unveil in her house; they refused, went to court and won their case. Fanny Truchelut was given a suspended sentence of four months' imprisonment and fined €8,500 in Aug 2006 for discrimination.
51. On protecting the rights of the girl child, see Chahdortt Djavann (2003), *Bas les Voiles*. Paris: Gallimard. She argues that veiling a girl child can be equated to constructing her psychic identity as a rouser of men's sexuality and making her responsible for sexual attacks that she may suffer from, and that it is very damageable to her. Looking at veiling not from the point of view of women's rights, but from the point of view of children's rights is very enlightening.
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56. Michel Huyette (2009), 'Mariage, virginité, mensonge, annulation, quelques réflexions autour d'un récent jugement du tribunal de Lille', *Paroles de juges*, 28 March, [www.huyette.over-blog.net/article-20139426.html](http://www.huyette.over-blog.net/article-20139426.html)
57. See note 54.
58. Hugh Schofield (2008), 'Anger over 'Ramadan' trial delay', *Worldwide Religious News*, 7 Sep, <http://www.wrn.org/articles/29278/?&place=france&section=islam> – "Critics say the decision is a breach of France's strict separation of religion and state. The trial of seven men for armed robbery was due to start on 16 September in Rennes. But last week the court agreed to a request from a lawyer for one of the accused to put it off until January. In his letter asking for the delay, the lawyer noted that if the trial were to start now, it would fall in the Muslim month of Ramadan. His client, a Muslim, would have been fasting for two weeks and thus, he said, be in no position to defend himself properly. He would be physically weakened and too tired to follow the arguments as he should."
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France 24 (2008), 'La nationalité refusée à une Marocaine en burqa', 12 July, [www.france24.com/fr/20080712-une-marocaine-burqa-voit-refuser-nationalite-francaise-religion-immigration](http://www.france24.com/fr/20080712-une-marocaine-burqa-voit-refuser-nationalite-francaise-religion-immigration)  
Cécilia Gabizon (2008), 'La Halde juge la burqa contraire à l'intégration', *Le Figaro*, 9 Oct, [www.lefigaro.fr/actualite-france/2008/10/10/01016-20081010ARTFIG00012-la-halde-juge-la-burqa-contraire-a-l-integration-.php](http://www.lefigaro.fr/actualite-france/2008/10/10/01016-20081010ARTFIG00012-la-halde-juge-la-burqa-contraire-a-l-integration-.php)

60. In particular, Europe is waiting on France to abandon its definition of secularism and to adopt the Anglo-Saxon definition: state's equal tolerance for all religions. This would allow France to 'accommodate' demands of Muslim fundamentalists, at the cost of women's human rights.
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*égalitaires, des statuts personnels justifient l'infériorisation des femmes. En France, et dans d'autres pays européens, nous constatons un déni de justice à leur égard, un déni de citoyenneté."*

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*Lalia Ducos*

## Personal Status and Bilateral Agreements

A blow against secularism (*laïcité*) and the rights of foreigners and citizens of Maghrebian origin in France

***There have been many reports on the inequalities and discriminations from which immigrant women in France have suffered. There is, however, one form of discrimination of which little is heard: that which takes place in the name of the cultural and religious rights of minorities. We are witnessing today in France a decline in many fields and an offensive on the part of religious fundamentalism which puts secularism (laïcité) – defined as the separation between religion and the state – in danger. The main source of immigration into France is from the Maghreb. This article discusses the forms of discrimination which immigrant women encounter in the laws that govern their family relationships. These are more generally called in the three Maghreb countries ‘family codes’ or ‘laws on personal status’. These questions of personal law have crucial importance, since they concern both the problem of equality between the sexes as well as that of a woman’s role as a citizen, besides the problem of secularism (laïcité).***

### The state of play in the countries of origin...

The organisations and associations for the rights of women have for many years denounced the discrimination and violence suffered by women because of the existing inegalitarian codes of personal status.

In 1956, Tunisia promulgated the first family code which was supportive of women’s rights, apart from the question of inheritance. For a long time, this family code has been a point of reference in the Arab world. In Morocco and Algeria, some progress has been achieved, thanks to unending activities on the part of activists in these two countries, supported by North African immigrants in France.

The Moudawana reform in Morocco in 2004 overturned the old family code and in some respects instituted equality between men and women.

The progress achieved is as follows:

- The family is the responsibility of the two spouses, the man is no longer described as ‘the head of the family’, equality of rights and duties within the family and not ‘obedience’ of the wife to her husband;

- Suppression of the *wali* (matrimonial tutor) for the marriage of a woman who had reached her majority;
- Equality of ages for marriage is fixed at 18 years for both sexes, instead of 18 for males and 15 for females;
- Divorce and repudiation is firmly set in a legal framework, rather than being the prerogative of the husband, who exercised it in an arbitrary manner.
- Regarding custody of children, the family code provided for both girls and boys the ability to choose at the age of 15 the person to whom custody should be granted. This put an end to the unequal treatment which offered this possibility to boys at the age of 12 and girls only at the age of 15.

The amendments made in June 2005 to the Algerian family code, promulgated in June 1984, were the result of a major campaign by associations in Algeria and France through a collective, 20 Ans Barakat ('20 Years is Enough'). The collective's aim was to prevent the code lasting 20 years. The struggle to abolish the code still goes on. If the amendments do incorporate some improvements to the status of women, they are still not sufficient, e.g. the principle of the tutor, *wali*, is maintained, which puts women, even those who have attained their majority, in the situation of being perpetual minors.

The progress achieved is as follows:

- Marriage is a consensual contract made between a man and woman in legal form;
- Suppression of marriage by proxy;
- The legal age of marriage is moved to 19 from 21 for males and 18 for females;
- The notion of the head of the family disappears to make room for respect and mutual agreement over family matters and the spacing of births;
- Prospective spouses are obliged to present a medical certificate, dating from the last three months, stating that they do not carry any disease<sup>2</sup>;
- It is possible for the wife to request divorce on grounds of persistent disagreement or for any violence inflicted;
- Repudiation and polygamy are maintained, but subject to judicial limitation;
- Some rights for the divorced woman including custody of the children and an obligation for the husband, in the event of divorce, to provide accommodation for the mother who has charge of the children, but only until the children reach the age of majority;
- The *fatiha* (religious marriage) can only be said after the contract of civil marriage has been presented.
- The major advance concerns the code of nationality: an Algerian mother can now transmit her nationality to her children, even if she is not married.

It is necessary to refer to the difficulties that citizens of both sexes encounter in the application of the reforms introduced in these two countries of the Maghreb, since

custom, tradition and Muslim law have been the references used by those drafting the texts. We are witnessing the rise of a strong religious fundamentalism, which refuses to accept progress towards the equality of rights and wants to keep half of society restricted to a role of perpetually being a minor.

## **...and in France**

Muslim fundamentalism is also growing in France. This fundamentalism's new strategy is to give visibility to 'religious communities' and their claims. One can now see a tendency to claim an 'Islamic' identity, represented symbolically by the wearing of 'Islamic dress'. Secularist activists see with great disquiet those who accept the existence of differences accepting a difference in rights, in the name of respect for difference.

Women are the main victims of this cultural relativism. In June 2008, for example, in Lille, virginity was accepted by republican judges as an "essential quality" of marriage, when a demand for annulment was made by a Muslim couple on the grounds of non-virginity. Happily, this judgment was overturned on appeal. If it had been confirmed, it would have been a means of threatening women by those who defend the principle of virginity before marriage.

Women suffer from this difference in rights, particularly through the application of the provisions in the bilateral agreements on personal status that exist between France and the countries of origin. There is a bilateral agreement between France and Morocco, but for Algeria, it is more a case of exequatur procedures which make possible the enforcement in France of a judgment made in Algeria.

Everyone might consider that in the field of personal status, the law is the same for everyone in the same territory, but this is not so. In the field of family rights, the fact that a woman is living in France does not mean that French law necessarily applies to her. In the same way, the fact of having French nationality does not prevent someone who is of foreign extraction finding the law of her country of origin being applied to her. How does this happen?

Article 3, paragraph 3 of the French Civil Code states that, "the laws concerning the civil status and capacity of persons govern French citizens, even those living abroad."<sup>2</sup> Thus everything concerning the marriage, divorce and descent of French people is governed by French law, wherever they are living.

As a matter of reciprocity, jurisprudence upholds the principle according to which foreigners living in France have the same rule applied to them, which means that the laws of their country of origin concerning family law apply in France.

When someone has nationality other than French nationality or when someone has dual nationality, the rules concerning family relationships are complicated. A foreign woman settled in France is governed by her personal status in her country of origin. A woman with dual nationality will have French law applied to her by

the French authorities, while her country of origin will consider her still to be one of their nationals, even when they accept her dual nationality. So her country of origin will apply its law to her, and such judgments are recognised in France by virtue of bilateral agreements or exequatur procedures in force between the two countries.

Frenchwomen whose families are of Moroccan, Tunisian or Algerian origin often continue to be regarded as Moroccan, Tunisian or Algerian by those countries, because their parents are or were of Tunisian, Moroccan or Algerian nationality, and this is so, even when they themselves have never possessed identity documents of the country of origin of their family.

Moroccan, Algerian or Tunisian nationality cannot be lost. In addition, in her country of origin or her parents' country of origin, even when a woman has French nationality and considers that this is the only nationality that she has, she can remain, even in France itself, governed by the law of those countries.

We often quote as an example the case of a woman of Algerian nationality, or a bi-national or of Algerian origin, married to an Algerian man, a bi-national or of Algerian origin. She lives in France but does not work. Her husband supports the family. They have three children. Following a dispute, the husband does not return to the family home. In the event, he spends several weeks' holiday in Algeria. While he is there, he requests a divorce according to Algerian law, without informing his wife. She is unaware of the case opened against her, since the husband has given the court a false address for her, and the woman, never having received a summons, has not been able to be present when the judgment of divorce was made in Algeria. Sometime afterwards, the woman receives from the French authorities the transcription in the French register of divorces of the divorce decree (a unilateral repudiation by the husband) which her husband has obtained in Algeria. She sees from reading the decree that she has been awarded a living allowance of 1,000 Algerian dinars (approximately €10) a year for each child.

This judgment is equivalent to repudiation, but is in judicial form and is not an oral repudiation<sup>3</sup>. By the exercise of the exequatur regime, which makes an Algerian judgment applicable in France, the husband has succeeded in making the Algerian code of personal status applicable in France.

Up to a recent date, there were many cases of repudiation which left women without any possible recourse in France. Thanks to the associations in the field and to the hearing of their representations by the ministers concerned, exequaturs are no longer issued for all forms of repudiation decreed by the Algerian and Moroccan courts (Judgment by the Cour de Cassation of 17 February 2004).

A further example: even though polygamy is forbidden in France, it is permitted in several countries where the family code is based on religious sources, even though in recent years, it has been more closely defined, thanks to amendments made in Algeria and to modifications of the Moudawana in Tunisia. Even so, if the man does

not have French nationality and a polygamous marriage has been celebrated in his country of origin according to local law in force in that country, it will be recognised in France.

It is the act of marrying several women in France that is legally reprehensible for France, not a polygamous state acquired in another country. Often these women can find themselves in an irregular situation in not having a residence permit (*carte de séjour*) and, therefore, being liable to expulsion from the national territory. Indeed, polygamous husbands often make sure to keep their wives in a state of total dependence on them.

This state of legal cohabitation within France between different codes of family status leads to human consequences and serious problems for wives and children. It is only in the event of a legal dispute that these women find out that they are governed by the laws of their country of origin. Even French women of Maghrebian origin are often unaware that they keep the nationality of their father, in the eyes of his country, in addition to their French nationality, and that they can find judicial decisions imposed on them that have been made in the land of their ancestors.

There are indeed possible legal recourses, but they are little known and complicated. Since 1968, the association Femmes Contre les Intégrismes ('Women Against Fundamentalism') has published a practical guide with legal information that is kept up to date, with a view to providing women with information about their rights and about possible legal recourses, which can be difficult to understand<sup>4</sup>.

Even when the laws in the countries of origin are not systematically unfavourable to women, practices and customs can remain discriminatory. Often these practices and customs (early marriage, rules for dress, marriages of *muta'a* type) are described as being 'Islamic' and they carry as much weight as the law as means of exercising control over women.

An article in the newspaper *Le Monde*<sup>5</sup> exposed the wish of certain groups to breach the laws of the state concerning marriage. Young Muslims wanted "to free themselves from civil marriage". In defiance of French law, which stipulates that a civil marriage should be made before any religious marriage, and punishes any minister of religion who performs a marriage without first requiring to see a copy of the act of civil marriage, these young couples contracted a Muslim marriage in secret but declared themselves in the eyes of the law to be living in a state of cohabitation. This practice is widespread in radical fundamentalist circles, with the aim of getting round the constraints of the law over divorce and polygamy.

The same article recalled the case of an official of the marriage registry, who in defiance of French law – which states that a person, having attained his or her majority, can freely decide to get married without the consent of anyone else – declared: "I recall that a civil marriage is obligatory and I explain the position to the parents of the young woman, since a marriage cannot take place without the father's consent."<sup>6</sup>

It is a serious matter that an official of the marriage registry, a mayor, can so far misunderstand the correct legal procedure, where it is the consent of the person involved that is necessary for a marriage to be performed in France, and not that of the father, as it is in countries where a woman is regarded as a minor and dependent on her *wali*. The role of the marriage registrar can involve holding separate discussions wherever there is doubt whether or not the person has freely consented, and he should inform the State Prosecutor if such a doubt is confirmed.

We can see here a concrete case of collusion between the law and an ideology that is at the service of patriarchy, as well as a double discrimination. In addition to the discrimination between men and women and between French nationals and foreigners, a further one is added between some 'French women' and other 'French women'. Citizenship is put in question depending on the origin of the citizen.

Françoise Gaspard, a historian and lecturer at the School of Higher Studies in Social Sciences, submitted a very elaborate report in 1994 to the National Council for the integration of immigrant populations on these complex but ignored questions.<sup>7</sup>

This report was never published by the organisation to which it was addressed, no doubt because its conclusions were too radical. They put at the heart of the analysis a double discrimination between men and women and French people and foreigners, which served the cause of patriarchy, and also the maintenance of the dispositions in vigour during the colonial period. In 1995, it was finally published by *Hommes et libertés* ('Men and freedom'), the review of the *Ligue des droits de l'homme* ('League for human rights').

It is worth recalling that during the colonial period in Algeria, the Muslim 'natives', just like the Jewish natives until the Crémieux Decree of 1870, were French subjects but not French citizens. Their personal status was defined so as to exclude them from citizenship. It was not the case that renouncing the personal status of being a Muslim – that is of renouncing customs incompatible with the Civil Code – was enough to obtain full nationality. The proof of this is provided by Muslims converted to Catholicism, who still remained governed by the Code de l'Indigénat ('Code of the Natives').<sup>8,9,10</sup>

In present day France, equality of rights between men and women and the principle of equal treatment as between nationals and foreigners are guaranteed by the French state – even more so between all French citizens whatever their origins. Reality and practice, however, often contradict these principles.

## Putting secularism (*laïcité*) into question

The fact of seeing the identity of French citizens being reduced to their religious identity is very worrying. As noted by H. Pena-Ruiz (philosopher, professor and author) at a public meeting which I attended, "to assimilate an individual into a particular group, is to impose on him the risk of having to make a submission that

is hardly conducive to his freedom. To stick collective religious or other identities on people is to divert them from seeking universal rights, which are the vectors of fraternity and liberation."<sup>11</sup>

It is in the family that one finds the source of one's identity, where the meaning of belonging to a community is expressed. Laws and customs are often portrayed as 'Islamic', and therefore unchanging and not open to discussion, in order to discourage women from raising questions about them.

Associations and groups of women in the Maghreb are working to inform women and young people about their rights, while at the same time continuing to exert pressure in favour of further legal reforms. One example is Collective 95, which brings together Algerian, Moroccan and Tunisian women activists. This Collective drew up a draft law on personal status with 100 points, which would apply to the three countries of the Maghreb. This proposed a secularist code, based on equality between the sexes, which drew its inspiration from the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

In May 2006, women activists from the three Maghreb countries met in France, to share their experience of the fight against discrimination and fundamentalism and to set up exchanges between women in France and women in the Maghreb. These activists, les Caravanières ('Women of the Caravan'), joined with other organisations (Femmes Contre les Intégrismes, Ligue Démocratique des Femmes du Maroc, Ligue Démocratique des Droits des Femmes d'Algérie, 20 Ans Barakat, Association des Femmes Tunisiennes, Association de Solidarité avec les Femmes Algériennes Démocrates, etc.) and visited Lyon, Paris, La Courneuve, Montreuil and Dijon. Under tents set up by local activists, statements were made and discussions held. It helped to show how widespread the applications and implications of codes of personal status from the Maghreb were throughout France.

Questions of personal status are of crucial importance for women, since if this area is the bastion of male domination, it is also the Trojan horse for an aggressive multiculturalism. France has ratified the CEDAW and should, therefore, guarantee equal rights to everyone living in France, *a fortiori* to any woman with French nationality, whatever her original nationality – and whatever her 'origin', or in other words the nationality of her parents! – but also to any foreigner. Anything that contradicts these fundamental rights should not be accepted on the grounds that it is the law elsewhere.

But contrary to the principle of the equality of rights between men and women and of equal treatment between nationals and foreigners, which is guaranteed by the French state, we can see a drifting away from this in the speeches and behaviour of representatives of the secular (*laïc*) state and of judges, who seem to be preparing us for an abandonment of French-style secularism (*laïcité à la française*), in favour of an Anglo-Saxon style secularism. They put forward a form of secularism intended to accommodate religious differences.

The use of religion against the rights of women and of citizens is an attack on secularism (*laïcité*), and no such attack can be ignored, since no breach against secularism is harmless. Citizenship in France is above any communitarian affiliation, since it is what makes us all equal citizens.

Nicolas Sarkozy, before becoming President of the Republic, said: "There is only one law that should prevail, it is the law of the Republic, and it is valid for everyone everywhere throughout French territory. We will not accept any system of domination, even from the family."<sup>12</sup>

We are still waiting for these words to become reality.

## Endnotes

1. The medical certificate required from both future spouses (Article 7b of the Family Code) has been turned into a certificate of virginity. Following campaigns by associations in France and in Algeria, clear instructions have been issued to officials in the marriage registry. Unfortunately in France, some doctors still issue these certificates, believing they are providing a service.
2. [www.legifrance.gouv.fr/html/codes\\_traduits/code\\_civil\\_textA.htm](http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm)
3. The oral form of repudiation (the *talak*) consists of pronouncing three times the words "I repudiate you." The five decisions of 17 February 2004 of the Cour de Cassation created law in the matter of recognition and exequatur in France of foreign decisions which pronounced repudiation by the application of Muslim law. Repudiation is, therefore, no longer made *by* exequatur in France.
4. The association Femmes Contre les Intégrismes (Women against Fundamentalism) was set up in 1995. It published the first guide *Madam, You Have Rights*, drafted by lawyers in 1996 and distributed 15,000 copies to associations. The fourth edition was published in 2008. This guide is also a useful tool for activists in associations ([www.fci-asso.org](http://www.fci-asso.org)).
5. Stéphanie Le Bars (2007), 'Young Muslims want to be freed from civil marriage', *Le Monde*, 8 June.
6. Marina Da Silva (2005), 'These French women victims of foreign law', *Le Monde Diplomatique*, November.
7. The report of Françoise Gaspard appeared in the review *Hommes et libertés* 84, Paris June-July-August 1995.
8. Laure Blevis (2003), 'French citizenship through the mirror of colonisation' – a study of requests for naturalisation of French 'subjects' in colonial Algeria, Dossier *Genèses* 53, December.
9. André Bonnichon (1931), *The Conversion to Christianity of Algerian Muslim Natives and its Legal Consequences*. Doctoral Thesis in Law, Sirey.
10. Patrick Weil (2005), 'Le statut des musulmans en Algérie coloniale, une nationalité française dénaturée' ('The status of Muslims in colonial Algeria, a de-natured French nationality'), *La Documentation française*, Collection Histoire de la Justice, Paris.
11. Conference given by H. Pena-Ruiz in Paris, in 2008.
12. Interview with Nicolas Sarkozy, then Minister of the Interior, on Europe 1. Nicolas Sarkozy gave to understand that France could call into question the Franco-Moroccan Convention which enabled 'personal status' to be applied to Moroccans living in France.

*Mimouna Hadjam*

## Islamism Against Women Throughout the World

***This article was written in the middle of the debate on the advent of the 'affair of the headscarf'. It is intended for those who have forgotten or denied the cause of women, including those thought to be natural allies, for those who lead by ignorance or intellectual laziness. This is an article written from having had enough of the nonsense talks at that time, in order to inform of a certain reality of Muslim women in France. Yes, the shari'a flows between the threads of the French Civil Code. Yes, girls are forced into marriage which is a crime: rape. Yes, some of our neighbourhoods are fenced in by a new social force, often encouraged by institutions and political parties under the pretext of social peace; this force is called political Islam.***

The ideology which bears the name of political Islamism cannot avoid being affected by economic and political changes in the international scene, but it still primarily concentrates its attacks against women. Muslim women have to be reminded of this fact. In Afghanistan, Algeria, Nigeria and Iran, it is Muslim women that have been murdered, tortured and stoned to death.

Happily for us immigrant women or women born to immigrants, we do not have to live in this situation. It is still, however, necessary to recognise that France has been contaminated by this ideology. It does not, indeed, have the barbaric face that it shows in those other countries, but thousands of women immigrants or those born to immigrants are victims of a double discrimination: victims of racism on the one hand, and of a patriarchal and obscurantist ideology on the other.

### The application of *shari'a* law in France

In the area of individual status, which governs personal relations (marriage, divorce), women living in France find that French courts apply to them the legislation of their country of origin.

More and more women find themselves divorced by repudiation in their country of origin by their husband, who pronounces the magic formula three times (as prescribed by the *shari'a*). This has simply to be validated by an exequatur in France for the woman to find herself divorced according to Muslim law, and notably deprived of all her rights to housing and to authority as a parent, including responsibility for her children. This is not a recent development. In 1990, a young Moroccan woman

aged 26, living in La Courneuve<sup>1</sup>, saw her four children, all with French nationality, taken from her by their father in Morocco, who considered that his wife was showing notions of undue independence. Divorced in her country of origin, the French court awarded custody of her children to the father. The French legal system merely endorsed a Moroccan judicial decision, despite a report from French social services that was favourable to the mother. Such women can never remarry, nor live with someone else, because of religious and community pressures and also because they always maintain the hope that their children will be returned to them.

A further humiliation allowed by *shari'a* law is polygamy, officially banned in France, but still tolerated 'in the name of respect for the culture of others'. The possibility of this has a great impact on the mentality of women, since they live in fear of a second marriage by their husbands. This inculcates a spirit of dependence and submission in them. There is little point in entering into religious considerations or theological explanations. Polygamy is a modern version of slavery, since it allows a man to seek one, two or three wives, and then to divorce them as he sees fit and meanwhile to exploit them as he pleases.

As the right to remain in France is only guaranteed to the first wife, any other wives have no legal status and become household servants obliged to do any tasks. Many births are declared in the name of the first wife, thus denying the rights of the mother and of the child. This increases the pressure on these women.

In this miserable situation, one can only envisage that there may be some slight improvement as regards to young women and girls, but this is to forget the scorn in which women are held. This is written in capital letters throughout our suburbs, where obscurantism reigns. It should be recalled that feminist networks have argued for a long time in favour of an autonomous status for immigrant women, enabling them to obtain leave to remain in France, independently of their husbands.

## **Forced marriages and legalised rape**

There have been scandals over forced marriages. Here again, one should not underestimate the weight of pressure from families and the innocence of girls who never openly say yes or no. We need to understand how this terribly retrogressive situation has come about involving girls in France. It concerns first of all the life of young girls who, even if they have been to school, still live under the permanent control of their families and of the community in the areas where they live.

They are watched over by their brothers, by their brothers' friends and by the people of the neighbourhood. Their movements are limited and the suburb becomes for them like a village in the depths of the country. Their parents fear that their daughters will become too French, that they are living a debauched life, because they are seen smoking a cigarette or in the company of a young boy, or because they are dressing in too 'sexy' a fashion. The solution of marriage is 'proposed' to

the girl. Few girls resist this, since the pressures on them are very great. One can make a comparison with the situation of 10 or 20 years ago, even though girls were then less inclined to submit. Because the jurisdiction of the community has expanded, the wish to save their own skins has been added to the obvious difficulty in the way of girls complaining against their families. Girls are regularly victims of violence from their brothers, which their mothers witness helplessly. One mother of five children at Drancy<sup>2</sup> tells, "My sons of 17 and 25 beat their two sisters, aged 16 and 23, practically every day, even though they are serious girls – one of them is a medical student. It really would be better for them to get married."

These arranged marriages take place in the country of origin during the summer with a cousin, who can in this way obtain the precious document giving him the right to stay in France. The changes in behaviour as regards to marriage are not the same for all the immigrant communities. For immigrants from West Africa, marriage has become a form of legalised rape. The Group for the Abolition of Sexual Mutilation (GAMS) is leading a national campaign in educational establishments against such practices.

Young girls, sometimes very young, are 'married'. In reality, this means rape repeated every weekend, usually at the home of the parents, but sometimes in a hotel or hostel. If the husband is in Africa, the young girl is taken there, and she can return once the marriage has been consummated. It is inadmissible that, in France, minor girls should be regularly raped by their 'husbands', who are often not legal immigrants but are waiting for the girls to reach their majority in order to arrange a civil marriage. Two sisters living at Saint-Denis<sup>3</sup>, one a schoolgirl of 13-and-a-half and the other aged 16, were 'married'. No one noticed anything until they became pregnant. These girls were obliged to abandon their studies and play first the role of 'wife' and then that of mother. This is something that is happening in France, with rapes authorised by a religious undertaking, given in front of witnesses. One can only cry out against this backward-looking development which works against women and girls, when one considers the hard struggle that feminists carried out to obtain the criminalisation of rape. We need to ask ourselves the reason for this retrogressive development that we have been experiencing for the past 20 years in our suburbs. It is for such reasons that it is vital to deny the grip of fundamentalism and religion over our lives as women, since this grip simply strengthens the theology of machismo, of male domination.

## **The affair of the first headscarves**

It was 1989 when the affair of the first headscarves broke out. This was two years before the Gulf War, which marked a crucial turning point for immigration. The Gulf War emphasised the confusion over immigration. This could not find any political expression, lest it might be made to seem part of Saddam Hussein's fifth column. It should be recalled that the government had set up all the phases of its plan Vigipirate.<sup>4</sup> Several Islamic associations profited from this to appear in public and

take the initiative in this argument which was being conducted in a subterranean manner. Was this something new? No.

The immigrant community or, more precisely, the immigrant communities living in France, had never lost contact with what was going on in their countries of origin and in the outside world. They can hardly be criticised for this. In the context of the economic crisis at the end of the 1970s, which hit them both first and harshly, the Islamic 'revolution' in Iran at first found a favourable response from among immigrants. It should be remembered that the Shah's regime, despised by the Iranian people, but supported by the US, until it was swept away by Khomeini, enjoyed widespread support from everywhere in the world, including the French left. This major world political event had immediate repercussions in France.

The strikes of the 1980s, and particularly the strikes of the 'Spring of Dignity' at Citroen, saw the first demands for mosques to be established inside the workplace. Without going as far as the frantic reactions of Pierre Mauroy<sup>5</sup>, who saw fundamentalists everywhere, we were among several political activists and their associates who expressed our disquiet at this idea, which was held by only a minority, but was still noticeable.

The first headscarves appeared at this moment among the second generation of immigrants, and were worn by well-educated young women, notably the most politically minded on the left (one of the leaders of the march of the descendants of North Africans (*beurs*) wore the headscarf in 1984). The most significant development after that was the reappearance of polygamy among immigrants from the Maghreb, which had previously completely disappeared. At this period, many Moroccan and Algerian women spoke in our offices about a perceptible change on the part of their husbands: "Since my husband became unemployed, he has changed. He has gone back to the mosque, where he finds people who give bad advice and urge him to take a second wife in order to rebuild his confidence in himself." Then came the earliest demands for courses in Qur'anic morality, which were heard within associations who organised help for homework or in municipal youth services. Such demands were met, as in Seine-Saint-Denis, in the Nord, where accommodation or special periods amid existing activities were arranged.

The Islamist movement was built up through the targeting of certain districts, where there were strong concentrations of Muslims, besides poverty, unemployment, precarious living conditions and drugs. This cocktail of poor living conditions was fertile ground for the development of shadowy obscurantist ideas, just as it was for the development of the racist ideas of the National Front.

## **The closeness of Algeria**

In this context, the Islamist movement worsened the living conditions of immigrants and particularly those of women. Unfortunately, few associations have had the clear-

sightedness to denounce this development with a view to protecting the immigrant population from political Islamist pressure. These pressures became stronger with the arrival of the FIS in Algeria, where the repercussions were swifter and deeper.

Algeria is close at hand, and immigrants travel – that is the parable. The young people of Algerian origin, whose history and that of their parents has been stolen, who are told they are French, but who find themselves rejected and excluded, have become enthusiastic about this new version of history, while feeling united with their despised brothers in Algeria. The Islamic networks exploit this in order to improve their organisation and start recruiting from amongst those immigrants who have recently become graduates. Mutual aid associations have sprung up to help provide for the necessities of life. One can begin to observe how their work is directed specifically towards women.

In the Nord, young Frenchmen converted to Islam are sent off door-to-door to talk particularly to women. If the parents are impressed by these young men with blue eyes and blond hair, who can speak perfect Arabic, they still remain prudent and warn their children: “We are Muslims and we teach you about our religion just as our parents taught us in their time.” Their daughters are keen participants at conferences and discussions and start to assume a certain status. In the region of Douai, they have been joining parents’ associations, women’s groups and para-municipal bodies, exerting a degree of influence over young girls. They see themselves as having a mission to bring ‘morality’ back to districts abandoned to 60 years of communism, and thus of lack of belief, with a view to re-Islamising it.

When the FIS was dissolved in Algeria in the early 1990s, some of its militants found asylum in France, particularly in our districts, and they strengthened the fundamentalist aspects of Islamic movements in these areas. The pressures being exercised have changed in nature, moving from the private sphere to the public arena, but always working against women. Thus, many associations have received ‘visits’, and women who attended their meetings have been threatened for going to courses in literacy. Campaigns of intimidation have been launched against the brothers of girls who have been to dances or the theatre. Their brothers have been accused of being idiots. Rumour-mongering has been fostered against the alleged loose morals of feminist leaders in local districts. They are alleged to be atheists and, therefore, necessarily criminals and prostitutes.

For years at La Courneuve, racist and sexist insults have gone together in a permanent atmosphere of intimidation. Some women were followed to their homes and received anonymous letters, before two women activists were physically attacked in 1994, under the pretext that “they were debauching Muslim women by making them learn French”.

In the Nord, the same association (one has to laugh about this) found itself the victim of attempted sorcery, designed to spread fear amongst women and discourage them from entering their premises.

## **The complicity of the left**

The activities of the Islamists are by no means new, but we had to wait until 1994 for a measure of acknowledgement of what was happening, when the attacks at Marrakesh took place, in which two French citizens from La Courneuve were involved.

Many of our commentators and friends on the left, who had been too busy threatening Algerian victims of fundamentalism with the International Criminal Court and fighting for the recognition of political refugee status for those who were persecuting them, became aware that such things could happen in Europe.

We started to be heard when we talked about the existence of political Islamism in France, which covered several cities, and about the fact that many young Frenchmen were enrolling in Bosnia and Afghanistan and also that there was indeed a degree of complicity within the services of the government who gave asylum in France more readily to Islamic militants than to progressive activists who were really under threat. Yes, there was such a complicity in several municipalities controlled by the left. They preferred to buy 'social peace' by making arrangements with Islamist associations and by making accommodation available, as happened at La Courneuve, Nanterre, Stains, Drancy, etc.

In recent years, the Israel-Palestine conflict and the war in Iraq have been further events that have encouraged young people to turn towards fundamentalism, even more so after the events of 9/11 strengthened suspicions against the Arabs, enabling Bush and Berlusconi to provide a platform to all the scoundrels on the planet about the clash of civilisations.

## **It is necessary to remind ourselves of several truths concerning Islam and about religion in general**

It is unfair to condemn one fifth of humanity, particularly since the evil of fundamentalism has touched every religion. The Christian Church lived under the sign of a permanent inquisition during the period of holy war, which provoked expressions of hatred and the Crusades. Judaism, however much it has been a victim of persecution, has conducted its own persecution against Palestinians, whether they are Christian or Muslim. Hinduism has gone astray and has become bloodthirsty towards its Muslim minority. This should not prevent us from criticising or even blaspheming against religion, without, however, insulting the followers of religion, something that we have done in the case of the headscarf.

We should hold on to our feminist positions, and not appear 'holier than thou', nor feeble, even less blameworthy, but should assume all our responsibilities, while remaining united with immigrant women who are the first to suffer in this situation.

## **Headscarves and the forced submission of women**

We are opposed to all form of headscarf, whether worn in Tehran, Kabul, Algiers, La Courneuve, Lille or Marseille, whether it covers part of the body or the whole of it, since all the headscarves in the world say one single thing: the forced submission of women to a programme for their oppression.

We have analysed this phenomenon among immigrants, and we are aware that for many women, the headscarf does not always have the same meaning. For the women of the first generation, it means above all a tradition of the countryside. And then – let us be honest – these women are so rarely visible that few people have really asked about how they are confined within their community. It was necessary for their daughters not to follow their example, but to adopt a style from outside the Maghreb for a debate to be launched in French society. These adolescents sometimes wear a headscarf in order to please their parents, especially if these are recent immigrants. They have the intention simply to gain some confidence, but soon find they are trapped. If wearing the headscarf is at first used as a means of obtaining permission to go out, the family circle regards it as a means of repression, and it becomes impossible for the girl to take off the headscarf, since going out without it is regarded as a sin and an insult to Islam. And so the headscarf as a means of showing one's identity soon becomes a headscarf that is an obligation. And with the multiplication of Islamist associations, and mosques where lessons are given, one soon sees more and more very young girls as 'apprentices of the headscarf'.

On Wednesdays and Saturdays, one can see more and more young girls, under 10 years of age, in the housing estates on their way to religious courses, headscarves on their heads. This apprenticeship in wearing the headscarf is being carried on under the impulsion of the surrounding community, to encourage the girls to demand 'their' headscarves when they approach the age of 14. This search for ethnic identity among adolescents is encouraged by the women, and its supporters ought to be accused of racism.

This use of women from the earliest age is one of the aims of political Islamism. The Islamists have an army of militants at their disposal for this purpose. Not all immigrant women become victims, and the immigrant community, like the rest of French society, is split by contradictions. Even if the immigrant community in its great majority belongs to the working class, one can find among them opinions from the right, the left, the extreme right – just as one finds rich and poor. This is the reality we have to deal with.

Political Islamism has been able to manage this, and among the militant girls are to be found university graduates who fight for Islamism in the political field. We have to regard them as political opponents.

## **Moral re-Islamisation among women divided among themselves**

These militants work very hard to make Muslim women and their families feel culpable over their children's failure at school and over their delinquency. No direct accusation is made, but everything is suggested. In addition to the important psychological and moral help they provide to the poorest women, they provide material and financial help (by looking after children and paying for holiday homes).

One of their objectives in the urban areas is moral re-Islamisation. They have had success here with a ban on non-*halal* meat, after enormous pressure had been exerted on the parents. Several years ago, parents who did not eat non-*halal* meat themselves encouraged their children to do so in school canteens: "Eat, and if God wills, He will forgive you." This is all finished. In the Nord, there are school canteens where hungry children stuff themselves with salads and sweets because of this ban.

No child in an urban area eats any chocolate without reading what kind of animal fat it contains. More radically minded people go further and forbid the eating of cheese, because it is a fermented product. Fewer and fewer girls go to leisure centres, or if they do go, they stop doing so at the age of puberty, because they are increasingly required to go to the mosque. The same phenomenon can be seen in classes for snow sports, open air classes or language courses, to which parents increasingly do not want their children to go, on the pretext that the buildings are shared between the sexes. This situation is getting worse, and one is aware that the mothers have been 'worked on' by militant women.

The month of Ramadan is the main time for recruitment. Women activists visit women at home, particularly those living in difficult circumstances: divorced women, rejected women, prostitutes and criminals. These latter categories find a certain acceptance in Islam, and women activists score extra points during the fasting month of Ramadan, by criticising backsliding believers and unbelievers, and condemning any atheists from their standpoint of veiled women. So one can say: "It's just too bad for them, let them sort themselves out. That veil they want – it's their own free choice." For them perhaps, but we have to stop them contaminating other women, since the distinction between 'wished for' and 'obliged to' or 'chosen' is a narrow one in places where there is no social mix and where girls are in danger of being quickly thrust under political Islamism.

Veiled women present a real danger to those who are not veiled. In literacy classes, there is a majority of unveiled women who are ready to make jokes during pauses between classes and to talk about men. During one such course at Drancy, a veiled woman came in. This meant a swift return to moral order and complete silence. Discussion turned to religious matters, even though she had made no such request. It was enough for her to appear with her headscarf for the rest of the group to be terrorised. The presence of a single veiled woman imposes a so-called 'respect',

which prevents any open discussion. This adds to the pressure on anyone who wants to take a contrary line.

As for cigarettes, that is another matter, since veiled women oblige other women in any group not to smoke, even though there is no ban on smoking in Islam. They simply say that it is not a proper thing for women to do. So all this leads us to oppose all headscarves, and to do this not only from a Republican point of view, but also from a feminist one.

## **Direct consequences concerning women's rights and the validity of the law on secularism (*laïcité*)**

We need to tackle the question of the headscarf from the angle of political Islamism and its direct consequences for women's rights. We are aware that *shari'a* law nowadays succeeds in passing through the mesh of French law, by means of bilateral agreements and legal exequaturs, and that forced marriages are on the increase. What is going to happen in the future, if we lose the battle over the headscarf? The urgency lies in the fight to defend secular (*laïque*) state education, even if this fight should not make us forget the deficiencies in the current condition of state education, since what damages the school is not something cultural, but much more the reflection of existing social movements to exclude people.

Having said that, we do not believe that it is discriminatory to require a veiled girl to take off her veil when she reaches the entrance of her school. In 1989, we opposed the exclusion of three girls from school at Creil, since this exclusion had been made by a school head well-known for his rigid attitude to the law. In addition, the controversy began in the context of a France influenced by the rise of the extreme right and of anti-Arab racism (this period was a lethal one for dozens of young immigrants from North Africa). Together with the feminists, we thought that modernity would triumph over ignorance.

We were wrong, and the trap closed over women. We were not fanatical supporters of a law, since we knew from experience that a law could not settle everything. All sorts of laws against racism have not succeeded in abolishing racism, but at least they enable victims of racism to defend themselves. If most people do not need to concern themselves over forbidding genital mutilation, this is thanks to the law that forbids such a practice. It follows from this that we hold that the law in favour of secularism (*laïcité*) is the best way to provide support to women and girls who oppose being contaminated by fundamentalist ideas.

No law provides a panacea and we continue to fight for a proper social policy for deprived urban areas, concerning education, employment and social housing, so that children are not transformed into apprentice fundamentalists. The state needs to be active in these matters and not simply act through the police. And in reply to all those who argue that this is a law laid down from the right and therefore a racist

law, we reply that the law to accept abortion was a law of the right and of a minister of the right, Simone Veil. This did not prevent the feminist movement and all the left from saluting such a feminist triumph.

If laws can help us to construct equality between men and women, so much the better, since equality between the sexes leads to democracy, and if there is any place where that can be learned, it is at school.

## **Building an anti-sexist and anti-racist world**

We are against the fundamentalists, for whom the battle over the headscarf is a step to test the forces of secularism (*laïcité*) and then to go further towards a ban on sport or of any mingling of the sexes.

We are also against those who support the 'rights of men', and who claim to want to support the culture of others. This means a position of cultural relativism which chooses to express itself in this way: "So long as they veil their women in the quarters where they live, in the schools their children attend, genitally mutilate their daughters, beat their wives or rape them, that is their business; it isn't ours." This is a neo-colonialist attitude, very far removed from the spirit of internationalism that many of them claim to support.

As for those who come from the ranks of immigrants, whether intellectuals or not, who have decided to support the veiling of girls, we reply in the name of liberty by asking them not to forget their comrades murdered by barbaric mobs in Iran or in Algeria, who have eviscerated pregnant women and decapitated babies. Before talking of liberty, it would be right to ask those who claim to support this ideology why they have never distanced themselves from those who perpetrated Muslim genocide in Algeria in the name of Islam.

We have made a decision to support an anti-sexist and anti-racist world, which knows no barrier between colours and sexes. This is why we have decided to work for the most far-reaching form of secularism (*laïcité*) that is linked with anti-racism, which should apply to everyone and serve as an antidote to all forms of fundamentalism.

*Source: Repubblica, 'Lettre autonome de la Gauche républicaine', Sep 2004. Thanks to Repubblica for authorisation to reproduce this here.*

*This article was originally published at: <http://sisyphe.org>*

## **Endnotes**

1. A suburb north of Paris.
2. A suburb north of Paris.
3. A suburb north of Paris.
4. Vigipirate is a national urban security plan.
5. The first Prime Minister of the new socialist President François Mitterrand.

## Chahla Chafiq

interviewed by Clara Domingues, July 2010

# “Democracy isn’t a Supermarket”

***A conversation with the writer Chahla Chafiq, who draws on the experience of Iran to comment on the links between secularism (laïcité), human rights and democracy.***

**You created the concept of ‘mutilated modernity’. Tell us what this term covers and how it concerns human rights and secularism (*laïcité*)?**

I was inspired in this by the experience of Iran. Before the arrival of the Islamists in 1979, Iran lived under the regime of Shah Pahlavi, who had launched major projects of modernisation, but opposed any political modernisation, in particular the freedom of speech and of opinion, under the pretext that social and economic development had to come before democracy. This ‘mutilated modernity’ led to a socio-political vacuum, which enabled Islamism to put itself forward as a way of salvation and a provider of justice and dignity for the oppressed. It thus contributed to the setting up of a totalitarian regime, which is still in place, and under which every individual has to submit to laws that are claimed to be sacred.

If ‘mutilated modernity’ points to the dialectical relationship between the absence of democracy, of human rights and of secularism (*laïcité*), the feminist example demonstrates how this relationship exists as a positive element.

Human rights existed in France before democracy. Men were born free and born equal before the law, apart from women. Olympe de Gouges, who argued for the application of these rights to women, was guillotined. It was only later on that democracy made possible the development of factors that were sufficiently powerful to lead to social progress.

Secularism (*laïcité*) is also a matter of struggle. It emerged from a power struggle between progressive movements and the Catholic Church, which was still powerful at the beginning of the 20<sup>th</sup> century. It reduced Catholicism to its place: one religion among others, whose dogmas were not called on to take precedence over human laws. Henceforth, society has had the same law for all, believers and atheists alike. Secularism (*laïcité*) brings equality in this area.

Even so, secularism (*laïcité*) and democracy might never have come about without social actors ready to support their introduction. We can never regard them as permanent acquisitions. Even today, there are local battles over them. Democratic

and secularist forces have to fight on the ground in opposition to politico-religious movements that are against secularism (*laïcité*), and in particular against those movements that proclaim their moderation. Several elected deputies and social workers have formed alliances with these for the sake of a semblance of social peace, but at the cost of confining part of the population within the framework of a totalitarian and religious identity.

**Some leftist forces make strange alliances with certain Islamist movements, while they unreservedly oppose Christian fundamentalism. How do you explain this?**

Since the 1980s, Islamist movements have made advances at an international level and in France. They have been greatly encouraged by the Iranian revolution which put forward a version of Islam on the social scene that claimed to emancipate people. Several countries were already living under Islamic law. But it was this revolutionary Islam that carried the day in Iran. This event greatly influenced the left and the extreme left in Iran, who wanted to fight against the colonialist and imperialist West.

A sector of the left in France and of its intellectuals took up the same posture. Some of them still maintain this position, criticising secularism (*laïcité*) on the grounds that it serves the interest of the West that is racist and seeks to dominate. Here too, there is a risk of creating a socio-political vacuum, which provides Islamism with every scope to put itself forward as a solution for forms of discrimination that have been experienced and as a solution for what is portrayed as depravity among women, who thus have no other choice but to veil themselves as a defence against a sexual liberation that is likened to pornography.

Anti-racism should not serve to help politico-religious movements. The latter do not bring us up against religious actors, but against movements that make ideologies of religion, to the detriment of individual freedom. The veil and the *burqa* do not represent a purely religious question any more than do abortion or contraception. We have to take the discussion of these issues out of the religious area.

**What do you think about the strategy of certain social or political movements who go in for religion in order to gain the ears of Muslim believers?**

Some thinkers propose integrating the return of a religious approach into political discussion in order to construct a modernity which respects cultural and religious differences. Others urge a re-Islamisation as an element in a new identity chosen by various actors, without considering the impact of this choice on social or individual life, particularly over sexual relationships in society.

Islamic feminism, a concept developed in Western universities and then exported into the field, plays on this tendency to make the religious a dominating element

in identity. So that for those who are Muslims, the religious identity dominates all the other points of reference in their identities, whether these are social, cultural or political... With secularism (*laïcité*), which guarantees the separation of Church and state, and the primacy of politics over religion and the freedom of conscience and expression, it is the autonomy of the individual which carries the day. We can henceforth live our multiple identities without fear of any sanctions.

This is why, even if Muslims are feminists, feminism as such cannot be qualified as Islamic, without involving itself in a globalisation of identity. Islam is a religion that was revealed in the 7<sup>th</sup> century, and whose texts have been the object of various interpretations. But from the moment that it sets itself up as law, it follows the example of any religious law and underwrites the hierarchy of the sexes and male domination, for the sake of preserving the sacred order.

Muslims are many and diverse, just like other believers and atheists too, and political movements that seek to reinvest in religion confine them within a collective totalitarian identity, which is in opposition to the system of democracy. Democracy isn’t a vast supermarket where each group can choose the values that its finds to be suitable. On the contrary, democracy projects the values of liberty, equality and solidarity as common points of reference. It thus opens the way to socio-political struggles which can lead towards the realisation of these values.

*The original interview, in French, was first published at:*

*[www.suite101.fr/content/chahla-chafiq---la-democratie-nest-pas-un-supermarche-a14727](http://www.suite101.fr/content/chahla-chafiq---la-democratie-nest-pas-un-supermarche-a14727)*



*Gita Sahgal*

## ‘The Question Asked by Satan’

Doubt, dissent and discrimination

in 21<sup>st</sup>-century Britain

***This article, an analysis of the role of religion in British life, examines the ways in which religion is promoted by British governments as part of public policy, leading to the shrinking of secular spaces, particularly in education. Successive governments have failed to recognise the lessons of the Rushdie affair and promoted fundamentalists who are Christian as well as Muslim. Class and educational aspiration rather than religiosity have opened the space for religion in public policy. Fundamentalists have also been embraced by identity anti-racists, while queer theorists and activists attack secularism and label those challenging Islamists as Islamophobes. Communalism is the default mode of academic theory, public policy and activism, putting at risk the gains made by egalitarian movements against racism and discrimination.***

### Introduction

“When people are told that they cannot freely re-examine the stories of themselves, and the stories within which they live, then tyranny is not very far away.” – Salman Rushdie

Britain is constitutionally a Christian state and also one of the least religious countries in the world. That is the British paradox. Religion drives many aspects of social policy and foreign policy, but for entirely expedient political reasons. Faith has little to do with much day-to-day life yet recognition of what have become known as ‘faith-based communities’ is central to political decisions on a range of issues. Freedom of speech, education and counter-terrorism strategies are all influenced by a range of assumptions around the benefits of a religion-based policy.

This article examines why the state that has never embraced secularism as a constitutional principle is abandoning the idea of a largely secular society. Contrary to much writing that takes for granted the rise of religiosity, I shall argue that questions of religion in Britain often arise through race or class concerns, with religion being used to contain or restructure emotional and sexual relations. The promotion of religion through a series of state policies is producing a society that is becoming increasingly ‘de-secularised’ in its social arrangements, with fundamentalists from all religions as the chief beneficiaries. Their organisations

are receiving millions of pounds from the government. In fact, the term that most suits the social engineering of this epoch is 'communalism', which has become the default model of society. I understand the term 'communalism' in its South Asian sense as the idea that individuals share a common political identity by virtue of a single characteristic such as ethnicity, caste or religious identity, and that they must be dealt with collectively as a group based on that characteristic.

Meanwhile the under-rated 'British value' of a healthy scepticism towards organised religion underlies actual attitudes across a range of ethnicities and classes. So although religious fundamentalist organisations are active across different religions in Britain, all of them influenced by and influencing transnational movements, they are being contested too.

Some of the contestation is open and ferocious, but there is also a highly subdued, internal process which may attempt to challenge elements of fundamentalist politics but fails to challenge the communal model. The theme underlying these concerns is the reconstitution of the far right, through the use of religion, as a direct result of government policy.

The first part of this article looks at the issue of secularism, and some of the support for and attacks on the idea of secularism; attacks which have intensified in the course of the 'War on Terror'. The long shadow of the Rushdie affair shapes debates and policy in relation to minorities, particularly Muslims. Most of this article does not address dominant discourses around secularism but instead looks at the fissures within progressive politics of secular and non-secular positions. I use the term 'secular' rather eccentrically – although in a way that many South Asians would recognise – as one who believes that religion should be separated from the state and should not be able to dictate state policy. However, I do not believe that all religion is necessarily private; many people who do have a public religious identity may also be secular in their politics. Conversely, I use 'communal' not to denote degree of religiosity, as people who are irreligious in their private lives or consider themselves secular can take communal positions in relation to public policy.

The article then examines the ways in which traditional Church of England and Catholic schools have helped to ensure class and racial segregation, while a new generation of evangelicals are being enabled to promote Christianity through a new system of schooling.

## **Secularism – 20 years after Rushdie**

2009 marks the 20<sup>th</sup> anniversary of the Rushdie affair. Over 20 years later, we should consider what has changed since 1989. Salman Rushdie, who went into hiding for over a decade because of a death sentence issued against him, has survived the death threats, come out of hiding and had a British title bestowed on him. He is now Sir Salman Rushdie. The man who has refused to retract the comment

“Death, perhaps, is a bit too easy for [Salman Rushdie],”<sup>1</sup> and who was part of an international campaign which used the issue of *The Satanic Verses* to launch a sustained attack on freedom of speech and secularism, has also been knighted and is now known as Sir Iqbal Sacranie. Honours given by the British government to the threatened author and to one of his persecutors neatly capture the government’s approach of having at least a ‘twin track’ approach on issues relating to minorities as well as to social control more generally. Neither of the main demands of the anti-Rushdie campaign has succeeded: *The Satanic Verses* has not been banned, nor has the blasphemy law been extended to ‘protect’ Islam rather than just the Church of England. In fact, the blasphemy law was finally abolished in 2008.

In spite of these apparent gains, it would be complacent to see a society in which basic freedoms have been successfully maintained. Across a range of issues a surveillance culture prevails. Part of the architecture of surveillance has been developed as a direct legacy of the Rushdie affair and intensified by the ‘War on Terror’. An exhausted government policy of multiculturalism (which consisted of dealing with minorities through ‘community leaders’) was transformed by the Labour government into a full-blown programme of courting the religious right. In relation to Muslims, it has benefited “the nexus of Brotherhood, Jamaati and Wahhabi-Salafi that constitute the Islamic right in the UK”.<sup>2</sup> The new Conservative-Liberal Democrat Coalition government in Britain, elected in 2010, has criticised some aspects of these policies in relation to support for Muslim extremism, but it is not clear whether they will be able to end the preference of their civil servants for dealing with fundamentalists rather than secular Muslim groups.

Christian groups have been given clear backing to insert themselves not only into ‘faith schools’ but state schools as well. Policies begun under the previous Labour administration continue to be supported by the Coalition. The greatest beneficiaries of the demonisation of Muslims in general has been the various fundamentalist and communal forces which have increasingly been put in control of managing relations between Muslims and government and of managing control over Muslim populations. As Chetan Bhatt argues, “In the face of religious assertion and an overwhelming communitarian-culturalism, British left secularism (including its Asian, black and anti-racist varieties) is in danger of receding almost to the point of political obsolescence.”<sup>3</sup>

Twenty years ago, the organisation Women Against Fundamentalism (WAF) was concerned that new faith schools were being founded. Today, the government has developed a programme of public-private partnerships in education which will communalise state school provision. As the section on education shows, the issue of separate faith schools has shifted to one on faith in schools – with large sums of public money being made available to a programme of work that transforms education from a system that encourages questioning and inquiry to one where, according to Christian evangelicals, even the existence of doubt is due to Satanic influence. Many of the positions so fiercely attacked when they were views held by Muslims are creeping in largely unnoticed, except for some prominent atheists and

scientists who are battling against religious influence in education. As with other areas of politics, there is a curious confluence of opinion on the left and the right. Many right-wing columnists are quite happy to 'Muslim-bash' but remain silent about the activities of the Jewish and Christian right. On the other hand, much of the left is so implicated in supporting the organisations of the Islamic right that they are silent on the rise in Muslim fundamentalism. They fear criticism may be mistaken for racism and are also apprehensive of being labelled 'Islamophobes'.

Pragna Patel describes the combined impact of the promotion of 'cohesion' and faith-based policies as resulting in a loss of services for women from minorities and a profound shrinking of secular spaces.<sup>4</sup>

Secularism itself is put on trial and scrutinised by a range of post-modern, post-colonial discourse theorists for its links to a linear idea of progress, 'secular time' and always for inherent racism.<sup>5</sup> The idea of linear progress and 'modernity' is elided with the idea of secularism, and seen as a state-centred discourse which minorities in the West have had no part in constructing. In this view, struggles for secularism across the world have been wiped out of the record.

Like 'modernity', 'fascism' is the property of the 'West' not the 'rest'. Influences which demonstrate a clear fascist lineage originating in ideologies that were formed in the prism of fascist anti-colonialism, such as the intellectual foundations of Hindutva, the Jamaat and the Muslim Brotherhood,<sup>6</sup> are too awkward to be named. For the cultural theorist, and the rigorous anti-racist, considerable energy is spent on studiously ignoring this evidence, even where it is readily available. Indeed the test of the true believer is the ability to turn firmly away – from the organised slaughter of gay men in 'social cleansing' operations, from the targeting of unveiled women, from the assaults on minorities and the destruction of their cultural and religious spaces. These are merely the collateral damage of the fight to preserve anti-racist or multiculturalist silences. In a curious piece of double-think, lineages of racism, inevitably originating in the Enlightenment, are drawn out and projected into the future to enforce an anti-racist silence on anyone who might make a criticism that *might possibly lead* to a racist reaction. But what is being silenced may be solidarity with those facing serious crimes and violations, because they are irredeemably tainted with supporting secular universalism. Ayaan Hirsi Ali must be condemned, Qaradawi supported. While Hirsi Ali's political allegiances will be scrutinised, the murderer of her colleague, Theo van Gogh, must in no way be associated with Islam, even though he killed in its name. Qaradawi must simply not be discussed in relation to any of his actual positions. The ideological and organisational lineage that leads to grave crimes must not be voiced.

For this is an analytic frame in which facts are a vulgar intrusion – indeed, they may be considered part of the process of demonisation. Sara Ahmed, for instance, supports the right to criticise, dismissing charges of inaccuracy as 'part of the problem'. Her writing and the authors she is defending illustrate perfectly the way in which criticism of particular Muslim fundamentalists is regarded as evidence of

Islamophobia. During a row about the reissue of a defamatory text, she charged the human rights activist, Peter Tatchell, with reproducing 'many problematic proximities between Islam and violence'.<sup>7</sup> Tatchell had produced a dossier criticising the Mayor of London for issuing an invitation to Yusuf al Qaradawi. In it, he produced examples of Qaradawi's attacks on human rights including supporting the killing of apostates, homosexuals and Israeli civilians. He also refuted Livingstone's defence of Qaradawi as a supporter of women's rights, pointing out that Qaradawi believed in female genital mutilation (FGM) and compelling the wearing of *hijab*. These are presumably the 'problematic proximities' that Sara Ahmed criticises. Neither Tatchell's facts nor his interpretation are challenged. Instead, we are treated to a textbook example of contemporary communal discourse.

Over 20 years ago, some anti-racists decided to support what they saw as the dominant values of their community and they condemned Salman Rushdie. Bernie Grant, an Afro-Caribbean MP, said that Rushdie should live in Saudi Arabia or Pakistan if he wanted to criticise Islam. But others, particularly those such as Southall Black Sisters who considered themselves rebels, defended the right of free speech in the name of their own secular traditions. Today, those who consider themselves transgressive choose instead to silence critics of the Muslim Brotherhood and Jammāt e Islami. Communal identity trumps political disagreement.

Those distancing themselves from any 'discourse' that might lead to the rise of racism fail to notice that the religious right is allying across religious lines in spite of the visceral hatred that many believers feel for other religions. These inter-faith alliances are not subject to the same scrutiny as secular discourses. Any criticism of an individual Muslim, such as the Head of Muslim Council of Britain, is treated as racist criticism of all Muslims.

Tariq Modood, who 20 years ago argued that believers would prefer to live under a Christian state, now says that it is ideological secularism that is the problem, not secularism per se. However he goes on to clarify that it must be a secularism that is properly pluralised, not a missionary or transcendent secularism where the secular stands 'above the fray' as a peacemaker. In Western Europe he argues, "It is the radical secularists rather than the Christian Right that are in confrontation with assertive subordinate Muslim minorities and opposed to their accommodation. It is sometimes Christians that are the peacemakers; this is particularly true in Britain which has mature ecumenical and inter-faith networks."<sup>8</sup>

The inter-faith networks are among the political spaces where Catholic, Christian evangelical, Jamaat and Hindutva representatives meet. Fundamentalists have also intervened in the Commission on Integration and Social Cohesion and the Equalities Commission, chaired by a member of the Christian Evangelical Alliance. The Conservatives have criticised some aspects of the Labour government's counter-terrorism strategies and their links to movements associated with serious allegations of war crimes and crimes against humanity. However, they have no love for the older anti-racist organisations which they see as associated with Labour. The

centrepiece of the Coalition's politics, the idea of the 'Big Society', is likely to favour the provision of services by faith groups as many aspects of the welfare state are dismantled. Secular NGOs such as Eaves Housing, which ran a shelter for trafficked women, have lost out, with the tender being won by the Salvation Army.<sup>9</sup>

The Archbishop of Canterbury, the most senior cleric of the Church of England (the monarch being the head of the Church), has promoted the use of *shari'a* law in Britain, as have senior legal officers. The promotion of religious law may be seen not only as a way of 'accommodating' Muslims (as several law journals have put it) but also of accommodating dissent within the Church of England on the question of gay male clerics and women clerics, which is threatening to split the Anglican Church worldwide.

## From race to religious identity politics

As long ago as the mid-1980s, religion had begun to displace 'race' as a more acceptable marker of identity. In Dewsbury, in Northern England, a group of white parents removed their children from a primary school which had a large number of Asian (mostly Muslim) children and claimed that they wanted a Christian education. It turned out that they were moving out of one school run by the Church of England, to another also run by the Church of England – but with a larger white intake. Meanwhile, Muslim organisations were organising one of the first Muslim girls' schools although they clearly did not want their strategy in relation to girls' education to be exposed.

It is not surprising, then, that British racist parties have begun to talk in terms of 'identity' rather than 'race'. Sometimes this is 'English identity', sometimes 'Christian identity'. Nick Griffin, leader of the British National Party (BNP), a party with fascist roots, is shown on a video discussing how to make the BNP saleable: "So instead of talking about 'racial purity' we talk about 'identity'."<sup>10</sup>

The logic of communal religious identity has become the common sense of the times, with the widespread acceptance of British Islamists as the public face of British Muslims. Increasingly the form of identity that the BNP focuses on is anti-Muslim. The English Defence League too targets Muslims, while claiming to focus on extremists only. Most anti-racists see their duty to support the Muslim right wing uncritically. Activists questioning this approach have been attacked as Islamophobes. One of the few successful challenges to this logic has come from the Quilliam Foundation, a counter-extremism think-tank, founded by former Islamists of the Hizbut Tahrir. Quilliam has issued a series of important briefings challenging Islamism. It has also engaged with the extreme right-wing BNP's attacks on Muslims. Rather than simply calling them 'racist', Lucy James, author of the report, argues that "there needs to be a greater focus on intellectually undermining and countering their arguments". The report makes clear that neither anti-Muslim attacks nor extremist forms of Islam are justifiable; in fact they reinforce each other.<sup>11</sup>

## **A word on religious observance and secular politics**

A few months after the London bombings in July 2005, the BBC conducted a poll on religious identity. According to the think-tank Ekklesia, the poll showed widespread ignorance of other religions. But most adults polled (73 per cent) said that the bombings had not changed their view of Islam; 67 per cent of respondents described themselves as Christians though only 17 per cent said they went to church regularly.<sup>12</sup> The comprehensive professional research in 2006 by Tearfund found that two-thirds (66 per cent – 32.2 million people) in the UK have no connection with any religion or church.<sup>13</sup> Only about 6 per cent of the population go to church on Sunday. These statistics may not capture the range of religious practices of people who are observant in less-established churches or in other religions, but they do point to decline in attendance of the most powerful churches: the Church of England and the Catholic Church.

In August 2005, a University of Manchester study funded by the Institute for Social and Economic Research found that religious belief was declining faster than attendance at services in the UK. According to a report on the website of Ekklesia, data collected annually since 1991 from 10,500 households suggests that fewer people now have robust faith than passively ‘belong’ to a religion. It concluded that the catchphrase “believing without belonging” (originating from research by Dr Grace Davie of the University of Exeter) is wrong in its usual interpretation – which is that there is a reservoir of responsive belief for the churches to draw upon. In other words, ‘passive belief’ could not be translated into ‘bums on seats’ in a church, as many said during a campaign to draw people into churches. But while the Church of England, the established or official church, is in massive decline, many other churches are on the ascendant and growing in people and wealth. The assumption that Muslims or other religious minorities are all extremely observant is also inaccurate.

Nor is there a necessary correlation between religious observance and the desire for social policy based on religion. Although Britain is a Christian state, the welfare state was constructed on universal principles after the Second World War. Social provision such as welfare benefits and the National Health Service were not built by imagining Britain as a collection of diverse communities. Some schools established by the Church of England and by the Catholic Church received state funding, but the vast majority of state schools were non-denominational. It is this precious heritage which is under threat today.

As research conducted by Southall Black Sisters clearly shows, many women who are deeply observant want to be able to traverse different religious spaces for their social and emotional lives and secular spaces for their activism and advice.<sup>14</sup> Southall Black Sisters have been unable to get funding to replicate their research, but it is crucially important to demonstrate what most British people understand – they do not want services to come with religious messages attached and they have never been unhappy with the secular character of much of the welfare state.

In the US, the wall of separation between Church and state established by the founding fathers has created a country vigorous in religious observance. There, politicians must parade their religious allegiance; in Britain, only a few years ago this would have been considered unseemly. Blair in Britain and Bush in the US were public about their own religious views. In Blair's case this was not to declare a 'crusade' but to try and engage conservative and fundamentalist Muslims on the basis of a shared Abrahamic faith.

Many contributors to a previous WLUML dossier exploring issues around secularism and religion either dismissed the issue of secularism as unimportant in the struggle against patriarchy or pointed out that secularism failed to fulfil its promise.<sup>15</sup> During the 1990s, WAF held discussions that both drew on and critiqued many different traditions of secularism. The struggle for a secular state was clearly recognised as not being the property of 'the West' or a finished project with a centralised sacred model. Many different state formations were examined to see the limits to the role of religion in state craft. For every state, the issues of family law and the control of sexuality were central – although different states solved these differently. And in every one, you could point to unfinished business in achieving separation that would clearly create a citizenry whose relations with the state did not have to be mediated through either secular or religious patriarchs. Even in states that had embraced a secular model such as India, family law remained based on separate religious codes rather than a 'uniform civil code', an aspiration still unfulfilled though it is contained in the Constitution. It was clearly recognised that states and nationalist ideologies were also highly patriarchal and in none were women's rights, the construction of gender relations, the control of sexuality and the family to be regulated by equality and non-discrimination norms.

This article draws on the position of WAF: that secularism is a pre-condition for democratic transformation but does not by itself guarantee it. In Britain, questions of state formation have become deeply unfashionable, as some forms of feminist activism have moved into social policy as a tool for gender empowerment and others have entered academia, taking a turn to culture, post-structuralism or post-colonial discourse theory. Universal values are seen as being rooted in the certainties of modernity – with secularism as an unfortunate by-product of a specifically Western Enlightenment tradition, which now only serves to oppress minorities who do not conform to a stereotype of 'enlightenment'. It is said that the time for this particular grand narrative is over.

When the academic Judith Butler spoke to an overflowing university hall in London, about 'the time of secularism', she implied that secularism as an ideology caused racism against Muslims. She criticised Dutch immigration policies towards Muslim immigrants, specifically their deployment of images of gay people kissing, as a test of comfort with 'Dutch values'. While 'secular time' was her target, it is possible that new immigrants were presented with 'Dutch values' such as 'tolerance' and 'liberalism' similar to 'British values' to which politicians frequently refer as a short-

hand for basic common values. In Britain, such discussions have nothing to do with secularism, and everything to do with the terms on which minorities are expected to integrate – to believe in shared values as well as to occupy the same physical space. Not content with pointing out the flaws in the Dutch policy and its targeting of Muslims, Butler took on the whole idea of Enlightenment which had brought the Dutch to the belief in the superiority of their values.<sup>16</sup>

Chetan Bhatt responded with a dense and many-layered response pointing out that the thinking of Muslim scholars had contributed to some of the foundational thinking that fed Enlightenment values, that Islam was not the ‘other’ of the West but part of it. He concluded with a story. In 1999, a white racist planted bombs in three areas of London: Brixton, one of the centres of Afro-Caribbean settlement and one of the ‘frontlines’ of the anti-racist struggle of the 1980s; Brick Lane, the heart of Bangladeshi settlement with a similarly long history of resistance; and a gay pub in Soho. Facing an attack that was simultaneously racist and homophobic, a group of young Bangladeshis visited the manager of the pub in hospital to express their solidarity with him.<sup>17</sup>

For Butler, who has done so much to destabilise the notion of fixed gender identities, the solidarity necessary in these times is to embrace that which appears most ‘different’, even if it means imposing a fixed identity reproducing the same stereotypical assumptions about disgust and acceptance as the Dutch state. Could the ‘Muslims’ viewing these videos be fleeing systematic homophobic attack in their countries of origin? Could they have diverse sexual experiences even if, as grey-bearded patriarchs, they would not admit to them in public? This is not something that Butler’s schema finds room for – as her target is ‘secular time’ and a linear account of modernity. Underlying her discussion, though, is the assumption that there is a single ‘Islamic community’ which stands outside the West *and* its notion of progressive change. Unlike many academics who construct crude binary oppositions in their discussions of race and religion, gender and sexuality, Bhatt draws from and scrupulously acknowledges secular struggles, particularly those of Asian women’s organising.

Kenan Malik, another academic whose formative years were spent battling racism, is another whose work draws from the tradition of what I shall call ‘egalitarian anti-racism’, which has long been able to embrace secular values along with other progressive principles, while ‘identity anti-racism’ – which propounds a view of anti-racism as the formation of a black working class – is deeply uncomfortable with it.

For identity anti-racists, Muslims are the new ‘black’ and the potential for mass mobilisation, especially in response to the ‘War on Terror’, has to be done through the mobilisations of Muslims *as a community*, mainly through an appeal to their victimhood. In an article on the alliance between the Muslim Brotherhood, represented by the Muslim Association of Britain (MAB), Arun Kundnani argues in the journal *Race and Class*:

"In European societies that are marked by structural anti-Muslim racism, it is natural and necessary that Muslims organise as Muslims in fighting the specific racism they face. In this, they are not breaking with the tradition of black anti-racist politics, as has often been assumed, but rediscovering on a new level its original lesson...

"Confronted by an intensely anti-Muslim public culture, Muslims cannot be expected to leave their religious identity behind when they enter the political sphere. To do so, would be to side with the new liberals and their misguided categories of acceptable and unacceptable Muslims."<sup>18</sup>

Kundhani does not address the question of why having a 'Muslim identity' should be collapsed into Brotherhood identity. Nor does he address the politics of the Brotherhood within the anti-war movement.

The Stop the War Coalition, dominated by the far-left Socialist Workers Party, entered into a formal alliance with the Muslim Association of Britain (who were originally seen as elderly, conservative community leaders before they came out as a Brotherhood-associated organisation). This alliance drove out independent left voices and those individuals struggling to express a more secular, public Muslim identity *within* the Coalition.

Another article in *Race and Class* describes how a young organisation, Just Peace, founded by young Muslim activists, was set aside in the process of agreeing a formal partnership between the Stop the War Coalition leaders and the Muslim Association of Britain (MAB). The possibility of building a progressive activist space for younger Muslims, within the anti-war movement, working with an older generation of anti-racists, appears to have been foreclosed by the partnership of two separate and distinct political forces. MAB never joined the Coalition, it remained an external partner – they did not want to join a big coalition 'lead by the left'; Muslims were to be mobilised *as a Muslim communal bloc*, by a separate political entity. Moreover, they were not to be infected with values external to the Brotherhood – which of course would be presented as Muslim values to be respected "if gender-segregated spaces and *halal* food could be provided at meetings, demonstrations and other events, then Muslims could participate in the anti-war movements without being assimilated."<sup>19</sup>

By promoting the Muslim Brotherhood, progressive scholars and social activists have contributed to the shrinking of secular spaces as well as mounted an attack on the idea of secularism itself. In this enterprise, they march in step with the state and new labour to which they see themselves in opposition. Allying with what were called 'non-violent extremism', that is the Muslim Brotherhood and the Jamaat e Islami, was an important plank of the Labour Government's soft counter-terrorism strategy. Deeply implicated in the same strategy, the left largely failed to criticise it. It was left to the Quilliam Foundation to argue:

“Just as Western policies in Afghanistan, coupled with the growth of an aggressive Islamist ideology over the last two decades have contributed to the creation of international terrorism it will take a similar amount of time to turn the tide. Assuming, of course, that we do not sow the seeds for future conflicts while attempting to uproot current terrorism. Therefore the use of austere Saudi Wahhabite clerics, or less extreme Muslim Brotherhood offshoots (especially in Britain) to undermine al-Qaeda, is a disastrous strategy that only strengthens the position of anti-West elements.”<sup>20</sup>

## **Multiculturalism, multi-faith or recognising the far right?**

Many commentators have spoken about how the ‘War on Terror’ has led to the values of pluralism and diversity being replaced by the policy of ‘social cohesion’, and adopting “a British way of life”.<sup>21</sup> According to where they find themselves on the political spectrum, the old policies might be mourned or their burial celebrated. For some of the identity anti-racists such policies signal “the end of tolerance”<sup>22</sup> and a reversion to the politics of assimilation which has long been criticised by all forms of anti-racist activism. For some of us who were the early critics of both multiculturalism and identity anti-racists, however, it isn’t really possible to do either.<sup>23</sup> Rather, it is important to look beyond the language being used by right and left, to see what authoritarian principles are being deployed to coerce, contain and control different populations, to threaten individual rights and freedoms and to substitute for them what Chetan Bhatt has called a sort of “infra citizenship” mediated through “community leaders”.<sup>24</sup>

But this is also not a discussion about the ‘end of tolerance’ or the West and the Rest, or even about a majoritarian ‘white’ discourse versus the creation of Muslims as the new ‘other’. Social attitudes and government policies reflect some elements of bigotry, but beginning and ending the discussion here tends to conceal as much as it reveals. Rather the discussion needs to turn to examining the many configurations of the far right and the ways in which their activities have been given space and legitimacy by both the government and their opponents.

## **How faith schools achieve their effect**

“The ultimate absurdity of abandoning the Biblical framework of knowledge is the introduction of doubt into the universality of any scientific law.”  
– Stephen Layfield, Head of Science, Emmanuel College<sup>25</sup>

The figure of 17 per cent attending religious services would probably be even lower if not for the existence of state-funded religious schools. As part of the settlement made between Catholics and the Church of England, both Church of England and Catholic schools receive state funding and are allowed to select pupils on the basis of faith. As Ann Rossiter pointed out in her article in *Refusing Holy Orders*, Catholic

schools performed the useful function of subduing Irish immigrants by substituting a Catholic identity for an Irish one.<sup>26</sup>

Parents who wish to have their children admitted to such a school have to demonstrate their 'belonging' to a particular church by attendance at services and may require a letter from their parish priest to confirm their active Christianity. Anxieties about the quality of education in state schools – many of them based on fear of social mixing of both class and race – cause many parents to consider religious schools a better option than their local state school. Their results, which are often good, seem to justify their perceptions.

A useful compilation of research into faith schools by the coalition Accord, which is campaigning to end privileges of religious schools states, "It appears that most of the apparent advantage of faith school education in England can be explained by differences between the pupils who attend these schools and those who do not."<sup>27</sup>

In 2008, two academics gave evidence before a Select Committee of Parliament on Children and Families. They described their comparative research into the social composition and the admission policies of what are known as 'voluntary aided' (religious) schools and community (state) schools. The indicator of deprivation that they used was children who were entitled to free school meals.

Dr Rebecca Allen stated,

"I was able to show that religious schools have higher ability and lower free school meal intakes compared with the neighbourhoods in which they are located. To give you an idea of the magnitude of those effects, if we take a community school and a voluntary-aided religious school, both located in a neighbourhood with exactly the same levels of deprivation, the community school is likely to have about 50 per cent more free school meal children than the voluntary-aided school."<sup>28</sup>

Further, referring to research on admissions conducted by her colleague Ann West, she said, "We can show that there really is a direct correlation between the number of potentially selective admissions criteria that schools use, and the extent to which their intakes are advantaged."

In other words, state schools have become bastions of class privilege, and class origin is still the most likely indicator of future success academically.

## **Faith schools and social segregation**

Since in some areas Christian schools admit Afro-Caribbeans, their role in sustaining racial segregation may not be so obvious. In a key speech, Trevor Phillips, Chair of the Equality and Human Rights Commission, warned that Britain was "sleepwalking towards segregation" but refused to condemn the existence of faith schools as one of the causes. He was at odds with several commissions of inquiry which

had identified the education system and the existence of faith schools as one of the causes of segregation, although they made no recommendations to end the privileges of state-funded religion-based schooling.<sup>29</sup> However, recent research to further the ‘social cohesion’ agenda is being used to critique some aspects of faith school admission criteria. Professor Cante’s latest report on the town of Blackburn with Darwen tentatively suggests that faith schools should change their admission criteria so that they do not admit pupils of only one faith. At the launch of the report, Professor Cante stated that faith schools with religious admission requirements are “automatically a source of division” in the town. The report found that the level of segregation in schools is high and growing more than the level of residential segregations suggests.<sup>30</sup>

When the Single Equality Bill was being debated, it was the focus of intense lobbying by a wide range of groups. The Accord Coalition, founded by the British Humanist Association, consists of religious and non-religious voices, to demand an end to some of the privileges of faith schools in their selection of pupils and teachers. This is a limited demand, but it is likely to gather support from a wide constituency. WAF has argued for an end to all state funding for religious schools but joined this coalition to amplify the voice for a set of set of minimum demands.

In a survey commissioned by Accord to coincide with the committee stage of the Equality Bill, a great deal of public support was found for Accord proposals in spite of the apparent popularity of religious schools. The survey found that 57 per cent of people agreed or strongly agreed that “state funded schools that select students by their religion undermine community cohesion”, while only 19 per cent disagreed or strongly disagreed. The poll also found that 72 per cent agreed or strongly agreed that “all state funded schools should operate recruitment and employment policies that do not discriminate on grounds of religion or belief”, with only 9 per cent disagreeing or strongly disagreeing.<sup>31</sup> These are the two issues on which Accord proposed amendments to the Bill.

## **Academies: state-funded, privately controlled schools**

However, the broader issue of state funding for religious schools, which in the last 20 years has allowed Hindu, Muslim and Sikh schools to open, is entirely off the table. In fact, as part of its deregulation of state control, the Labour government promoted a programme to create 400 academies or specialist schools. This public-private partnership put huge sums of taxpayers’ money into private hands. A donor offering £2 million to establish a school may be matched by as much as £25 million more in government investment and with recurring costs added. Private trusts are gaining control of a resource that has traditionally been part of the budget of elected local councils and therefore subject to scrutiny and public accountability. In 2003, the government published a five-year strategy committing to opening 200 academies by 2010, a target they met by 2009. Those offering

to set up such schools need not have a background in education. Unsurprisingly, Christian evangelical groups have been able to take advantage of such schemes, and have received powerful political backing to do so. The academies programme has continued under the Coalition government with the addition of a programme to establish 'free schools' following a Swedish model.

One group that established several academies is the Emmanuel Schools Foundation, which is controlled by Sir Peter Vardy, a successful businessman who ran a car dealership and engages in philanthropy. His foundation has established at least three schools and had planned to open at least four more. Academy schools are not the preserve of the rich. They are free schools like directly state-run comprehensive schools, frequently situated in deprived areas. They are either newly built schools or refurbished old state schools which were judged to be doing badly. These schools are closed and then reopened with new buildings and state-of-the-art equipment. Opponents of academies say that municipal councils who are charged with running schools are forced to accept an academy because the level of funding they receive from central government may be contingent on this acceptance. But the money spent on these schools is resented because so many other schools also aspire to improve their stock and hire more teachers. They are usually oversubscribed but it is highly unlikely that it is primarily the religious character of some academies that attracts parents and pupils. They are simply the smartest and most modern schools in the area.

Following a complaint about Middlesborough Academy, relating to the teaching of Christianity and the promotion of anti-gay views, two separate officials of the Academies Division Delivery Unit replied. The first letter had formulaic replies which refused to address the questions that had been put to them about the schools.

The first official said, "Amongst other things, the Funding Agreement requires Academies to provide a broad and balanced curriculum and to teach the core and foundation subjects of the National Curriculum." He listed the various forms of guidance, employment law and so on that had to be followed. Having failed to address the allegations relating to extreme forms of Christian belief imposed on pupils including the promotion of homophobia, the letter ended blandly by stating,

"Pupils are encouraged to explore different views, theories and beliefs in many different subjects in the curriculum, using contemporary and historical sources of evidence. This is an essential part of enabling young people to develop their own mature and informed views on moral and ethical issues and to become responsible and active citizens."

When the complainant was not satisfied and pursued the complaint, he received a letter from another official, who again confirmed that the schools were bound by certain requirements outside of which they were free to innovate: "However, those freedoms do not extend to exemption from legislation. All schools are bound by laws on discrimination and the King's Academy is no exception."

Stating that evolution was taught in science classes, “The National Curriculum specifically states scientific data can be interpreted in different ways and produce different theories (e.g. the theory of evolution). The Academy’s curriculum fully meets these requirements.” The official then confirmed that, “The Biblical view of creation is taught in Religious Education lessons. Students are taught to consider opposing theories and come to their own, reasoned conclusions. Their approach is consistent with the non-statutory national framework for religious education recently published.”<sup>32</sup>

These passages are quoted at some length because they go to one of the perennial questions that arise in discussions that range from religious schools to parallel *shari’a* councils. If they exist, wouldn’t it be better if they were regulated? Isn’t this the human rights solution to the tension between diversity and equality? State sponsorship and supervision will make sure that such schools meet appropriate benchmarks. They cannot fall below standards of behaviour towards both staff and pupils if they are bound by, among other things, anti-discrimination legislation as well the need to comply with national requirements regarding the standard of teaching.

There are a number of problems with the approach on compliance with standards and guidelines. The inspectors seem to tolerate to a large degree lack of adherence to the guidelines. Proponents of creationism and its apparently non-religious counterpart, intelligent design,<sup>33</sup> consider it a victory to be able to ‘teach the controversy’. By this means, they hope to get completely non-scientific theories accepted as equivalents to science. Even in religious education classes, teaching such a theory as an alternative, factual world view would be a victory for a fundamentalist interpretation of religion.<sup>34</sup>

These letters have been posted on the internet as part of campaign by anti-creation activists, who had succeeded in raising a series of tough questions about the precise nature of the Christianity taught in the schools and its reach throughout the curriculum. Information on their websites indicates that many of the key players – Sir Peter Vardy, the head teachers of the schools and the science teachers – were quite open about their adherence to creationism until they came under sustained attack from parents, from the scientist Richard Dawkins, among others, and from the media.

The Christian Institute had posted a speech delivered by Stephen Layfield, the head of science by one of the academies. As the storm broke, it disappeared from the website but was dug out by secular advocates. The speech, along with other material on the sites, relates to the different way the curriculum is organised.

The long speech on science teaching, with constant references to the Bible and to creation and intelligent design ‘scholars’, is a template for a fundamentalist world view. Purity, certainty and the absence of doubt are repeated throughout the speech: “The ultimate absurdity of abandoning the Biblical framework of knowledge is the

introduction of doubt into the universality of any scientific law." Layfield praises "intelligent design", the "scientific" development of creation theory. It is held that intelligent design proves that a higher being 'designed' the world:

"Biology teachers should encourage students to identify 'design features' for all living systems...

"The genetic code thus provides overwhelming *prima facie* evidence for intelligent design. Only blind, wilful ignorance prevents serious-minded people from seeing it. The Apostle Paul, with remarkable prophetic insight, immediately afterwards comments, 'For although they knew God, they neither glorified him as God nor gave thanks to him, but their thinking became futile and their foolish hearts were darkened. Although they claimed to be wise, they became fools' (Rom 1:21,22)."<sup>35</sup>

But this view is not a pre-modern one. In a classic assertion of a fundamentalist world view, he says "we stand firmly upon the bare proposition that God has spoken authoritatively and inerrantly in the pages of holy Scripture." It exists in tension with Enlightenment values and aims to improve on them. The idea of the divinity is to be harnessed to reason based on knowledge that the divine is designing the world: "If blind, purposeless chance is the sole driving forces behind the universe, why should there even be such a thing as reason?"

Speaking of the Scriptures he says, "They are not merely religious documents. They provide us with a true account of Earth history which we ignore at our peril. Many who parade as competent scientists today are unwittingly asking the same question which Satan first uttered back in Genesis, 'Did God really say...?' (3:1)."

Happily for the pupils, rationality and spirituality combine through true science, and may mitigate the inevitable cost of original sin:

"True Science then should confirm pupils' realisation that they are rational, spiritual beings of infinite worth with immortal souls whose eternal destiny, because of their sin, is placed in the balance. True science is no enemy of true religion. Indeed, the fear of the Lord is the beginning of knowledge and of wisdom (Proverbs 1:7 and 9:10)."<sup>36</sup>

But the most chilling realisation is that according to officials running the Academy department, faith is not the basis for the admission to the school, nor is the faith of the teachers. These are precisely the two issues which the Accord Coalition hoped to see being legislated during this parliament to make entry to faith schools more open and to encourage better teaching. Academies already comply with the first principle and may well comply with the second. As far as the government and schools inspectors are concerned, the Emmanuel school is not only satisfactory but inclusive, having a "higher share of Muslim students than adjoining schools".<sup>37</sup>

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*Pragna Patel*

# Cohesion, Multi-Faithism and the Erosion of Secular Spaces in the UK

Implications for the human rights of minority women

***This article explores the erosion of secular public culture in the UK and its implications for minority women whose bodies have become the battleground for the control of community representation. It argues that struggles for equality and secularism now overlap and have taken on a sense of urgency because it is the human rights of women that are being traded in the various social contracts that are emerging between state and the religious right minority leaderships in the UK. The increasing communalisation (involving religious and community groups mobilising solely around religious identities) of South Asian populations, in particular Muslims, reflects a form of instrumentalisation of religion by the state which has severely constrained the public space available for women to mobilise around a rights-based agenda and has also significantly narrowed the choices of women of faith.***

## Introduction

The UK has seen a concerted assault on secular spaces in the wake of civil unrest in some of the Northern cities in 2001, the 9/11 atrocity and the '7/7' London bombings of 7 July 2005. In the guise of the 'War on Terror', the state's response to the threat of Islamist terrorism has been dominated by a two-pronged approach to minorities – first, to counter the direct threat of terrorism with draconian, anti-civil liberties measures; and, second, the development of a new 'cohesion' and faith-based approach to minorities to replace the previously dominant ideological framework of multiculturalism for mediation between state and minority populations.

The process of de-secularisation started in the late 1980s following the Rushdie affair, when cracks appeared in the widely held view that Britain was a secular society in all but name. The Rushdie affair and the resurgence of religious fundamentalism in all religions<sup>1</sup> not only exposed the lack of separation between the Church of England and the state and the privileging of Christianity above other religions, but also the limits of multiculturalism which placed primacy on the preservation of religious identities of the various minorities above the need to build a democratic, secular and anti-racist culture.<sup>2</sup> For Muslims, the Rushdie affair marked a significant

turning point when demands for recognition and equality became focused upon religious observance and identity. Other minorities quickly followed suit.

The 'War on Terror' has resulted in the deliberate pursuit of domestic policies by the British state aimed at accommodating religious identity within public institutions. This is, in turn, a reflection of a number of political and social trends resulting in the shrinking of secular spaces and the increasing communalisation (involving religious and community groups mobilising solely around religious identities) of South Asian populations in particular – a process which has been quietly taking place for some time.

In accommodating religion within state institutions, the state's aim ostensibly has been to contain Islamist terrorism on British soil and to construct a moderate British Islam but the process of de-secularisation is having far-reaching consequences in re-ordering and undermining the democratic nature of civil society with very specific consequences for all progressive struggles but especially those waged by minority women. This process is occurring hand in hand with the dismantling of the welfare state and the pursuit of a racist anti-immigration agenda. The new cohesion and faith-based approach to minorities has therefore become a political resource used by the state and the religious right in all communities to aid the de-secularisation process.

This article explores the erosion of secular public culture in the UK and its implications for minority women whose bodies have become the battleground for the control of community representation. My argument is that struggles for equality and secularism now overlap and have taken on a sense of urgency because it is the human rights of women that are being traded in the various social contracts that are emerging between state and the religious right minority leaderships in the UK.

## **The SBS experience**

I use as my starting point a campaign waged by the Southall Black Sisters (SBS) in 2007/08 against a decision made by the local authority (Ealing Council) to cease critical funding used by SBS to provide life-saving frontline services for minority women subject to violence and abuse in the family. What began as a local funding dispute soon came to signify a much larger struggle for equality and for the right to exist as an autonomous, secular, anti-racist and feminist organisation.

SBS was first set up in 1979, comprising African-Caribbean and Asian women, in the midst of intense anti-racist activity. We consciously adopted a secular feminist identity, one based on a shared history of colonialism, racism and religious patriarchal control. The absence of recognition of gender power relations within the previous anti-racist movements and the absence of acknowledgement of racism within white feminist movements had resulted in the invisibility of black and minority women. It was this invisibility which gave rise to the organisation

and others alike. Personally, SBS was exactly the kind of political home that I and other women like me were searching for, since it enabled us to explore and validate our experiences of racism without suppressing the problem of gender inequality within family and community. None of this was easy to do in contexts where the only legitimate struggle by many on the progressive left was perceived to be the struggle for racial equality.

Since 1982, SBS has operated as a not-for-profit, advice, advocacy and campaigning centre for black women, with a particular focus on the needs of South Asian women subject to gender-based violence. While based in West London, an area with a large South Asian population, we have a national reach.<sup>3</sup>

In 2007, Ealing Council decided to cut funding to SBS on the grounds that specialist services for black and minority women worked against the interest of 'equality', 'diversity' and 'cohesion'. Our very name and existence was deemed to be unlawful under the Race Relations Act 1976 because it excluded white women and was therefore discriminatory and divisive. Instead, in the name of 'best value' for money, the Council decided to commission a borough-wide generic domestic violence service using the funds that had previously been awarded to SBS – funds critical to SBS in meeting core costs which were not easily available from other grant-making bodies, because most prefer to fund specific projects rather than overall running costs.

We were concerned that, if left unchallenged, Ealing Council's approach would have allowed public bodies to redefine the notion of equality in ways that undermined the very concept. It had come to be defined by Ealing Council as the need to provide the same services for everyone, in an attempt to address some resentment among the white population that it was the majority white population rather than the minorities that had historically been discriminated against and 'excluded' from civic regeneration policies. The notion of equality in this sense was no longer linked to the needs of the most vulnerable and deprived, but instead viewed as reflecting the needs of the majority community. Our fear was that this approach would be replicated with confidence elsewhere in the country, leading to the widespread closure of similar organisations set up to counter racism and provide minority women with real alternatives to patriarchal community (religious and cultural-based) mechanisms for dealing with disputes in the family.

SBS therefore brought a legal challenge against Ealing Council, which culminated on 18 July 2008 when, at the High Court in London, SBS won an important affirmation of the right to exist as a secular specialist provider of domestic violence services to black and minority women.

In court, SBS submitted that Ealing Council's approach to equality in effect meant that the race equality legislation in the UK could not protect those who are historically disenfranchised and discriminated against, since it rejected the notion of positive action in addressing racism. We argued that the Council's 'one size fits all' approach

was misconstrued because it ignored unequal structural relations based on class, gender and race. SBS further argued that specialist services for minority women are needed, not only for reasons to do with language difficulties and cultural and religious pressures, but also because of the need for advice and advocacy framed within a democratic and secular ethos in complex circumstances where racism and religious fundamentalism are on the rise in the UK and worldwide.

SBS also argued that Ealing Council's approach to cohesion was fundamentally wrong because it failed to recognise that, far from causing divisions, the provision of specialist services may sometimes be necessary to address substantive inequality, and that in turn is central to achieving a more cohesive society. It was pointed out that the SBS project was in fact an example of how cohesion is achieved organically, borne out of collective struggles for human rights, and not by the imposition of ill-conceived social policies from above. It was described how black and minority women from various national, ethnic and religious backgrounds learn to coexist in the secular space provided by SBS. In doing so, they both tolerate religious and cultural differences and at the same time challenge religious and cultural practices that stifle their common desires and aspirations to live free from violence, abuse and from other constrictions on their lives.

The newly formed Equalities and Human Rights Commission (EHRC) which intervened at SBS's insistence also criticised Ealing Council's interpretation and implementation of the equality legislation and its policy on cohesion.

Finding in SBS's favour, Lord Justice Moses who presided over the hearing held that Ealing Council had deliberately failed to have proper regard to its duties under the Race Relations Act 1976, and had taken a flawed approach to cohesion in reaching its decision:

"There is no dichotomy between the promotion of equality and cohesion and the provision of specialist services to an ethnic minority. Barriers cannot be broken down unless the victims themselves recognise that the source of help is coming from the same community and background as they do. Ealing's mistake was to believe that cohesion and equality precluded the provision of services from such a source. It seemed to believe that such services could only lawfully be provided by a single provider or consortium to victims of domestic violence throughout the borough. It appreciates that it was in error and that in certain circumstances the purposes of Section 71 and the relevant statutory code may only be met by specialist services from a specialist source. That is the importance of the name of the Southall Black Sisters. Its very name evokes home and family."<sup>4</sup>

Lord Justice Moses concluded his much celebrated judgment by safeguarding a more progressive notion of equality:

"An equal society protects and promotes equality, real freedom and substantive opportunity to live in the ways people value and would choose

so that everyone can flourish. An equal society recognises people's different needs, situations and goals and removes the barriers that limit what people can do and can be."

The SBS case has created a legal precedent as to the correct approach to be taken by statutory public bodies in the delivery of services and the funding of specialist organisations. The challenge has come to represent a key moment for black and minority groups and other organisations in the voluntary or third sector seeking to address the needs of the vulnerable and marginalised in society. But it has also sounded a warning bell to secular progressive minority groups.

Ealing Council's cynical use of the cohesion agenda to cut our funding has profound implications for the human rights of black and minority women in particular. We are acutely aware that the judgment, notwithstanding its progressive definition of equality, does not necessarily preclude fundamentalists and the religious right from claiming scarce public funding to provide faith-based services on the grounds that they are best placed to address those from the same religious background.

## **Cohesion: a new policy framework for minorities**

As the SBS example so clearly shows, the cohesion approach promoted by the government, is now the dominant framework for dealing with minorities. It is a policy objective that is linked to the other overarching themes of governance in the UK today, greater civic engagement; preventing violent Muslim extremism; 'managing migration' with a view to assimilation; and the shift in institutional accountability towards faith-based organisations and institutions.

'Cohesion' is a malleable term that has never been precisely defined by the government. Official definitions refer to cohesion as a "process that must happen in all communities to ensure that different groups of people get on well together" (Commission on Integration and Cohesion 2007). At the national and local level, a 'cohesive' community is described as one in which there is a common:

"...vision and sense of belonging for all communities; where the diversity of people's different backgrounds and circumstances is appreciated and positively valued; where those from different backgrounds have similar life opportunities and where there are strong and positive relationships developing between people from different backgrounds and circumstances in the workplace, in schools and within neighbourhoods".<sup>5</sup>

While the rhetoric of cohesion appears to have laudable aims and locates the responsibility for community cohesion on all communities including the majority community, in reality, the government has linked the issue with race. Its guidance document, for instance, calls on local councils to develop their cohesion strategy in the context of race relations. The assumption is that it is migrants (largely Muslims) who have failed to integrate into a 'British way of life' or adopt 'British values' and

are therefore responsible for the lack of cohesion in society. The SBS funding crisis illustrated this connection clearly.

The government's cohesion strategy can be traced back to July 2001 and the civil disturbances that took place in the northern UK cities of Oldham, Burnley and Bradford – areas with large Pakistani and Bangladeshi Muslim populations. These northern towns and cities are economically deprived areas historically born out of the collapse of the textile industries and the failure of social policies to redistribute resources equitably. The entire region is characterised by considerable social segregation, especially in education, social exclusion, poor housing and racism. The result has been simmering community tensions between white British and Asian British youths in particular, who have fought each other and the police in street battles, often fuelled by inflammatory right-wing organisations and the media.

In implementing the 'cohesion' policy, the state followed a contradictory course. For example, far from removing racially segregated education, identified as a major divisive force in British society, the government actively promoted single-faith schools and academies and set about creating the conditions for faith-based organisations to flourish.

In August 2006, the government announced the launch of the Commission on Integration and Cohesion to identify the ways in which local areas can foster cohesion. The Chair of the Commission was Darra Singh who was also directly responsible for the SBS funding crisis as the Chief Executive of Ealing Council. The report of the Commission, *Our Shared Future*, published in June 2007, did not address structural inequality or more pertinently the contradictions of promoting faith-based organisations in achieving cohesion. While there was some acknowledgement in the report that the disturbances in the northern cities in 2001 were in part a reflection of deprivation and industrial decline, nevertheless its focus was entirely on the need to develop local-based cohesion work – largely through religious exchange networks – and it gave guidance to local authorities to avoid funding single identity groups in particular. The report also avoided addressing the problematic issue of state support for faith-based schools, especially the existence of Church of England, Catholic and Jewish schools which, in turn, has fuelled resentment among other religious minorities, resulting in the growth of state funding of Muslim, Sikh and Hindu schools.

In 2008, the government issued a consultation document, *Guidance for Funders* (Department for Communities and Local Government 2008), which formed an important part of the government's response to the Commission on Integration and Cohesion and its report *Our Shared Future*. The Guidance set out the government's intention to advise funders on "practical ways in which local authorities could help build strong communities by promoting cohesion and integration locally". Following the report, the Guidance also placed conditions on the funding of single community groups defined as third sector groups providing targeted support for single issue/identity-based community activity.

These groups include black and minority groups and other equality groups, including women's groups, gay and lesbian support groups, age and disability groups and service providers. The view was that local funding should not be made available to single group projects if it "builds resentment in others". Following the SBS funding victory, the government withdrew the Guidance on funding for single identity groups and left it to local authorities to use their discretion on what organisations to fund or services to commission.

Local authorities have since continued to divest themselves and their areas of their 'race' equality departments and officers and replaced them with Community Cohesion Directorates. It would appear that it is the long-standing single identity groups (more often than not, progressive and secular) that are targeted for funding cuts at the same time as encouraging faith-based groups to emerge, as discussed below. The withdrawal of funding for SBS is one high-profile example but there have been others, including several Asian women's refuges, mental health and community organisations for African and Caribbean people, to name but a few.

This dual process was vividly evident at the height of SBS's funding crisis. The irony of the situation in which SBS found itself was, that at the same time that Ealing Council decided to withdraw financial assistance, Ealing's Cohesion Strategy was and continues to be dominated by the need to promote faith-based (largely Muslim) groups to deliver local welfare services (Ealing Council 2007).<sup>6</sup>

Ealing Council's Preventing Violent Extremism (PVE) (Ealing Council 2008) strategies also reflect a major preoccupation with engagement with Muslims only. Of the £45 million made available by the government for 2008–11 to local authorities to tackle extremism among Muslims, Ealing Council received a total £205,000 for 2008–09, rising to £225,000 and £286,000 for 2009–10, respectively. Ealing's PVE agenda seeks to "gather greater understanding of the issues/concerns facing Muslim communities; provide space for greater dialogue and discussion around Muslim identity and understanding Islamic values; provide more opportunities for engagement with the wider community through volunteering and establish greater support networks for Muslim women". Under the theme of 'Engaging with Muslim Women', the Council has made a grant of £35,000 available to local groups to "foster in young Muslim women a greater willingness to express their own views and influence their local community, a greater awareness on how to access public services offered by statutory bodies such as the Council, and a greater awareness on how to become involved in local decision-making processes". Youth services have also been provided with £10,000 to engage with Muslim girls in secondary schools through lunchtime sessions to discuss the concerns of the Muslim girls (Ealing Council 2008).

While Ealing Council maintains that the PVE focus "compliments the emerging borough 'Integration and Community Cohesion' strategy developed in 2007", in practice, the Council's PVE and Cohesion strategies are indistinguishable.

One consequence of Ealing Council's cohesion approach is that it has encouraged the development of faith-based initiatives, including the future creation of Muslim women-only projects, without any reference to the politics and ethos of such projects and even though there are no visible demands for such organisations (Ealing Council 2008). This approach is being repeated throughout the UK and the organisations that have so far been closed or threatened with closure are secular organisations for black and ethnic migrants, secular women's refuges for black and minority women, disability groups and rape crisis centres. Following SBS's lead, organisations confronting similar funding problems with their local authorities have mounted legal challenges against their councils using the equality legislation but while some have been successful, others have not. Paradoxically, the emphasis on funding faith-based groups have led some previously secular black and minority organisations to re-fashion themselves as faith-based groups – this has the effect of reinforcing the view that questions of identity within minority communities can be reduced to questions of religious values only. Discussions with a number of anti-racist activists in the north of England have suggested that minority groups have recently adopted a faith-based identity in order to attract local authority funding that has been diverted from anti-racist projects to cohesion and preventing violent extremism work.

## **From multiculturalism to multi-faithism**

The rise of fundamentalist leaderships in minority communities has posed a significant threat to the autonomy and fundamental freedoms of minority women in the UK. Since 2000, however, minority women have found themselves facing a more difficult and invidious battle involving not just fundamentalists but mainstream religious leadership itself – the so-called 'moderates' – who, with the demise of progressive secular institutions within minority communities, in particular black workers' support organisations, anti-racist and police monitoring groups and Asian women's refuges, are increasingly seen by the state to be fulfilling a crucial role in mediating between state and community. This is of course a process that has always occurred under multiculturalism, but what is different is the unequivocal acknowledgement by the state that religion is a vital part of public life which cannot be ignored.

The faith-based perspective (a framework of mediation between state and community institutions based solely around religious identity), is now an integral part of the cohesion agenda. At its heart is the view that civil society is split into two groups – those that are faith-based and those that are secular. There is increasing conviction in official policy that the experiences, resources and networks of people based on religious identity have been neglected in favour of secular groups (Ealing Council 2008). To correct this situation, strategies and programmes are developed to give faith-based organisations full opportunity to participate in society because they are deemed to be important sources of social capital (vital sources of civic

mobilisation and social campaigning) (Ealing Council 2008). These policies and strategies effectively re-cast ethnic minority communities (especially South Asian) as 'faith communities' so, for example Asian communities are increasingly re-categorised as 'Hindu', 'Sikh' and 'Muslim' communities.

The increasing emphasis on religion and religious identities has led to the transformation of Britain from a multicultural into 'multi-faith' society, based on a model of 'integration' which views the discrimination and exclusion of many in black and minority communities not as a product of class inequality or racism, but as a historical failure to respect and facilitate religious identity within public institutions. Models of civic engagement based on notions of citizenship and respect for individual human rights, which have never been given the opportunity to take root properly, are replaced by notions of social cohesion and integration involving adherence to 'core British values'. But such adherence does not displace cultural or religious identity. In fact, the emphasis on engagement based on faith identity encourages adherence to cultural and social autonomy as well as to a core set of values which are mostly about the maintenance of public order. This is well understood by both the state and the various religious leaderships. For example, the UK's Islamic Human Rights Commission has made it clear that it sees no reason why minority communities cannot be guided by their personal religious laws, since this does not impact on social cohesion. The demand for equality is therefore substituted by the demand for greater recognition of religious diversity and the need for 'religious literacy'. That is, the need to understand the dominant theological values and traditions as espoused by religious leaders, but not the recognition of the various liberal cultural and religious and non-religious traditions within a community.

Faith groups are now to be found at the heart of the regeneration of communities and as a direct result, religion is becoming increasingly entrenched within state institutions at central and local levels, and is reflected at all levels of state policy. In all the key public institutions, the emphasis has shifted to the need to provide services that are "sensitive to religious identities and values". This has brought into the domain of religious groups, concerns which were once addressed by progressive secular anti-racist and feminist groups, including issues such as domestic violence, child protection, and the rights of black and minority offenders in the criminal justice system.

The state's multi-faith approach has opened up the space for a reactionary politics of identity based on religion to flourish and has put power and authority into the hands of religious leaders. The conflation of issues around race with religious identity as defined by the state and fundamentalist and conservative religious leaderships, has also, paradoxically, led to the direct sponsorship of fundamentalist or reactionary organisations such as the Muslim Council of Great Britain, The Muslim Association and the Hindu Forum of Britain,<sup>7</sup> all of whom claim to be 'moderates' and all of whom have enjoyed or enjoy an unprecedented influence on state policy towards minorities.

The so-called 'moderates'<sup>8</sup> may profess to keep law and order on the streets of Britain and decry the extremists in their midst but many are linked to violent fundamentalist movements abroad where violence is routinely used to subjugate women. Nor are they moderate on the question of women's rights in the UK. Many have used the space opened up by the government's faith and cohesion agenda to put themselves forward as the 'authentic' voice of their communities and make demands which are primarily about limiting women's participation in the public sphere and maintaining the private sphere of the family as the only legitimate arena of female existence.

The state's cohesion and faith-based approach fits neatly into a wider neoconservative agenda involving the privatisation of vital state functions. The steady demise of the welfare state cannot be underestimated, since the breach that is created has allowed religion to step in, advantaged as it is over secular groups, by its networks of membership and vast resources. Space does not allow a full discussion of the role of religion in the provision of social services in the UK, but the shifting of institutional accountability for welfare services on to religious organisations is a dangerous development. It has to be recognised that religious groups can and do play an important role in helping to combat poverty, homelessness and destitution faced by immigrants and asylum seekers for instance, but they do this while remaining in the private sector, raising funds through their own membership and from other sources. Most importantly, their users are relatively free to exercise choice in whether or not they wish to use their services. But what is harmful about the cohesion and faith-based approach is the fact that in the name of equality, religious groups are being brought into the public domain through public funding to provide services on the basis of their religious ethos and belief systems. The danger is that through need and individual circumstances coupled with a lack of alternatives, users, such as vulnerable minority women, will have no choice but to use the services offered by religious organisations. Needless to say, and as the experience of women and sexual minorities shows, those who do not share the ethos and values of such organisations will find themselves discriminated against and excluded.<sup>9</sup>

## **Minority women and the struggle for human rights**

The struggle for equality and for the human rights of all minority women in the UK is now inextricably linked to the struggle for secular spaces. The turning point in compelling feminist organisations like SBS to make explicit this connection was the Rushdie affair and the growing power of religious fundamentalists who used the multicultural terrain to pursue a vigorous de-secularisation agenda (Southall Black Sisters 1990; Sahgal and Davies 1992). The anti-Rushdie protests created the conditions for the emergence of a culture of intolerance, fear and censorship, which remains with us in a more heightened form. Since the 1990s, we have witnessed with alarming frequency, religious fundamentalist and authoritarian<sup>10</sup> protests to any form of dissent from an imposed religious identity, much of which has centred directly and indirectly on the control of women's sexuality.

Nor are such protests confined to Muslims only. Hindus, Sikhs and Christians in the majority community have also sought to impose strict religious identity on followers by clamping down on dissent.<sup>11</sup> It would seem that orthodox if not fundamentalist<sup>12</sup> leaders in all religions are vying for control over the representation of their communities. In the process, what is made transparent is the reinvention of essentialist notions of religion as a framework for highlighting inequalities and demanding recognition.<sup>13</sup>

## **The privatisation of family law**

The feminist and human rights scholar Karima Bennouna (2007) has stated that the struggle to keep religion and the law separate is one of the most urgent struggles now taking place globally. She adds that the emphasis on 'freedom of religion' has overshadowed the importance of 'freedom from religion' (Bennouna 2007). This is clearly evident in recent debates and developments in respect of demands made by some Muslim organisations to incorporate aspects of personal laws (*shari'a* laws) in relation to the family within the English legal system, a move which is encouraged by leading figures in the judiciary and the Church of England.<sup>14</sup>

### **Religious arbitration tribunals**

Family laws are increasingly at the centre of political controversies between religious groups and secular feminists in the UK. The recent creation of the Muslim Arbitration Tribunal (MAT) in the UK, set up and managed in accordance with the Arbitration Act 1996 for alternative dispute resolution in civil law cases, especially family cases in England, is an example of how religion is encroaching upon the secular legal system (Taher 2008).<sup>15</sup> The MAT will enable arbitration (mediation by another name) of, among others, family disputes to take place in accordance with 'Islamic sacred law'.<sup>16</sup> By existing within the framework of the Arbitration Act 1996, the MAT will ensure that its determinations can be enforced by the English courts in cases where both parties have agreed to be bound by the outcome.

Groups like SBS and Women Against Fundamentalism<sup>17</sup> have challenged developments such as the MAT, by arguing that the demand for religious personal laws will result in the privatisation of family law and thus become the main means by which the absolute control of minority women is maintained. Such a development will in effect allow unelected and unaccountable community leaders to preside as judges and make determinations based on religious interpretations that have historically discriminated against women and legitimised their oppression within the family. Moreover, when combined with the wider gender inequality that persists in society more generally, women will find it difficult to obtain a hearing on equal terms.

It is true that if civil law principles are breached by the operation of religious tribunals like the MAT, it is open to a party to complain but that choice is illusory

unless a party is actually able to complain and even then, the woman would need to convince a court that legal principles are breached. For example, to prove duress in cases of forced marriage, she would have to meet the evidentiary threshold required and this may not be easy to do. Many women do not necessarily know that their rights have been violated or will not want to be seen to be dissenting from religious norms and will not want to risk being ostracised and subject to being declared a 'bad' Muslim, Sikh or Hindu. Many will not complain even if there are violations of the law. Moreover, social pressures which circumscribe the choices open to women will not always be acknowledged. Cases in the English courts suggest that so far, only legal and not social compulsion is recognised.<sup>18</sup>

The existing evidence on the outcome of family disputes in the MAT suggests that the primary concern is to keep the family intact, even in circumstances where women and children are highly vulnerable to domestic or family violence. For instance, on its official website, the MAT professes only to be concerned with civil disputes and not to interfere with the criminal law process but nevertheless it is interfering in ways that undermine state protection for minority women by limiting their participation in the civil and criminal justice system, for example by diverting them away from the formal legal system towards informal, religious-based mechanisms for dispute resolution. In a number of domestic violence cases, the MAT has succeeded in reconciling women with their abusive partners without regard to their history of abuse or their general vulnerability. Indeed, the MAT has gone so far as to state that it will actively interfere in criminal cases by seeking to influence the Crown Prosecution Services to drop charges in domestic violence cases even where criminal offences may have been committed:

"The MAT is unable to deal with criminal offences as we do not have jurisdiction to try such matters in the UK. However where there are criminal charges such as assault within the context of domestic violence, the parties will be able [to] ask MAT to assist in reaching reconciliation which is observed and approved by MAT as an independent organisation. The terms of such a reconciliation can then be passed by MAT on to the Crown Prosecution Service (CPS) through the local Police Domestic Violence Liaison Officers with a view to reconsidering the criminal charges."<sup>19</sup>

By allowing religious arbitration tribunals like the MAT to adjudicate in family disputes, the state is in effect privileging and sponsoring the most dominant, patriarchal, homophobic and authoritarian, if not fundamentalist, interpretations of religions in minority communities. The incorporation of religious personal laws within the legal system formalises gender discrimination and a culturally relativist approach to family cases, adding to the immense community pressures that minority women already face to agree to mediation and governance, based on their religious identity. It signals the view that it is legitimate for minority communities to operate a second-rate justice system based on unaccountable and partial mechanisms of conflict resolution. This is in itself a racist response to demands for equality and

justice, especially in view of the fact that even in countries where state-sanctioned religious laws operate, there are substantial movements, often led by women and human rights activists, for their repeal on the grounds that they are not compatible with universal human rights principles.

By accommodating religious systems of dispute resolution in family matters in the English legal system, the UK state is effectively taking away the safety net of the secular legal system, underpinned as it is by universal human rights values to which minority women have contributed through their struggles. In doing so, it accepts the view propounded by religionists that the principles of individual choice and autonomy are 'Western' or 'alien' concepts and encourages the development of parallel legal systems. The incorporation of the MAT within the legal system directly contravenes the UK's obligations under the domestic and international human rights law, which is to protect women and children from acts of violence committed in public or private spaces. The duty to exercise due diligence, in order to prevent, investigate and punish acts of violence against women, including those carried out by non-state actors, is a necessary function of a democratic state and the democratic principle. This duty is clearly being subverted as the above quote on how the MATs deals with domestic violence cases show. Instead of encouraging women to seek redress or accountability through the courts, the aim of the MAT is solely to resolve family matters informally, precisely in order to avoid the scrutiny of the state.

In response to criticisms about the formalisation of legally binding religious arbitration systems, supporters of the MAT argue that it is an important vehicle for the expression of Muslim female 'choice' and 'autonomy' and that regulation of the system is all that is required to address gender discrimination.<sup>20</sup> This perspective, which at first glance appears seductive, fails to grasp two crucial problems. First, that the question of the exercise of choice and autonomy for most minority women cannot be divested from the social, political and economic power dynamics that exist within and without minority communities which usually protect vested patriarchal interests. Second, the need to save state resources is precisely why any attempts to regulate religious tribunals will ultimately fail, since the type of effective regulation required would defeat the object of the exercise, which is to save resources and time. Global research conducted by the International Council for Human Rights Policy in Geneva suggests that mechanisms for regulation in any case are wholly absent, and that states that have established separate religious laws are very reluctant to intervene in their functioning to regulate or reform them. The inevitable consequence is that the laws of the minority will remain unreformed for decades (International Council on Human Rights Policy 2009).

### **Contradictory developments in the law's response to women's human rights**

Notwithstanding the demand for greater 'religious literacy' within the English legal system, English judges from time to time have safeguarded the rights of minority

women, despite accusations of 'Islamophobia' or religious insensitivity. Although not a uniform occurrence, there have been some very welcome judgments in the courts.

In a recent case involving childcare proceedings, Lord Justice Wall (2009) emphatically stated that religious law cannot be allowed to trump concerns about the physical safety of children. In this case, a Muslim father of children under 11 years of age sought to challenge the placement of his children with a non-Muslim foster family in circumstances where the children had suffered horrific abuse. Dismissing evidence from a Muslim scholar who appears to have argued that placing the children with a non-Muslim family would exacerbate the physical risk to the children by making the matter more public, thereby increasing the shame and dishonour wrought on the family, the judge argued that the correct priority was the physical safety of the children.

The problem is that such insights about the arbitrary application of religious laws and their inherent bias in favour of patriarchal power do not appear to be creatively applied in other cases, nor do they influence social policy considerations or the wider political culture which is increasingly preoccupied with the desire not to cause religious offence. In other words, attempts to address the clash between key rights, for example the right to manifest religion and the right to gender equality in legal judgments, are often ignored in state social policy and practice towards minority communities.

The tendency to show deference to religious values is usefully illustrated in a rape case that came to SBS's attention in 2006.<sup>21</sup> The case concerned a traditional Muslim woman who was raped by her husband who was then prosecuted. However, at trial she claimed that her religious requirements meant that she could not take part in a public legal process involving men unrelated to her to whom she would have to answer questions of a sexual nature.

In response, the prosecution counsel requested the defendant to change to a female counsel, but that request was refused, presumably on the valid grounds that this interfered with the defendant's right to choose his own legal representation. The prosecution counsel then requested that the victim be allowed to give evidence via a videolink through a female interpreter so that she would not have to see or hear the defendant's barrister or indeed any other male within the court room.

To accommodate this request, the judge adjourned the hearings to obtain reports from a Muslim cleric in order to ascertain the position of Muslim women in public life. Following this report, on religious and cultural grounds, he permitted her to give her evidence and be cross-examined via videolink through a female interpreter.

It is easy to have a feminist kneejerk response to this case, to view the measures taken by the court as very necessary in a situation where there is a need to improve the notoriously low rates of prosecutions in rape cases. However, when examined more closely, the court's approach gives rise to some concern mainly because it came

close to undermining the rules of evidence in order to allow for greater religious and cultural accommodation. The court's response was not about the valid need for witness protection or even about making the court process less intimidating for female rape victims, but about the need to 'respect' the religious identity of Muslim women as endorsed by the Muslim theological expert used by the court. In many other situations, the same religious framework used to determine state response to minority women can and will work against the interests of women precisely because it is not they but religious 'experts' who validate their responses. In a political climate where there is huge pressure on women to conform to standards laid down by fundamentalists and religionists,<sup>22</sup> it is women who have the most to lose when the rule of law or important legal safeguards are undermined or when needs are determined upon the basis of religious identity. It therefore becomes all the more necessary to uphold the rule of law since women's freedom (from terror and torture within the context of the family) is as dependent on it as is the freedom of those who are targeted as so-called state 'terrorists'.

Far from empowering minority women, the court's approach is inhibitive because it inevitably draws on very narrow assumptions about religious identity. Yet, the approach taken by the court has been widely circulated by the police as a model on how to address religious and cultural issues within the criminal justice system. Ultimately, it is a disturbing case, since it is only a short step to accepting the view that Muslim and other ethnic minority women have no need to utilise the secular legal system, since they are governed by their own community or personal laws. Indeed, this is precisely what happened in Germany when a Moroccan Muslim woman was denied a divorce in the face of domestic violence by a judge who stated that as a Muslim woman, she was governed by the Qur'an and not the civil law of the land (Hari 2007). The decision was eventually overruled but the danger of adopting a culturally relativist approach is all too obvious.

## **The role of religion in shaping public policy**

The speed with which the English legal system and indeed all public institutions are absorbing minority religious identity, at the exclusion of all else, is alarming. One glaring example of this is the way in which the government has set up numerous advisory forums to discuss issues affecting minority communities but involving religious leaders or increasingly Muslim women as opposed to black and minority ethnic (BME) women only. For instance in 2002, the government set up the Muslim Women's Network UK (2006), which conducted a series of closed focus group discussions in 2006 to give voice to Muslim women's needs.

The report launched soon after by the Muslim Women's Network UK<sup>23</sup> identified many issues such as gender-based violence, immigration difficulties, community pressures, racism and the lack of political representation – most of which are not specific to Muslim women only. But by attributing such experiences to Muslim

women, the state wittingly or unwittingly homogenises Muslim religious identity and isolates the experiences of Muslim women from those of other South Asian women with whom they share specific family values and norms, due to their common social, cultural and political histories of origin in the Indian subcontinent. For example issues of 'honour' and 'shame', which are central organising features of all South Asian families and beyond critical in controlling female sexuality, are increasingly being attributed to Muslim women only.

The strategy of isolating Muslim women's needs and presenting them as somehow 'different' from those of other South Asian women in particular is deliberate and divisive. It plays into the fundamentalist segregationist agenda and denies the overwhelming success of secular Asian women's projects organising against gender-based violence and discrimination across ethnicities, cultures and religion. The approach strongly undermines the solidarity that has been forged by minority women and encourages groups to compete for resources and separate provision based solely around religious identity.

Collaborations between state institutions and faith groups on issues that were once the terrain of black and minority feminists are now evident up and down the country. In July 2005, the Greater London Domestic Violence Project, for instance, organised a round table discussion on domestic violence with faith leaders from London's main religions, many of whom belonged to minority religions. But no secular feminist groups that had worked on domestic violence within minority communities were invited to be part of the same discussion. The effect of this is two-fold: first, it empowers community leaders to take responsibility for issues such as domestic violence without having to account to women in their communities; since they are encouraged to relate only with the state through engagement in inter-faith partnerships. Second, the absence of feminists and progressive groups from such discussions serves to de-legitimise feminist and secular approaches to social issues within minority communities.

This event led to the publication of a report entitled '*Praying for Peace*'. While it does contain feminist analysis of domestic violence, it also encourages partnerships between faith leaders and the 'domestic violence sector' (white but not black and minority secular feminists) in addressing issues of domestic violence. Unsurprisingly, the entire debate on violence against women is circumscribed within a religious framework which by its very nature compromises progressive human rights language and principles. For example, the report utilises religious notions of 'karma' and 'sin', which clearly act as substitutes for the feminist notions of human rights, choice and autonomy. Perhaps the most significant aspect of the report is the emergence of a contract between state and religious leaders to tackle issues such as domestic violence, forced marriage and other forms of abuse within minority communities. But the trade-off is not about protecting minority women, but about the maintenance of public order in return for communal (family) autonomy. By appearing to take responsibility for issues like domestic violence or forced marriage

in minority communities, religious leaders can expect increased state support and resources, which ultimately give them greater control over women (Greater London Authority 2006).

The reality of women's lives does not support the view that most minority women choose identity according to their faiths alone. In a study carried<sup>24</sup> out by SBS on the impact of the cohesion and faith-based agenda on women, the majority of women of various ages and religious backgrounds who were interviewed, expressed very strong negative sentiments of mistrust and alienation from religious-based leaderships within religious institutions. Of the 21 women interviewed, all except one professed to some form of religious belief and some held very strong personal religious convictions. But all of the respondents viewed religion as a matter of personal choice or belief, rather than the basis of a social identity. They did not express any sense of belonging to a faith-based community. In fact, their reality showed that they adopted fluid identities which often straddled different traditions and cultures, for example:

"Tomorrow I go to celebrate Valentine's Day. Islam says we shouldn't dance. I used to get awards for dancing. I love celebrating Valentine's Day. I will wear red clothes and red lipstick and get a red rose ... I wear lots of makeup and perfume. I also love celebrating Christmas and Easter. These are small pieces of happiness."

The vast majority of the women interviewed were adamant that they did not want religious authority to arbitrate on family matters. Reasons for this included memories of religious divisions in their countries of origin (the pain of partition of the Indian subcontinent was still raw for some); fear of breaches of confidentiality; fear of sexual exploitation<sup>25</sup> and abuse of religious power; vulnerability to coercion and social compulsion to stay in the family; fear of not being listened to and fear of corruption, factionalism and struggles for power within religious institutions. In other words, they did not see religious institutions as simply religious institutions but as political entities involved in struggles for power and control over resources and people, especially women.

## Conclusion

We have found that, despite challenges and protests from secular feminists, and subject to a few exceptions which serve only to prove the rule, there is no political will within or without the state to confront the problem of the erosion of the secular fabric of public culture in the UK. Liberals and anti-racists alike have uncritically embraced the view that the adoption of a political religious identity is inevitable and necessary in the struggle against imperialism and racism as signified by the 'War on Terror'. While many have been critical of the state's cohesion agenda and the backlash against multiculturalism, few (if any) publicly acknowledge the close link between the promotion of the 'cohesion' agenda and the 'faith-based'

approach to the management of race relations. Yet it is precisely this linkage which corrals minorities into specific reactionary religious identities and reinforces the tendency to value religious and cultural orthodoxy and conservatism, often imposed by powerful, illiberal and even fundamentalist religious forces within minority communities.

It is black and minority women who lose out in the ensuing silence, since their bodies are being used by the state to wage its 'War on Terror' and by fundamentalists and religionists to safeguard the socio-religious identity of their communities. The reality of women's lives show that the struggle for secularism is the struggle for equality and human rights. The two struggles are now so inextricably linked that it is impossible to wage one without simultaneously waging the other. This is the true significance of SBS's successful challenge to Ealing Council: it highlighted the urgent need to develop a politics of solidarity within and between communities which recognises that what is at stake is no less than the fight for secular, progressive, feminist and anti-racist values – a fight which is embodied in our name.

## Endnotes

1. I distinguish religious fundamentalism (the political use of religion) from religious observance, by following the definition developed by Women Against Fundamentalism: "Religious fundamentalism refers to the rise of any modern religious political movements that exercise selectivity in the interpretation of its religious texts. Two features that are common to all fundamentalist religious movements stand out: first, they claim their version of religion to be the only true one and feel threatened by pluralist systems of thought; and second, they use political means by which to impose their version of the truth on all members of their religion. Fundamentalism is a term that can apply to all religions but at the heart of all fundamentalist movements is support for the patriarchal family as a central agent of control. And women are viewed as embodying the morals and traditional values of the family and whole community. These movements demand absolute conformity to religious laws as interpreted by male religious leaders and deny the countless religious interpretations, traditions and practices that have evolved within a religion" (Sahgal and Davies 1992).
2. See Gita Sahgal (Sahgal and Davies 1992).
3. For a history and account of the work of Southall Black Sisters, see Southall Black Sisters (1990) and Gupta (2003).
4. R on the application of *Kaur and Shah v London Borough of Ealing*. [2008] EWHC 2062 (Admin).
5. The accepted definition of 'community cohesion' agreed by the Improvement and Development Agency (IDeA), the LGA (Local Government Association) and the Home Office was first published in the LGA's *Guidance on Community Cohesion* (2002).
6. See *Ealing's Shared Future: Integration and Community Cohesion Strategy 2007–2011*. The following objectives dominate Ealing's cohesion strategy, although they are by no means exhaustive: work with faith-based groups; publish a faith directory; hold interfaith conferences and improve inter-faith working; deliver Ealing Muslim Community engagement project by working with Muslim children and young people on issues, problems and social tensions affecting Muslims and how to engage Muslim communities to engage in the formation of public policy; deliver a faith volunteering

project for schools, hospitals and the police targeting Muslim volunteers; provide conflict mentoring training for young Muslim children and people; hold a conference that will emphasise a scholarly interpretation of Islam that supports integration and citizenship; launch a Muslim network; build the capacity of third sector organisations that will explore the values of Islam; develop questionnaires to gather the views of Muslims.

7. See Awaaz (2006), *The Islamic Right – Key Tendencies*, which traces the roots of the Muslim Council of Britain to the long-standing Islamic Right political party – the Jamaati-I-Islami (JI) from the Indian subcontinent. Awaaz is a UK-based secular network of organisations and individuals set up to monitor religious hatred in South Asia and the UK. Awaaz has also researched the links between so-called ‘moderate’ Hindu organisations, such as the Hindu Forum of Britain and the Hindu Council UK and Hindu Right organisations in India responsible for fomenting hatred and violence against Muslims. It also notes that in April 2006, Ramesh Kallidai, the General Secretary of the Hindu Forum, was appointed commissioner by the Commission on Integration and Cohesion. Awaaz has exposed him as a sympathiser if not promoter of Hindu fascism. In April 2006 for instance, he attended a meeting of the Hindu Swayamsevak Sangh (HSS), a British branch of the RSS – a fascist organisation in India that promotes Hindu supremacist ideology – where he paid homage to a previous leader of the RSS who extolled the virtues of Nazi Germany. The RSS has been widely blamed for largescale anti-minority violence in India and one of its former members was responsible for the murder of Mahatma Gandhi.
8. The term ‘moderates’ is peculiar to discussions following the 9/11 bombings in New York and is often used by the US and European states to distinguish between ‘extreme’ and so-called ‘moderate’ Muslims. Those Muslims who claim to advocate moderation in respect of religious or political beliefs and to uphold the rule of law (usually with reference to public order) are deemed to be ‘moderates’. It is however, a contested term which is firmly located within the politics of the ‘War on Terror’.
9. For example, in 2007, in the UK, the Roman Catholic Church threatened to close all its adoption and fostering agencies because of new equality legislation, which made it unlawful for agencies to discriminate against gay couples wanting to adopt or foster children. The Church was seeking an exemption from the equality legislation pertaining to sexual orientation. We fear that religious institutions in all religions will seek to legitimise sexual or gender discrimination by claiming religious privilege and by doing so, exclude from their services those who do not share their religious values.
10. By this, I mean forms of protest that seek to use fear and intimidation to impose a particular interpretation of religion on the population.
11. Over the years, there have been a number of protests within minority populations that reflect growing intolerance of dissent from within. The Muslim fundamentalist protests against Rushdie in 1989 is only one example of a growing number of protests. In 2006, Hindu fundamentalists attempted to use the language of human rights to stop an exhibition of paintings in London by the renowned Indian painter M.F. Hussain. They argued that the naked depiction of female deities offended ‘Hindu’ religious sensibilities – although their claim to represent all Hindus was never challenged by the organisers of the exhibition. Of course, dissent is not confined to minorities – in December 2004, Christian fundamentalists, led by the organisation Christian Voice, demonstrated outside the offices of the BBC against the broadcast of *Jerry Springer, the Opera*, on the grounds that it was blasphemous.
12. In this context, the term ‘orthodox’ refers to adherence to conventional or traditional religious doctrine, whereas ‘fundamentalism’ refers to modern political movements that

use modern means of communication to impose a strict and selective interpretation of a religious text on the basis that it is the only 'true' interpretation.

13. See Sahgal and Davies (1992).
14. See for example, 'Civil and Religious Law in England: A Religious Perspective', a lecture delivered by the Archbishop of Canterbury at the Royal Courts of Justice on 7 February 2008.
15. See Abul Taher (2008), 'Revealed: UK's first official Sharia courts', *Times Online*, Sep. See also Muslim Arbitration Tribunal, at [www.matribunal.com](http://www.matribunal.com)
16. The Muslim Arbitration Tribunal announces itself on its website in the following way: 'The Muslim Arbitration Tribunal (MAT) was established in 2007 to provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic Sacred Law and without having to resort to costly and time consuming litigation'. See Muslim Arbitration Tribunal, [www.matribunal.com](http://www.matribunal.com)
17. Women Against Fundamentalism was formed in 1989 to challenge the rise of fundamentalism in all religions. Its members include women from a wide range of backgrounds and from across the world. See [www.womenagainstofundamentalism.org.uk](http://www.womenagainstofundamentalism.org.uk)
18. See, for example, *Hirani v Hirani* [1983] 4 F.L.R. 232. *P v R* [2003] 1 F.L.R. 661 and *Re M Minors (repatriated orphans)* [2003] EWHC 852. In these cases, the English courts have for example recognised forced or imposed marriages in circumstances of duress and/or where undue pressure has been applied but not those where a petitioner has simply consented to a marriage out of a sense of 'duty'.
19. For more information, see [www.matribunal.com](http://www.matribunal.com)
20. This is a common argument made by some Muslim scholars, including feminist scholars in the UK (Malik 2008). While appearing to provide ways of negotiating competing interests in equality and human rights in the British context, the paper is devoid of any socio-political analysis that gives rise to demands for separate religious arbitration systems and fails to refer to the contestations that are taking place between feminists and fundamentalists in the legal arena. For example, in her analysis of the *Shabina Begum v Denbigh High School* case, there is a complete absence of any examination of the social and political pressure exerted by Shabina's brother and a Muslim fundamentalist group that advocated on her behalf and there is also no consideration given to the impact of growing fundamentalist demands for recognition of religious dress codes on other Muslim girls in the school who feared that they too would be pressurised into wearing the *jilbab*. Her paper also quotes, with approval, the attempts by Marion Boyd, the former Attorney General of Ontario, Canada, to legitimise and regulate Muslim arbitration systems within Ontario's civil legal system. However, it fails to mention that this development was contested by Canadian Muslim women, who in coalition with other women, eventually won a vital victory against the attempts to severely limit women's universal access to equality and human rights. See, for example Canadian Council of Muslim Women (2007).
21. The details of this case were circulated to SBS among other organisations, on 20 October 2006 by fax, by a police inspector from the Specialist Crime Directorate of the Metropolitan Police Force.
22. The term refers to those who strictly adhere to religious tenets and values only.
23. The Muslim Women's Network UK is an independent network of Muslim women who seek to provide a 'channel' between Muslim women and the British State to ensure that they have equality of opportunity and an effective voice. See [www.mwnuk.co.uk/content.php?id=84](http://www.mwnuk.co.uk/content.php?id=84)
24. Following SBS's victory in challenging Ealing Council under the Equality legislation, a pilot study was carried out by SBS with funding from Oxfam UK. The goal of the study

was to assess the impact and process of the cohesion agenda and to bring the severely marginalised voices of women from ethnic minority groups within the UK into the debate on community cohesion. A report on the findings will be published by SBS in winter 2010.

25. In the study, a significant number of women recounted cases where religious authorities had abused their positions of power. A particularly common fear that emerged was the fear of being sexually abused by figures of religious authority.

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*Maryam Namazie*

## Religion is a Private Affair

One law for all

***This article explains the position of the Council of Ex-Muslims of Britain (CEMB), which was established to break the taboo that comes with renouncing Islam. The organisation's assertions include that people everywhere want and demand universal rights and values, which are not Western but belong to all humanity.***

The Council of Ex-Muslims of Britain (CEMB) was established in June 2007 to break the taboo that comes with renouncing Islam (and religion altogether).

This public renunciation is crucial because being an ex-Muslim, or an apostate, is punishable by death in many countries ruled by Islamic law. Even in a place like Britain, there are many who face threats and intimidation for leaving or wanting to leave. I suppose you could say this coming out is similar to gays who came out of the closet to highlight their situation and make it easier for others to do so. Because of the CEMB's existence, it has become easier for ex-Muslims to come out and not feel so alone.

We use the term ex-Muslim, rather than atheist, not because we want to create yet another false identity that divides and excludes. After all, we want people to be treated as human beings and citizens, and for one's religion or belief to be relegated to a private affair. But whilst religion or the lack thereof is one's own business, it's a different story when one can be killed for it. Then a public challenge becomes a form of resistance.

Of course people have always left Islam before but an organised movement of this nature paves the way for others to be able to renounce religion and Islam and breaks the most important taboo.

The CEMB shows that there are many who want to leave, or at the very least who are opposed to the political Islamic movement and who are challenging it head-on especially in light of the fact that Islamists often feign to represent all 'Muslims'.

The CEMB also shows that Islamic rule and its savagery are not people's 'choice', their culture and religion as the Islamists often claim, but actually the culture and religion of a ruling elite and political movement that imposes it very much by brute force. We reiterate that people everywhere want and demand universal rights and values, which – as we have said on many occasions – are not Western but belong

to all humanity. We insist that people are not to be handed over lock, stock and barrel to regressive Islamic organisations and pigeonholed as ‘Muslims’ when we all have hundreds of characteristics that define us and that we define ourselves by. To make ‘Muslim’ the most important characteristic is part of the attempt to Islamicise people and relegate them to the political Islamic movement.

Cultural relativism helps to imply that Islam and political Islam represent all those who are deemed or labelled Muslims – whether they were born or living in the Middle East, Asia or North Africa or once came from there umpteen generations ago. It’s as if there are no classes, political, social and rights activists, communists, atheists, progressives, freethinkers, humanists, rationalists or secularists among this group – all are Muslims, and the most reactionary of Islamists at that!

With free expression under such threat and criticism of religion even deemed to be defamatory, the CEMB also defends free expression unconditionally and unequivocally as the very act of renouncing religion and Islam is one of the greatest acts of free expression possible in our day and age. Throughout history, freedom of expression has had most meaning when criticising religion, and such expression and criticism has been necessary for the advancement and progress of society.

Whilst the CEMB has mobilised much support – including from Muslims and others – this support has been missing from what we call the religious-nationalist anti-imperialist left, which is more concerned with defending religion and particularly Islam at the expense of people’s lives. This anti-colonial grouping has an affinity with Islam, which it sees as an oppressed religion and its perspectives coincide with that of the ruling classes in the so-called Third World. This grouping is on the side of the ‘colonies’ no matter what goes on there. And their understanding of the ‘colonies’ is Eurocentric, patronising and even racist. In the world according to them, the people in these countries are one and the same with the regimes they are struggling against. So at Stop the War Coalition demonstrations here in Britain, they carry banners saying “We are all Hezbollah”; at meetings they segregate men and women and urge unveiled women to veil out of ‘solidarity’ and ‘respect’.

But even their anti-imperialism – their badge of honour – is pathetically half-baked; it does not even scratch beneath the surface to see how political Islam is an integral part of US-led militarism. Their historical amnesia of even the past 30–40 years ignores that the political Islamic movement was encouraged and brought to centre-stage by Western governments as a green belt against the former Soviet Union during the Cold War. They conveniently forget how in Iran, for example, it was supported in an effort to crush the left and working class revolutionary movement. Or how political Islamists are some of the US’s closest allies and how it has been strengthened anywhere they have ‘intervened’ – from Afghanistan to Iraq to Palestine.

They fail to see that in practical terms – notwithstanding the differences – political Islam and US-led militarism are two sides of one coin with the same agenda, the

same vision, the same infinite capacity for violence, the same reliance on religion and reaction, the same need for hegemony.

This type of politics denies universalism, sees rights as 'Western', and justifies the suppression of rights, freedoms and equality, under the guise of respect for other 'cultures' implying that people want to live the way they are forced to.

Whilst the anti-imperialist left defends and justifies political Islam on the one hand, the virulently racist and right wing defends US militarism and the brutal Israeli occupation of Palestine on the other. They rattle off fact after fact about the horrendous status of women under Islam so that it can help promote the neo-conservative agenda of bombing men, women and children into 'liberated' swamps like Iraq. They are only 'concerned' about the 'rights' of women and apostates so they can ban the Qur'an and 'Muslim immigration', so they can "stop the subhuman teeming hordes destroying the Christian nature of Europe and the West".<sup>1</sup> They are quite happy to defend Christian religious morality, restrict the benefits due to single mothers, demand exemptions from the Sexual Orientation Regulations, and bar funds for AIDS-related and contraception-related health services abroad.

Both the anti-imperialist left and the right wing refuse to see millions of people as truly human – with innumerable differences of opinions, and belonging to vast social movements and progressive organisations and parties – and worthy of the same rights and dignity as they believe is their due.

Despite all their language to the contrary, the politics of both sides has nothing to do with improving and changing the lot of humanity and the status of people living under religious laws.

In the face of political Islam's onslaught often aided and abetted by government policies of cultural relativism and minoritism, the European nationalist-religious anti-imperialist left and the virulently racist right wing, it is the CEMB<sup>2</sup> and other secularists that are raising the banner of secularism, universalism and values worthy of 21st century humanity here in Europe and across the world. This movement must be supported and defended unequivocally.

## Endnotes

1. Namazie, M. (2008), 'Challenges facing the women's liberation movement'. Speech at 'Sexual apartheid, political Islam and women's rights' seminar, London, 10 March, <http://maryamnamazie.blogspot.com/2008/03/challenges-facing-womens-liberation.html>
2. CEMB (2007), *Manifesto of the Council of Ex-Muslims of Britain*, [www.ex-muslim.org.uk/indexManifesto.html](http://www.ex-muslim.org.uk/indexManifesto.html)



*Bojan Aleksov*

## The New Role of the Orthodox Church in Serbia

***After Slobodan Milošević was ousted from power, the new democratic government of Prime Minister Zoran Đinđić introduced religious education in state schools. Although only one part of Đinđić's strategy, allying with the Serbian Orthodox Church (SOC) became a steady component of political rule in Serbia. The confessional allegiance and faith became chief legitimising devices, supplementing or replacing the nationalism and social populism of Milošević's era, and filling an ideological void.***

***In addition to religious education in schools, the effects of the alliance of the political elites with the SOC include: a new law on religious communities which secures a special status to the so-called traditional churches; an officially sanctioned influence of the SOC on the media; increased public spending on the churches, especially the SOC; worsening relations with Romania, Macedonia and Montenegro by following the SOC's or individual bishops' policies; dismissing legal proceedings against SOC clergy; growing discrimination against small non-traditional religious communities.***

After Slobodan Milošević was ousted from power in Serbia in October 2000, one of the first measures of the new democratic government of Prime Minister Zoran Đinđić was to introduce religious education in state schools.<sup>1</sup> A declared atheist, Đinđić also became the head of the consortium for the construction of St Sava Church in Belgrade, often hailed as the biggest Orthodox church in the world. After two years in office, he made his last public appearance at a fundraising event for St Sava Church among the Serbs in Germany. A couple of days later, Đinđić was killed in broad daylight in front of a government building by members of the secret police. Despite his efforts, Đinđić remained unpopular among the clergy and generally among those close to the Serbian Orthodox Church (SOC). This was evident even during his funeral when the Metropolitan of Montenegro, Amfilohije, who was officiating in place of the ailing Patriarch Pavle, compared in his eulogy Đinđić's murder to all the murders in Kosovo and Iraq [sic], to the consternation of all those present. Although only one and eventually the least successful of Đinđić's political strategies, allying with the Church has remained a steady component of and rule in political behaviour in Serbia ever since. Whether a true sign of piety or rather a pragmatic display of confessional allegiance, close contacts with the Church developed into key elements of authority-building. This comes as no surprise considering the fact that for many years now the SOC has featured as the most trusted institution on all the public opinion polls.

There are two phenomena to distinguish here. With the growth of public recognition of religion in Serbia from the end of the 1980s onwards both ideational and practical religiosity undeniably rose, albeit with a considerable gap between the two.<sup>2</sup> Indicative of this change is the fact that before churches often stood empty, whereas now throngs of believers cram into both the old and the new sacral constructions mushrooming all over the country. Instead of a handful of elderly women hidden in the churches' corners, now men and women in attendance are neatly separated, standing on the right and the left side respectively. Even head-covering for women in churches has, after half a century, been reintroduced. Not all of this can be discarded as a fashion, a consequence of or a benefit from the Church's alignment with Serb nationalism in recent years, as is often simplistically claimed. In order to point out that there is more to it, it suffices to consider the rising number of young men and women who take monastic vows of celibacy and dedicate their lives to God and the Church in numerous old or newly founded monasteries.

The revitalisation of religion has been a dominant trend in the entire post-communist world, yet it occurred in different ways in all countries, and hence this wholesomeness as such cannot explain the socio-religious changes and the role of the different churches involved in the process.<sup>3</sup> The alleged de-secularisation of Serbian (and Yugoslav) society and the subsequent reclaiming of the public space by the SOC are post-Socialist trends that have been closely studied. Developments since 2000 have received less attention.<sup>4</sup> In Serbia, the alliance between the elites and the SOC marks a significant change compared to the years of Milošević's rule. In addition, the Church's involvement and ambitions, conflicts within the Church itself as well as with other segments of society have reached unforeseen dimensions. This article looks at some of these quantitative and qualitative changes noticeable since the overthrow of Milošević.

As I will illustrate, it is the state's representatives who, in a remarkable twist, since the end of 2000 have been seeking to establish strong links with the Church in order to consolidate and legitimate their political positions. This is quite the reverse from the situation in the late 1980s and early 1990s, when it was the Church that sought to establish such links and when Milošević only reluctantly accepted such offers, often only to his own benefit. However, Milošević never attended liturgies or showed a high regard for the Church. Neither did he restore church property lost under communist rule nor did he allow for religious education in public schools and religious influence in the public media.<sup>5</sup>

Whereas during Milošević's rule religious resources and symbolism were mobilised only to serve clearly political purposes and to legitimise the dominant nationalist orientation, after 2000 systemic institutional arrangements were introduced with the aim of establishing a new cultural and symbolic centrality of SOC and some other so-called traditional religious organisations. In order to achieve this, massive changes in both the legislation and policies of representative governmental agencies

at all levels have been undertaken. Most prominently, government members elected after 2000 as well as all those gaining institutional power on any political level vocally pay homage to the Church as the chief symbol of Serbian culture and national unity. Many previously explicitly atheist politicians have been seen posing awkwardly through the long hours of Orthodox liturgy and even competing in their public appearances alongside church dignitaries. Finally, religious iconography of public events is revived together with conservative religious discourse. The changes introduced after 2000 affected other religious communities in Serbia as well, especially the ones considered 'traditional' and privileged. This inevitably led to power struggles within religious communities, with far-reaching and sometimes violent implications, as was the case with the Islamic community. Because of the range of issues involved, the situation of other religious communities will have to be omitted and the following article will focus on the new role of the dominant Orthodox Church in Serbian society.

## **The change in the legal status of the Church and its implications**

Soon after the ousting of Milošević, Zoran Đinđić was the first to realise the enormous symbolic political power inherent in an alliance with the SOC. In July 2001, after he had met the members of the SOC's Holy Synod, the government issued a decree authorising the SOC and six other religious communities to offer religious education in state schools as an optional subject.<sup>6</sup> After more than a decade, this demand of the Church was accepted in a move widely interpreted as an attempt to appease the Church and the nationalists after Đinđić's extremely unpopular decision to arrest and extradite Milošević to the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Hague. Although religious education had been demanded by the SOC for long, it was introduced hastily, without any prior input from experts, without public or parliamentary debate, without consideration of its impact on other subjects, without a distribution of class hour funds, and, above all, without providing for properly trained teaching staff.<sup>7</sup>

Initially, it encountered only lukewarm acceptance. When the Ministry of Education was asked to publish information on the number of students who, in the first year after its introduction, had chosen religious education over the alternative option, civic education, the Ministry replied that such information could not be published without the permission of the SOC. The following year, the Serbian Parliament agreed to change the Law on Elementary and High School Education, altering the optional status of religious and civic education to compulsory; the only option that remained was choosing between the two. Ever since, the percentage of students opting for religious education has steadily grown and overwhelmingly supersedes the percentage for civic education. A further change in educational policies occurred in 2004, when the government annulled a decree that had removed the Theological Faculty from the University of Belgrade in 1952. The Theological Faculty, which for

half a century had been maintained exclusively by the SOC, was thus returned to the University of Belgrade and under the budget of the Ministry of Education, albeit with these two state institutions having no say in what is taught there and how it is done. In spring 2008, Radomir Naumov, then Minister of Religious Affairs, signed an agreement on state financing with four Orthodox seminaries (high schools). Urging the seminaries to abide by the legal requirements for high schools in terms of teaching plans, didactical programmes, textbooks and staff, the state's actual ability to exercise supervision in religious high schools is still to be seen.<sup>8</sup>

The introduction of religious education in state schools and the subsequent changes of laws pertaining to education policies also established a hitherto unknown legal concept of 'traditional churches' for seven religious communities.<sup>9</sup> This new concept, modelled on the Austrian law on religious associations passed in 1998, quickly became the common device for structuring both religious policy-making and legal debate, and was clearly distinct from the previously existing notion of unlimited religious pluralism, widely criticised within the SOC as a vehicle for secular disbelief.<sup>10</sup> In 2006, two key legal documents regulating the position of churches were adopted. While the constitution proclaimed the separation of Church and state (Articles 11 and 44), both the new Law on Churches and Religious Communities and a sub-legal act on the Registry of Churches and Religious Communities legalised discrimination by attributing historical continuity and legal subjectivity only to "traditional churches and religious communities" that existed since 1930 at the latest.<sup>11</sup>

This arbitrary act does not acknowledge all other religious communities registered in accordance with the previous law, which caused heavy protests by the smaller communities. Furthermore, the new Law on Churches permits the "traditional churches and religious communities" to perform religious rituals within schools, state institutions, institutions of social and child care, hospitals, the army, the police, prisons, public and private enterprises, citizens' apartments as well as other places. Equally controversial, the law recognises bishoprics to be legal units, opening up the possibility of arbitrary state interference with inner church affairs. And finally, through the provision that there may be only one Orthodox Church, the Ministry of Religious Affairs, which authored the law, clearly favours Orthodox canons over European legal conventions.

What are the wider implications of these legal changes? Ever since Đinđić's decision in 2001 to support the construction of the St Sava Church with state funds, there has been regular and increasing financial support of the SOC from the state budget. Since 2004, in addition to some ad hoc sponsoring activities, the salaries of the SOC clergy in Kosovo have regularly been paid by the state. In 2008, the state budget envisaged 180 million dinars for church buildings, of which the SOC received 162 million dinars, the Roman Catholic Church five million dinars, and the other recognised religious communities one or two million dinars each.<sup>12</sup> The greatest share has been allotted to the interior decoration of St Sava Church in Belgrade.

In 2008, the state expanded its coverage of the salaries of the Orthodox clergy in Kosovo, now including 765 priests and monks in several border or economically deprived areas.

In 2002, a new broadcasting law was ratified, obliging the public service radio and TV broadcasters to acknowledge the traditional, spiritual, historical, cultural, humanitarian and educational importance of the SOC and other traditional religious communities in society.<sup>13</sup> Under this law, the State Broadcasting Commission (Republička Radiodifuzna Agencija, RRA) was set up. It consists of nine members, featuring a representative of the religious communities, Bishop Porfirije of the SOC, who was recently elected to head the Commission. Furthermore, the law exempts religious communities from paying broadcasting fees until the denationalisation process will be completed (article 67). While various radio stations and at least one ecclesiastical TV station have been broadcasting semi-legally or illegally for years, the State Broadcasting Commission recently announced that 10 church radio stations have applied for operating licences. Yet this is only a fraction of the ever-growing media presence and influence handed to the SOC by both the state and the private media.

The Law on the Restitution of Property adopted by the Serbian Parliament in 2006 foresees, with regard to the Church, the complete restitution of its property.<sup>14</sup> According to the director of the Serbian Restitution Directorate, Vladimir Todorović, 813 requests for the restitution of land were submitted, of which 632 came from the Serbian Orthodox Church. Some requests were already processed, for example the Monastery Kovilj near Novi Sad regained 1,000 hectares of land that had been sequestered after the Second World War.<sup>15</sup> Although the restitution of property was undertaken in all previously communist-ruled countries, two issues distinguish the Serbian case. Firstly, unlike in neighbouring countries, the restitution of church property was not initiated contemporaneously with the return of nationalised property to private individuals, which is still pending. Secondly, a lack of transparency and accounting for the property once it is returned can be observed. In Hungary and Croatia, where significant property has already been returned to the SOC, the public and even most of the clergy were not involved in any decision-making over its future use. In both countries rumours arose about some members of the clergy usurping their positions in order to gain privately from the transactions.

In addition to the political support and laws that boosted the economic and social status of the SOC it is important to notice the change in the attitude of courts and various government agencies in handling the matters that involve clerics. In the period under consideration between 2001–07, two important trials were carried out against clerics. In two separate cases, a bishop and a hieromonk of the SOC were charged for paedophilia and criminal sexual conduct with boys. Despite the fact that the testimonies included those of other clerics and despite unforeseen media interest, the prolonging of the court hearings saw the charges expired and the accused acquitted. Lawyers and many observers in the media

attributed the acquittal to the pressure exercised on the courts by the Church or the pro-Church fraction in the government of Vojislav Koštunica.<sup>16</sup> In the case of the bishop of Vranje, Pahomije, the County Court in Niš, which is a court of the second degree, upheld the verdict of the Municipal Court, dismissing the appeal from the Municipal Public Prosecution without motivating its decision.<sup>17</sup> Eventually, the Supreme Court denounced the judges responsible for the expiration of both charges, which however, bore no consequences either for the judges involved or for the trial outcome.<sup>18</sup>

Beyond these cases, several legal conflicts between the Church and the State Institute for the Protection of Cultural Heritage occurred, the legitimacy of the latter being increasingly questioned or disrespected by clergy members.<sup>19</sup> On the other side, the State Institute's conservationists claim that many churches listed for protection suffer damage and the destruction of their historical settings through unauthorised construction or renovation works undertaken by the clergy. Besides alterations of existing buildings and frescoes, the most disputed issue is the unauthorised construction on church grounds of so-called parish homes, usually priests' houses. The size of these new houses often exceeds that of the historical churches, obstructing the view, not to mention the houses' appalling architecture. What is more, the responsible local authorities simply tend to gloss over construction and civic building regulations when it comes to churches. In a widely publicised case, the Heritage Protection Institute pressed charges against bishop Filaret for building his residence and a fishing pond on the grounds surrounding the monastery church of Mileševa, one of the prime examples of medieval fresco art in Serbia. Filaret's building mania, the conservationists claimed, seriously undermined the monastery church's foundations and also destroyed its original appearance. Filaret's additions were neither removed nor sanctioned in any way.<sup>20</sup> Currently two more medieval monasteries, Žiča and Banjska, are in a process of state-sponsored reconstruction and massive extension, despite fierce criticism and opposition from the conservationists.<sup>21</sup>

Also in other conflicts, the state and its agencies increasingly succumb to the pressure exercised by the Church. A recent telling example is the case of Dr Predrag Ilić, lecturer at the Police Academy in Zemun and author of the book *Srpska pravoslavna crkva i tajna Dahau*<sup>22</sup> ('The Serbian Orthodox Church and the secret of Dachau'), in which he questions the Church's victim account of the war-time fate of Bishop Nikolaj Velimirović, showing that he in fact spent a very short time in Dachau and that he was awarded better treatment than other prisoners.<sup>23</sup> When the Holy Synod orchestrated a campaign against Ilić and especially protested against the fact that he was a state employee, the Vice Minister of the Interior Vladimir Božović threatened Ilić with job dismissal rather than defending him.<sup>24</sup> In another controversy surrounding the canonisation of Bishop Nikolaj Velimirović in 2003, his staunch anti-Semitism was denied and suppressed.<sup>25</sup> At the same time, there are cases in which government ministers and political leaders have interfered with internal affairs of the Church. The leader of the New Serbia party (Nova Srbija)

and Minister for Infrastructure in Koštunica's government, Velimir Ilić, intervened in support of three priests in his hometown of Čačak who had gone on a hunger strike after the local bishop had removed them.<sup>26</sup>

Of all government agencies, the one most biased in favour of the Church is the Ministry of Religious Affairs. Since 2000, it has been headed by laymen who previously or even during their times in office maintained functions within the SOC. Rather than acting as public officials indiscriminately defending and enacting government policies, they often act as the SOC's representatives in the government, promoting the Church's cause. The recent appointment of Bogoljub Šijaković, a professor of philosophy at the Theological Faculty in the University of Belgrade, who already held the same post in the federal government of Jugoslavija between 2000 and 2001, to the new Serbian government led by the Democratic Party signals that no change in attitude or policies is to be expected. All of the above demonstrates that the close Church-state relationship that has emerged in Serbia is situated between the model found in countries like Greece and the model of separation and cooperation, as for example in Germany and Austria, where churches are endowed with a variety of social tasks.<sup>27</sup> Those favourable to greater church involvement in society are pressing for further changes, which would ensure more privileges for the SOC and other traditional religious communities as well as grant them a special status in decision-making in many areas of life. To any criticism they reply with the argument that privileging traditional churches and providing for their social involvement might be a novelty in Serbia, but such privileging is widespread in countries with which Serbia has close historical and cultural ties, and which all are members of the EU. The foreign partners of the SOC, such as the Konrad Adenauer Foundation or the Catholic Church in Germany and Austria, actively shape this view through regular training sessions and seminars, translations of German publications and transfer of ideas and models from Austria and Germany.<sup>28</sup>

## **The Church's mission**

The positive disposition of the authorities towards the SOC saw an unprecedented surge in church activities.<sup>29</sup> In the years since 2000, there has been a noticeable increase in church construction, the revival of old and the founding of new monasteries, the opening of new seminaries and theological faculties, and consequently also an increase in the number of students and priests. While it is difficult to find comprehensive information on the scope of construction activities on behalf of the SOC, the available data proves illustrative enough. In Novi Sad alone, 18 churches have been built since 1990, 12 of them after 2000. In the bishopric of the Banat currently 30 churches are under construction, and in the large Niš bishopric over 100, which is more than during the whole period of modern Serbian statehood in that diocese.<sup>30</sup> Much of this church-building receives financial support either through the state budget or through municipal authorities and large state enterprises. The remainder of the costs is covered by church funds and

private donations, the latter of which include rather dubious businessmen and war profiteers. Among the most notable donors were the leader of the paramilitary unit 'tigers', Željko Ražnatović Arkan – killed in 2000 – and the businessmen Stanko Subotić Cane, Bogoljub Karić and Đorđe Knežević, who are all under criminal investigation or already sentenced but beyond the reach of justice. Some of the donors have received high church decorations for their contributions. The construction zeal results in excesses such as oversized churches, church towers and fences, or in endeavours such as the shipping of soil from Serbia to Herzegovina, in order to build a monastery there on 'Serbian' soil.<sup>31</sup>

With the same pace in which hundreds of churches of uniform appearance came to dot the landscape, new saints fill up the church calendar. Much has already been written about the Kosovo myth connected to the notion of 'heavenly' Serbia, i.e. the notion of the Serbian people being elected by God, a nation with a 'mission'.<sup>32</sup> Here it will suffice to point out that it was the idea of the 'divine' medieval Serbian state as established by St Sava and glorified in the Kosovo martyrdom which served the merging of the ethnic principle with the Orthodox faith. This merging was cemented in the interwar construct of *Svetosavlje* as the uniquely Serbian interpretation of Orthodox Christendom.<sup>33</sup> The identification of the Orthodox Church with the Serbian nation as assumed in *Svetosavlje* has seen in the meantime some additions that have received less attention, if any at all. The suffering that the SOC and the Serbian people underwent in fascist Ustaša Croatia became the key proof for the Church-nation symbiosis while the victimisation rhetoric extended to post-Second World War communist-ruled Yugoslavia up to most recent events during the wars after the dissolution of Yugoslavia. These are part of the larger wave of historical revisionism in Serbia whose target is the history of the Second World War and its aftermath, i.e. the revision of the role of the quisling regimes, collaborationist forces, and communist government after the war.<sup>34</sup> In the last decade the SOC has canonised many martyrs of those years. The shadow on these canonisations was cast when many priests who were made saints because they were allegedly victims of communist terror were identified by witnesses as Nazi collaborators and convicted criminals of the Second World War.<sup>35</sup> Another dubious practice was to refashion the suffering the Serbs experienced under the murderous Ustaša fascists. In Ledinci in the Srem diocese the execution of local Serbs by Croatian Ustašas or Nazi Germans was remodelled on the example of Glina in Croatia, where local Serbs were burned to death in their church.<sup>36</sup> As if it was not enough for these victims to be murdered, they also had to be burned in the church in order to be remembered, or for memory to be manipulated. In addition, in connection with the recent war in Bosnia-Herzegovina, there were attempts in some bishoprics to revive the topic of martyrdom under the 'Ottoman yoke'. In the village of Medna, in the Bihać diocese in Bosnia, using the Greek blueprint, the remains of supposed monks and children allegedly killed by Ottoman Turks were excavated and a new monastery envisaged in order to advance the cult of victimhood and martyrdom under the 'yoke of bloodthirsty Turks'.

None of these cases, however, compares to the attention the SOC dedicates to the Jasenovac concentration camp as the location of the single-most tragic suffering of Serbs in the Second World War. Besides canonising Jasenovac victims, the Church, apparently dissatisfied with the Serbian state's engagement in this regard, has taken over the organisation of commemoration practices and even research on Jasenovac. The Holy Assembly of Bishops created the Jasenovac Committee (*Odbor za Jasenovac*) to coordinate worship, commemoration practices, research, and public education activities. The Committee runs an elaborate website, organises public activities, and cooperates with many research centres specialising on the Holocaust and the Second World War in Serbia, Israel and the US.<sup>37</sup> This remarkable engagement is, however, overshadowed by the Church's insistence on the number of 700,000 Jasenovac victims, despite recent tacit agreements of researchers on an equally horrifying 80–100,000.<sup>38</sup> What is more, the fact that the SOC continues to refuse cooperation with the memorial centre in Jasenovac run by the Croatian government, and instead promotes a centre of its own in Donja Gradina, on the Bosnian side of the Sava river, seriously puts into question the Church's determination to keep alive the memory of the victims of Jasenovac. Instead of uncovering evidence and keeping up the memory of the suffering, the exaggeration of numbers and glorification of suffering epitomise what is usually described as a *martyrium* myth.<sup>39</sup> To use the words of Vjekoslav Perica, the Kosovo sacrifice together with the martyrdom of the Jasenovac concentration camp have come to form a sort of 'Jerusalem Myth', whose function is to boost "national pride and cohesion [and to] strengthen the status of the SOC as a partner in the national leadership".<sup>40</sup>

Many bishops and priests see themselves at the forefront of the defence of Serbian interests, which means that they often are to be found at the core of current conflicts, especially in bishoprics where Serbs live alongside other confessions or other, non-Serb Orthodox Christians. Thus, Bishop Justin of Timok is at odds with the Orthodox Vlachs in Eastern Serbia, Bishop Filaret with the Muslims in south-western Serbia, Bishops Vasilije and Irinej with the Hungarians in northern Vojvodina, not to mention the bishops in Bosnia, Croatia and Montenegro. The church reports about incidents tend to exaggerate and always victimise the Serb side. For example, when in January 2005 Bishop Filaret reported and the church media disseminated the information about a great commotion among the Serbs caused by a Muslim attack on a priest in Pljevlja, it eventually turned out that some youngsters had called a young local priest 'big head' as he was passing by.<sup>41</sup> On a few occasions, the conflicts involving the clergy led to the worsening of inter-ethnic and even interstate relations, notably with Montenegro, Macedonia and Romania. The problems with Montenegro began when its authorities banned the entry of Bishop Filaret to its territory following the directive of the ICTY that marked him as an associate of fugitive war criminals. The Serbian Minister for Infrastructures and close associate of Prime Minister Koštunica, Velimir Ilić, suspended his visit to the country, and the Serbian Radical Party threatened a traffic blockade. The

Montenegrin authorities eventually succumbed and allowed the controversial bishop to enter.<sup>42</sup> In 2005, the conflict over the status of the Orthodox Church in Macedonia had escalated beyond the ecclesiastical level when the abovementioned Minister Ilić ordered the withdrawal of two Serbian aircraft rented by Macedonian Airlines. The action was reported to be in retaliation for the jailing of a Serbian Orthodox Church priest in Skopje for allegedly inciting religious hatred.<sup>43</sup> Finally, the conflicts over canonical territory continue unabated with the Romanian Orthodox Church, as the SOC does not recognise the Romanian Church's pastoral rights in the territories south of the Danube among the Vlach (Romanian dialect) speaking Orthodox, and objects to the Romanian bishop residing in Banat, where there is a recognised Romanian Orthodox Church curacy (*vicariat*). The above discussed Law on Churches and Religious Communities and the Registry of Churches, however, do not recognise the Romanian Orthodox Church as "traditional".<sup>44</sup> Submitting to the SOC's canonical interpretation, the state in this case is clearly violating the principles of Church-state separation as well as that of non-discrimination.

It should not go unnoticed, however, that in some instances conciliatory actions replaced what previously had been conflict-provoking attitudes within the SOC, the most notable being the SOC's decision in 1999 to appoint new bishops for the bishoprics in Croatia and Bosnia, which had been vacant after their bishops had fled during the wars of 1991–95. Then, the Church had issued a communication to the international mediators stating that "victims of genocide cannot live together with their past and perhaps future executioners," thus justifying armed upheaval and violence perpetrated by Serbs in Croatia and supported by the Yugoslav Federal Army.<sup>45</sup> Not without opposition within the Church, this move considerably eased the return and reintegration of Serbs, as is the case in Dalmatia with its agile Bishop Fotije. Another example is the cooperation of the SOC with the international administration in Kosovo over the reconstruction of destroyed and damaged Orthodox churches, despite the harsh opposition of the local bishop Artemije.<sup>46</sup>

Motivated by its acquired freedom and privileges, the Church has become very active in setting up humanitarian and also women's organisations, publishing houses and electronic media, travel agencies and other businesses, none of which had existed for almost half a century or, in some cases, had not existed at all. Expanding its social involvement and allowing also for lay involvement, the SOC is struggling to keep its grip on these activities. In many dioceses, the lay Bogomoljci movement has been revived, yet unlike in its heyday during the interwar period it is now strictly controlled and supervised by the SOC.<sup>47</sup>

Likewise over 60 Orthodox youth organisations have emerged since 2000. They are all geared to function under the Church's umbrella and strictly reflect church structures. Among the most active of these lay organisations are the Otačastveni Pokret Obraz ('Fatherland Movement Dignity'), the student association Sveti Justin ('Holy Justin'), and in particular the influential youth organisation Srpski Sabor Dveri ('Serb Assembly Dveri'). Obraz had its first public appearance in March 2001 with its

so-called 'Announcement to the Serb enemies' (*Srbskim neprijateljima*) referring to Jews, Ustašas, Muslims, Albanians, democrats, fake peacemakers (read: NGOs), sects, drug addicts, and homosexuals.<sup>48</sup> The roots of this most extreme right-wing organisation go back to the mid-1990s and a magazine entitled *Obraz*, to which many rightist intellectuals, including former Prime Minister Vojislav Koštunica, contributed articles.<sup>49</sup> Today, *Obraz* remains the most radical youth group, last making a public appearance in the violent protests it staged in Belgrade after the arrest of war crime suspect Radovan Karadžić. They seem to be beyond control, though in close contact with some of the clergy.<sup>50</sup>

Although all of them began as political groups, most of these associations now focus heavily on moral issues. While this is a new phenomenon for Serbian par-ecclesiastical organisations, it is hardly a novelty in the context of lay groups among conservative Protestants and Catholics around the globe. In fact, the literature of American fundamentalist Protestants proves to be a major source of inspiration for many of the analogous moralising publications in Serbia. Also in other respects, the activities of Dveri and *Obraz* hardly differ from those of other NGOs or civic associations, as they organise workshops, trainings, lectures and excursions for their members. More importantly, Dveri managed to obtain financial support from the Serbian diaspora using church channels, being now able to compete with Western-funded political parties and NGOs in the scope of its activities. It boasts over 40 local branches in Serbia and is present at all Serbian universities. Its biggest success, however, was achieved when its members were asked to join the editing of the Church's most respected and widely read weekly *Pravoslavlje* in 2004. From then on, issues previously unspoken of, such as abortion, homosexuality, the role of women, as well as articles about the alleged detrimental influence of the Western world dominate over traditional theological topics. The political programme of Dveri is easily discernible from its slogans – for Orthodoxy, patriotism and the monarchy; against communism and globalisation, alternatively cosmopolitanism and mondialism – and its campaign against the so-called 'white plague' – the low birth rate – and abortion.

The emphasis of Dveri's activities is in line with the increasing ambition of the Church to influence public morality in Serbia. In recent years, a number of interventions by clergy members on behalf of the SOC led to cancellations or public protests against 'blasphemous' concerts, performances, movies and exhibits, even sausage festivals.<sup>51</sup> The Church's interference continues despite the state's support of some such events, or rather *because* of it, as was the case with youth camps organised by the Ministry of Education as a part of an AIDS prevention programme.<sup>52</sup> The Holy Synod issued a statement condemning the Ministry and with it the whole concept of modern education, identifying it with sectarianism, Satanism, etc. Among other things, the statement was based on a fabricated story according to which the participants of these camps were forced to strip in order to learn how to use a condom.<sup>53</sup> Finally, in yet another realm, young lay activists close to Dveri succeeded in influencing the SOC to become the most resolute opponent of any technological

inventions that encroach on privacy, such as chipped IDs or closed circuit television systems. Although usually rather on the agenda of leftist anti-globalisation groups, the concern for privacy is also shared by American Christian fundamentalist groups, who, as said, heavily influence their Orthodox counterparts in Serbia. A few years ago, the Orthodox Church in Greece displayed a similar defiance towards such technologies, e.g. the new EU identity cards.

## Conflicts within the Church

Having illustrated the Church's activities and renewed position within politics and society, as well as some of the conflict potential this brought about, I will now analyse the widespread characterisation of this development as a clericalisation of Serbian society. In such characterisations, clericalism is generally understood as the attempt of the Church and the clergy to dominate political and cultural life. So far, there has been only one serious attempt, by the historian Slobodan Marković, to refute this claim.<sup>54</sup> Marković lists three necessary conditions for clericalisation:

- The number of practising and institutionally bound believers needs to exceed half of the population. In Serbia, while all relevant polls point to the rise of practising believers, these are still in single digits, while all others are rather to be classified as 'declarative believers'.
- The existence of a historical tradition of clericalism. In the modern history of Serbia, the Church has never played a significant role in politics. No significant political party or grouping embodies a clericalist tradition.
- Sufficient economic and political power of the Church to compete with the state. In Serbia, the Church does not own economic or profit-making resources (industries, hotels, etc.). The return of nationalised property is changing the Church's economic portfolio, but even with all its land and real estate returned, its property will still be considerably smaller than that of many private individuals in Serbia.

Not finding any of these conditional ingredients, Marković rejects the notion of the clericalisation or clericalism in Serbian society. We can add some more reasons by placing Serbia and its Orthodox Church in a wider context. In spite of clearly increased church attendance and the church construction boom in Serbia, it still seems obvious that even if these phenomena continue for a century, they will never come near the levels of Romania or Greece. Similarly, while the above changes point to the increased power and prestige of the Church in Serbia's current affairs, they come nowhere near the one enjoyed by the Orthodox Church in Greece, Cyprus or Romania, or by the Catholic Church in Austria, Italy or Malta, all of which are EU countries.

A key obstacle to any substantial clericalisation of Serbian society and not taken into consideration by Marković is the Church's internal divisions. The recent historical

heritage is hard to overcome. The most serious consequences of 40 years of official atheism feature a low level of religious instruction, weak religious intellectual elite, underdeveloped theological reflection, as well as the lack of language and flexibility within the Church to respond to contemporary challenges, including competition with other confessions. As a consequence, and despite a now very supportive environment, the Church not only often finds itself in conflict with the rest of the world, but is also ridden by internal divisions. Another consequence of the Church's increasing public involvement is exposure to media attention, which often results in a display of the Church's actual weakness. While creating numerous media outlets of its own, many in the SOC are extremely negatively disposed toward other, non-church media and use every opportunity to condemn their reporting. It is ironic that the SOC seems to long for the times when media coverage could be avoided or manipulated, as this was the case during the times when the Church was suppressed, if not literally persecuted.

Internal divisions are especially evident in the most pressing issue plaguing the SOC, which is the election of the successor to the aged and fragile Patriarch Pavle who has spent most of the last year in hospital. Commentators see the Metropolitan of Montenegro, Amfilohije, as the most likely successor to the Patriarch's throne. Amfilohije chairs the Synod, the Church's government, and is thus currently acting as the head of the Church. He is largely to be held responsible for the unforeseen growth of the Orthodox Church in Montenegro, which had been close to extinct. During his time in office, Amfilohije literally ordained hundreds of priests, monks and nuns, and consecrated hundreds of restored or newly built churches. Furthermore, relying on the sympathy he enjoys in Rome, where he pursued part of his graduate studies, as well as other international support, Amfilohije was behind the 'traditional religious communities' model in Serbia, which he strives to introduce in Montenegro as well. Finally, it was he who urged to accept European aid for restoring damaged churches in Kosovo, a matter which the local Bishop Artemije opposed, as mentioned earlier.<sup>55</sup> To crown his successes, the Holy Assembly of Bishops in 2008 approved of Amfilohije's initiative to raise the Metropolis of Montenegro to the rank of Archbishopric.<sup>56</sup> Having gained many enemies especially in his native Montenegro for his radicalism and outspoken Serbian nationalism, Amfilohije has recently adopted a conciliatory attitude, especially towards the inimical political leadership in Montenegro. In an interview in May 2008 to the Montenegrin daily *Vijesti*, Amfilohije expressed his wish to continue his mission in Montenegro, rather than be elected the new Serbian patriarch.<sup>57</sup> These statements came as a surprise to less informed church observers who had long considered Amfilohije the leader of the so-called hawks among the bishops. Yet unlike hardcore nationalists, Amfilohije and his followers eagerly establish links with the Vatican and many other European and Western institutions. However, seeking such contacts usually means finding possible allies in their anti-secular struggle without changing their normative stands on how the society and Church-state relations should be. Furthermore, Amfilohije remains a fervent Serbian nationalist, as was recently evident when he branded the

arrest of Radovan Karadžić as treason and hurried to praise Karadžić's courage after he visited him in prison.<sup>58</sup>

Nevertheless, close contacts with the Roman Catholic Church and international organisations make the Montenegrin Metropolitan a thorn in the side of the more hawkish and nationalist bishops, or the so-called Bosnian lobby within the SOC. For many years now, the regional balance in Serbian seminaries and among both white (married) and black (celibate) clergy has been swaying towards a Bosnian domination. Similarly, the Catholic Church in Croatia is increasingly dominated by the clergy originating from Bosnia, or more precisely, from some of its remote and poorer corners, where religious upbringing and schooling flourished even in the heyday of socialist atheism. Furthermore, the interplay of ethnicity and confession in Bosnia has influenced many to pursue a religious vocation when this was not popular elsewhere. The communist authorities were never able to uproot this phenomenon and could apply repression only in cases of nationalist excesses. Bosnia was the last part of the former Yugoslavia where priests even in the mid-1980s were sentenced to prison terms for what they said in funeral sermons or for what they sang at family patron saint celebrations. Once out of prison, these Bosnian priests were rewarded with the most influential positions in Belgrade or parishes in the diaspora. The war in the 1990s only strengthened the trend among the Bosnian youth to join the clerical ranks, so that now they make up the relative if not absolute majority among seminarians and newly ordained priests in almost all dioceses. Their domination is obvious in higher ranks as well. In addition to those heading the Bosnian dioceses, most of the bishops in the diaspora and even some in Serbia and Montenegro, such as the controversial Pahomije, accused of paedophilia, and Filaret, known for war-mongering, originate from Bosnia. Together, the Bosanci (Bosnians) form the strongest and most numerous lobby in the Assembly of Bishops. Their most vocal and powerful member is the bishop of Tuzla, Vasilije Kačavenda, known for his luxurious palaces and extravagant lifestyle.<sup>59</sup> According to press speculations, Bishop Vasilije's doubtful moral credentials and his involvement in the war in Bosnia, which had put him under the spotlight of the War Crimes Tribunal in the Hague, led the Bosnian lobby to look for a more suitable candidate.<sup>60</sup> They have agreed on Sarajevo's Metropolitan Nikolaj, the eldest and most respected of the Bosnian bishops, who has refrained from radical gestures or statements. Yet his old age makes him an unlikely candidate. What further undermines any prediction is the peculiar election procedure whereby the Patriarch is chosen by straw among the three candidates with the most votes. In any case, the most outspoken and prominent bishops hardly stand a chance to be among the first three, as they are not favoured by the silent majority. This is also the fate of the popular bishops exposed in the media, such as Grigorije of Herzegovina, who is the obvious favourite of the Serbian President Boris Tadić and the liberal elites in general.

The struggle over the patriarch's successor has, over the last couple of years, acquired additional dimensions through a dispute among some bishops over

what at first glance seem to be minor liturgical matters.<sup>61</sup> Little known to outside observers, internal wars are waged in the Church over a calendar and liturgical reform, the regulations of fast and the contacts with the Catholic Church or the ecumenical movement. A zealot-style movement emerged in the two biggest dioceses (Šumadija and Žiča), targeting their bishops Jovan and Hrizostom and turning them into unlikely successors to the patriarch's throne.<sup>62</sup> Inspired by Igoumen Veniamin and the historian Miodrag Petrović among others, the zealots struggle to preserve what they hold to be the old liturgical order and the true Orthodox faith.<sup>63</sup> The opposition to the local bishop amounted to violent incidents, requiring police security during some church services in the diocese of Žiča. The dissenters report to have been harassed by the police. Supported most notably by the bishops Artemije (Raška-Prizren diocese), Nikanor (Banat) and Jefrem (Banja Luka), the zealots have joined forces with the remnants of the never fully reconciled Free Serbian Orthodox Church, a group that had split with the SOC in the 1960s over its alleged cooperation with the communist regime, and gathered many Serbian Orthodox communities in the diaspora. In addition, many radical right-wing and nationalist intellectuals, monks and members of the Bogomoljci movement in Serbia eagerly join the ranks of what amounts to a new force against what internet sites of the 'Zealots' call the "Vatican Junta", led by bishops Amfilohije, Atanasije, Ignjatije, Irinej, Lavrentije and some others.<sup>64</sup>

When the issue of liturgical reforms was discussed at the Holy Assembly of Bishops in 2007, only 16 out of 37 bishops declared themselves in favour, and hence the old liturgical order remained intact.<sup>65</sup> Yet the division and conflicts remain intense as illustrated by the fact that some bishops, such as Nikanor of Banat, refuse to send candidates to study at the Theological Faculty in Belgrade which is apparently in the hand of the 'reformers'. The common denominator of the reformist and allegedly pro-Catholic and pro-Western bishops is their following of the teachings of John Zizioulas, the bishop of Pergamon of the Ecumenical Patriarchate. Notwithstanding his image as one of the greatest Orthodox theologians of our times, Zizioulas is despised among traditionalists as the head of the Orthodox delegation that signed the so-called Ravenna document in 2007 in which the Orthodox allegedly accepted the primacy of the pope.<sup>66</sup> In reality, despite their more diplomatic attitude, Amfilohije and most of those bishops branded as reformers studied in Greece and boost a profound and well-built criticism of the Catholic Church and Western institutions and society.

The 'Bosnians', on the other hand, are much less educated, and besides their hardcore Serbian nationalism and traditionalism lack differentiated views on the contemporary challenges pressing the Church, apart from outright rejection. Regardless of the nuances in the differing interpretations, one thing is certain: with the Holy Assembly of Bishops, the collective head of the Church, sharply divided into two camps, it is hard to foresee how they could agree on the candidates for holding the future Patriarchate. The tensions heightened even further with yet another violent incident on 22 August 2008, when Bishop Artemije attempted to

remove his adjunct Bishop Teodosije and the hieromonk Sava from the monastery of Dečani in Kosovo. Dečani boasts the most numerous brotherhood (27 monks) of all Serbian monasteries; it enjoys UNESCO heritage protection and a special reverence among the people for safeguarding the holy relics of the medieval king/saint Stefan. As already mentioned, Bishop Teodosije and hieromonk Sava, under the patronage of the Metropolitan Amfilohije, collaborated with the international and Kosovo authorities, which enraged Artemije, the canonically responsible bishop, who is known for his hardline position on Kosovo. Some ugly scenes of brawling among monks not only evidenced the sharp divisions and conflicts within the Church, but further worsened the situation of the remaining Serbs in Kosovo. In addition, the image of the Church was seriously damaged.

In December 2008, the Holy Assembly of Bishops met in Belgrade to discuss the plea of the Patriarch Pavle to be relieved of duties because of his poor health. The media widely speculated about the authenticity of the Patriarch's plea and the candidates for the future Patriarch. Eventually, the meeting ended with the decision to reject the Patriarch's plea and prolong the status quo which was an obvious sign that divisions persisted and no camp was able to gain an upper hand.<sup>67</sup>

## Conclusion

While rejecting the notion of a clericalisation of Serbian society, this article has drawn attention to the unprecedented rise of the SOC's economic and political power. Initially, the SOC as the historically dominant Church sought the restoration of its lost privileges from the pre-communist era and attempted to influence state authorities to limit the rights of other religious communities as well as of non-believers. The regime change in 2000 saw a reversal of policies. Not capable of solving its accumulated problems and of offering real future perspectives, the new political and economic elite in Serbia has felt a need to rely on the Church in order to consolidate and legitimise its power and authority. Courting the SOC, the representatives of the democratic political parties since 2000 have often assigned to the Church a much bigger influence over voter choice than it actually yields. Despite the trust and respect enjoyed by the SOC, public surveys have never resulted in establishing any link between confessional allegiance and political preferences. Nevertheless, the rigid model of separation between state and Church inherited from the communist period in Serbia has slowly been transformed into a new social pact between the SOC and associated traditional churches on one side and the state on the other. First of all, the legal division between traditional and non-traditional religious organisations inevitably placed obstacles in the work of the latter and privileged the former. Furthermore, the ambitions of the SOC as the biggest church with access to, a voice in, and an influence upon public life have significantly risen, as is evident through a number of legal changes and concessions. In its power drive, the SOC is now confronted with the temptation of many churches in post-socialist countries which have accepted instrumentalisations by the political forces to gain

some political power for itself. This overlapping of religion and politics resulted in what Horvat described as "politization of religion or religionisation/sacralization of politics".<sup>68</sup>

As has been pointed out, Serbian nationalism is still the SOC's most powerful resource for preserving its role as the dominant factor in society. Yet, the risks this involves have become obvious, as both the clergy and the church hierarchy prove unable to cope with the high expectations and privileges awarded to them, and instead become mired in a series of conflicts over nationalist and Orthodox righteousness or disputes over property. Further democratisation and pluralisation of society will bring more challenges for both the SOC and the relations between the Church and the state, especially as the pace of transformation accelerates. Unfortunately, most voices within the Church present secular modernity and its challenges in a highly abstract way (as rootless). Similarly, globalisation is simplistically reduced to such a modern secular abstraction. On the other hand, secular critics and opponents of the SOC often behave in an implacable fashion, presuming that the marriage of modernity and secularism is inevitable, and conceptualising any church and religion in general as irremediably anti-modern, monolithic and parochial. Both sides in this ongoing conflict tend to dramatise the antagonism and to co-produce each other through mutual stereotyping and aggrandisement: a phantom of secularism against a phantom of religion.<sup>69</sup> In contemporary Serbia, an old-fashioned anti-clericalism opposes an old-fashioned religious anti-modernism, which in its forms and style proves reminiscent of analogous antagonisms of the 19<sup>th</sup> century.

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## Endnotes

1. The author wishes to thank Klaus Buchenau, Slobodan Marković and Sabine Rutar who read previous drafts of this article and offered valuable comments and suggestions. For any remaining errors, the responsibility remains with the author.
2. For a detailed analysis see Mirko Blagojević (2003), 'Religijska situacija u SR Jugoslaviji: Revitalizacija religijskog ponašanja i verovanja', *Teme* 27(4): 525-552, [www.scindeks.nbs.bg.ac.yu/clanak.php?issn=0353-7919&je=sr&id=0353-79190304525B&pdf=da](http://www.scindeks.nbs.bg.ac.yu/clanak.php?issn=0353-7919&je=sr&id=0353-79190304525B&pdf=da)
3. Research on the expectations and hopes with regard to the social and cultural role of the Church shows significant differences among the post-communist countries and aptly illustrates the point, even if it unfortunately does not include Serbia. The polls, asking for religiosity and orientation towards the Church, brought forth the most skeptical attitudes towards the Church in Eastern Germany (27.6%), Bulgaria (33.9%), the Czech Republic (36.4%) and Estonia (38.5%). In the middle part of the scale range are Hungary (42.3%), Belarus (44.5%), Slovenia (46.8%), Latvia (52.8%), Russia (55.1%), Slovakia (59.7%) and Croatia (60%). Poland (62.7%), Ukraine (63.1%), Lithuania (74.4%) and Romania (74.7%) feature the highest shares of respondents who think that the Church significantly contributes to solving moral, family, spiritual and social problems. The polls in the various countries also confirm that no cleavage along confessional lines exists in the societies involved in the research. See Tomka, Miklós (2002), 'Tendances de la religiosité et de l'orientation vers les Églises en Europe de l'Est', *Social Compass* 49(2): 537-552.

4. The role of the SOC between 1945 and the 1990s is well covered in: Vjekoslav Perica (2002), *Balkan Idols: Religion and nationalism in Yugoslav states*. Oxford; Klaus Buchenau (2004), *Orthodoxie und Katholizismus in Jugoslawien 1945-1991: Ein serbisch-kroatischer Vergleich*. Wiesbaden (Balkanologische Veröffentlichungen, 40); Radmila Radić (2002), *Država i verske zajednice 1945-1970*, 2 vols. Beograd; and Eadem (2000), 'The Church and the Serbian Question', in Nebojša Popov (ed.), *The Road to War in Serbia: Trauma and catharsis*. Budapest, 247-273 (German version in Bremer Thomas, Nebojša Popov, Heinz-Günther Stobbe (eds.) (1998), *Serbiens Weg in den Krieg*. Kollektive Erinnerung, nationale Formierung und ideologische Aufrüstung. Berlin). References to the time period from 2000 to the present can be found in Ilić, Angela (2004/05), 'Church and state relations in present-day Serbia, parts I-IV', *Religion in Eastern Europe* 24&25 (6&1-3); Bogomilova, Nonka (2005), 'The religious situation in contemporary Bulgaria and in Serbia and Montenegro: differences and similarities', *Religion in Eastern Europe* 25(4), [www.georgefox.edu/academics/undergrad/departments/soc-swk/ree/2005/bogomilova.pdf](http://www.georgefox.edu/academics/undergrad/departments/soc-swk/ree/2005/bogomilova.pdf)
5. In fact, he even vetoed a bill on the restitution of church property enacted by members of Parliament of his own party, the Socialist Party of Serbia (Socijalistička Partija Srbije, SPS).
6. According to the decree on the organisation and implementation of religious education in state schools, published on 27 July 2001 in the *Serbian Official Gazette* 46, the following religious communities were proclaimed "traditional": Serbian Orthodox Church, Islamic community, Catholic Church, Slovak Evangelical Church of Augsburg Confession, Jewish community, Reformed Christian Church and Evangelical Christian Church of Augsburg Confession. The Holy Synod is the executive body made up of five bishops who governs the Orthodox Church in practical matters, whereas the Holy Assembly of Bishops includes all bishops, usually convenes once a year, and represents its highest legislative and ruling authority.
7. See Bojan Aleksov (2004), 'Religious Education in Serbia', *Religion, State and Society* 32(4): 341-364. For a complete version of the study see Bojan Aleksov (2004), *Veronauka u Srbiji*. Niš.
8. 'Ministar potpisao ugovore sa verskim školama', *Danas*, 7 March 2008.
9. As listed in note 6.
10. Reinhard Kohlhofer (2004), 'Away with legal discrimination – Serbia shouldn't follow Austria', *Forum 18 News Service*, 2 Sep. Forum 18 is a Christian web and email initiative which provides original reporting and analysis on violations of the freedom of thought, conscience and belief ([www.forum18.org/Archive.php?article\\_id=403](http://www.forum18.org/Archive.php?article_id=403)). Many other Eastern European countries since then have equally modelled their laws along the Austrian example.
11. The Law on Churches and Religious Communities: [www.parlament.sr.gov.yu/content/cir/akta/akta\\_detalji.asp?Id=349&t=Z#](http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=349&t=Z#). The relevant articles are 11-16.
12. M. Pešić (2008), 'Manastir Staro Hopovo napokon dobija struju', *Politika*, 23 April.
13. The Serbian text of the Broadcasting Law is available at [www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=45&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=45&t=Z#), cfr. esp. article 78.
14. O zakonu o restituciji imovine, *Pravoslavlje* 977, 1 Dec 2007, 16. An English translation of the law is available at [www.mpravde.gov.rs/images/27\\_\\_law\\_on\\_restitution.doc](http://www.mpravde.gov.rs/images/27__law_on_restitution.doc).
15. See the news item on the website of the Serbian Orthodox Church (2008), 'Restitution of 1,000 hectares of land to the Kovilj Monastery', 25 Jan, [www.spc.rs/sr/restitution\\_1000\\_hectares\\_land\\_o\\_kovilj\\_monastery](http://www.spc.rs/sr/restitution_1000_hectares_land_o_kovilj_monastery)
16. Zorica Miladinović (2006), 'Vladika Pahomije oslobođen optužbe', *Danas*, 7 March.
17. Zorica Miladinović (2006), 'Sud u Strazburgu o slučaju Pahomije?', *Danas*, 12 July; B.

- Janačković/Uroš Piper (2007), 'Država i sud zaštitili pedofila Pahomija', *Blic Online*, 31 Oct., [www.blic.rs/temadana.php?id=17984](http://www.blic.rs/temadana.php?id=17984)
18. Ekipa 'Blica' (2007), Kazniti sudije koje su štitile Pahomija i Ilariona, *Blic Online*, 3 Nov, [www.blic.rs/hronika.php?id=18394](http://www.blic.rs/hronika.php?id=18394)
  19. For a detailed account of the conflicts between SOC and Cultural Heritage Protection Institute in Montenegro see Veseljko Koprivica (2005), "'Svetac" u maršalskoj uniformi', *Danas*, 24 Oct.
  20. Marko Omčikus (2003) 'Filaret i Ribnjak', *Vreme* 676, 18 Dec. Omčikus is the director of the State Institute for the Protection of Cultural Heritage. [www.vreme.com/cms/view.php?id=361388](http://www.vreme.com/cms/view.php?id=361388)
  21. See Saša Segedinski, 'Mistrija, mantija i tovar para', [www.tabloid.co.yu/clanak.php?br=148&clanak=20](http://www.tabloid.co.yu/clanak.php?br=148&clanak=20)
  22. Published in Belgrade in 2006.
  23. Nikolaj Velimirović was a theologian, popular author, influential bishop and the spiritual leader of the interwar Bogomoljci lay religious movement. After having been taken to Germany as a prisoner at the end of the Second World War, Bishop Nikolaj, a staunch anti-Communist, decided not to return to Yugoslavia. He eventually died in exile. His cult, first possible only in the diaspora, spread to Serbia in the 1980s. Canonised in March 2003 as Saint Nikolaj of Žiča, he is today venerated in the SOC and among many of his countrymen as the greatest Serb of the 20<sup>th</sup> century.
  24. The vice minister's letter to Patriarch Pavle was published on the SOC's official website on 23 Nov 2006. For the whole debate about Predrag Ilić's book see the section 'Crkva i politika' of *Nova Srpska Politička Misao. Časopis za političku teoriju i društvena istraživanja*, [www.nspm.rs/crkva-i-politika/](http://www.nspm.rs/crkva-i-politika/)
  25. See Jovan Byford (2008), *Denial and Repression of Anti-Semitism: Post-communist remembrance of the Serbian Bishop Nikolaj Velimirovic*. Budapest, New York.
  26. G. Otašević (2008), 'Prote ostaju u Čačku', *Politika*, 4 March. The three priests had opposed the bishop's stand on liturgical and ecumenical matters, claiming that he was accepting papal primacy over the orthodox canon law.
  27. This refers to a scheme widely acknowledged among sociologists of religion, which groups countries into three models of Church-state relations, i.e. one of strict separation (US, France, some of the successor states to the Soviet Union and others), one of separation and cooperation (Germany, Austria, Italy, Romania, and others), and one of a state Church (Greece, Malta, and others).
  28. The website of the Belgrade office of the Konrad Adenauer Foundation records these activities, which in the last two years included training seminars for religious education teachers, church media representatives and young Christians, a conference with church leaders on the social role of churches and their cooperation with the state, as well as the translation into Serbian of a book on the social teachings of the Catholic Church, [www.kas.de/proj/home/home/45/14/index.html](http://www.kas.de/proj/home/home/45/14/index.html)
  29. I deliberately avoid terms such as 'revival', 'resurgence' or 'revitalisation', often used to characterise recent developments within the SOC. Many of the activities discussed below simply did not exist before, so there could be no talk of reviving them. Similarly, church attendance was for various historic reasons very low among the Serbs and is probably at its highest levels at present.
  30. For Niš, see Interview with Bishop Irinej (2005), *Svedok*, 29 Nov. For a detailed map and photos of new churches in Novi Sad see the brochure *Kritika klerikalizacije Srbije*. Novi Sad 2007.
  31. Nebojša Petković (2007), 'Srpska zemlja srpskoj zemlji', *Pravoslavje* 969-970, 1-15 Aug, 47.

32. For an overview see Wayne S. Vucinich and Thomas A. Emmert (eds.) (1991), *Kosovo: Legacy of a Medieval Battle*. Minneapolis/Minn.
33. For the historical analysis of Svetosavlje see Klaus Buchenau (2006), 'Svetosavlje und Pravoslavlje, Nationales und Universales in der serbischen Orthodoxie', in Martin Schulze Wessel (ed.), *Nationalisierung der Religion und Sakralisierung der Nation im östlichen Europa*. Stuttgart, 203-232.
34. For the wider context of historical revisionism in Serbia, see Todor Kuljić (2002), *Prevladavanje prošlosti: uzroci i pravci promene slike istorije krajem XX veka*. Beograd.
35. 'Zločinac je i pop Dušan Prijović', *Danas*, 5 Sep 2005.
36. See 'Proslavljen praznik svetog Tome u starim Lednicima', *Informativna Služba Srpske Pravoslavne Crkve*, 20 Oct 2006, [www.spc.rs/Vesti-2006/10/20-10-06-c.html#led](http://www.spc.rs/Vesti-2006/10/20-10-06-c.html#led)
37. See [www.jasenovac-info.com](http://www.jasenovac-info.com)
38. The two key studies which questioned the official Yugoslav number of victims in Jasenovac appeared in the 1980s. See Bogoljub Kočović (1985), *Žrtve drugog svetskog rata u Jugoslaviji*. London; and Vladimir Žerjavić (1989), *Gubici stanovništva Jugoslavije u drugom svjetskom ratu*. Zagreb. Recent studies by Dragan Cvetković from the Museum of the Victims of Genocide in Belgrade, based on the revised official census 'Victims of War 1941-1945' conducted in the 1960s, confirm the above given number of victims.
39. For a short overview of the SOC's martyrological approach to Jasenovac and its victims, see [www.jasenovac-info.com/biblioteka/Sveti\\_srpski\\_novomucenici\\_jasenovacki.pdf](http://www.jasenovac-info.com/biblioteka/Sveti_srpski_novomucenici_jasenovacki.pdf). This approach is also widely promoted through the circulation of icons that have been newly created in regard, cfr. [www.jasenovac-info.com/ikone/?lang=en](http://www.jasenovac-info.com/ikone/?lang=en). For a discussion of the definition and function of myths as instruments of identity formation see Pål Kolstø (2005), 'Introduction', in Pål Kolstø (ed.), *Myths and Boundaries in South-Eastern Europe*. London, 1-34.
40. Perica, *Balkan Idols* (above note 4), 228.
41. The reports are available at the Church's official website, [www.spc.yu/Vesti-2005/01/28-1-05-c.html#fil](http://www.spc.yu/Vesti-2005/01/28-1-05-c.html#fil)
42. 'Ugroženi odnosi Srbije i Crne Gore', *Danas*, 8-9 Sep 2007.
43. 'Jedan avion vraćen u Beograd, o drugom se pregovara', *Danas*, 3 Aug 2005.
44. Vladimir Ilić (2007), 'Priznata i nepriznata', *Danas*, 20 Nov.
45. Radić, *The Church and the Serbian Question* (above note 4), 255-262, cites the Synod's Official Letter to the International Peace Conference held in the Hague in November 1991.
46. In order to counter the accusations of Bishop Artemije, the SOC displayed all documents concerning EU-funded reconstruction of churches in Kosovo on its official website, proving how successful its cooperation with the Kosovo and EU administrations was ([www.spc.yu/sr/o\\_obnovi\\_porusenih\\_svetinja\\_na\\_kosovu\\_i\\_metohiji\\_17\\_marta\\_2004\\_godine](http://www.spc.yu/sr/o_obnovi_porusenih_svetinja_na_kosovu_i_metohiji_17_marta_2004_godine)). Bishop Artemije had implied that accepting the involvement of the international community and the Kosovo authorities meant a tacit approval of Kosovo's independence, and that those responsible for destruction of the churches were now involved in their reconstruction.
47. No comprehensive studies on the Bogomoljci exist. For their origins and a description see Bojan Aleksov (2006), *Religious Dissent between the Modern and the National: Nazarenes in Hungary and Serbia 1850-1914*. Wiesbaden (Balkanologische Veröffentlichungen, 43), 174-179. Today they are officially known under the name of Pravoslavna Narodna Hrišćanska Zajednica ('Orthodox National Christian Community'). See Velibor Marijanović (2007), 'Revnitelji Pravoslavlja', *Pravoslavlje 977*, 1 Dec, 2-3.
48. The entire text of the appeal is available at the website of the Obraz movement, [www.obraz.org.yu/Obraz/Nacela/Srbskim\\_neprijateljima.htm](http://www.obraz.org.yu/Obraz/Nacela/Srbskim_neprijateljima.htm)

49. 'Koštunica pisao za Obraz', B92, 22 Dec 2005, [www.b92.net/info/vesti/index.php?yyyy=2005&mm=12&dd=22&nav\\_id=183269](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=12&dd=22&nav_id=183269)
50. 'Karadžić to appeal extradition to UN court; angry nationalists lash out at Serb government', *International Herald Tribune*, 22 July 2008, [www.iht.com/articles/ap/2008/07/22/europe/EU-Serbia-Karadzic.php](http://www.iht.com/articles/ap/2008/07/22/europe/EU-Serbia-Karadzic.php)
51. The Bishop Irinej Bulović of Novi Sad threatened all those participating in a sausage festival called *Kobasicijada* in Turija and successfully intervened with the police in order to stop the performance of an Italian theatre in Novi Sad and the exhibition of Živko Grozdanić, which mocked some of the Serbian bishops. See the official statement of Bishop Irinej (2004), 'Saopštenje za javnost. Pravoslavne eparhije Bačke povodom Turijske Kobasicijade', *Informativna Služba Srpske Pravoslavne Crkve*, 18 Feb, [www.spc.rs/Vesti-2004/02/18-2-04\\_c2.html](http://www.spc.rs/Vesti-2004/02/18-2-04_c2.html). For reactions among the artists see G.D. Noni (2006), 'Inkvizicija za 21. vek', *Danas*, 8 Sep.
52. Managed by the Yugoslav Youth Association Against AIDS – JAZAS, [www.jazas.org.yu](http://www.jazas.org.yu)
53. The statement of the Holy Synod from 30 Aug 2002 was published in *Pravoslavlje* 923, together with the article of one of the most active lay preachers Vladimir Dimitrijević, 'Seksualno vaspitanje – naša "karta" za Evropu' ('Sexual education – our "ticket" to Europe'), [www.pravoslavlje.org.yu/broj/923/tekst/seksualno-vaspitanje-nasa-karta-za-evropu/print/lat](http://www.pravoslavlje.org.yu/broj/923/tekst/seksualno-vaspitanje-nasa-karta-za-evropu/print/lat).
54. Slobodan Marković (2005), 'Srpska pravoslavna crkva u Srbiji i država: klerikalizacija ili cezaropapizam', in Vesna Đukić (ed.), *Vera – znanje – mir*. Beograd, 149-170, [www.bos.org.yu/materijali/Vera-znanje-mir.pdf](http://www.bos.org.yu/materijali/Vera-znanje-mir.pdf).
55. See the official statement of Metropolitan Amfilohije in which he repudiates Bishop Artemije's claims, 'Izjava Mitropolita crnogorsko-primorskog Amfilohija povodom memoranduma o obnovi svetinja na Kosovu i Metohiji', *Informativna Služba Srpske Pravoslavne Crkve*, 29 March 2005, [www.spc.rs/Vesti-2005/03/29-3-05-c.html#amf](http://www.spc.rs/Vesti-2005/03/29-3-05-c.html#amf)
56. See 'Promjena odnosa vlasti prema crkvi dovela je do duboke krize', *Vijesti*, 27 May 2008.
57. *Ibid.*
58. See 'Mitropolit Amfilohije posetio i pričestio R. Karadžića', *Srpska Pravoslavna Crkva*, 26 July 2008, [www.spc.rs/sr/mitropolit\\_amfilohije\\_posetio\\_i\\_pricestio\\_r\\_karadzica](http://www.spc.rs/sr/mitropolit_amfilohije_posetio_i_pricestio_r_karadzica); and 'Mitropolit Amfilohije: Najboljim sinovima ovoga naroda sude oni koji su beskraino gori od njih', *ibid.*, 28 July, available at [www.spc.rs/sr/mitropolit\\_amfilohije\\_najboljim\\_sinovima\\_ovoga\\_naroda\\_sude\\_oni\\_koji\\_su\\_beskraino\\_gori\\_od\\_njih](http://www.spc.rs/sr/mitropolit_amfilohije_najboljim_sinovima_ovoga_naroda_sude_oni_koji_su_beskraino_gori_od_njih)
59. The pictures of Bishop Vasilije's palaces featured in the tabloid magazine *Glorija*, see Peščanik (2008) 'Dvori Vladike Kačavende', 14 Nov, [www.pescanik.net/content/view/2303/58/](http://www.pescanik.net/content/view/2303/58/)
60. See Lazar Manojlović (2008), 'Jastrebovi SPC', Peščanik, 13 Nov, <http://pescanik.net/content/view/2288/58/>
61. Among the matters in dispute are silent or loud reading of some prayers, the lifting of the curtain on the main gates of the iconostasis as well as the perennial issues of children's communion without previous fasting and of the general frequency of communion.
62. A parallel could be drawn to the Old Believers in Russia in the 17<sup>th</sup> century, or more recently to the Old Calendarists in Greece, who constituted as a reaction to the introduction of the Gregorian calendar, a move the SOC rejected for the very fear of such internal splits.
63. Media controlled by the Church largely suppress the conflict; only the debate between the proponents of liturgical reform (Atanasije) and its opponents (Jefrem of Banja Luka) was published on the pages of *Pravoslavlje*. One of the programmatic texts for dissenters is the speech held by Bishop Nikanor of the Banat in the Lipovac Monastery

- in the Niš diocese in January 2008, which is unofficially disseminated. The dissenters established the association *Zakonopravilo* (Law Codex), and mainly use the internet ([www.revnitelj.com](http://www.revnitelj.com), [www.novinar.de](http://www.novinar.de), [www.ihtys.us](http://www.ihtys.us), [www.savest.org](http://www.savest.org)) as their forum, as most of the church media are closed for them. See the fierce attack launched by Bishop Atanasije (2008), 'O pogubnim novotarijama tzv. revnitelja "starog načina služenja"', *Srpska Pravoslavna Crkva*, 25 July, [www.spc.rs/sr/o\\_pogubnim\\_novotarijama\\_tzv\\_revnitelja\\_%E2%80%9Estarog\\_nacina\\_sluzenja](http://www.spc.rs/sr/o_pogubnim_novotarijama_tzv_revnitelja_%E2%80%9Estarog_nacina_sluzenja), after a violent incident, in which priests and the bishop of the Žiča diocese clashed with dissenters in the village of Duškovci; as well as 'Saopštenje arhijerejskih namesnika eparhije žičke', *Pravoslavlje*, 1 July 2008.
64. Other bishops favourable of at least some reforms include Joanikije of Nikšić, Grigorije of Hercegovina, Hrizostom of Bihać, Fotije of Dalmatia, Maxim of Western America, Irinej of Australia, Jovan adjunct bishop of Montenegro, Porfirije adjunct of Bačka, Teodosije of Dečani, adjunct of Kosovo.
  65. *Politika* (2008), 'Ko navlači zavesu na crkvene dveri', 14 Aug, [www.politika.co.yu/rubrike/Drustvo/Ko-navlachi-zavesu-na-crkvene-dveri.sr.html](http://www.politika.co.yu/rubrike/Drustvo/Ko-navlachi-zavesu-na-crkvene-dveri.sr.html)
  66. The Ravenna Document is available at the Vatican's website, [www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/ch\\_orthodox\\_docs/rc\\_pc\\_chrstuni\\_doc\\_20071013\\_documento-ravenna\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/ch_orthodox_docs/rc_pc_chrstuni_doc_20071013_documento-ravenna_en.html)
  67. *SE Times* (2008), 'Ailing Patriarch Pavle agrees to remain at helm of Serbian Orthodox Church', *Southeast European Times*, 14 Nov, [www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2008/11/14/nb-08](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/11/14/nb-08)
  68. Vedran Horvat (2004), 'Church in Democratic Transition between the State and the Civil Society', *Religion in Eastern Europe* 24(2): 1-18, 14.
  69. For the Russian case, see Alexander Agadjanian (2006), 'The Search for Privacy and the Return of a Grand Narrative: Religion in a post-communist society', *Social Compass* 53: 169-183, 171 and 179.

*Staća Zajović and Lino Veljak*

## Tendencies of De-secularisation in Serbia and Croatia

***This article deals with the actual tendencies of de-secularisation in two ex-Yugoslav republics – Serbia and Croatia – which requires the examination of a broader historical and geographical context. Namely, secularisation was carried out in Yugoslavia, and therefore also in the two respective countries, predominantly in the period after the Second World War. That was the time when communists seized power, as was also the case in the other countries of east and south-east Europe. They rose to power against a social background of an authoritarian patriarchal structure of consciousness characterised by marked, mostly traditional, religiousness. This was true of both Serbia and Croatia, the dominant religion in Croatia being Catholicism and in Serbia the Serbian Orthodox Church – with numerous religious minorities in both countries, so that the Orthodox adherents are second in numbers in Croatia, whereas Catholics constitute the third-largest religious group in Serbia, particularly in the northern province of Vojvodina, and are outnumbered only by Muslims.***

While the Serbian Orthodox Church (SOC) used to be the *de facto* state Church in the Kingdom of Yugoslavia, the Catholic Church, which had lost its status of state Church after the disintegration of the Austro-Hungarian Empire, wielded spiritual hegemony over the Croats at that time. During the Second World War, both churches overwhelmingly supported Quisling forces and, therefore, shared accountability for the civil war which ended in 1945 in victory for the anti-fascist forces led by communists. The new Constitution proclaimed the principle of secularism and guaranteed freedom of religion, but as a private matter for each individual, which soon led to the discontinuation of religious teaching in public schools and the expulsion of theology departments from universities.

Like elsewhere in Eastern Europe, as of 1945, the Communist government in Yugoslavia applied two basic complementary strategies in coping with religion:

- Imposing an atheist view of the world;
- Subjecting the Church to state control (i.e. secret police).

As for enforcing atheism, things did not go as far as in Albania, where the Enver Hoxha regime banned all forms of religious manifestations and proclaimed Albania to be an atheist country. The strategy of conversion to atheism was mainly restricted to:

- The compulsory 'scientific view of the world' at all levels of education, which entailed advocating atheism as the only concept in compliance with science;
- The ban of religious adherence for members of the Communist Party and strong discouragement of religious adherence for educators: this ban meant that higher social positions and executive and influential posts were made unavailable for practising believers, so in the 1980s no one could count on a high-powered post unless they were members of the Party.

The second strategy was very successfully applied to the SOC, which was put under complete state control, especially regarding the selection of its high-ranking officials (similar to the situation with the Orthodox Church in Romania or the Catholic Church in Czechoslovakia). The Orthodox Church was thus pushed to the margins, which was further enhanced by the low theological level and general cultural level of the clergy. A myth of the Serbian and Orthodox identity was being maintained on the social margins; in reality the Church had been reduced to an inconsequential wedding and funeral service used by traditionally minded Serbian families with no ambition to climb the social ladder.

Attempts to exert the same type of control over the Catholic Church, with its seat in Croatia, failed because of the staunch resistance of its leadership; otherwise, the Catholic Church of Croatia used to be – and has basically remained to this day – among the most conservative wings of Catholic integristism. The parallel between the structure and the position of the Catholic Church in Poland and that of Croatia is obvious. It was therefore subject to repression, which did not end until the early 1960s, during the Second Vatican Council, when a concord was signed between Yugoslavia and the Vatican. Nevertheless, the Catholic Church did not renounce its policy of equating the Croatian nation and Catholicism, and in that way it is similar to the developments in Poland, but with a crucial distinction in the fact that during the Second World War, the Catholic Church of Poland was not smeared by collaboration with the occupying powers – it had spearheaded and even served as an umbrella for the illegal opposition, i.e. those who did not approve of the new socialist order.

In the late 1980s, at the time of the fall of the Berlin Wall, both churches played a prominent part in the creation of new alliances that were to shape the post-communist constellation of powers. Thus, the SOC, hand in hand with the conservative national intelligentsia, moved away from the margins toward the conservative communist elite, led by Slobodan Milošević, and the military and police establishment. At that point, the legitimacy of the communist monopoly had been consumed: as opposed to those who led to modernisation, Milošević – who was personally indifferent towards religion, probably even an atheist – turned to the SOC out of pragmatic and utilitarian reasons, seeking support to become the leader of the Serbian people. And the Church lent him their unconditional support.

In Croatia, the Catholic Church entered an alliance with the Quisling emigration from the period of the Second World War – with whom it had maintained ties

ever since, allegedly out of purely pastoral reasons – and with the conservative forces from the communist, military and police milieus, the epitome of which was a former general of Tito's, Franjo Tuđman, who won in the first multi-partite election in 1990 with his party called the Croatian Democratic Alliance. The Church gave them massive support, which was even described as decisive, according to some assessments.

Tuđman, formerly a steadfast atheist, who legalised his marriage in church just three years before his death, readily fulfilled his promises to the Catholic Church: that very year, religious teaching was introduced in all primary and secondary schools in Croatia. It was an optional subject, but accompanied with strong political and social pressure on parents and students to enrol, whereby the rates of attendance – depending on the social environment – varied from 70 per cent to 100 per cent. The process of restitution of church property began, as well as abundant state financial support, which was legalised by a concord between Croatia and the Vatican in 1995, according to which the state pledged to provide permanent financial support to the Church, including the financing of the church educational system, the church officials' salaries and pensions, tax exemptions for economic activities, guarantee for religious teaching in schools, a conspicuous profile in the media, etc. The Church thus became one of the most powerful financial institutions. Every public manifestation – opening of schools, hospitals, roads, bridges, public buildings, etc. – was invariably accompanied by a church blessing. Army and police chaplains were installed, while references issued by the local parish priest were often decisive in obtaining state or public office.

Only the attempt to put a ban on abortion ended in failure. Although the Tuđman government had prepared a legal draft mirroring the Polish and Irish legislations, the resistance of civil society, spearheaded by feminist networks, was so strong that the idea was (temporarily?) renounced. Public polls confirmed that the absolute majority of women (including the absolute majority of declared believers) do not accept the proposed restrictions of their reproductive rights – and to this day, no political party in Croatia, not even those very close to the Church, has put this issue on their agenda. Attempts to incorporate church teachings on sexuality in the curricula through the subject of health education have also failed, although the Church and the civic organisations it controls have not in the least renounced imposing church dogmas onto educational curricula.

The processes of de-secularisation in Serbia had different dynamics. Although the SOC gave staunch support to the Milošević regime and played a very important role in the war-mongering propaganda and psychological conditioning for war (by organising displays of bones, relics of Serbian saints and skulls of murdered Serbian children across Serbian lands, with some senior church figures openly calling for revenge for the genocide conducted against the Serbs by the Croatian Quislings during the Second World War, etc.), Milošević kept the Church on the margins throughout his rule. He used it whenever he needed support, but gave it

nothing in return except for full legality of its practices and a high media profile. The democratic opposition thus won over to their side the majority of church dignitaries, who lent them support in the final years of the Milošević regime. However, neither church dignitaries nor opposition leaders condemned the Milošević regime for provoking the wars and organising war crimes, but rather for losing all of the wars they had undertaken; furthermore, some priests denounced him as “godless”. Curiously enough, the fiercest enemies of the Milošević regime in church circles were dignitaries of fundamentalist orientation, whereas those disapproving of rigid fundamentalism were much more restrained.

A more intensive de-secularisation in Serbia began only after Milošević’s downfall. Owing to the fact that the new authorities in Serbia are largely closely connected to the Church (their most prominent representative being Vojislav Koštunica, who succeeded Milošević as president of the then-Federal Republic of Yugoslavia, i.e. the federation composed of Serbia and Montenegro), religious rituals became a corporate part of state manifestations. In the army, the officers in charge of ideological and political counselling, i.e. the successors of the former political commissars, were replaced by army chaplains, while army imams were appointed in predominantly Muslim units, in respect of the majority principle. State support to church institutions was ever-increasing, the SOC Theology Faculty was reincorporated in Belgrade University, etc.

The Church took advantage of the conflicts that arose within the ruling coalition (which, in a simplified explanation, could be seen as conflicts between the forces pledging for a radical breakaway from the Milošević regime and those who referred to themselves as legalist, while striving to maintain the continuity with that regime in every possible way) to further strengthen its position in the state and in the society. The first group of markedly secular orientation was led by Zoran Đinđić, Prime Minister at that time, although he, too, began declaring himself as a believer, which clearly explains the new predominant climate among the anti-Milošević opposition that prevailed in Serbia after 2000, i.e. after the opposition took power. In an attempt to push his opponent Vojislav Koštunica, a markedly clerically oriented national-conservative politician, to the margin, Đinđić ceded to the request of the Church that religious teaching be introduced into primary and secondary schools in Serbia. However, he failed to gain any support from the Church – on the contrary, after his assassination, leading metropolitan Amfilohije Radović gave an extremely malicious speech over his catafalque – just as the Church did not get any credit from Milošević for all the services it rendered to his struggle for absolute power in Serbia and ‘the Serbian lands’. However, since religious teaching was introduced in Serbian state schools, the Church definitely affirmed itself as an important social factor.

Interestingly, the SOC did not succeed in its attempts to have religious teaching introduced into state schools in Montenegro. All such attempts failed, both before and after Montenegro gained independence. A possible explanation lies in the fact that the ruling Social Democratic Party did not need any support from the Church.

Furthermore, the SOC disputes the very existence of the Montenegrin nation (which necessarily also implies its state), thus systematically backing oppositional pro-Serbian parties. On the other hand, the Montenegrin Orthodox Church, which seceded from the SOC in a schism, is not influential enough in Montenegro to lend any meaningful support to the authorities; for that matter, the Montenegrin Orthodox Church would like to see religious teaching introduced into its schools, but under its supervision. Be it as it may, Montenegro is the only state in the area of the former Yugoslavia that can be said not to have been affected by any significant wave of destruction: this does not refer exclusively to the society, but also to other dimensions of secularity.

In Serbia, especially after the aforementioned Koštunica became Prime Minister in 2004, the wave of de-secularisation reached proportions equivalent to those recorded in Tuđman's Croatia in the 1990s. Although the constitutional provisions referring to the *laïc* character of Serbia remained unchanged (the separation of church communities from the state, etc.), the adopted legal changes (the law on religious communities) divided all religious communities into traditional (SOC, Catholic Church, Islamic Community, and Jewish and Evangelical communities), and 'untraditional' ones (all other religious communities, including some with a hundred-year-old tradition (the Nazarenes, and some others), whereas the SOC was granted special status in view of its role in constituting and preserving the Serbian national entity. Although the SOC does not formally enjoy the state church status, the existing legal regulations provide for precisely such an interpretation of its status. On top of it all, the actual Minister of Religion in the Serbian government is Montenegrin philosopher Bogoljub Šijaković who, in an interview given several years ago, introduced himself proudly as an Orthodox fundamentalist, and who behaves in accordance with this definition in his ministerial position.

The practice of the Serbian authorities is actually based on such an interpretation of the legislature according to which the SOC enjoys the status of one of the key national and state institutions. It is autonomous from the state, yet the state has to take into consideration its recommendations, which ought to be binding; in the words of Vojislav Koštunica, "The Patriarch's word cannot be disputed!" This is how the former Prime Minister put an end to any further discussion regarding a purely political matter, which had previously been commented on by Serbian Patriarch Pavle.

One of the legacies of Koštunica's government, but also of the actual government who succeeded him, is the restitution of church property which had been nationalised after 1945. Furthermore, the law on religious communities grants salaries and pensions to religious officers, the financing of church affairs, tax exemption including tax on church economic activities – the priests having practically been granted immunity from criminal proceedings, etc. The Church has lately been allocated significant finances from the state budget and, considering its position in relation to the state authorities, there is sufficient conclusive evidence in support of the argument that it is very close to assuming the position of state Church.

The SOC enjoys full support of the Catholic Church and the Islamic community, because these two communities expect to draw their own benefits from this situation: if the state finances religious officers and the entire machinery of the SOC, supporting the building of its religious facilities, proscribing religious teaching in schools, exempting from tax its economic activities, etc., then the same is expected to be put into effect proportionally concerning the other religious communities. And not only do they expect this – they also obtain it!

Remarkably, similar relations between the dominant church and smaller traditional religious communities are present in Croatia. On the grounds of the abovementioned concord with the Vatican, the state restitution of church property was completed either in the form of real estate or financial compensation, thus the Catholic Church repossessed its land and buildings. The restitution of nationalised property was extended to encompass other religious communities (probably in order to meet the requirements of European legislative standards), which was particularly favourable for the SOC in Croatia who, prior to nationalisation, owned a considerable amount of real estate, including an important part of the centre of Zagreb. The same rule is applied when it comes to the salaries of religious officials, their social insurance retirement schemes, etc. The Catholic Church and other religious communities league together whenever moral values are at stake, which they generally tend to interpret from the fundamentalist point of view. For example, they find common ground in their attitudes to women's reproductive rights (contraception, abortion and also the general population policy). In early 2009, the Catholic Church, the SOC and the Islamic community in Croatia jointly opposed some provisions of the new Human Rights Law (those referring to equal human rights disregarding sexual orientation). Nevertheless, their objections were not sustained, which can be explained exclusively by the intention of the Croatian authorities to adapt their legislation to the standards of the European Union.

The SOC and other traditional religious communities in Serbia behave in a similar way. Not only did they draw similar joint objections to the Anti-discrimination Law, which was adopted by the Serbian Assembly, but they also issued a joint statement in June 2009, at a conference organised by German agency Conrad Adenauer in Belgrade, according to which the rejection of their proposed amendments to the respective Anti-discrimination Law and Law on Culture served as a proof that the position of religious communities in Serbia was deteriorating. A detailed analysis into their arguments reveals that they see any insistence on upholding the fundamental principles of secularism, i.e. separation of the state and the Church, as proof that "the communist way of thinking and view of the world are still present". In an attempt to free society of the remnants of this spirit, they pledge for radical de-secularisation. It is no coincidence that in May 2009, an almost identical definition of the communist spirit and the need to suppress it was issued by Ivan Mikelić, editor-in-chief of the leading newspaper of the Croatian Bishop Conference *Glas Concila*, in his editorial dedicated to the debate against the protests of the Council of the Philosophy Department of the Faculty of Philosophy at Zagreb University

against the decision that, during the student blockade of the faculty, lectures were to be held in the premises of the Croatian Catholic University – a private university owned by the Zagreb Archbishopric, but financed from the state budget.

All this leads to the conclusion that de-secularisation in Serbia and Croatia alike, however much ground it may have gained, has stopped halfway through and that some important elements of secularity have been maintained. One of the reasons why the efforts of the dominant churches to assume total spiritual monopoly over their respective societies and to take the role of absolute moral and political arbiters in all crucial state, societal and human rights issues were not successful lies in the discrepancy between declarative religious affiliations of the population and the factual degree of their readiness to accept the rigid interpretation of religious norms. Namely, according to the census in both countries, the number of atheists and agnostics does not exceed 5 per cent, which means that a vast majority of citizens expresses some religious affiliation (predominantly for the major religion).

Conversely, research reveals that even among those believers who did not formally declare their affiliation to any religious community, but practise some forms of religious rites, the majority do not accept some moral norms, starting from sexuality and reproductive rights, and so on. Furthermore, a series of scandals (of a financial nature, and especially those involving paedophile priests, the most important of them being the Orthodox bishop Pahomije) has begun to gradually undermine the reputation of the Church in both countries, especially in Serbia. For years, the SOC held the unchallenged lead in the list of most trusted institutions, its ratings growing all the time. However, a survey conducted in the spring of 2009 in Serbia showed that the citizens' confidence in the Church had dropped by 6 per cent over the preceding six months. Although it still remains first among the institutions to enjoy the citizens' trust, this is a drastic decline. Similar tendencies, though not so drastic, are also present in Croatia.

It therefore appears that – in the short- and medium-term – there is no direct threat as yet that some form of theocracy could be installed. This is reinforced by the fact that practising believers do not amount to more than one-third of the population in both respective countries. Nevertheless, bearing in mind the growing economic crisis and the financial potential of the dominant churches, it is conceivable that in the long-term, the future major stakeholders of national resources might also, through a carefully devised strategy (primarily in the sphere of education and the media) impose cultural and spiritual hegemony in their societies, which would be but one step away from creating a theocratic state. Therefore, civil society, together with all the factors striving for the preservation and further development of the legacies of modern democracy (which necessarily includes the secular character of the society and the state) ought to be on constant alert: it should by no means be lulled into thinking that de-secularisation tendencies have reached their climax and that they are going to stagnate and decline. It would be naive to expect that the churches will choose to remain within the confines of amassing material wealth.



*Alia Hogben*

# Introduction of Religious Family Laws in Canada

A case study

***The Canadian Council of Muslim Women (CCMW) advocated that religious laws should not be applied in family matters in Canada, and that there should be “equality without exception” for all Canadian women, regardless of religion. During the two-and-a-half years of struggle against the imposition of religious family laws, the controversial issue to emerge was the role of religion within the legal system. This article discusses the CCMW’s position on the issue, the related actions and projects undertaken, the forces against them and their ongoing concerns.***

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”  
– Canadian Charter of Rights and Freedom: subsection 15[1]<sup>1</sup>

The Canadian Council of Muslim Women (CCMW) is an organisation of believing women who advocated that no religious laws should be applied in family matters in our country. The premise of our argument was that there should be “equality without exception” for all Canadian women, whether they are religious or not. CCMW is firmly committed to the equality of women as an Islamic principle which is congruent with the Canadian Charter of Rights and Freedoms. As Canadian Muslims, we have acknowledged that the laws of the land are compatible with the principles of Islam and we can live here fully as Muslims with our religious and other freedoms protected.

The issue in Canada was that our Arbitration Act 1991, which was to deal mainly with commercial disputes, had a clause which permitted laws of any other jurisdiction to be used for private legally binding arbitration. It was this clause which opened the door for the use of religious family laws.

The CCMW decision to oppose the use of any religious laws in family matters was made with considerable thought, research, consultation with Muslim women and discussion with several Islamic scholars. It was extremely difficult as we foresaw that two sides would develop – those against all matters Muslim, and those who uncritically defended anything associated with Muslims.

As part of the development of our position, we held countrywide focus groups with Muslim women to help them understand both systems of laws – Canadian and Muslim family. It was not surprising that many Muslim women had an idealistic perspective of women's rights which were not part of the *fiqh*/jurisprudence as practised.

The CCMW continues to be grateful for the superb support we were given by Women Living Under Muslim Laws (WLUML). Some members like Marieme Hélie-Lucas, Ziba Mir-Hosseini and Rashida Manjoo came to Canada and their research was used constantly. There was wonderful support from international women's organisations as well.

In September 2005, the Premier of the province of Ontario made a public statement that no religious laws will be applied and only the laws of Ontario and Canada would be used in private legally binding arbitration for family matters.

One of the reasons for not wanting any religious family laws is because we know that not so long ago, Canadian family laws were based on Biblical Christian values which created many issues for all women. Though not perfect, the last 30–40 years have changed family laws to be more attuned to the human rights paradigm. The fact is that the laws are no longer based on religion and any introduction of religious family laws is a reverse process.

The question for Canada and for other Western countries is why would a parallel system of law be permitted, if this jeopardises equality rights within the family? If this is so, then why should not Muslims and other believing women benefit from such laws?

This demand for religious laws happened in the West, and we feel strongly that our rights, as women, were in jeopardy even in a Western liberal democracy. The demand and the arguments continue as we know that some Muslims are agitating for the use of Muslim family laws in various parts of Europe and now Britain.

Speaking as a believing Muslim woman, I find the political use of religion with the rallying call that Islam is the answer for states is dangerous and leads to injustices. There are some Muslim religious scholars and politicians who insist that Islam or Muslim history already has germane ideas for democracy. This may be so, but blocking other good ideas because they originated in the West is immature and dangerous.

What was our context, and what were the forces against us? Canada prides itself on its Charter of Rights and Freedoms and the Multiculturalism Act. It has enshrined equality of women as well as religious freedom and during the struggle these were pitted against each other as if they are in conflict.

Some demanded that their religious rights include the right to live under their own religious laws within a Western, democratic and liberal society. They argued that religious rights supersede the equality rights of women, and their world view, based

on their interpretation of Islam, is that women are complementary to men, and the goal is equity rather than equality of women.

We, as Muslim women, of course want unequivocal equality. The concept of equality is much misunderstood, as is secularism. We defined equality to mean that all people should be treated as equals; it is not limited by gender, race or religion. It is about respect and dignity and it does not mean being the same or identical, as it accepts diversity amongst individuals. Equality has to be substantive, and laws must ensure opportunities and choices for full participation as a citizen in the political, social and economic life of society.

As for secularism, it is associated with the West's colonialism and oft-times hypocritical positions regarding neo-imperialism and human rights violations. It is not anti-religion, as misinterpreted by most Muslim majority countries, by Muslim academics and by activists as well.

There are Islamic scholars such as Abdullah an Naim and Asghar Ali Engineer who are committed to secularism for Muslims. An Naim, as a religious person, states: "I need a secular state. A state that is neutral regarding religious doctrine, one that does not claim or pretend to enforce Sharia – the religious law of Islam."<sup>2</sup> He gives a thorough analysis of why *shari'a*, as law, cannot be enforced by the state as public law or policy.

For me, a secular state is one which has no religion, nor can it favour any one religion over another. It is founded on the principles of civil society, democracy and on universal human rights. What such a state does is to protect its citizens' choice of religion, but within the context of human rights and core constitutional values. The state cannot take on the role of interpreting any faith, and though it allows for the practices of each faith, it must ensure that the rights of the individual are not unfairly subsumed by the rights of the group. A secular state protects minorities and the vulnerable.

Though some states call themselves secular, often there is no clear demarcation of religion and state. Canada does not formally identify itself as a secular state. It has the Queen as its head of state and of the Church of England; its Charter starts with "Whereas Canada is founded upon the principles that recognizes the supremacy of God and the rule of law..."

However, most Canadians would agree that there should be a separation of state and religions. But during the two-and-a-half years of struggle against the imposition of religious family laws, the controversial argument which emerged was the role of religion within the legal system.

Canada has three foundational documents which guide the country and its people – the Constitution, the Charter of Rights and Freedoms, and the Multiculturalism Act. It was the first country which articulated a policy on multiculturalism, recognising the plurality of its citizens.

In our struggle, the issues were about the place of religion in the public space; whether multiculturalism should be translated into different laws for different groups; what is included in religious rights; and how do we balance the rights of minority groups and the individual within the group. Most importantly, do religious rights supersede the equality rights of women?

Some argued that the Charter and Multiculturalism Act allowed for each minority group to identify itself by any number of identity markers, including the application of their own laws. The rationale of the proponents of the application of religious family laws within the civil justice system was based on the following five major rationales:

1. The practice of religious laws was part of their religious right.
2. The practice of religious laws is part of their identity of being Muslim.
3. Jews were allowed to have their rabbinical courts, so Muslims should have *shari'a* courts.
4. Some people are more comfortable going to their religious leaders for private agreements rather than the civil courts.
5. Women should have the choice of using religious family laws to settle matters such as marriage, divorce, custody of children and financial issues.

Our response is that CCMW and its partners did not agree with the position that the practice of religious laws is part of religious freedom. The implication that Muslims have to live under Muslim family laws is inaccurate and leads to a misunderstanding of what should be included under religious freedom. There is no requirement for Muslims to live under a particular form of legal system. The movement to introduce family laws has more to do with politics than religion.

Another grave concern about the application of Muslim family law is that it is a complex system of laws and there is no uniform interpretation. As the research by WLUML discovered, "What is assumed to be Muslim in one community may be unknown or even be considered un-Islamic in other Muslim communities."<sup>3</sup> Religious laws do not have women's equality as a foundational value, and this is a major stumbling block.

At times there was a deliberate blurring of the terminologies of *shari'a* and *fiqh* or Muslim family laws, which led to friction and controversy amongst Muslims. No Muslim will deny belief in the Qur'anic definition of *shari'a*, which means "the beaten path to the source of the water" and is a metaphor to describe how we are to live. Most Muslims would agree that laws were promulgated centuries after the death of the Prophet by pious and wise men, and therefore recognise that they are man-made.

In WLUML's Occasional Paper 11, Dahlia Eissa notes:

"We have a body of Islamic jurisprudence that has created two classes of citizen: *sui juris* [of full age and capacity, independent] men of full intellectual,

physical, and moral capacity, and *non sui juris* women of questionable intellectual, physical and moral capacity. For this reason, a woman's right to self-determination is fettered to the extent that it is believed that her agency must be checked by a male guardian, who in some instances may be charged with making decisions on her behalf. In other instances her agency may be checked by a requirement that she secure the consent of her male guardian in order to act."<sup>4</sup>

The rationale that the practice of religious laws is a marker of Muslim identity is tied in with the same sentiments. This search for authenticity and identity is far more tied to politics than to what is taught in the Qur'an. Living under Muslim laws is not the sixth pillar of Islam.

As the Canadian law professor Jean-Francois Gaudreault Des Biens explains, the establishment of parallel systems of justice, administered by groups who share a socio-religious identity, can lead to "identity based legal pluralism". This may lead each group demanding collective rights and moving away from the rights of the individual. He states:

"The public recognition of identity-based communities that are partially or entirely self-governing raises important questions pertaining to the nature of citizenship in a democratic polity and the sharing of sovereignty within political communities."<sup>5</sup>

Another University of Toronto law professor, Lorraine Weinrib, argued that using religious family laws would affect women's equality rights. She says that Canadian courts should not be given authority to enforce arbitration orders based on religious laws because it could:

"...undermine the Charter's clear construction of the state's relationship with all individuals, male and female, as unmediated by the legal precepts of a particular faith or the cultural norms of a faith community."

About voluntary consent, she says:

"It is no answer to say participation in these arbitrations is based on voluntary commitment to the authority of religious precept in one's own life and to a faith or ethnic community. The state cannot: test the quality of consent; make assumptions about the authenticity of these precepts; or validate the work of the institutional delivery system with these communities."<sup>6</sup>

It is true that if one religious group was allowed to use the Arbitration Act for family matters, then this right should be extended to all groups. We learnt that the Jewish tribunal, the Beit Din, had resolved two cases in one year, using the Arbitration Act.

We agreed that even if only two cases of family disputes were settled using private legally binding arbitration then it would be unfair and illegal to disallow other religious people from using this mechanism.

This was the reason the coalition of organisations and individuals advocated against *any* religious laws in family matters. The argument was that since the current family laws were civil laws, subject to revisions by democratic means, and as family laws primarily impact women, then all women, including religious ones, should have the same laws applied to them. There was also concern that this would lead to privatisation of justice and create a parallel system of laws.

The fourth rationale was that people may be more comfortable going to community leaders for resolution of their family disputes rather than the public civil court system.

This is a valid point, and the changes to the Arbitration Act do not interfere with the rights of individuals to consult with their community or religious leaders. The vital difference now is that unless the leaders are trained as arbitrators and use Canadian family laws, their decisions are not legally binding.

In Islam, marriage is a civil contract and does not have any religious aspect. For divorce, because men are allowed the unilateral right to divorce, there is no religious aspect either. The current move to insist on 'religious marriages or divorce' has more to do with an effort to control family laws and women's freedom.

There was criticism that eliminating any religious laws in private legally binding arbitration limited women's choice. Surprisingly, most of this criticism came from some feminists. CCMW never belittled Muslim women and their independence or capacity for decision-making, but we know there are powerful influences in our lives which affect the decisions we make. Muslim women are strongly influenced by their religious beliefs, their families and their communities and often will place these above our own welfare and needs.

To explore women's choice and informed consent, CCMW commissioned community research which demonstrated the power of the family, communities and religious beliefs to the extent that most women put their own interests below those of others.

Another research project was on the effects of cultural relativism on the lives of Muslim women. We find the prevalent perspective of post-modernism taken by liberal Westerners disturbing and, in some ways, demeaning to non-Western women. Other women are seen as different and beyond the protection of human rights. Culture and religious practices are accepted for others but not for themselves. The statements of the Archbishop of Canterbury to allow for Muslim laws in Britain are examples of ill-considered statements being passed on as liberal and accommodating.

It was a long and stressful struggle lasting over two years. Without the close collaboration and active participation of a strong coalition, we would not have succeeded. But there were continuous challenges due to the issues raised about faith and state; the meaning of multiculturalism; the accommodation of diversity; the discussions internal to the Muslim communities; the external racist discussion

of anti-Muslim stereotyping and the cultural relativism of some 'neo-liberals' who bent backwards to advocate for religious communities rather than for the individual woman.

What were the lessons learnt from this example of grassroots activism to influence change?

- The disturbing fact is that even a Western democratic country such as Canada, with its Charter and as a signatory to CEDAW, would consider the introduction of other laws as part of religious freedom without due consideration.
- The Charter and the policy of multiculturalism were invoked by both sides.

Does pluralism encourage each cultural/religious community to retain all its practices even if some of these are incongruent with those held by their fellow citizens? This led to heated discussions regarding the rights of the individual with a minority community versus the rights of the community itself:

- As believing women we will not be placed in a position of choosing equality versus religious freedom. Equality should be embedded in religious freedom.
- The argument of 'cultural relativism' is still ongoing. It is raised every time an issue dealing with religious/cultural accommodation comes up.
- We learnt that we Muslim women need to educate ourselves so that the message of Islam is not always received filtered through others.
- Since 11 September 2001, the rise in anti-Muslim/Islam feelings is part of our reality. It is always there and affects our lives.
- For some Western Muslims there is almost a rejection of our multiple identities and far more emphasis only on one identity that is our religious one.

Sadly too many Western Muslims are very critical of the West, not acknowledging that they themselves are Western and enjoying the freedoms of the West. As Muslim women we don't apologise for embracing the values of the Universal Declaration of Human Rights. Some Muslims increase their identity markers and demand religious accommodations which to others seem to push the boundaries beyond reasonableness.

- It was extremely important to form a coalition of Muslim and non-Muslim organisations to ensure that the issue was seen as a family issue affecting all women and their children.
- We must not be manipulated so that we submit to unacceptable religious injunctions which deny our equality as fully human and autonomous.

The danger has more to do with trying to define a 'pure Islam' as if there is only one Islam with no diversity or pluralism in it.

In conclusion our major concerns continue to be racism and discrimination from without, and from within the Muslim communities the strong movement towards a

conservative, rigid and intolerant interpretation of Islam. This is affecting our youth, so how can we present an alternative in the face of this conservative interpretation and the politicised use of Islam?

## Endnotes

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## Cultural Relativism

Theoretical, political and ideological debates

***The argument in this paper is threefold. First, we argue that cultural relativist thinking establishes great divides among women of the world according to their religion, ethnicity, nationality, culture, geographic locations and other particularisms. Second, it ignores the heterogeneity within each particular cultural group of women. Finally, it endorses strategies that are ultimately incapacitating for women with different cultural and religious backgrounds. This third point is especially important when considering the policy implications of cultural relativist thinking. Therefore, we propose a critical examination of the implications of cultural relativist thinking for Canadian Muslim women. To undertake such an examination, we will take a feminist, anti-racist dialectical approach through which we can recognise not only the particularity and individuality of each and every woman, but also acknowledge the commonalities between women wherever they are located and across all spectrums.***

In recent years, and especially after 11 September 2001 ('9/11'), the concept of 'cultural relativism' has re-emerged as a contested notion in academic circles. Politicians have often used the concept as a tool for managing, controlling and putting into practice multiculturalism and diversity. Social justice activists, too, have made use of it to register discriminatory grievances and demand tolerability and fairness. Cultural relativism has been employed in debates surrounding cultural accommodation, cultural plurality, cultural differences and tolerance. This is especially evident in the use of the concept, implicitly or otherwise, in debates about Islam and whether or not Islamic culture inherently conflicts with Western culture. Often this debate is played out on the bodies of women; images of Muslim women, veiled and unveiled, have become widely used as symbols or markers of liberation or oppression, tradition or modernity, backwardness or progressiveness, and Western or Eastern. In other words, the duality of Western-as-universalistic and Eastern-as-particularistic has framed much of the argument. In this paper, we challenge this *binary* mode of thinking, and argue that there is no *one* West or East, nor is there *one* Islam. A disentangling of the theoretical and political tension involved in understanding cultural plurality and democratic rights will follow this argument. The topics upon which these debates are argued is the case of *shari'a* debate in Ontario and the veil debate in Quebec. However, before proceeding to how the debates have played out in the Canadian context, we must define what we mean by 'cultural relativism.'

'Cultural relativism', which was a powerful intellectual asset in the struggle against early 20<sup>th</sup>-century racism – especially in the latter's scientific form as eugenics and its imperialist form as the belief in Western 'civilisation' as superior to all others – fails to explain the complexity of the imperialist racism that followed 9/11. The concept emphasises the particularity, uniqueness and localism of cultures, ethnicities, nations and religions, among other social markers, as experienced and shaped identities of individuals and communities. The main thesis of cultural relativism is "that no value judgments are objectively justifiable independent of specific cultures" (Schmidt 1955: 782). Thus, according to cultural relativism, there can be no universal, essential human or social characteristics. Theoretical claims based in cultural relativism encourages ethnic, clan, tribal, national, language and religious particularisms. Consequently, in political terms, it encourages ethnocentrism and the particularity of the 'rule of law' rather than laws' universal appeal and application.

Since the late 1980s, cultural relativist thinking, now dominant in the academy and fashionable in media and popular culture, treats *difference* as the main constituent of the social world. Human beings, in this construction of the world, are all different, with their diverse and particular 'identities'. In this world of particularised individuals, cultures, peoples, nations or social relations of ruling such as patriarchy are each unique, and so there are no universals social rules governing human relations such as capitalism, imperialism or class. Gender oppression is too culturally particular to be the target of universal struggle by women and men. At the same time, in this mode of particularised thinking, the concept of *difference* replaces the concept of *domination*. The world, in this view, is not divided into powerless and powerful blocs. Every individual, every woman, wields power. Power is not hierarchically organised; there may be a 'centre' and a 'margin' of power but there are no relationships of domination and subordination. Cultural relativist theorisation emphasises respect for cultural difference. Although its advocates, for example, oppose violence and discrimination, they often remain silent about it, especially when it is perpetrated by 'others' whom they cannot judge because of cultural differences. Razack illustrates this point in her discussion of the Norwegian Government's policy toward forced marriage (Razack 2004).

Specifically, our argument in this paper is threefold. First, we argue that cultural relativist thinking establishes great divides among women of the world according to their religion, ethnicity, nationality, culture, geographic locations and other particularisms. Second, it ignores the heterogeneity within each particular cultural group of women. Finally, it endorses strategies that are ultimately incapacitating for women with different cultural and religious backgrounds. This third point is especially important when considering the policy implications of cultural relativist thinking. Therefore, we propose a critical examination of the implications of cultural relativist thinking for Canadian Muslim women.

To undertake such an examination, we will take a feminist, anti-racist dialectical approach through which we can recognise not only the particularity and

individuality of each and every woman, but also acknowledge the commonalities between women wherever they are located and across all spectrums. Further, a feminist, anti-racist dialectical approach sees this universality and particularity as both inseparable from each other and as in conflict with the other. The mode of thinking extends our understanding of the relationship between the Canadian state and religion, or the relationship between genderised and racialised citizens and the universality of rights. These are key elements to the Canadian debate on multiculturalism and cultural relativism. The approach taken here emphasises the interconnection between religious identity and other Canadian institutions. Religion, in this case Islam, cannot be treated only as a religion, but as something that is contextualised in terms of politics, culture, economy, ethnicity, nationality, history, population movement and diaspora, among others. We argue that religious claims should be assessed in the context in which they are expressed. In other words, in examining the current debates involving Canadian Muslim communities, it is important to ask why the debates arise in the first place. What is the historical, economic and political context? We will engage with these questions in the context of the *shari'a* debate in Ontario and the *hijab* debate in Quebec, with reference to similar debates that are taking place worldwide.

The approach taken here is particularly significant for Canadian Muslim women because of the implications it has for reducing their identity to their faith and for seeing them as different from other Canadian women, and therefore, outside the reach of criticism or even solidarity. A further consequence of such reductions is the homogenisation of Muslim women into one uniform group, with the same ideas, beliefs, experiences and cultural practices. This reduction and separation of Canadian Muslim women based solely on their faith is theoretically erroneous and politically damaging. Our main point is that a cultural relativist approach does not allow a serious departure from neocolonialism nor does it explain the rise of Islamophobia and anti-Arab, anti-Muslim racism. A radical departure requires the abandoning of the epistemological and theoretical dictates of cultural relativism. In the (neo-) colonialist-Orientalist world view, the Middle East is almost always associated with Islam.<sup>1</sup> The consequence of this association for Middle Eastern women is that their identity is reduced to a faith that they may or may not subscribe to. The fixation of identity to religion is achieved at the expense of all other affiliations whether they are other religions, political affiliations, class, sexual or national affiliations, to name just a few. According to this logic the women of the Middle East constitute an anomaly, exception or abnormality and are seen as blind followers of Islamic patriarchy. They are, according to neocolonialist-Orientalist thought, without their own history since they do not struggle for equality or liberation.

This line of argument fails to acknowledge and appreciate a century of Middle Eastern women's struggle against patriarchy. Feminist ethnographical and historical research tell us about a century of the women's press, a century of advocacy of women's rights, a century of writing, a century of poetry, a century of organising, and a century of repression of women's movements by both secular-liberal and Islamic

regimes, and often with the support of Western powers (Shirabi 1988; Kandyoti 1991; Joseph 2000; Fleischmann 2003; Mojab 2006a). Appreciating this history and seriously integrating it into lived experiences of women is difficult for those taking a cultural relativist position because, in their opposition to universalist discourses, they often side with nationalists, Islamists and nativists. They privilege the nativist position, often sanctioned by patriarchal states, to treat resistance by women of 'Islamic' cultures as influenced by 'Western discourse' that are not compatible with Islam and as not indigenous to the native culture. It is understandable, then, why academics and activists in the cultural relativist position prefer silence or fail to condemn violence against women of the 'other' culture. They are more concerned about being labelled 'racist', 'Orientalist', 'ethnocentric', 'essentialist' or 'neocolonialist' than in being able to deeply challenge their own thoughts on the inter-dynamics of diverse and even contradictory factors in understanding and explaining the diversity of the role of Islam as a religion and a culture in women's lives.

## **'Tolerance' and 'difference':**

### **The debate over Canadian multiculturalism**

One of the primary areas wherein 'cultural relativist' thinking manifests itself is in debate about the effectiveness of 'multiculturalism' as a policy strategy for dealing with 'minorities'. More recently, this debate has been focused on whether or not multiculturalism is an effective policy to address needs, demands and grievances of Muslims. The two main concepts employed on both sides of the debate are 'tolerance' and 'difference'. One side of the debate, which advocates multiculturalism, is celebratory of difference and maintains that we should 'tolerate' and accommodate cultural differences (Stein et al 2007; Fraser 1997: 180).<sup>2</sup> The other side of the debate sees the cultural accommodation that multiculturalism offers as a "generous betrayal" whose main victims are women. In other words, they argue that in accommodating 'other' cultures, multiculturalism undermines universal values of justice and human rights that supposedly have their roots in Western culture (Razack 2007; Razack 2004: 141, 143). Both sides of the debate fall into a dangerous trap of framing their arguments in cultural terms.<sup>3</sup> In isolating culture from politics and economic relations and also de-historicising the former, and by basing the notion of culture primarily on ethnicity, including religion, the multiplicity of factors that makes culture a dynamic, ever-changing concept that is contingent on people's diverse histories and lived experiences is obscured. In addition, both sides of the debate fail to capture the dialectical relationship between particulars and universals, as discussed above. The framework is divisive in that it creates a separation between Western and 'other' cultures, with definitive privilege being bestowed upon 'Western' ones. Notions such as 'democracy', 'rationality' and 'civility' that are ascribed to Enlightenment thinking and modernity are considered to be intrinsic to Western culture and thus the superiority of its appeal. Conversely,

'other' cultures are labelled 'traditional' and backward, and are therefore thought to be unable to conceive of a sophisticated political agenda or conception of justice. A feminist, anti-racist dialectical approach, on the other hand, recognises the individuality and uniqueness of each culture composing the nation of Canada, while at the same time recognising the universality of injustice and effective strategies for combating it. It is not 'either/or' logic.

A further consequence of binary thinking, as described above, and the current usage of multicultural policy, is the homogenisation of Muslims in general, and Muslim women in particular, into one single category. On both sides of the debate, Muslim women have been reduced to a homogenous population whose identity is determined by an imaginary uniform religion and whose resistance against patriarchy should be guided either by the West or by the dictates of Islam. Referring to Sunera Thobani, a feminist woman of colour, Sedef Arat-Koç says,

"[T]he immigrant whose political subjectivity challenges such binaries becomes a threat to order since the 'self' and the 'other' are destabilised. Thobani was very threatening because she could not be construed as the Western 'us' or the 'traditional other', having transgressed the boundaries" (Arat-Koç 2005: 45).

The reaction to a 2001 speech about 9/11 by Sunera Thobani, professor of women's studies at the University of British Columbia, and a former president of the National Action Committee on the Status of Women, is similar to the reaction and perceptions of CCMW during the *shari'a* debate (Thobani 2001).<sup>4</sup> As we will argue below, it is also similar to the reactions to and perceptions of self-identifying Muslim women who do not wear the *hijab*. In these cases, the women involved could not be categorised according to a cultural logic of either 'Western' or 'non-Western', or any cultural logic for that matter. This renders the debate surrounding the Muslim woman uncomfortable in mainstream, progressive or right-wing circles that insist on framing the debate in cultural terms. Using a cultural framework makes it impossible to accurately situate Muslim women who do not fall on either side of the binary that Arat-Koç describes.

The preference for a politics of cultural recognition stems from the discursive shift away from talking about inequality toward talking about difference. This shift has occurred in part because of serious power imbalances that have denied adequate recognition of minority groups (Phillips 1997). One consequence of this shift is the displacement of considerations of socio-economic inequality in favour of considerations of cultural difference. This occurs even in self-defined Marxist circles, where, in order to create links of solidarity against Western imperialism, cultural differences are recognised and accommodated at the expense of the consideration of certain aspects of social justice and economic inequality. In order to address questions of injustice, it is essential to consider both recognition and socio-economic redistribution. Recognition and redistribution are in a dialectical relationship where they are mutually reinforcing and conflictual at the same time.

For this reason, one cannot be prioritised over the other. They both have to be taken into consideration when long-term solutions to injustice and lasting links of solidarity are to be formed.

An example of this trend is given by one of the opening meetings of the 'Marxism: A Festival of Resistance 2007' conference held in Toronto during 10–13 May 2007. This meeting, entitled, 'Building Unity: Muslims and the Left', brought together representatives of the Muslim, university and left communities. Although well-intentioned, the politics of engagement with the Muslim communities that the Marxism conference and other similar gatherings promote does not go beyond the notions of 'tolerance', 'difference' and 'multiculturalism'. What we are proposing is that when building a solidarity movement, the politics of engagement needs to go beyond cultural markers of difference and injustice to include politics of collective emancipation.

### **'Double jeopardy': Muslim women's complex identities**

Since the late 1980s, a trend has developed in feminist and critical race scholarship which talks about people's 'intersecting identities' in order to explain their multiple loyalties and affiliations (Simien 2004; McCall 2005). This trend has moved into the mainstream policy and media debates with politicians using this concept to describe the relationship that Muslim and other non-white citizens have to the state. For example, Marion Boyd, former Attorney General of Ontario and the author of the review of Ontario's Arbitration Act, suggests an "understanding of individuals as being at the intersection of various identities" as being an effective way of negotiating the debate over Canadian multiculturalism (Boyd 2005: 73). This strategy has so far proven ineffective, especially for those who are forced to constantly negotiate their relationship with the Canadian state. What Marion Boyd fails to recognise is that people are never at the intersection of various identities. They have no choice but to assume all of their identities all the time. Himani Bannerji points out that it is impossible for a person to highlight one of their multiple identities over the others. She says, "their sense of being in the world, textured through myriad social relations and cultural forms, is lived or felt or perceived as being all together and all at once" (Bannerji 2005: 144). Despite this reality, many Muslim women activists have been forced to contend with the dilemma of 'double jeopardy', whereby they have been forced to choose one affiliation over all others. As Bannerji argues, "a simple arithmetical exercise of adding or intersecting 'race,' gender, and class in a stratificatory mode [that is, a hierarchical one] would not do. Neither can it posit 'race' as a cultural phenomenon and gender and class as social and economic" (Bannerji 2005:146). Our feminist, anti-racist dialectical position maintains that it is neither recognition nor redistribution that should take precedence when it comes to remedying injustices faced by Muslim women. Rather, both approaches need to be integrated in order to develop effective solutions that will provide long-term benefits to all those involved, especially the most marginalised.<sup>5</sup>

## **‘Cultural relativism’: The underpinning ideology in the *shari’a* debate in Ontario**

‘*Shari’a*’ is often mistakenly used to refer to a set of Muslim laws. In actuality it is an Arabic word describing a religious code covering all aspects of Muslim life. This confusion is symptomatic of the culturalist framing of the debate that misuses and misinterprets complex Muslim concepts to racist ends. It is also of note that there is no one code of Muslim laws. Rather, there are five main schools of Muslim thought, which in turn are interpreted and applied in multiple ways throughout the world. This makes it difficult to regulate the equal, uniform and fair application of Muslim law, especially in the Canadian context where there are very few people who are sufficiently schooled in both Muslim and Canadian jurisprudence.<sup>6</sup>

In October 2003, the Islamic Institute for Civil Justice (IICJ), led by Syed Mumtaz Ali, a retired lawyer, focused attention on the Arbitration Act of Ontario when this organisation announced that, under the Act, it would start using Muslim family law to settle civil disputes (Boyd 2005: 71). Mumtaz Ali claimed that since it was possible under Ontario provincial law to apply religious law to civil disputes, Canadian Muslims had “a clear choice”. He asked them, “Do you want to govern yourself by the personal law of your own religion, or do you prefer governance by secular Canadian family law? If you choose the latter, then you cannot claim that you believe in Islam” (Ali 1995). The IICJ argued that, on the basis of cultural self-determination, Muslim Canadians, like Hasidic Jews who used the rabbinical courts, must be allowed to use the Arbitration Act to apply religious law to family disputes.

Mumtaz Ali’s pronouncement and the arguments of the IICJ are a clear example of the ‘either/or’ logic that constitutes the ideological core of cultural relativist thinking. In the name of Muslim cultural autonomy, Ali is claiming that there are no universal principles of justice in Canadian law and that the principles that govern a believing Muslim’s life are completely separate from those that govern other Canadians’ lives. Our argument is that not only is such thinking damaging and divisive in terms of Muslims being part of the Canadian nation, but also that it is symptomatic of the conflict that exists within Muslim communities, namely, that the dominant voices amongst Muslims decide who is or is not a Muslim. In the case of the *shari’a* debate in Ontario, the IICJ became the governing ideological body, taking over the political and media space by excluding the voices of Canadian Muslims who would choose to be governed by secular Canadian family law instead of Muslim family law from the ‘Canadian Muslim community’. As Alia Hogben, Marion Boyd and Natasha Bakht point out, many devout Muslim women would be negatively affected by Ali’s pronouncement and other similar pronouncements that were made at the height of the debate (Hogben 2006: 135; Boyd 2004: 4; and Bakht 2004: 10). For a devout Muslim woman, being labelled a heretic for choosing to use secular Canadian family law is a cause for great concern. In addition, she would have to contend with the risk of being cast out of her community because she disobeyed the directives of a religious leader.

Due to the popular attention the *shari'a* debate received, the provincial Liberal government commissioned former Attorney General of Ontario Marion Boyd to review the Arbitration Act. Her report, entitled *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, was released in December 2004. Much like Ali's arguments, Boyd came out in favour of maintaining the existing Act with no changes, only recommendations for its practice. She framed her endorsement of the existing Act in cultural terms. She claimed that "the laws of the province and their application are more easily digestible by some cultures than others, making their impact disproportionate on those who do not belong to the dominant culture" (Boyd 2005: 73). This argument emanates from the same ideological approach as Ali's, that somehow the morals and ethics of Muslim and 'other' cultures are different from those of 'Canadian' culture. Both Ali and Boyd's positions, framed in terms of either 'Canadian' or 'Muslim' culture, excludes those who took a stand against *shari'a*, and who framed their opposition in terms of the universality of women's rights. As Alia Hogben points out, "[T]he public discourse was framed very quickly by pitting religious freedom and multiculturalism versus women's equality" (Hogben 2006: 136).

The very title of the report, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, is problematic. The notion of 'choice' to exercise religious freedom, as expressed in the report (Boyd 2004: 71), runs counter to our research and that of other scholars (Moghissi 2006; Mojab 2006b). The notion of 'choice' is highly complex when one considers the internal power cleavages in any given community. A closer analysis of the interplay between 'choice' and 'religious freedom' disentangles the problematic of the use of the universal principle of freedom of religion as a means to exercise a particular form of control of women.<sup>7</sup> This illustrates the contradiction that is often seen when alternative publics justify cultural self-determination using universal principles, only to selectively apply such principles within their communities. As Hogben states, "[W]hat is free choice, when even in discussions, some 'religious leaders' have made condemnatory statements that people who oppose the use of religious laws are not Muslims, that they should be declared *kaffir* [unbelievers], made into outcasts" (Hogben 2006: 135). In fact, Boyd contradicts herself when in the introduction to the report, as cited above, she agreed with scholars and activists who said that the possibility of coercion exists when it comes to choosing whether or not to use Muslim family to settle disputes. Further, it is easy to see that the 'choice' to disagree with proponents of *shari'a* is a difficult one, especially when the consequence is to be labelled an unbeliever. The title of the report also suggests that Muslims and people of faith are somehow separate from Canadians and need to be 'included' and 'accommodated'. What is at issue here is that other commonalities shared by all Canadians, outside of the purview of culture or religion, that are rooted in shared economic status, and/or legacies of displacement and dispossession, are obscured by culturalist ideology that divides people into cultural groups.

Indeed, it is not only proponents that adhere to culture talk. One of the most vocal opponents of the use of Muslim family law in the arbitration of civil disputes was

Homa Arjomand, the co-ordinator of the International Campaign Against Shari'a Court in Canada. Much as with Ali and Boyd, Arjomand framed her arguments in cultural terms by demonising the practice of Islam instead of the structure of patriarchal relations. She saw the debate about the use of Muslim family law in Ontario as symptomatic of the growing global threat of political Islam (Arjomand 2006). She focused her efforts on illustrating how Islam oppresses women and in doing so, in a way similar to the approaches of Ali and Boyd, she homogenised Muslims and Islam. Arjomand claims that *shari'a* has been used to subjugate immigrants coming from the Middle East, North Africa and Asia. We have tried to argue in this paper that the image of Muslim majority countries, where the populations are silent victims of *shari'a* law, is false. In her No Sharia campaign, Arjomand often invoked the image of the Islamic Republic of Iran as a theocratic state, governed by the principle of *shari'a*, to warn her fellow Canadian citizens of what is at stake for women in Canada. The image of stoning women to death as a punishment for committing adultery or engaging in same-sex relations were conjured up to instil a cultural fear in the Canadian population. The repressive nature of the Islamic regime is undisputable. Arjomand, no doubt, is fully aware of the unceasing resistance of Iranian women against the *shari'a* dictates of the state. Today, Iran, as with the rest of the Middle East, is a site of one of the most dynamic and sophisticated women's resistance movements against all forms of patriarchal repressions (Shahidian 2002). Indeed, overlooking this struggle, that is, dehistoricising the agency of women in the majority Muslim countries, locks one's argument into a culturalist trap, as did Arjomand's (Arjomand 2006).

The attitudes expressed by Boyd and Arjomand, although to different ends, can also be referred to as 'colonial feminism' (Midgley 1998; Bhavnani 2001). It means that they failed to recognise the diversity and dissent that exists within Muslim communities and the rich history of women's struggles against patriarchy in Muslim majority countries and in the Muslim diaspora. Furthermore, colonial feminism sees the North American or Western European context as the starting point for the theorisation of feminism (Ahmed 1992; Spivak 2000; Bannerji, Mojab and Whitehead 2001; Mohanty 2003). Non-'Western' examples of women's oppression supplement the study of women in the 'West', while power differentials between the 'First' and 'Third' world are left untouched and the specificity and diversity of women's experiences in non-Euro-American contexts are ignored. The 'West' as centre and the rest as periphery are thereby strengthened as a theoretical outlook. This particular grouping of Western feminist theory ends up creating monolithic images of Third World/South women. This contrasts with images of Euro-American women who are "vital, changing, complex, and central subjects" (Mohanty 2003: 518-519).

On 11 September 2005, after a long, heated and controversial debate, Dalton McGuinty, the Premier of Ontario, publicly announced that there would be no religious laws used in arbitration (Bryant 2006). This was seen as a great victory for all opponents of the use of religious laws in arbitration, regardless of their

motivations or approaches. For Arjomand, McGuinty's decision represented a victory over "the forces of 'Political Islam' in Ontario" (Arjomand 2006a). For CCMW, the decision was a victory for women's universal equality rights. The difference between these two reactions is significant. Arjomand's reaction to the decision stems from her culturalist logic wherein the secularist West has achieved victory over the threat of 'political Islam', or the East. But CCMW's logic stems from the universal principles of equality that they saw as threatened not by 'political Islam' but rather by a cultural relativist interpretation of Canadian multiculturalism and its application to the notion of democracy, secularism, and the plurality of religion so far as religious accommodation and tolerance is concerned. Arjomand's position is symptomatic of an ahistorical and cultural essentialising approach which inevitably contributes, as we have argued, to the formulation of the colonialist idea that culture in the Muslim world is static, backward and quintessentially intolerant of women's rights. According to this ahistorical logic, in the Middle East there is no room for, nor has there ever been conceptions of, universal justice and struggles for equality. Despite the fact that CCMW's position does not stem from a similar logic, such critiques have been launched against them, too. As Hogben states, struggling to maintain the autonomy of their position and to prove that CCMW's was not a racist, culturalist position "was an arduous process" (Hogben 2006: 136).

Based on the above discussion, we conclude that the main proponents of the argument for the use of religious family law in arbitration were not acting in the best interests of all Muslims, in particular those of Muslim women. Rather, it was an attempt by certain dominant and recognised Muslims to gain further legitimacy and power through the sanction of their ideas by the Ontario government. Pronouncements of Mumtaz Ali made it appear as if the government had given the IICJ special permission to set up an Arbitration court. However there had been no changes made to the Arbitration Act since it passed in 1992 up until this past year (Boyd 2004: 4). So, it was not a matter of getting a law passed or amended for Ali and other proponents; it was a matter of using existing provincial law to show that Ontario was a jurisdiction that allowed for cultural accommodation in its existing legal framework. Ali's plan backfired when McGuinty disallowed the use of any religious law in arbitration. It would be a mistake to assume, however, that McGuinty's motivations were based entirely on protecting the interests of Muslim women. One has to take into consideration the political climate of fear, suspicion and distrust, and the timing of his decision. His decision reflected wider global debates about the failure of multiculturalism policy and ideology and its inability to deal with the perceived 'threat' of political Islam. He was making a statement about limits to religious accommodation and where the line should be drawn. In other words, his decision, just like Boyd's, was based on the tension between cultural accommodation and tolerance within the secular multicultural framework where notions of secularism and multiculturalism both are contested, too.

Although stemming from a controversy in Ontario, the *shari'a* debate extended to other parts of the country. In May 2005, Fatima Houda-Pépin, a member of the

Quebec National Assembly, introduced a motion to block the use of Islamic courts in Quebec (CBC 2005). She expressed concern that Dalton McGuinty would continue to allow the use of religious law in arbitration in Ontario. She, too, expressed her concerns in cultural terms. She said, “[W]e want to be integrated like all other Canadians” (CBC 2005). Her arguments in the Assembly to get the motion passed are similar to those put forward by Homa Arjomand. Like Arjomand, she sees political Islam as a threat to Canada’s secular democracy and to Canadian Muslims. She poses Canadian democracy against the absence of democracy in Muslim countries. She frames democracy as a distinct Canadian value.<sup>8</sup> She expressed concern that *shari’a* might be applied in a “non-Muslim” context, that is to say, in Canada.<sup>9</sup> Referring to the Canadian context as “non-Muslim” is highly problematic. Muslim Canadians are part of the Canadian context and the ongoing debates surrounding ‘Canadian Muslims’ indicates that the “Muslim context” is not separate, either geographically or politically, from the Canadian context.

Further, it is also significant that the motion to oppose the implementation of Muslim tribunals in Quebec was put forth by a Muslim woman, Houda-Pépin, which gave it an added legitimacy that it would have otherwise lacked. Houda-Pépin is acting as the native informant to the Quebec National Assembly, who is interested in lending some legitimacy to their motion so that they cannot be accused of racism toward Muslims. If Houda-Pépin, a Muslim woman, endorses and puts forward the motion, then it must be valid, and indeed, ‘authentic’.

In January 2007, the municipality of Hérouxville in the Mauricie region of Quebec adopted a code of conduct for immigrants. This code outlines the ‘*normes de vie*’ or ‘way of life’ of Quebecers and Canadians more generally and of residents of Hérouxville specifically. It contrasts this ‘way of life’ with that of immigrants, with implicit references to Hasidic Jews, Sikhs and Muslims. For example, in reference to schools, the code states that students cannot carry a weapon or anything that looks like a weapon, symbolic or otherwise, implicitly referring to the Sikh symbolic dagger, the kirpan.<sup>10</sup> In reference to security, it says that in public places one has to have one’s face showing all the time in order to facilitate identification, referring to the controversial face veil, the *niqab* (Municipalité de Hérouxville 2007). In addition, in the preamble, it states the reason for the drafting of the code as the clash of local and certain immigrant cultures.<sup>11</sup>

Both Houda-Pépin and the Municipality of Hérouxville, although to different degrees, are afraid of the threat that political Islam poses to what they describe as the Canadian ‘way of life’ or Canadian democracy. They are framing the debate in terms of two cultures, one rooted in Canada, the other rooted in the Muslim world, in opposition with one another. This assessment of the current context and the remedies proposed to solve this perceived culture clash ignore the structures that allow for certain groups’ identities to be undervalued and demonised. Both Houda-Pépin and the Municipality of Hérouxville identify Canadian multiculturalism as the source of the problem, because minority groups are using it as a mechanism

of cultural claims. However, they also justify their positions by saying that they want to protect the Canadian Charter and way of life of which multiculturalism is a part (Municipalité de Hérouxville 2007; Assemblée Nationale de Québec 2005). By framing their arguments solely within the contours of the debate on Canadian multiculturalism, they illustrate the limits of multiculturalism as a remedy for cultural injustice. In Nancy Fraser's description, "'mainstream multiculturalism' proposes to redress disrespect by revaluing unjust devalued group identities, while leaving intact both the contents of those identities and the group differentiations that underlie them" (Fraser 1997: 23-24). In other words, by framing things in terms of Muslim and Canadian identity, they are ignoring the structures of power which allow for such injustices to exist – and perpetuate themselves – in the first place. Limiting the debate to multiculturalism will only allow the redressing of injustice to go so far. In order to have a lasting remedy to injustice, one needs to seriously address structural power imbalances and take seriously the necessity of redistribution of resources to redress injustice in the long-term.

## The veil debate in Canada

It is evident that the global controversy over Muslim women's dress now has its place in Canada, too. The code for immigrants in the municipality of Hérouxville is a good example to ponder upon. Muslim women's dress generally, and the *niqab* specifically, are implicitly referred to at least five times in the first five pages of the code (Municipalité de Hérouxville 2007: Municipalité de Hérouxville). In most instances the references to the *niqab* are somehow tied to security. This is not surprising nor is it a coincidence. It is symptomatic of the fear of the encroachment of political Islam. The councillor, André Drouin of Hérouxville, who spearheaded the initiative, much like Jack Straw or Tony Blair, was fighting their racist battle with Islam on the bodies of Muslim women. As Razack says in the context of forced marriage and 'honour' killing,

"...the body of the Muslim woman, a body fixed in the Western imaginary as confined, mutilated... serves to reinforce the threat that the Muslim man is said to pose to the West and is used to justify the extraordinary measures of violence and surveillance required to discipline him and Muslim communities" (Razack 2004: 130).

In fact, Drouin has recommended that Citizenship and Immigration Canada should consider the code, claiming that, "Québec faces a state of emergency because of its efforts to respect non-Christian religious and cultural beliefs" (CBC 2007). It is significant that, once again, the veil has taken centre stage as the battleground where politicians debate how to deal with the perceived threat that immigrants, and specifically Muslims, pose to the Canadian 'way of life'.

The *niqab* debate has once again come to the forefront in Quebec where local politicians such as Quebec Premier Jean Charest have recently criticised elections in Canada for allowing Muslim women to wear the *niqab* when voting in three federal

bi-elections in Quebec (CBC 2007d). What is significant about this 'controversy' is that it is not seen as one by Quebec Muslims. Nelson Wyatt, a CBC reporter, writes that Muslim groups are "mystified about the uproar" (CBC 2007d). This goes to show that once again Muslim women's bodies are being used as a means to alienate and demonise Muslims in Canada.

Another site where the debate has played out is in sporting events. Two recent controversies, both in Quebec, having to do with wearing the veil in sporting competitions gained much attention. In the first case, five soccer teams withdrew in solidarity from a tournament when a referee told the Ottawa Selects team that one of their players could not compete wearing a *hijab*. The referee justified the decision claiming that the girl could be accidentally strangled (CBC 2007a). In the second case, a team of Muslim girls withdrew from a taekwondo competition when they were barred from competing in their *hijabs*. Subsequently, the International Taekwondo Federation ruled that they should be allowed to compete (CBC 2007b). What is significant about these two stories is the current spotlight on Muslims which opened public spaces for so much media and popular attention. The International Taekwondo Federation president, Tran Trieu Quan, reflected this context when he said, "the authorization is a temporary one because an ad hoc committee will take a closer look at the political and social aspects of allowing the Muslim headcovering to be worn during competition" (CBC 2007b). Once again, the symbol of the veiled Muslim woman is seen to pose a threat and represent something that is politically and socially questionable. Hence, she needs to be controlled.

Reactions to this debate in Canada have been varied. Both mainstream liberals and the left have reacted by saying that Muslim women should have the right to choose how they dress. As in the case of *shari'a*, the idea of 'choice' and Muslim women's dress is a complex one. Instead of interrogating whether or not the veil is really a common and comfortable identity marker for the majority of Muslim women, and looking further into the complex debates amongst Muslim women on this topic, both mainstream liberals and progressive academics have taken it for granted that it is an accurate representation of the Muslim woman. An interesting example of this position was an attempt at a day of solidarity with Muslim women organised by Dr Muriel Walker at McMaster University in Hamilton. In an effort to show her solidarity with Muslims who have been demonised post-9/11, 2001, Dr Walker invited women to join her in wearing the *hijab* for a day to see how it feels to be a Muslim woman. She said in an "open letter to Womankind", "yet in the 'Western' world (of what I know myself from France and Canada) wearing a *Hijab* is certainly a very difficult and courageous act because precisely it is the visible and unmistakable sign of a religion that has become synonymous with terrorism since the 9/11 attacks" (Walker 2007: 2). In the poster she says, "Let us show our Muslim sisters that we respect and love them in all their choices" (Walker 2007a).

In our discussion with some Muslim women about this event, it was clear that they found it problematic and even offensive. The idea that wearing a *hijab*

for a day could help someone to feel what it is like to be a Muslim woman is preposterous. To reduce Muslim women's identity down to a head-covering is an affront to the complexity of what it means to be a Canadian Muslim woman today. This is especially true when one considers the origins of this reductionist symbol in the racist, Islamophobic attitudes of politicians. Granted, there are many Muslim women who see the veil as an identity marker, but even then, the veil often represents so much more to them. Veiled women we have spoken to about this day of solidarity and other similar events expressed their discomfort with such attempts at 'understanding'. They echoed the sentiments of unveiled Muslim women who saw such an attitude as racist and contributing to the homogenisation of Muslim women as well as precluding their ability to form other links of solidarity. It is of note that Dr Walker saw no common ground between herself and her Muslim 'sisters' and found no other way of showing her solidarity with them.

Ontario Premier Dalton McGuinty has expressed a similar opinion to Dr Walker when asked about Jack Straw's reaction to the women wearing the *niqab* in his constituency office. Apparently, McGuinty has no problem with women wearing the *niqab* as long as they are comfortable with it. His justification is that, "this is one of the strengths of this society that we are building together that we are respectful of one another's traditions and faiths." He also referred to the Canadian Charter of Rights and Freedoms as a justification for his position (CBC 2007c). This opinion reflects the complete lack of knowledge that McGuinty has of the complex history of women's struggle and their relationship to veiling in the Muslim world. Ironically, during the *shari'a* debate, when Mumtaz Ali was using the Canadian Charter of Rights and Freedoms as a guarantee of religious freedom, McGuinty chose to exclude the use of religious family law in arbitration from the choices that people of other "traditions and faiths" are allowed to make. McGuinty's positions on *shari'a* on the one hand, and the *niqab* on the other, are coming from the same perspective. Both positions characterise Muslims, specifically Muslim women, as one homogeneous group, with one unchanging set of rules by which they live.

## Conclusion

As we are jotting down the concluding remarks, yet another matter related to Muslims has prevailed over the upcoming provincial election in Ontario: the Conservative proposal for full public funding of faith-based schools. We will not be able to delve into the range of debates this issue has raised in this space, only suffice to say that separate is not equal and being equal does not erase difference. Increased demands for religious-based schools can only add to the burden of ill-funded public schooling and perpetuate educational and social inequalities. Obviously, the cultural relativist thinking constitutes the ideological core of this debate. In this position paper we have attempted to illustrate the dangers and pitfalls of cultural relativist thinking in policy, academic and activist circles. Only thinking in terms of cultural accommodation and recognition will provide short-term, superficial

solutions at best, to the problems that minorities face. We have argued that such thinking sets up great divides among women according to their religion, ethnicity, nationality, culture, geographic locations and other particularisms; ignores the heterogeneity within each group of women; and endorses incapacitating strategies for solidarity with women of different cultural and religious backgrounds. In some anti-racist, post-colonial feminist studies, the racist and patriarchal nature of the state is emphasised to the extent that feminist activists are blamed for taking their demands to the state. It is claimed that the racist patriarchal state is not able or willing to secure women's rights, and thus women should subject the state to as much scrutiny as we do conservative religious groups (Razack 2007: p.29). While it is true that the modern state is patriarchal, capitalist and racist, it is also true that 'culture' or non-state spheres, both private and public, are equally if not more racist, patriarchal and class-based. Indeed, one can argue that 'culture', 'civil society' and the private sphere of home are the main sites of oppression of women. Our point is that women should not be forced to choose between the state and non-state, rather using a feminist, anti-racist dialectical framework forces us to see both as patriarchal institutions.

In the mode of thinking described above, essentialising 'multiculturalism' as the cultural and political identity of the nation and conferring on it the magical power of remedying all injustices, is one side of the coin. The other side is cultural relativist thinking and approach. We would like to propose that essentialising multiculturalism and relativising culture constitute a symbiotic relationship, not a dialectical one. In other words in both multi(cultural)ism and (cultural) relativism, it is 'culture' that is being relativised and essentialised. We are not proposing that culture is unimportant. What we are arguing is a more expansive view of culture, one that does not exclude other determining factors in remedying injustices that minorities face. We have to see culture as part of the larger context that helps us understand the more complex power relations that are shaped and operated on the basis of class, gender and race in a historical context.

The *shari'a* and veil debates are only two sites of many where Muslim women's bodies have become the battleground of the limits of multiculturalism and cultural accommodation. Increasingly, debates that have been presented in Europe for the last decade, such as polygamy, 'honour' killing and forced marriage, are finding their way into Canadian media, academic, policy and activist circles. These are favourite topics for those who continue to frame debates over Islam and the West in cultural terms and those whose political agenda is to illustrate the incompatibility of Islam and the West. Not only do these debates lack context and sophistication, they are outright racist. They lump all Muslim men together as barbaric traditionalists and all Muslim women together as passive, unintelligent victims. The above discussion has illustrated that this assessment is damaging and inaccurate. In contrast, the picture presented above shows a dynamic and diverse population and women's movement that does not fit within the confines of mainstream debates about 'Muslim culture' and the 'West'.

## Endnotes

1. For an excellent discussion on this issue see: Fred Halliday (1993), "'Orientalism' and its Critics', *British Journal of Middle Eastern Studies* 20(2): 145-163.
2. For details on Canadian multiculturalism see: Canadian Heritage (2007), 'Multiculturalism', [www.canadianheritage.gc.ca/pc-ch/sujets-subjects/divers-multi/multi/index\\_e.cfm](http://www.canadianheritage.gc.ca/pc-ch/sujets-subjects/divers-multi/multi/index_e.cfm); Canadian Heritage (2007), 'Mission and Strategic Outcomes', [www.canadianheritage.gc.ca/pc-ch/org/mission/index\\_e.cfm](http://www.canadianheritage.gc.ca/pc-ch/org/mission/index_e.cfm)
3. The privileging of culture as an explanatory mechanism for social relations has become so prevalent that the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences and the Office of the High Commissioner for Human Rights of the United Nations convened an Expert Consultation on Intersections of Culture and Violence Against Women in November 2006. At this meeting the relationship between culture and violence against women was debated. For more information, refer to United Nations Human Rights Council (2007), 'Implementation of General Assembly Resolution 60/251 of 15 March 2006' Entitled 'Human Rights Council' Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Yakin Ertürk: Intersections Between Culture And Violence Against Women, <http://daccess-ods.un.org/TMP/8910763.html>
4. For an excellent discussion of the formation of Canadian national identity see: Sunera Thobani (2007), *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto: University of Toronto Press.
5. A very good example of how 'double jeopardy' has played out in reality, which offers a good comparison to the dilemmas faced by Muslim women who are demonised because of vocal, non-conventional activism, is the Clarence Thomas case. Anita Hill, a black woman colleague of Thomas who accused him of sexual harassment, instead of being supported, was accused of being a traitor to the African-American community because she was accusing a black man of sexual harassment, supposedly furthering the demonisation of African-American men. During the controversy, "African-American women were in effect 'asked to choose... whether to stand against the indignities done to them as women, sometimes by men of their own race, or to remember that black men take enough of a beating from the white world and to hold their peace'.... women are effectively asked to choose between quiet abuse in private and noisy discursive abuse in public" (Fraser 1997: 110; 115).
6. For a detailed study of how Muslim Family Law is practised in different contexts see: Sherifa Zuhur (2005), *Gender, Sexuality and the Criminal Laws in the Middle East and North Africa: A comparative study*. Istanbul: Women for Women's Human Rights – New Ways.
7. For an overview of this debate see: Special Rapporteur of Religion or Belief (2002), 'Working Paper for Geneva-Based NGO Committee on Freedom of Religion or Belief and NGO Committee on the Status of Women', [www.wunrn.com/un\\_study/english.pdf](http://www.wunrn.com/un_study/english.pdf)
8. The above is paraphrased from the French. The original reads: "*Peut-on justifier l'application de la charia au Canada quand, dans les pays musulmans, les groupes de la société civile réclament son abrogation pour en finir avec la discrimination faite aux femmes? Réclamer l'application de la charia au Canada est un véritable coup de force qui vise à saper l'une des assises fondamentales de notre démocratie: notre système de justice.*" Assemblée Nationale de Québec (2005), 'Les travaux parlementaires: Journal des débats – Débats de l'Assemblée Nationale; Le jeudi 26 mai 2005 – Vol. 38 No. 156', [www.assnat.qc.ca/fra/37legislature1/Debats/journal/ch/050526.htm](http://www.assnat.qc.ca/fra/37legislature1/Debats/journal/ch/050526.htm)
9. The above is paraphrased from the French. The original reads, "*Le problème qui est*

- posé ici nous renvoie, M. le Président, à l'application de la charia dans un contexte non musulman." Assemblée Nationale de Québec (2005), "Les travaux parlementaires: Journal des débats – Débats de l'Assemblée Nationale; Le jeudi 26 mai 2005 – Vol. 38 No. 156", [www.assnat.qc.ca/fra/37legislature1/Debats/journal/ch/050526.htm](http://www.assnat.qc.ca/fra/37legislature1/Debats/journal/ch/050526.htm)
10. A recent case in Quebec involving a boy who accidentally dropped his kirpan in the schoolyard sparked much controversy. For details, see: CBC (2006), 'Timeline: The Québec kirpan case', [www.cbc.ca/news/background/kirpan/](http://www.cbc.ca/news/background/kirpan/)
  11. The above is English paraphrasing of the original which is written in French. In reference to the kirpan the code says, "Les enfants ne doivent porter aucune arme ou semblant d'arme, symbolique ou non." In reference to the niqab it says, "Dans les lieux publics, il est de mise de se montrer à visage découvert, en tout temps, pour faciliter notre identification." In reference to a clash of cultures the code says, "Or, ce multiculturalisme engendre de plus en plus fréquemment des chocs entre la culture d'accueil et certaines cultures immigrantes." Municipalité de Hérouxville (2007), 'Municipalité de Hérouxville'.

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**Ariane Brunet**

interviewed by *Marieme Hélie-Lucas*, August 2009

## Secularism in Canada

***In this interview, Ariane Brunet discusses her perspectives and experiences of secularism in the provinces of Ontario and Quebec in Canada. Despite secularism meaning the separation of Church and state, under the banner of 'multiculturalism', religious institutions within Canada continue to influence public policies on health and education, and to call for new legislation that has adverse effects on the civil, economic and political rights of Canadian citizens. This is particularly true for the rights of women and children. Ongoing tensions at the policy level stem from varying interpretations on the meaning of secularism, the 'right to freedom of religion or belief', as well as contradictions amongst the Canadian charters of rights, the constitution, and international human rights commitments. Furthermore, arguments of cultural relativism that underlie political debates, particularly on the policy of 'reasonable accommodation', have created room for a re-emergence of religious fundamentalism across Canada. While certain actors in Canadian civil society and the women's movement have been actively challenging this, there needs to be a much stronger international movement to counter the current trends and to uphold individual rights for all.***

There are different points of view on what is secularism in Canada, depending on whether one is francophone or anglophone. I will speak from a francophone point of view.

To me, secularism means the separation of state and Church, and from my own experience in my own country, particularly in Quebec, it also meant the end of a period where religious authorities had control over education and health, mostly, and also had an overall big influence with our prime minister, here in Quebec. For me secularism meant putting an end to this state of affairs.

But it did not end, and it is important to understand the role religious people could, and did, play – and continue to play in the way our schooling system functions in Quebec. It is still confessional, i.e. it is either a Protestant school board or Catholic school board, although they are changing this as we speak. The draft law 118 abrogating confessional status of state schools in Quebec was adopted in 2000, however many people think that it has not yet provided for secularism in the school system. At long last, we are coming to the end of that era. To me secularism is the separation, the end of the influence of Church in state affairs.

The health system too was very much under the control of religious authorities in Quebec. Mainly the nuns were running hospitals. The Catholic Church has been the main organiser of hospitals in Quebec since the beginning of colonisation till 1960, at the time of the 'quiet revolution'. The conversion of the state of Quebec to the welfare state marks the end of clericalism in the social domain. With the election of the liberal party of Jean Lesage, the clergy was replaced at the head of education, health and social services.

But I also realised, during the Beijing World Conference (on women's rights), that Catholicism, through the Pope's influence, through the Vatican's money, controlled the health systems of many countries in West Africa. I am particularly referring to the influence the Church has over Benin's health systems.

I will give a broad overview of what has happened recently in Canada, particularly in Quebec and in Ontario, because I followed more what was happening in the eastern parts of Canada than what was happening in the western parts. What has happened recently was that a certain type of leadership in some Muslim communities in Ontario demanded that arbitration courts in family matters were allowed to use *shari'a* laws to settle disputes. It is important that I emphasise it was demanded by 'some' Muslim communities because it was not all the communities that were involved in this attempt; but certainly there were leaders of the Muslim communities that were trying to introduce the idea of using *shari'a* laws within arbitration courts. That was around the fall of 2003.

It was definitely family law. The idea behind it was that, through religious arbitration courts, issues of divorce, alimony, custody rights over children and inheritance – in short, questions pertaining to family laws could have been dealt with by arbitration courts in Ontario, thus introducing religious laws as another legal system.

Who stood against this and called for the movement to rally around this issue? It was first done by the Canadian Council of Muslim Women (CCMW). It is important to understand that it was not the women's movement at large, the women's movement as it was known; they mostly did *not* respond to the situation, until the CCMW *did* respond to it: it was the CCMW which was really committed to equality of women; they pushed on this issue and got many other organisations in Canada to then follow suit. And they asked particularly at this point the human rights organisations, which I was part of, to also get involved.

However, some people argued that the Canadian Charter on Rights and Freedoms and the annexed instruments were to be understood in light of the law on multiculturalism. They thought that linkages should be made between multiculturalism and an opening to Muslim communities, and that accepting the idea of having *shari'a* laws in arbitration court systems in Ontario could be an opening to Muslim communities in the name of multiculturalism.

The Canadian Charter was used many times to reinforce the idea that it is possible to 'accommodate' cultural communities. In 1995, commenting on the Quebec

Charter of Rights and Freedoms, a juridical recommendation of the Human Rights Commission concluded that curtailing freedom of clothing (in actual fact, the veil) was a discriminatory provision that would compromise the right to education as well as freedom of religion.

One can see here that the Canadian Charter of Rights and Freedoms can also be used to comfort those who want religious law to be applied in the legal system. What was sought was the privatisation of justice, the cohabitation, in the name of multiculturalism, of autonomous systems of justice intricately linked to identity politics.

Article 27 of the Canadian Charter clearly states that "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians".<sup>1</sup> Multiculturalism is one of the cornerstones of the new Canada created by Pierre Elliot Trudeau, the Prime Minister in the 1960s and 1970s, who repatriated the Canadian constitution back into Canada, while it had been in the UK for a long time. Prior to it, Canada was a dominion of the UK, its constitution was under the control of the British Parliament and the Act of British North America of 1867. This implies that the Canadian Constitution could be modified by the British Parliament. The law of 1982 on Canada is a law of the UK Parliament that put an end to the constitutional and legislative links between the UK and Canada. It is on the occasion of this repatriation that the then-Prime Minister of Canada suggested that a Charter of Rights and Freedoms be a component of the Canadian Constitution of 1982; in fact it is now the first part of the Constitution.<sup>2</sup>

But we are talking about the 1980s, while we are now in the 2000s, dealing with a new issue, which is how Muslims and other communities (Jewish, Sikhs, Catholics, but also anglophones and francophones) all attempt to interpret the Charter from the point of view of identity, come into looking at the laws of Canada, and how they integrate or not into the systems, and who is trying to influence communities in Canada to read the Canadian Constitution and the Charter with a different light.

That is one part of the story. But the second part of the story, which I think is just as important because it is in parallel, was that at the same time there was also a rise of cultural relativism going on. Cultural relativism, the way it was articulated in Canada, which is pretty much the way it is articulated in most countries these days, was that religion, ethnicity, nationality, culture and other types of particularism, all need to be taken into account. This again is giving prominence to identity.

For instance, instead of setting up a women's movement in which women from different cultural realities could feel they were part of societal debates, in Quebec, the specificities of the lives of women of migrant descent, their struggles within their communities and their capacity to influence the priorities of the women's movement were hardly taken into account. We were far too occupied with the cleavage between anglophones and francophones, hence caught in a nationalist

feminism. In Canada the same thing happened, not because of a linguistic difference but due to a multiculturalism largely coloured with cultural relativism.

I totally agree with colleagues of mine in Canada (such as Shahrzad Mojab) that there was an incapacity for strategising for women with different cultural and religious backgrounds. There was no room for it in the women's movement, until the CCMW were there to say, "Hey, we are concerned by what is happening in the arbitration courts in Ontario, we need to address this and we need collaboration, and a sense of solidarity on this issue, because it is going to be to the detriment of our capacity to freely choose what we want: we want to be under the same law, that everyone should enjoy the same laws, and the same constitution in Canada." That was key to women's understanding of the situation. And of course for some Canadian women's groups, it took more time than others to follow suit, to come into this movement against the introduction of religious arbitration courts.

I have not been able to find any public historical track of the implication of feminists into this debate. The debate starts in 2003; CCMW steps in, in 2004. Although several women's organisations presented memorandums at the audits of Marion Boyd's Commission in view of the publication of her report on religious arbitration courts, there is no organised movement prior to the CCMW calling for solidarity.

After the publication of the Boyd report in December 2004, and after the CCMW suggested collaborating on this issue to the National Association of Women and Law (NAWL), a working group was set up and a statement of principles was issued in February 2005.<sup>3</sup> After this and after the meetings with WLUML networkers in Ottawa and Toronto, a Coalition Against Religious Arbitration was set up. The idea of course was to have as much influence as possible to counter the Boyd report that was being prepared by the Ontario government, which was in favour of religious arbitration courts.

How to insist enough on the fact that it required the leadership of CCMW for this coalition to be born? How to insist that it required the parallel work of Homa Arjomand in her 'No Sharia' international campaign? Without the strategic and information dissemination work of CCMW and Homa Arjomand, Canadian women would have taken even longer to commit themselves collectively to this action. I think we were not in a position to understand what was at stake, the importance of this situation, precisely because multiculturalism allows for communalism. The apology of cultural relativism isolates women from one another. It was easier for Canadian feminists to jump on the bandwagon of CCMW, rather than to initiate the struggle.

The lack of contacts with women from various Muslim communities, the lack of knowledge of the history of black women's struggles against the creeping racism that prevailed in the women's movement in the 1970s and 1980s, the lack of awareness regarding the exportation of Muslim fundamentalism already rising in countries such as Iran, Saudi Arabia, Algeria, into the countries of immigration such

as the UK, France, the US, or Canada, explains that this campaign could not take off without the vigilance and the initiative of the CCMW.

However, it has at least forced everyone to become aware of the high level of organisational capacity of women of migrant descent, and of the importance of international solidarity. This solidarity is far too often understood as from North to South. Unfortunately, feminists have not taken this opportunity to organise against the rise of fundamentalisms. Some of them even saw positively that the campaign be centred on women's equality, in order to avoid debating on multiculturalism and religious freedom.

Homa Arjomand's was a one-woman struggle: she was gathering huge momentum under common international perspectives. An Iranian woman who was based in Ontario, she was trying to get the international community to be moved by this situation, to look at countries of immigration, including France and England, because they also would see the importance of what was happening in Canada and how the outcomes of the struggle against religious arbitration courts in Canada would reverberate in other countries of immigration. I think this was an excellent strategy.

I remember that in France there were demonstrations in front of the Canadian embassy and that had a great influence over the decisions that the Ontario government made subsequently. It was the same thing in Sweden, there was also a demonstration in England, there were letters that were written by the Iranian women's movement saying that "what you are doing will have an influence in our own country, so you need to think this through carefully."

There was of course WLUML, who came to a meeting with the National Association of Women and the Law. Members of WLUML came from South Africa, from Pakistan, from India, from France, from Algeria, from Iran, to dialogue with the women's movement here and make them better understand the influence this would have not only on Canada but outside, from the perspective of countries of immigration as well as in Muslim countries and communities. It was very important that there was such a movement influencing the Canadian thinking on this issue. It is the key to understand the process here.

We need to keep in mind that the law on multiculturalism dates from the 1960s and 1970s, it didn't take into consideration the new migration of the 1980s and the 1990s. Our political thinking did not merge with the realities on the ground, with what was happening particularly in Ontario and Quebec at the time.

For example, the Charter on Rights and Freedom clearly states in its Article 2 that there is a secular principle that has to be respected – namely freedom of conscience and freedom of religion, freedom of thoughts and beliefs, freedom of opinion and expression, the capacity to meet peacefully and the principle of association. The Charter also forbids discrimination based on race, on national origin or ethnic origin, colour, religion, sex, age, mental and physical deficiencies.

But to be truthful to the politics of multiculturalism, the Canadian Charter affirms also that all interpretations of the present Charter of the time have to be in line with the main goal of the Charter, which is to promote and maintain the multicultural reality of Canada.

But what does this Article 27 of the Charter actually mean? What it means has never been fleshed out from a political and legislative angle. Article 29 reiterates that the rights and privileges of confessional schools should be maintained.<sup>4</sup> It proves that, at the time of the law on the Canadian Constitution in 1982, the move towards a more secular state in Canada was still to be done. It was only in 2007, when the Government of Quebec de-confessionalised state schools, that things began to change.

Multiculturalism allows for 'identity education', designed to fit cultural or religious identities. Indeed this does not make Canada a secular state. It appears more and more to be a state that accommodates religion, culture and patriarchal values. The beginning of the Charter and the Constitution very clearly mentions God and it recognises the supremacy of God – but still states that our rights are first and foremost.<sup>5</sup> What a contradiction... But it seems that there is no attempt to resolve this opposition of two supremacies: God and the Law. Some people argue that the supremacy of God in the Preamble contradicts Article 2 of the Charter, which protects freedom of conscience...

The contradictions of Canadian instruments should also be highlighted when we are looking into the question of secularism at the time of the debate on arbitration courts. I see therefore why people were wanting to push for more religious influence in policy and in politics, wanting to seize that moment – because the Charter has those articles that allow for this form of taking over justice issues, bringing religious influences into justice issues, through arbitration courts. This needs to be addressed by Canadian legislators and by Canadian politicians. We cannot ignore that factor; it is not only an academic exercise here. The fact that there are those discrepancies and those articles that leave leeway to interpretation has to be taken into consideration.

Secularism cannot exist as long as one will attempt to include migrants into a legislative frame that was conceived of with regard to the beginning of the industrial area, when migrants were in their vast majority migrating from Europe, whose religious codes were similar to ours. Although there was a need to address linguistic differences, in Quebec at least, it was felt that from the religious point of view, new migrants will melt into the already existing communities. Italians, Portuguese, Greeks, Poles and Irish who came into Canada did not raise major issues; they could be assimilated while remaining Italians, Portuguese, Poles, Greeks or Irish.

In the 1970s, the Italian population merged with the anglophones and was trying to take advantage of its knowledge of the language. In order to achieve this status, they had to go to English schools and when the people of Quebec demanded

that French become the language of the majority, these Italians had to start learning French and thought they would lose their chances of a better economic life. In this case, despite their being Catholics, they assimilated themselves into the anglophone, mainly Protestant, community. This today has lost its importance, but it was very important at the time.

With the immigration of the past 30 years, and globalisation, things turned differently: in 2003 the rise of fundamentalism found fertile soil because our Charter allows for all sorts of interpretations, as it chose to communalise immigration and to gather the Canadian population on a common denominator which is the 'supremacy of God'. Obviously, nobody really knows the Preamble of the Charter, but the legislator can make reference to it.

Two historically very important problems arose in the 1990s: in 1994 in Quebec, it was the issue of religious symbols in schools, the wearing of the *hijab* in schools, and in 2001, it was the issue of the kirpan, the Sikh symbolic dagger. It is interesting that in 1995, the legal advice that was given by the Human Rights Commission on the veil concluded that, in public schools, one could not forbid access to the services of a school to students that were wearing the *hijab*. The legal advice given by the Commission is still on their website. Ten years later the issue of the veil came back again, in 2005, in the case of private and public Catholic schools. Again in private schools it was clear that it was OK if somebody wanted to wear a veil to come to school. So it was reiterated that private schools too have to accommodate people's religious beliefs. It is interesting because here again there is a divide between religious freedom and the religious symbolism of your practice of a religion, which in international human rights law are two different things.

But in Canada I think there was a misinterpretation of international laws, even if juridical/legal advice given by the commission looked at international law. But it did not have any influence on their decision.

Public education in Quebec is fairly recent: it is only in the 1960s that a Minister of Education was set up. Education is crucial and has a definitive importance in our legislative and judicial environment. The opinion of the Commission on Human Rights of Quebec in 1995 on the issue of veiling in state schools clearly emphasised the right to equality and the right to public education for all. The second opinion of this Commission on the same question, but now regarding private schools, emphasises the same idea of equal rights of pupils to freedom of religion. In both cases, there is equality only with respect to access to school and freedom of religious practice. And obviously tolerance is articulated with wearing religious symbols. The judicial context has not evolved since then. The significance of religious symbols regarding male/female equality, the impact that veiling could have on other girls in the school, the coercive aspect of family on wearing a veil, discrimination, restrictions imposed on women by all religions and by those who hold the power or are influential in religious matters, the absence of analysis of the impact of these opinions on the human rights of the pupils as a whole...

One should be able to consider these questions, keeping in mind that it is impossible to promote respect of religions and religious tolerance without at the same time ensuring that the right to equality between sexes be respected. Some people would say that this is precisely what the judicial framework is trying to promote when ensuring that veiled girls can go to school. Freedom of conscience and of faith is one thing, however the right to express one's religion can and actually does create problems when one wants to respect equality between the sexes. This nuance is not unimportant and has not yet been taken into account by the judicial system, neither in Quebec nor in Canada. It is important to remind ourselves that CEDAW requires member states to adapt their religious practices to put an end to sex-specific discrimination.<sup>6</sup>

It is important to underline that in 2006 a unanimous decision of the Supreme Court of Canada granted permission to a young Sikh boy to carry a kirpan inside the school, with one restriction: it should be kept into a well-sewn case and hidden inside his clothes – once more the Court was keen to demonstrate that Canadian society gives prominence to freedom of religion and respect of minorities.<sup>7</sup> This decision of the highest Canadian Court allowed for cultural relativism to step in and since then 'reasonable accommodation' has never stopped.

Thus there have been more and more demands for sex segregation in public spaces and institutions: for instance, different timing for women to use sports facilities (public swimming pools amongst others), sex segregation in prenatal training courses, refusing medical care if given by an agent of the opposite sex, refusing to allow female police officers in the house during incidents of domestic violence, refusal by Hassidic Jews to allow female evaluators of the Société de l'Assurance Automobile du Québec ('Car Insurance Policy of Quebec') into their house – the list would be long<sup>8</sup>...

In my view, this has to be linked to fundamentalism. There is a rise of fundamentalisms in Quebec and, as in other places, it happens at a time when the right comes back to power in many countries, when comprador capitalism expands, when countries with immigration are incapable of rethinking the nation state thus engendering closed identities, communalism and a weak analysis regarding the need to persist in prohibiting all forms of discrimination.

Freedom of religion cannot all of a sudden prevail over equality between the sexes. Cultural relativism rapidly expressed itself here as elsewhere, as in an 'all security' time; Quebec society too gave priority to intercultural exchange to the detriment of the intra-cultural aspect, i.e. our capacity to erode our society not only within its diversity but also in the multiple realities inside this diversity. Media, jurists, NGOs – all of them attempted first to avoid the simplistic equation of terrorism to fundamentalism; however in the process many fell into the trap of equating cultural relativism with anti-racist struggles, and very few were capable of understanding that if one is not vigilant on the basic principle of equal rights for men and women, it is the whole system of rights that will sink. In Canada as well as elsewhere, allowing

the promotion of national 'values' (the Canadian values dear to the heart of the new Prime Minister, Mr Harper) instead of defending universal rights leads to a drift of what is considered a 'value' depending on times, context, political situation, power struggles.

However, equal rights between men and women are mentioned in the preamble of the Universal Declaration of Rights. One can thus understand that this very equality is the commonwealth of all people, all societies, and that in order to develop respect for rights and freedom of all, one must ensure that social progress is well anchored on the principle of equality between men and women. Quebec allows this debate to go on, depending on internal debates of some organisations, as could be seen when the Federation of Women of Quebec (FFQ) declared itself against prohibiting signs of religious affiliations inside the public administration and public services of Quebec in its May 2009 general assembly.

On 22 May FFQ changed its views, inviting the government of Quebec to "take into its hands the issue of secularism (...) and clarify what was the present model of secularism".<sup>9</sup>

Feminist jurists came to the rescue of FFQ's statement, arguing that in this debate there were "false oppositions, such as the one between secularism and freedom of thought, or else between equality and freedom of religion".<sup>10</sup>

Once more, it is interesting to underline that one mistakes freedom of thought and freedom of religion with displaying religious symbols. Karima Bennoune reminds us that international law prohibits discrimination on the basis of religion or, as both are crucial with respect to the antidiscrimination human rights regulations, that prohibition of discrimination lies *inter alia* in the United Nations Charter as well as in the two Conventions on Human Rights, i.e. the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Ms Bennoune also points out that the right to freedom of conscience and freedom of thought, and the right to gender equality cannot be subjected to any limitation; however the right to expressing one's religion can be limited.<sup>11</sup>

As elsewhere, what caused problems in Quebec is actually the wearing of religious signs and not freedom of thought. Wearing religious symbols is too rarely understood as one of the spearheads of the rise of fundamentalisms and of a political use of religion. It is well known that very little legal effort has been made to analyse the impossibility until now to reconcile freedom of religion and gender equality, or, as highlighted by Karima Bennoune, to reflect on the consequences of this failure. Its political dimension should and must call our attention: contextual realities, absence of critical analysis of the 'popping out' of religion in public debates, historical lack of debate in society on secularism – all concurs to keep Quebec and Canada inside the identity discourse.

In the case of religious arbitration tribunals, there were women from Muslim communities and other faith-based communities speaking out against identity politics, and arguing that there is no need for so-called 'accommodation' for women of faith. For example, when a rabbinic school complained to the YWCA about a mixed gym that was located in front of the rabbinic school: they demanded the YWCA cover or blacken their windows, arguing it was not good for the rabbinic school's students to see women exercising... and the YWCA indeed blackened their windows! But the women who were using that facility at the YWCA initiated a petition which was widely signed, to ensure that the authorities at the 'Y' would change their decision. They succeeded. In the process, more and more people became aware of the issue.

But on the issue of *hijab*, I insist that cultural relativism comes into play. It is much more difficult to deal with it, because the left holds this ideal that racism should be properly addressed and it is afraid of Islamophobia... There is a lack of analysis. No one asks who are those leaders insisting on separation in swimming pools and wanting to make sure that women who are going to hospital are met with women doctors alone, or that policemen are not entering family houses; who are those people?

Sometimes such demands are made by some women, but one discovers down the road that they were linked to ultra-conservative schools of thought. Some years ago, there were demands at McGill University for separate spaces to perform prayers and a request that rooms be made available. Recently in Quebec some people requested that Muslim women who wanted to learn driving would be provided with women instructors alone. And some requested that police officers that are called in instances of domestic violence, thus inside the house, should be women, as men were 'not appropriate'. We can see similar specific demands occurring in the educational system, in the health system, in the judicial system, etc.

Contrary to popular belief, I think that fundamentalists are very well-organised. There is very little analysis that has been made over the years as to who is making that kind of demand. It is particularly true in the case of the swimming pools and prenatal courses; fundamentalists didn't want husbands to accompany women to prenatal courses while the purpose of prenatal courses is precisely for husbands and wives to learn together and share. Health practitioners had to accommodate those women and allow them to bring in female support instead of their husband at prenatal courses. This of course created divisions, as there was a separation of sexes in public places again, while this facility is offered by universal health care.

Of course that brought out the whole issue of reasonable accommodation and of process of reporting on this issue.<sup>12</sup> After a year of questioning and interviewing everybody in Quebec, anybody who wanted to present a brief in front of the Commission on the '*accommodation raisonnable*' was able to do so. A wide range of people spoke, from community-based groups to individual citizens, to community leaders – various communities whether they are Muslim, Christian,

Jehovah Witnesses, etc. – everybody was able to present briefs to the Commission. But again the Commission's main results were to demand even more 'reasonable accommodation' for religious beliefs. It is important because it really talks about who has an influence here in the community. I believe that a lot of people clearly took another stand, but ultimately it was Charles Taylor and Gérard Bouchard who were the two main people that were hired by the Quebec government to lead this commission: they clearly took the stand that 'this was the appropriate way of looking at tolerance', as the debate over Canadian multiculturalism is effectively rooted in the idea of strategic dealing with minorities.

In February 2007, the Government of Quebec decided to set up a Consultative Commission on Practices of Reasonable Accommodation regarding Cultural Differences (CCPARDC),<sup>13</sup> with a mandate of sketching out judicial practices of accommodation that took place in Quebec and to conduct a wide popular consultation on accommodations, so as to see if there would not be a deeper problem regarding the sociocultural integration model that had been set up in Quebec since the 1970s. The Commission held hearings in 17 municipalities in Quebec and delivered its final report on 22 May 2008. Among the 37 recommendations, the Commission encourages the government to adopt founding resolutions defining "an open secularism and an interculturalism specifically from Quebec". The Commission also worked towards promoting "responsibilization of (social) actors regarding the management of demands for adjustment". Finally, as Charles Taylor said to one of the commissaries, the question is not that of breaking away or making radical changes, but only to propose "measures to facilitate intercultural relationships and the normal evolution of a pluralist and modern society".<sup>14</sup>

Many thought this report had not gone far enough and above all that it gave legitimacy to the "idea that religious freedom supersedes other important social stakes and justified exceptions to secular management regulations". Moreover this report fails to underline the fears that many expressed regarding some accommodations contravening gender equality. The report solely recommends to increase financial support to organisations that support immigrant women – which of course is good news – and to back the project including an interpretative clause in the Quebec Charter that would establish equality between men and women as a fundamental value.

Obviously, this report does not raise at all the context in which fundamentalisms are rising. As for wearing religious signs in public administration, the report "recommends only that religious signs be banned for magistrates and Crown Prosecutors, policemen, wards in jails, Presidents of National Assembly, because they exercise some power".<sup>15</sup>

Reasonable accommodations do indeed fit into multiculturalism as it is promoted by Canada. 'Multiculturalism' in Canada refers to the presence and survival of racial and ethnic minorities which define themselves as different and insist on remaining different. At the level of ideas, multiculturalism constitutes a somehow

comprehensive coherent set of ideas and ideals that deal with the highlighting of the cultural diversity in Canada. Politically, multiculturalism is structured around the management of diversity through official initiatives at federal, provincial and communal levels. Finally, multiculturalism is the process through which racial and ethnic minorities try to gain support from the central authorities for the achievement of their goals and the satisfaction of their aspirations.<sup>16</sup>

Apart from the 40-odd indigenous nations in Canada, and the long presence of a black population brought about by slavery, there are about 20 cultural communities, from the oldest ones – Irish, Chinese, Italian, Greek, Portuguese, Japanese, Polish, Ukrainian – to the most recent ones – Filipino, Latino, Jamaican, Haitian, Vietnamese, Pakistani, Indian, North African, Arab, etc. This ‘management of diversity’ is, in actual fact, no different from promoting difference as a first step and later proposing tolerance. Promoting tolerance means that one can be sure that I recognise you as ‘other’ – as you want me to identify you. Multiculturalism may be equated to managing identity claims by proposing a modèem of Canadian diversity – ‘Canadian’ here being what unites. But no one seems to know what Canadian unity means, as it seems to be determined by the capacity to identify who are the ‘others’, to name them and to accept them as ‘others’, to the point that one prefers to develop adjustments in order to emphasise the fact that ‘they’ are not ‘us’.

In short, multiculturalism, especially in the past 15 years, allows for *marking* the ‘other’ in his/her difference. The aim is no more to apply the same laws to all, but to make adjustments; it is slowly setting up a client’s justice and an exception legislation which manage the way in which one ‘Canadianises’: one melts into the anglophone or francophone substratum – depending on the province in which one lives.

Canadian multiculturalism is really based on the idea that there are differences. And even though one wants to avoid saying that and therefore to pass a law, the law is indeed formulated in order to make one understand that the policy behind it all is to highlight minorities: as a minority, we are going to give you some laws that will enable you to open up to the idea of difference and to the idea of tolerance, which are in my view the main axes. This is what multiculturalism is about. And when you scratch the surface, you discover that if I am going to be different and if I am going to be tolerant, it is because I acknowledge that you are not me, you are not the same as I, you are the ‘other’. This is very well perceived by the Canadian public up until now.

And it is like not acknowledging that within your own community you are divided: for example, among French Canadians, some of us are nationalists, some of us are federalists, some of us are secularists, some of us are Christians, some of us are of different beliefs, etc. Not seeing that the so-called minorities are not homogeneous heavily weighs on the psyche of the Canadian population. Because it ignores the variety within those communities that settled in Canada in the past years 20 years,

whether they come from Pakistan, Indonesia, Senegal, it does not matter. The various possibilities existing within each community have been overlooked.

How does it affect women's rights when communities are homogenised in this way? It leads exactly to what happened with the issue of arbitration courts: the politicians, the public and the media consider that if the opinion of a 'leader' of a community is taken into consideration, then one gets the right perspective on what is good for that community – hence for the women. What is supposed to be good for the women is what the leader says is good for the community, based on religious beliefs. This is the way it is understood by the media, although we are now *starting* in Quebec to see editorials that attempt to bring another understanding of this issue.

The fact that women are *objectified* in the process is not seen and it is a huge problem. The women's movement recently, through the Fédération des Femmes du Québec (FFQ),<sup>17</sup> passed a resolution in its general assembly called "*Ni obligation, ni interdisant*" (neither obligations, nor forbidding) regarding the wearing of religious symbols in the public service. The FFQ, which is supposed to represent Quebec, in fact stated that they do not want to give an opinion about the problem so wearing of religious symbols should not be forced and shouldn't be forbidden. FFQ clearly stated that they took advice from Présence Musulmane,<sup>18</sup> an organisation which is very much under the guidance of Tariq Ramadan, a fundamentalist from Switzerland. Once more, one can see the influence of fundamentalists.

However, a woman of Algerian origin living in Quebec was present when FFQ passed this resolution: she proclaimed that FFQ was not speaking for her, that she could not agree with the resolution. But she was branded hysterical and going overboard with her fear that the resolution would give the wrong message from the women's movement in Quebec, if indeed women refused to take a position on wearing religious signs in public offices and services.

There have always been agreements on the question of education between the Government of Quebec and religious communities (Catholics for a long time), as it is only now that schools have been de-confessionalised, have become secular. Agreements with Jews, Protestants and Muslims are likely to exist as long as the state will not be clearly secular.

There is a need to look at what is happening in Canada and Quebec while keeping in mind the international aspects of the influence of fundamentalists throughout the world, whether it is the countries of immigration or in the countries of origin. Wanting to have peace with 'communities' within one's country is done to the detriment of understanding the multiplicities of views, opinions and realities inside those communities; doing that would make the realities in those communities as real as possible to the majority of Canadians.

It is a huge problem because Canada is looking at an international issue, a global issue, with a local perspective but without considering that this local perspective is

influenced by the realities of the entire world – totally askew from the reality of the interpenetration of the influence that we all have on each other in this day and age with information technologies, with the tools of the younger generation.

Who are the second migrant generation, who do not seem themselves either as Canadian, Pakistani, Indian or whatever? What is their own understanding of the world that we are leaving them? So it is really this cultural relativism, this idea that Canadians are tolerant people – when in fact they are, to me, the ostriches who put their head in the sand, more than ever before. I think we are insular in our understanding of the world more than we have ever been, because we accept those ‘adjustments’, thinking this is the Canadian way.

Is this what universality truly means? When we battle against ‘Asian values’, for instance, we are in total contradiction with ourselves, because we are doing exactly the same thing as what we fight against in other contexts.

There is nothing wrong with cultural relativism from a Canadian perspective. We simply propose adjustments or accommodations. For how long can we do this? How many adjustments that deny the universality of rights? When will we be willing to look at the rise of fundamentalisms within our society? Who are we protecting here? As we are making adjustments to accommodate minorities within communitarianism/communalism, we are ignoring more and more our existing laws, not even bothering to ensure that we interpret those laws in ways to include discrimination against women – no matter who they are. Women have fought very hard for laws that grant them rights and these laws are being eroded as we are administering justice in a piecemeal fashion.

We are not using the laws in the book *and* we are not applying them, because we are increasingly opening up to mediation – a mediation by which fundamentalists will use the laws that they see fit. So there is a dereliction of what the constitution and the legislation bodies of this country really can do. There is a hubbub, it nourishes and it feeds the flourishing of fundamentalists in the diaspora: they have the ground to do so, even though they are in a minority.

There is a group of women, human rights activists and a few journalists in this country that are finally starting to come out of the woodwork. But there is a need for an international movement...

Why were religious laws in arbitration courts finally stopped? Because we were backed by an international movement. All the juridical, the legal, advice that was given in Canada up until now always favoured cultural relativism – always. It is very important to understand that the women’s movement in Quebec or in Canada needs this solidarity because we need to understand the global influence of all actions. I don’t think we understand that perfectly enough.

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*Djemila Benhabib*

## Finding the Same Advance of Islamism in Europe and North America as in Algeria

***Before pushing the boundaries of the East, the fires of political Islam have changed the nature of states and the future of their peoples. In Algeria, the Islamist attacks became in the early 1990s a long river of bestiality that has prevailed, in one decade, over 200,000 people. In France, political Islam is ensconced in the heart of many cities, while in Canada and Quebec, it is gaining ground day by day because of the politics of multiculturalism and an erroneous vision of integration and freedom of religion. What do these abuses conceal? Where do they take root? Who are the first victims, the initiators and promoters? In order to answer these questions, this article initiates a reflection on the subject.***

In the spring of 1994, I was living in Oran in Algeria. I was 21 years old and my head was full of dreams. I had had this town under my skin for a long time. I was used to visiting every part of the town, from the shabbiest to the grandest. I had sauntered down its boulevards, lined with palm trees, and had let myself be immersed by its atmosphere and its moods, while secretly though not explicitly harbouring a sense of rebellion. One day all that stopped. The town was no longer what it had been.

On 10 March 1994, Abdelkader Alloula, that great man of the theatre, had just been assassinated and with him, the whole of Oran. "The Lion of Oran is dead," cried Zoubida Hagani on Algerian television, with an expression creased with anguish. At the same period, the Groupe Islamique Armé (GIA, 'Islamic Armed Group') ordered all Algerian women to wear the Islamic veil. We were faced with a choice between hiding our bodies in walking coffins or resisting. Some did resist and were murdered. This was what happened to Katia Bengana, a young *lycée* student, 17 years old, who was murdered when leaving her *lycée* at Meftah. That was the day that I realised that my future depended on putting a stop to this ideology of death. The triumph of that ideology would negate all I stood for. Its progress would leave me shut in. I understood that my body would carry forever the marks of this confrontation, which was such an unequal one. I already knew that with the adoption of the Family Code in 1984, I was regarded as an object to be placed at the service of a husband and his parents. That was certainly why I was always repelled by the idea of being married. In any case, I had never had any dreams of a wedding, a family, children, a wedding gown or all the fripperies of a marriage.

When the Front Islamique du Salut (FIS, 'Islamic Salvation Front') threatened to take power at the start of the 1990s, with its various armed forces, everything changed. The mosques were turned into political tribunals. Prayer rooms appeared everywhere in workplaces.

The conservatory closed down. The brass plates on municipal buildings changed. One could read "Islamic Municipality" in various places. One saw separate counters set up for men and for women. Many hairdressing salons became increasingly hidden. Women did not go any more to sporting complexes. The morality police became ever more threatening. A campaign was launched against any mingling between the sexes. A war was declared against couples appearing together. To go to the beach became an act of resistance. To smoke a cigarette was the same.

A terrible fracture struck society as a whole. This was not a break between the East and the West, as described in the thesis of the shock of civilisations, which so appeals to extremists of the right and to racists of every description. The fracture occurred inside the same country where the great majority were all Muslims. This fracture occurred through two social projects that were completely incompatible and which clashed violently.

The FIS's project can be summed up in a single phrase: Islam was our religion and our state and *shari'a* was our constitution. This *shari'a* was based on the superiority of the Muslim over the non-Muslim and the superiority of the man over the woman. To this was added the use of violence in order to terrorise the whole population and enforce its submission to Islamist dictatorship. In Algeria, just as in the Sudan and in Iran, political Islamism made its way over the bodies of thousands of men and women. Have we forgotten this?

I found refuge, together with my family, at Saint-Denis in the Paris region, naively believing that one could leave the Islamists and their endless demonstrations far away from me. I never thought that I should one day reopen this painful chapter of my life, when dear friends had been taken away from me and thousands of Algerians had been torn away into exile. The pain was so keen that I wanted to forget, to keep silent about what I had experienced and, above all, say nothing about it. I never thought that I should one day expose my life, like a weapon of last resort, to defend with my body the rights of women, freedom and democracy.

While working at Stains with children who had educational problems, I was quickly disabused. Political Islamism had corrupted the immigrant population in a thousand ways and had insidiously penetrated, like a cancer in metastasis, around institutions, while it waited for the best moment to strike with deadly effect. The strategy was always the same: political sermons in prayer rooms, taking charge of people's social and economic needs and exercising control over young girls and women. Polygamy and divorce went hand in hand with republican values. Everyone to his own domain. The republic for the whites and exclusion for the coloured, such was the price of the pretence of social peace.

As for those girls who let down their skirts – did that matter? And those girls who were sent away into the depths of the countryside to get married or to be circumcised? What can one say about the Family Code that I thought had been buried in the cellars of history, but which was applied to immigrant women through the bilateral agreements between France and various African countries? Then there were the outrages of 1995. The horror caught up with me once again! What can one say about those democrats cowering in Paris, who had to apologise all the time for even existing, while the leaders of the FIS were received with honour in the offices and the drawing rooms of the French Republic? How many friends did I have to accompany to the police station? Was it because the West had decided to play the FIS card? Probably.

## **Dead end! Change of direction**

Ever since I came to Canada in 1997, what monstrous things I have had to hear: from Islamic tribunals in Ontario to the legalisation of polygamy in British Columbia, to the wearing of the kirpan in state schools in Quebec and the construction of *sukkah* and *eruv*<sup>1</sup>. I have even seen girls in prams covered from head to foot. Not because it was cold. Not at all. This was going on in the month of July. It was suffocatingly hot in Montreal and a man was leading a small girl completely veiled – of what age? Three or four years old. Heavens, I hadn't even seen that in Algeria! I could quote dozens of examples like these, since Canada and Quebec overflow with amazing stories of this kind. Even worse, we are witnessing the multiplying and spreading of judicial exceptions on religious grounds which seriously impinge on fundamental values of society, and these are generally called reasonable adjustments: "It's my freedom; it's my choice."

And what is the worst? This is the formation of unnatural alliances between some feminists or some people on the left with the Islamists. I never thought I would have to cry out, in a hall full of feminists, all my pain as a woman because I had been condemned to death at the age of 20 on the grounds that I was a woman, a feminist and a believer in secular values. I never thought I would have to convince a room full of feminists that the veil was an instrument of slavery, beneath which women suffered in Iran, Saudi Arabia, Afghanistan and Sudan. What are they doing in defending the Islamic veil? Do they want to make it the main pillar of Islam?

I never thought I would have to attack feminists or left-wingers, since they made up a part of my natural political family. Nevertheless, in May 2009, when the Women's Federation of Quebec (FFQ) took a decision to allow the wearing of ostentatious religious emblems in government buildings in Quebec, I had no alternative but to express my dismay and my anger in front of the Chair, Michelle Asselin, who was supported by Françoise David, spokesperson of the political party, Québec Solidaire. They curtly told us that we had to get on with fundamentalism when it was Muslim, while we had to fight it when it was Catholic.

No! You must know that there is nothing in my culture that makes me predestined to hide myself under a shroud, an ostentatious symbol of difference. I am tired, dispirited and worn out by the idea that confines me within the same communitarian fold, just because I carry an Arab name. That is indeed racism! Not to recognise that I have the same rights and obligations as everyone else, just because of my origins. I do not ask any privilege, any special right and any derogation from the law. I just want to be treated as a simple citizen. Is this really so hard to understand?

We cannot accept this conception of a difference over equality between the sexes, which can lead to the direst results. We cannot accept injustice, wherever it comes from and whatever it consists of. There is no tradition, no belief that can justify barbarity against women. No, Madame Asselin, no, Madame David! What would you have said to Aqsa Parvez who was murdered at the age of 16 in Toronto on 10 December 2007, because she refused to wear the Islamic veil and be controlled by the male members of her family? Is it only death that can release these young girls and young women from the tyranny of religion and tradition? The words cannot be held back: tradition and religion exist to enslave women. What does this blindness mean that involves respecting traditions and customs, even those that are outdated?

I cannot accept that I should see political Islamism gain strength even here in Quebec and throughout the world through its many demands. Our democracy is in a state of decline when we stop basing our judgements on reason. The separation between politics and religion in the sphere of public activity, in short a secular approach, means providing a place for civic and civil bonds, which goes beyond beliefs and non-beliefs, in order to build a common future, to make such a world as we wish for and as we dream of, far removed from religious burdens. Let us not maintain an interpretation based on distinctions in law at the very heart of our institutions, since one of the intrinsic values of democracy is that of equal justice for all. In democracy, there is an egalitarian concept of justice which allows us to construct and maintain social bonds. This is where the future of our children should lie.

## Endnote

1. A *sukkah* is a hut which practising Jews build outside their house or apartment in order to house the Messiah if he were ever to appear.  
An *eruv* is an enclosure intended to serve a Jewish community that lives according to the laws and rules of the Talmud and the Torah. In towns where it exists, an *eruv* is defined as an area where certain activities that are normally prohibited (such as the act of carrying anything) can be carried out on the Sabbath and on certain Jewish festivals. This enclosure can be a literal one (thus in the case of a town naturally enclosed within walls) or a symbolic one (a simple thread, hung between trees and electric poles can do this). It is this latter case of an artificial *eruv* that has drawn attention to this phenomenon.  
In reality, the existence of an artificial *eruv* is not noticed by most of the population,

apart from Jews of a strict persuasion. Nevertheless, an *eruv* raises a problem for the observance of a strictly secular approach, since it impinges on the public domain by standing out from the private sphere (<http://fr.wikipedia.org/wiki/Ca/érouv>).

In 2001, a request to establish an *eruv* at Outremont (<http://fr.wikipedia.org/wiki/Outremont>), a district of Montreal, was turned down by the authorities in the town, but the request was subsequently authorised by a judgment of the High Court of Quebec ([http://fr.wikipedia.org/wiki/Cour\\_supérieure\\_du\\_Québec](http://fr.wikipedia.org/wiki/Cour_supérieure_du_Québec)). Other municipalities elsewhere have been confronted with similar controversies on this subject, in particular Saint-Brice-sous-Forêt (<http://fr.wikipedia.org/wiki/Saint-Brice-sous-Forêt>) in France. *Eruv* is also the name used for ingredients prepared on the eve of religious holidays which makes cooking permissible on days when it is normally forbidden.



*Karima Bennoune*

## Obama in Cairo

The religionising of politics

***In his celebrated 2009 Cairo speech, US President Obama laudably aimed to reach out a much-needed hand of friendship to Muslim-majority societies across the globe. However, his embrace of a confessional worldview in that address was worrying. Speaking to those gathered at Cairo University to hear him, the President focused not on citizenship, or national or regional identities, but solely on presumed religious identities, thereby casting Muslims as a sort of monolithic bloc made up of people who are defined by their religious belief. In addition, he repeatedly quoted from religious texts. This article asks how using such a religious lexicon in political discourse affects the separation of religion and state. It also argues that 'religionising' politics unwittingly plays into the hands of fundamentalists.***

While President Barack Hussein Obama clearly aimed to strike a blow against Islamic extremism with his speech in Cairo today,<sup>1</sup> it often seemed that he was actually capitulating to parts of the social agenda of those very movements to do so. Perhaps more than anything else, his address was a stark reminder that secular space shrinks daily, especially in political discourse where religion claims more territory all the time. While the President's speech was courageous in attempting to reach out to parts of the world so alienated by the illegal policies of the Bush administration, and in taking on a number of crucial issues like terrorism, torture, the Iraq war and Israeli settlements with a certain amount of laudable frankness (for which he is sure to be unfairly criticised all around), his embrace of a confessional view of the world is very worrying.

In the President's construction, those who live in Muslim-majority countries seem not to be citizens or Asians or Arabs or Africans but simply 'Muslims'. The diverse global population of over a billion people of Muslim heritage is seen as some sort of bloc made up of those who are first and foremost defined by their presumed religious identity and beliefs, ironically the very emphasis of the notion of *umma* so championed by fundamentalists. Such a view reverberated throughout the US television coverage of the event which focused on "the global Muslim population" – seemingly some sort of organised, unified entity.

The President quoted religious texts repeatedly, citing the Qur'an alone at least four times (as well as the Talmud and the Bible). According to the President, "God

intended" for there to be peace in the "Holy Land". The "world we seek", the "new beginning" the President champions, are to be found in scriptures. "The people of the world can live together in peace," because it is "God's vision". This rhetoric is deeply worrying and harkens back to the ways in which both Presidents (W) Bush and Clinton deployed religious arguments. So much for change. Is this what contemporary political discourse has come to? What kind of meaningful separation of Church and state will be left if this is our political lexicon? How can we possibly make an effective stand against diverse religious fundamentalists – whether Al Qaeda, of which the President spoke today, or the murderer of US abortion provider Dr George Tiller – if we repeatedly concede the primacy of religion in public and personal and political life?

Most disturbing to me was the President's use of the issue of the regulation of headscarves, a subject he mentioned repeatedly. He reduced this complex problem to a scenario in which "Western countries... impeded Muslim citizens from practicing religion as they see fit... by dictating what clothes a Muslim woman should wear." This is remarkably one-sided as the President made no mention whatsoever of the pressure, coercion and even violence sometimes employed within some Muslim populations and families to get women and girls to wear – and believe they are required to wear – the *hijab* and other 'modest' gear. Moreover, whether or not such garb is indeed a religious requirement is highly contested among people of Muslim heritage. I have just published research<sup>2</sup> conducted among the many people of Muslim, Arab and North African descent in France who support that country's 2004 law banning religious symbols in public schools which they see as a necessary deployment of the "law of the republic" to counter the "law of the Brothers", an informal rule imposed undemocratically on many women and girls in neighbourhoods and at home and by fundamentalists.

The President's most misguided utterance on this topic was that he "rejects the view of some in the West that a woman who chooses to cover her hair is somehow less equal..." Indeed, as many feminists throughout the Arab world, South Asia and in Muslim diaspora populations have noted, gender subordination is often deeply implicated in the emphasis on women covering their bodies. It is true that this issue has been misused and has mingled dangerously with post-9/11 discriminatory attitudes about Muslims and Islam. And it is laudable that Mr Obama is concerned with such prejudice. However, that is not the only relevant factor here. Gender equality is central to this discussion. In fact, some Muslim majority societies, like Turkey, also ban the headscarf in certain educational settings in the face of pressure on women and girls to wear such garments and in light of some of the meanings of those coverings.

I was grateful for the words of Peter Daou on the *Huffington Post* who asked of the President's rhetoric about the headscarf, "Is this a joke? With women being stoned, raped, abused, battered, mutilated, and slaughtered on a daily basis across the globe, violence that is so often perpetrated in the name of religion, the most our

president can speak about is protecting their right to wear the hijab?”<sup>3</sup> It seems that Mr Obama is attempting to build political bridges by taking a more socially conservative stance, a common – but mistaken – tack in the struggle against fundamentalism and terrorism. Perhaps this explains his vague reference to the “offensive sexuality” that the internet and television are bringing into homes in the era of globalisation. Does he mean exploitive images of women? Or could this also be easily misinterpreted to include depictions of homosexuality, especially in a country like Egypt which has prosecuted men for being gay in grossly unfair trials in recent years? This may also be the reason that the President felt compelled to stress his respect for “women who choose to live their lives in traditional roles”, rather than, say, referencing the critical struggles of the Egyptian women’s movement. Welcome to the new cultural relativism. We’re not going to deal with human rights problems in your part of the world, because we want your extremists to stop blowing us up. Only such a stance could explain the fact that the President’s only reference to the repressive Saudi regime was a complimentary nod to “King Abdullah’s interfaith dialogue”.

I believe that the President went to Cairo with the best of intentions, to reach out a much-needed hand of friendship. For that, I salute him. But I also believe that the potential consequences of how this “new beginning” is constructed need to be weighed carefully. As the US prepares to witness the funeral of Dr Tiller on Saturday – a memorial which is likely to be picketed by our own Christian Taliban – it is a crucial moment for weighing the costs of further religionising politics. While this is put forward as a tool in the battle against religious extremisms, it is instead a significant concession to their very agendas.

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**Rhonda Copelon**

interviewed by *Marieme Hélie-Lucas*, July 2009

## Secularism Versus Religious Pluralism in the US in the Light of Human Rights and Women's Rights

*In 1996, on behalf of Algerian women, Rhonda Copelon courageously took up the controversial case against Anouar Haddam and the Islamic Salvation Front, charging them with 'war crimes and crimes against humanity, including murder, rape and torture'. In this interview, she touches upon the human rights organisations' taboo regarding Muslim fundamentalism. She compares the support she received from the human rights community when fighting Christian fundamentalism (that prohibited the use of federal funds for abortion) and when fighting Muslim fundamentalism (that slaughtered civilians in the 1990s in Algeria): while she was widely supported in the first case, in the second case, she felt abandoned and terribly lonely, as she describes. Rhonda points at a terrible gap in international human rights work: hiding behind 'due diligence' and focusing exclusively on state accountability, human rights organisations fail to support the victims of Muslim fundamentalist political non-state actors – while they do support Muslim fundamentalists when they are persecuted by the state. This creates an unbalance in reporting and a hierarchy among victims of violations.*

### Part 1: Fighting Christian fundamentalism

I want to stress the importance of the concept of secularism to human rights in general, and in particular we know that secularism is important to religious pluralism.

The first question you are asking is about the importance of secularism to women's rights. It seems to me that it is hard to find something that is pure secularism, right? Even before the latest attack here, the mobilisation here by extremist religious forces, there was a strong critique that, although we call ourselves a secular society, we are a very Christianised secular society, and I accept that.

On the other hand, secularism enables a level of religious pluralism. This pluralism is ultimately, I think, extremely important to women's rights and enables us to mobilise such concepts as equality, liberty and the whole rant of human rights in order to achieve women's rights. I believe in the US we did not – this could be wrong, but at least I didn't – think much in terms of secularism *per se*. I thought in

terms of the importance of pluralism, the importance of constitutional rights. But it was because of a combination of the growth of extremist religions and the power of religions in this country, and my relationship to the international movement that I began to conceptualise the problem as also a problem of the maintenance of secularism.

I think part of the reason that we have a kind of naïveté here is because we have one of the most progressive constitutions on the question of secularism. In other words, what was thought out by the original founders of the Constitution, and some of the people who came here to escape religious persecution, was that we did not want a state religion. We did not want a simple notion that you have a religion but you tolerate other religions; we wanted that there should be no relationship between the Church and the state. The concept of separation of Church and state was written in as our Establishment Clause – no establishment of religion. It is the first clause of the Constitution.<sup>1</sup> I think that it is kind of easy here to grow up feeling like we are living in a secular state without even having to name it. And that in the periods of our history when religion rears its head – a period that hopefully, maybe, we are getting through, but we have been struggling with for 20 years – we see how fragile that notion is, that the state and religion are to be separate. We can see that fragility in shifts in constitutional law, which is very disturbing.

I grew up in a Jewish family and it was interesting because one has a different perspective or view of the sort of nature – of the Christian nature – of society. There is always a continuing battle, and it is a battle being lost by secular forces today, around the funding of private religious schools. My father, who was a great believer in a certain amount of Jewish education, would say it is up to the community to pay for its schools. The Orthodox Jews were always fighting to get funding, and he would say – he was very strong about it – “You cannot ask for that from the state without losing something fundamental about a secular society.” I suppose my own position in society influenced me here, in the way that I felt that religion was something religion was supposed to take care of.

Today, and I do not purport to be an expert here, but today there has been, as a result of the political development that I’ll talk about, an immense underlining of that distinction between the state and religion. Religion has very effectively used the idea that the state shouldn’t be entangled with religion to exempt itself from a wide range of regulations which are secular in nature and designed to maintain that, at least if any funding is going to religious institutions, it can only go to the secular functions of the institutions.

We are in a crisis of secularism in this country, I believe. Obviously [Alexis] De Tocqueville said that we are the most religious country we ever saw, and it does feel like that – in the sense that, in a time of economic difficulty, people are definitely, in this country, turning to religion and turning to more evangelical, fundamentalist types of religion.

It seems that what remains of the separation of the Church and the state from a legal perspective is extremely tenuous, and the increasing, what I think of as the 'religification' of society and the notion that religion is part of the public sphere, is more and more problematic. With regard to the process, I can speak to the development of the political use of religion; this is not a new thing, I would say, and a historian could situate you much better in a sort of history of this process. I entered the process in the 1970s as a feminist lawyer, and in a place where it really came to a head, as a feminist lawyer arguing for equality against an anti-equality movement that was headed by women. There was [Phyllis] Schlafly, a name that may be known to others, who argued against equality on the essentialist grounds that it was going to take away the special privileges of women, the lifestyle women were used to, adding that what feminists were doing was denigrating the lives of women who spent their lives raising children and being housewives and good wives. The movement for reinforcing women as good wives and mothers was very powerful in the 1970s, and it grew out of a religious right context.

My sense is that when the abortion issue came along, it interfaced with a (supposedly) theological position of the Catholic Church, so it became a huge mobiliser. The Church did not try to explicitly mobilise the Church against women's equality, but when you got to the question of abortion then there was a mobilisation, a major institutional mobilisation, to stop abortion. That began way before the 1970s; it began in the fight against contraception. Back in the Margaret Sanger days, in the early 20<sup>th</sup> century, you had the Church oppose the question of contraception.

There is interesting material that demonstrates that the Church took different positions in different places. There is a study of the Church's role against contraception in Chicago that demonstrates that they turned a blind eye when it had to do with the black community. So the whole contraception issue is also interwoven with demographic population control goals as well.

We know in regards to the abortion issue in this country that it really was not a religiously motivated movement to begin with. Part of it had to do with establishing the medical profession and getting rid of the women who were healers, who were the abortionists, and who were also the providers of most healthcare to women. The medical profession wanted to delegitimise the healers and they did that through delegitimising abortion, by saying that WASP women – white Anglo-Saxon Protestant women – were not having enough children and WASPS were being outnumbered by the immigrants who 'procreate like rabbits'.

This was even before the issue became as racialised, as it did later on when they said it was the Irish, it was the Italians, it was all these Catholic immigrants who believed that they should not use birth control and that they should have as many children as they could. That scared people back in the early 20<sup>th</sup> century; we had eugenics laws develop out of that as well, all of which became targeted against the minority, the racial minority population, as the society developed. But that is a little bit of an aside, although I don't think you can see religion as disengaged from other

political purposes. What I am saying is that the reproductive rights movement, the movement for contraception, the movement for abortion, drew the Church in as a direct and major actor.

There is a lot of debate in this country about whether or not the court should have decided *Roe v Wade*. Some thought the court stepped out too far and therefore the backlash was so great. Most of us who were involved in the movement in that period, or who studied it, would say that the issue of abortion was completely stopped by legislators because of the power of the Catholic Church. You really couldn't, in so many places, undo the criminalisation of abortion. You needed to bring the courts in; you needed to bring in human rights. We got further and also experienced this immense backlash. But that response was already there, in terms of trying to prevent it from happening to begin with. Without *Roe v Wade*, we might have very gradually gotten to a place of more abortion rights than in other countries. But it would have taken a long time, and a lot of lost lives, both in the physical and the spiritual or active sense of women who would not have that access.

I think that although the Church had been very active in opposing contraception, when the abortion issue came along it went into full gear. One example of that is that after *Roe v Wade* there were multiple efforts, hundreds of efforts, to enact some kind of human life amendment. The Constitution would be changed to make abortion something that the state could decide on. The absolutist position was that the foetus was a human being from the moment of conception and therefore had all the rights of persons; therefore abortion was murder, therefore abortion was impermissible. They would say [it was] impermissible under all circumstances, even if the mother's life is at stake, because that's God's will. Their answer to the sacrifice of a woman for a foetus is that it is God's will.

What happened is that the Catholic Church went into very high gear. In 1975 the Church promulgated what they called a Pastoral Plan for Pro-Life Activities.<sup>2</sup> Any organiser would look at this plan and say, "Wow, I wish our NGO had the capacity to do this." Because it was a step-by-step, layer-by-layer blueprint for turning abortion around in this country. They put a lot of resources into it, and the dioceses were extremely active. One part of it was having to teach the flock why abortion is so bad, and part of the reason that was happening was that a majority of the Catholic flock did not accept the official position, and still doesn't.

So part of it was teaching their flock, but the other part of it was engaging their flock and themselves in the political process. 'Right to life' committees came into being that were, for example in New York State – where I have the evidence from a case we did – the 'right to life' committees were funded from the Sunday contributions in church. In other places, electoral material, which is completely illegal under our tax laws, which gives exemption to churches – electoral material was put on the pews so that people would vote the right way on abortion. (*Editor's note: This is a violation of the law that prevents non-profits from getting involved in elections.*)

The goal was to make people into single-issue voters on abortion because that was the way to have an impact. If you have 5 per cent of the population saying, "I'm going to vote on abortion no matter what," you have a tremendous amount of leverage in the US political process. Whereas for us as feminists, abortion was a critical issue, but was I going to say that I would vote on abortion as against ending the war in Vietnam? That was a choice I wasn't prepared to make. So the pro-choice forces were much less effective in creating single-issue voters, even though abortion was on the top of their agenda, than the right-wing forces.

Despite this mobilisation, the pro-life right wing lost over and over; they couldn't get a vote on a constitutional amendment; they couldn't get a vote on a human life statute that would declare a foetus to be a person for whatever reasons; and this idea would be completely unconstitutional under *Roe v Wade*.

Then they turned to Medicaid – but not only that, they turned to many things; they were passing local laws to create obstacles to abortion. For example: informed consent requirements, waiting periods, hospital requirements, so that a very simple inexpensive procedure would become expensive; and husband consent laws, which were soundly defeated. There was a whole 'father's rights' part of this movement. And parental consent laws, which have only been partially eliminated actually. Then they had laws about trying to stop later-term abortion, which they became very successful on lately.

So the actual framework of *Roe v Wade* has gradually disintegrated, but I am ahead of my story. To go back, the Pastoral Plan had embedded in it the idea of creating legislation that would stop government support for abortion. Obviously, funding is a huge support. The poor are the easiest population to go after. So one of the major federal initiatives of the time, which started on the state level and became a big federal initiative, was to eliminate funding under Medicaid, which is our medical health funding programme for poor women. People need to understand that in the US we do not have a universal healthcare system. The only state-supported systems for healthcare are for the poor, the elderly, the disabled, veterans, federal employees, the military, etc. – people for whom the federal government has responsibility. So Medicaid is a very critical programme; it is a very contested programme.

They went after Medicaid funding, first on the state level, and they lost. But around the country, in the courts, they won legislative or administrative regulations that would limit Medicaid funding. Generally they were trying to limit the 'elective' abortion. They were trying to make the 'medically necessary abortions' ('elective' and 'medically necessary' in quotes because abortions are always medically necessary) – they wanted to make the 'medically necessary' abortions very difficult to get. They were going back to the old therapeutic idea that the life of the mother had to be at stake, or some extremely serious health situation had to be at stake, as opposed to the much broader definition of health that the Supreme Court had given, which is much more like that of the World Health Organization (WHO) and takes in the wellbeing of the whole person.

There were attacks on the state level. All but one of the state limitations on Medicaid were declared unconstitutional by the lower courts as a violation of equality, as an interference with the constitutional right to make a decision, once *Roe v Wade* had been decided. The Supreme Court, in 1980, reversed all those decisions, and said that not funding was not really a burden, and Medicaid support for abortion was not really a right, because the state was not interfering, it was just withholding something. It didn't matter that the state was funding everything else to do with pregnancy; this wasn't discrimination because it wasn't an interference. It is a very technical interpretation that they have used now many times to really cut back on the access to benefits from a constitutional perspective.

The important thing is that in that period, 1976, the first Hyde Amendment was enacted by Congress, who said no funding except when a life of a woman would be in danger if the foetus was carried to term. They wanted to eliminate the idea that if the woman would go and have an illegal abortion, her life would be in danger, since everybody would come under that framework because women's lives were seriously endangered by clandestine abortions in this country.

That challenge was extremely mobilising, and we then challenged that limitation. *(Editor's note: This section is about the Harris v McCrae case, brought by the Center for Constitutional Rights (CCR) in 1976, challenging the legality of restrictions on Medicaid abortions. The CCR won in New York district court but the decision was overturned by the Supreme Court in Webster v Reproductive Health Services, 1989.)* We decided in 1976 that, as part of the challenge, we were going to make an establishment clause and a free exercise liberty of religion challenge to that limitation. I would say that because of the role of the Church going way back in contraception and abortion, in an amicus brief [a brief filed in support of a lawsuit, containing additional information or argumentation] that the CCR did, in 1973 for *Roe v Wade*, they argued that the anti-abortion laws were a violation of the separation of Church and state. The argument was that the view that the foetus is a human life from the beginning of conception is a fundamentally religious idea. Here is where pluralism comes in because this is not an idea shared by all religions in this society. We had testimonies from different religions about the ways different religions look at foetal life and not all hold the view that full life exists at the moment of conception.

Basically, what we were saying was that this is religious legislation. That was an extremely controversial thing to do, because the argument was, "Well, you know, what about Martin Luther King? What about the civil rights movement?"

We argued that the civil rights movement had religious people in it but that it was not a religious movement as such: the fact that people are involved in a movement out of religious beliefs or religious principles does not necessarily make the issue religious. The question is what is the ideology of the movement? What is the range of forces that are supporting this idea? Are they wholly religious? Martin Luther King was not the only advocate for civil rights, and his advocacy for civil rights was

not exclusively rooted in church and religion. He happened to be a preacher; he happened to invoke God. But he wasn't using doctrine; he was using the progressive elements of equality, and other people were using progressive elements of equality which were not rooted in religious thinking. So we sought to distinguish one from the other: the anti-abortionists from the civil rights movement.

Then people would argue, "Well, but you're saying that religious people can't be involved in the political process." We said, "No, absolutely not, we can't say that, there's a right to be involved, but if what you ultimately do is you enact religious legislation, then the court has the obligation to strike it down."

Now, this was really, really hard because we didn't have the support of everybody in the liberal establishment. We had a lot of support, however, and the American Civil Liberties Union (ACLU) took up the case with us and they got much more public heat than we did, because if the anti-abortion movement could undermine the ACLU, they felt that they were more powerful.

But we and the ACLU were co-counsel; we had a number of co-counsel, but many of the attacks on the religious case, even though it was coming out of the CCR, were directed at the ACLU, because it was a more obvious target. I thought they would direct it at us because they would say, "oh it's a communist plot," you know, but no – they went after the ACLU on it.

What was hard about the case is that most of the establishment of religion cases (*Editor's note: i.e. having to do with the constitutional clause that there shall be no established Church*) up until that time – and this is an irony actually – had to do with things that were more ritualistic: prayer, religious statues, things that are more tightly connected to religion. The furthest they got was the teaching of creationism in schools. We modelled our case in part on that case.

I think there is a very big reluctance in law to move away from describing something as religious, unless it is rooted in ritual. On the other hand, it was rooted doctrine, very clear and absolutist doctrine that was being put forward; it was being put forward in the political process by religious forces. We lost that case [*Harris v McCrae*].

The irony is that today, using the non-entanglement idea of the separation between Church and state, religious groups are getting the right to run day care centres without being regulated by the state, because that would be too much entanglement. So now all of these really secular functions of the religious schools are being exempted from regulations by the court on constitutional grounds. That's not about doctrine; that is about the power of all the churches – and this is an important consequence that I am now getting into.

In 1978, I cannot remember exactly the form it took, but essentially it was announced and made clear that the Protestant fundamentalists were going to ally with the Catholic Church on issues of abortion. I also think they mentioned gay rights; they

were more into gay rights, and they were more into taking overtly anti-equality positions on these issues.

That was a historic change in the relationship of religions in the US. The Catholics and the right-wing Protestants did not get along on a lot of issues. We know that the Catholic Church has very progressive positions about some things – the death penalty, labour, poverty, etc. The right-wing Protestants do not have those positions, so they would be opposed to each other in many respects. What happened is that you had this alliance between two religious forces – the Catholic force being at that time the more powerful force in the country – which, on a number of issues, did not agree, but did agree on the issue of women and especially of abortion. Also on the issue of gay rights, although that, for the Catholic Church as we know, has never been as big an issue as abortion. Abortion became their mechanism for gaining political power; Ros Petchesky writes about this very well, in *Abortion and Women's Choice*.<sup>3</sup>

So abortion became the mechanism by which patriarchal religious forces were able to mobilise women. They mobilised women to increase their own power, so what got wrapped together was the evil of abortion and the preservation of the essentialist, traditional woman's life. Women seemed to be the forefront of the anti-abortion troops in a lot of ways. But in fact you had male leadership of the campaign for a long time. So it was a really effective way for them to build what seemed to be a grassroots movement while still controlling it.

The thing about religious mobilisation is people become passionate about their rigorousness and the urgency of their cause. One of the dilemmas of fundamentalism and using religion for political mobilisation is that quality of saying that what you are doing is God-given, God-driven, that you are carrying out a divine purpose, that you will give yourself to that purpose. This approach takes many different forms in religious fundamentalisms, but that is the form it took in abortion issues and it meant that anything they would do will be really OK because God was on their side. I just need to remind us here about what happened to Dr George Tiller, how he was murdered for working in an abortion clinic, and the way in which murderer's discourse leads to murder.

Politically, what happened is that these two groups – Catholics and evangelical Protestants – got together and they had a political motive, which was to elect anti-abortion representatives at all levels, from school boards on up. They did this throughout the system, and in the process their abortion campaign got aligned, particularly because of the role of the evangelical right in this country, with the conservative agenda. Little by little you saw an extremist agenda taking over the Republican Party. Catholics who were anti-choice begun voting Republican, and the fundamentalist Protestants began to build their political power on a really extreme right agenda.

What we saw was – from platform to platform, from president to president, with Bush being the greatest extreme – the increasing power of a political constituency

motivated by religious doctrine. The Clinton administration yielded to it in certain ways, but they also did really fight the efforts of this huge religious cabal. Clinton fought it when he vetoed federal anti-abortion legislation, but he accepted the Defense of Marriage Act (DOMA)<sup>4</sup>, the anti-gay marriage legislation. So there were things that the Democrats accepted, because they took into account the way religion had been mobilised in this situation.

Then Bush comes in, really on the coat-tail of this extreme right and starts to dismantle everything, starts to support the abstinence campaign, faith-based programmes, faith-based office at the White House, etc. Faith takes such an importance... The popular argument, that faith is such an important part of who we are as a people, makes it possible to religify everything and it gives a lot of power to the right. I don't want to say that faith isn't important, that hope isn't important and that humanistic goals aren't important. The problem is that our ways of invoking these ideas in order to mobilise people are not as powerful as those of the religious right. They want faith-based programmes, but what is that about? Is that about the far right? Is it about the whole spectrum of religion? Is that about how you have to be religious in order to be legitimate? Is this what is happening now?

By the way, just to finish up on the Harris case, in the district court we had a devoutly Catholic judge who was a Vatican II judge [Judge Dooling]. He really believed in the right of conscience, so he was completely with us. But when his law clerk asked for examples of anything that was absolutely evil that he had no power to regulate, he said abortion. Yet he wrote in some of the most beautiful language that exists in abortion cases about the essential nature of the abortion decision for women. He described it and his last opinion was that the right to abortion was "akin to a woman's right to be". I have to say this from a personal perspective – it was an amazing experience to work with such a decent, conscience-driven, philosophical judge, who got it, who really got it.

There was at the same time a lawyer representing the Hyde Amendment who brought fetuses into the courtroom. There were times in the courtroom when you could see the whole fight within the Catholic Church happening right before your eyes. The 'right to life' lawyer would overstep and the judge would come down. It was very fascinating, and more interesting really than if we had litigated before a Protestant or a Jewish judge that didn't have that background. He did not rule on everything I brought into the case. When I went to get his decision, he said, "I ruled on the First Amendment", which is the establishment clause and the religious freedom issue, "but not exactly the way you wanted me to."

What he did was he gave us a lot of findings and facts that were sufficient to really say that the Hyde Amendment was religiously motivated. But in the end he said that "this is just a coincidence between religion and morality; we can't really separate them, and it is not a violation." The Supreme Court just picked that up and ran with it. So we lost the issue in the Supreme Court.

What we did do in the process – and this is one of the things about being in a pluralistic society – we really were able to explain why this issue was so crazy. I would go out speaking and very often Catholic women would come up to me and say, “thank you so much, you have helped me to understand what is going on. You have helped me understand that this is a religious position that is not held by other people. That I have to respect the fact that we live in a society where we don’t tell everybody else how to live.” Some would be saying, “and I understand why I can’t accept that a foetus should be more important than a woman.” So doing the case had a lot of impact in this society.

It ultimately led to about 15 states maintaining Medicaid as a state matter, and paying for the whole thing so that Medicaid funding was not cut off all across the country. But it is still incredibly difficult for women, particularly in rural areas, to get access to abortion. This is a big issue for us in terms of universal healthcare.

What happens with the abortion issue for all women in universal healthcare? (*Editor’s note: This is a reference to the Obama administration’s efforts to get a universal healthcare bill passed.*) Is abortion going to be made into something that is not a legitimate aspect of healthcare? (*Editor’s note: It was.*) Some could say that the fact that we emphasise so much the decisional autonomy of women undermines the argument now that this is part of a push for universal healthcare. But we have to work with things as they come up, you know, there is a dynamic...

That was the end of the case, but it was not the end of the alliance against women’s rights. We have not seen the end of the alliance yet, but it does seem to me that this last election and some of the things that are said within the far right religious groups is maybe really weakening that alliance. It is not weakening religion as a force, and it is not weakening conservative religious positions against abortion and against women’s rights, but it may be weakening this vicious fundamentalism that we have experienced. For example, there is a lot of writing about the evangelical groups now getting involved in preserving the environment, because we have an obligation to take care of the environment. It does seem that when polls are done asking people what is their most significant issue, fewer people are saying that abortion is the most significant issue. This does not mean that Rick Warren who spoke at the inauguration is going to support women’s rights, or back off on abortion, or lesbian and gay rights.

I do have a concern that Obama’s desire to bring everybody together presents a risk for women’s rights issues, and for gay and lesbian issues. I hope we can say that he is operating out of extreme care and not distancing himself from the agendas he promised when he was running. But we don’t know that yet. He seems to be giving more recognition to what he considers to be the moderate religious forces as opposed to the forces he thinks are really conservative. I think we saw that in his speech in Cairo, for example. I didn’t really object that he quoted the Qur’an because he had to win over a lot of the people listening to him. But what I felt was that he not only flattened the Muslim majority world into Islam, into one sort of ‘identity’, but when he spoke about women and women’s rights, he

could have spoken in a way that recognised much more both sides of the women's rights struggle. Instead, under the rubric of women's rights, he sort of emphasised the right to live a traditional life. This harks back to what was going on in the 1970s when women were being mobilised against feminism because they would be denied the right to live a traditional life.

I could even understand him saying that, if he also said women have immense ambition and goals today, and that we are at a place where we can bring a massive group of people into equality, which doesn't have to threaten some women's right to live a traditional life. That, to my mind, is a very different way of speaking than to just say that women have the right to live a traditional life.

When he talked about education, he talked about expanding programmes that bring people from universities and graduate studies to the US to study and that's great. Obviously he means to include women and men in that, but he was never explicit. However when he ended his talk with women doing literacy and microenterprise, I felt that, "Oh, it is not like this is not important to us but women were not seen as part of a whole..."

I think it is a very delicate thing that the President of the United States has to do, but I think he really invisibilised the struggle of women to achieve equality, which is an international human rights issue. When I tried to call people's attention to that I got a lot of flak; they didn't see it. They said you cannot be so critical, etc. I do think it is problematic.

I was going to say one other thing: the work we did around the establishment clause, taking on the Catholic Church, was not simply a domestic act. I think women around the world know about the gag rule preventing people who receive funds from USAID from being able to promote and encourage abortion, or even to refer someone for an abortion even if they are working in a medical facility or doing advocacy work. The gag rule has had incredibly destructive effects on women around the world and it raises the question, how powerful are these right-wing religious forces in the US? As we've seen, they have had influence on both Democratic and Republican presidents. It depends a great deal on the secular forces, on women's rights and human rights and secular forces in this country, to maintain a certain amount of power to keep these things from happening. It is the same thing with abstinence as a solution to AIDS.

When the anti-abortionist movement here started mobilising together both their religions, they were able to draw on a huge religious establishment that has missions all over the world. But we also saw this type of alliances in 1994 in Cairo; they did a huge job in mobilising not only together but with Al Azhar university. I was in Costa Rica in 1991 and there was a whole fight about abortion. People were coming on the bus with foetus pictures, and that was being supported, I am quite sure, just as in many other places, by the movement in the US. South Africans talked about the way in which the anti-abortion movement moved into the country.

Once these religious organisations recognised that they wanted international power as well as national power, they used the Church's role in the UN, as well as mobilisation on the ground, through missionary-type projects, for which they got federal money in some instances. The degree to which we have an extremist fundamentalism in this country has really had a huge impact on the rest of the world.

In Latin America, evangelical Protestants have been incredibly powerful in mobilising and gathering these constituencies. In a time of such insecurity in the world, insecurity in society, insecurity in families, people are very susceptible to these religious movements. Moreover, the way in which globalisation tends to shake things up makes people very insecure. And this all feeds into international religification.

## **Part 2: Fighting Muslim fundamentalism: “It was a lonely struggle”**

*(Editor's note: Rhonda Copelon then compared previous cases against Christian fundamentalism with the Haddam case, in which she sued an Algerian fundamentalist leader of the Islamic Salvation Front. He was asking for political asylum in the US on the grounds he thought he would be killed or jailed by the Algerian government. This case was Jane Doe v the Islamic Salvation Front (FIS) and Anouar Haddam.)*

When we found out the judge was a former general counsel to the CIA, we thought this case had been routed to him, and that they wanted to protect Haddam. But it turned out that he was a total wild card. When we looked him up, because you have to do your research, we found out that he had ruled for the plaintiff in civil rights cases more consistently than most other judges and was often reversed. He seemed to be willing to do what he thought was right, even though it wasn't where the law was.

Immediately, his first issue was, like: “What are you doing here? The crimes in this case happened in Algeria, to Algerians, between Algerians, so why are you here?” We had to explain the theory of universal jurisdiction that underlines why we should be able to sue somebody. This was only a civil case; it wasn't criminal so we couldn't put Haddam in jail but we could exact a declaration of his responsibility and get damages. That really was what the plaintiffs wanted – a declaration of his responsibility and the possibility of damages. We always pointed out carefully that you can't count on money; that is not a predictable result of constitutional law suits.

We started to do quite well in court. Haddam's lawyer was not very smart, but he could make enough of a fuss so that everything got held up and held up, and the case moved very slowly. Then our judge retired. We got a new judge who was highly respected in the liberal community and has done some excellent things, but who really, in terms of the way his final opinion is written dismissing the case, didn't hear the evidence that we had. He took the view that we were persecuting Haddam. I think that judgment was very much a function of the fact that he had

been sitting in court, watching all these cases – Guantanamo cases, wire-tapping cases, you know, things which were really abusive. Because he was seeing so many state abuses, he translated that into the possibility of state abuse of Haddam. We had a very hard time with him, even though we put together enough information to demonstrate that we should have been able to go to trial.

I would say this also, and I think it is always true in these cases: documentation in cases that actually prove someone's responsibility is an extremely difficult subject, particularly in a context where the people who have the information have to be witnesses. We tried over and over again to get testimony. We learned a great deal about the structure of the armed groups, and the particular cell that Haddam was most probably a part of, that was in charge of identifying who should be killed. He made a public statement, "We told them who should be targeted!"

Though we actually learned about the internal structure of the Armed Islamic Group (GIA) from people in Algeria who were studying it, they were unwilling to testify, unwilling to be public, because that would put them and everyone around them in danger. But it turned out that he really was a part of the GIA. The evidence is that he made statements about things that happened a day later. There was a cell of people saying who should be targeted. But the proof was impossible; it was even impossible to prove that one of our client's sons was killed by people who were in the courtyard saying fundamentalist things, doing fundamentalist things. We couldn't even prove that, because people who had seen it were unwilling to testify. And we were wary of using anything the police gave us because the police had no credibility. Ultimately, we tried to get the police evidence because we thought, let's try to get everything, but they wouldn't give it to us anyway. They promised it to us but they didn't give it to us.

We were caught in the problem of how do you actually prove these things that happened on the ground in another country, and then connect them to someone who is making speeches in the US? That requires a lot of steps of proof and a lot of people to take risks to make the connections that have to be made. In a situation where people are under threat, in the way that they were, it is totally understandable that they will not want to risk appearing in court. You can do human rights documentation without that; you can gather all this material and you can write a documentation, but you can't use it in court if the documentation is hearsay, or if the expert who collected it is unwilling to testify about the process and be subject to process examination, or be subject even more seriously to the danger of being murdered for doing so, or having his or her family being affected, or having to go into exile, or whatever. People have different ideas about what is most important, you know. Testifying in court is not necessarily the most important thing people can do; maybe the book that they have to write is more important than a testimony in court.

So it was very hard to prove our case against Haddam. Although we had enough for the judge to say that we should have been allowed to go forward, the bottom

line was that if we couldn't prove our case in court, it would be worse to try the case and lose – and have all that political attention around it, and public attention, and media attention – than not to try. If we couldn't get certain basic things into the record, then we were taking an immense risk in terms of trying the case. After the judge made a summary judgment dismissing the case, we had a consultation with the clients and with incredible disappointment decided that we could not go forward and appeal. Appealing it was only going to put us back to the situation of how we were going to prove it.

We all worked hugely, and we had mounds of material. But it was not admissible material. It was the kind of evidence that could lead to admissible material, but it was not admissible material. That is a limitation of the formal judicial process; it is not necessarily a limitation of the human rights documentation process.

The human rights documenters, to move to the second point, could have done a major job by asking, "Who are these people whom the state is accusing of being fundamentalists; yes, they are victims, but are they also persecutors?" They really could have shown that. They could have used a lot of material that we had and they could have developed their own material, but that's not what they wanted to do. They really wanted to focus on the state. When we put them under a lot of pressure, they wrote a couple of pages on what was happening to people in civil society who were opposing the FIS as well as trying to oppose the state. But you get extremely lopsided human rights reports during that period.

We were accused – for example, I think there was someone in Amnesty who accused us of being agents of the Algerian state because we were going after Haddam. That totally negates the idea that a non-state actor can be as dangerous as the state and that there are people who are at risk because of what non-state actors would do. It is a continuing struggle to get that point recognised within the human rights movement.

The final element of this for us was the asylum case, and it is very tricky with asylum cases in this. And you made the point earlier that we seem to have had right-wing allies on this and that was very troubling. The local hearing officer that heard the case ruled that Haddam was not entitled to asylum because he was a persecutor of others. It is a fundamental rule in asylum law, coming out of the Second World War, that you can't go out and seek asylum, even if you have been persecuted or have a well-founded fear of persecution if you are sent back, if you have been a persecutor yourself, full stop.

We said, OK, we have to deal with the fact that he is a persecutor of others and we at least have to try to deny him asylum. So at the same time as we were doing the case, we were also filing an amicus brief on his asylum petition.

So first the local judge who heard him thought he was lying through his teeth about everything. This is the judge who hears him to assess credibility, and he said he didn't believe him, he believed the evidence.

By this time, the US had changed its position on Haddam and on the FIS. I think the Algerian government was winning the war and the US clearly decided that Haddam – there was a statement somewhere, one of these congressional hearings – wasn't an authentic representative of an authentic movement or something. They clearly switched in 1996 or 1997; they switched their position. Whereas originally the State Department tried to stop the asylum process from going forward and we got wind of it and we wrote lots of letters; we had people call and journalists call and the State Department was forced to back off. That happened very early in the asylum process.

*[Here, the interviewer refers to the fact that, in the asylum case, the head of the Middle East Section of Human Right Watch was ready to go and support Haddam so he could get asylum (he was stopped by many protests), and that it is important to mention it, and to refer to Amnesty too.]*

I was going to get to the fact that in the asylum battle we found ourselves up against many of the asylum lawyers and some of the human rights organisations, and we couldn't get support for our position from the human rights folks.

The hearing examiner who declared that he should not get asylum was a very conservative right-wing hearing examiner, which undermined our position. Then the case went to the Bureau of Immigration Appeals where there were, at that time, some fairly progressive people. I know there was someone from the National Lawyer's Guild. They saw Haddam as the victim. They were not going to give credence to this right-wing, lower court judge, who just brought his prejudices to bear. They reversed the decision, and said Haddam was entitled to asylum. For some reason this happened twice and I can't remember why, but I think they had to remand it for reconsideration. Then we prepared an amicus brief that we used at various levels, saying, "Look, this is the kind of group he is involved with, this is the relationship between the FIS and the GIA; this is the role he was playing."

And the other thing is, you can't be denied political asylum because you are a member of something; you have to do something, so we had to say he had been a knowing member. If we had said otherwise, we would have been doing what McCarthy did to people here in the 1950s: guilt by association. So we asked for Haddam to be barred because of things he had done. You never get acknowledgement that your amicus brief will be accepted because they don't do that; it is supposed to be confidential. But we said Haddam is writing all over the place about what he is doing so we are going to file a brief. But we got tremendous opposition.

Lawyers who did immigration work said we don't ever believe in using the argument that an applicant for asylum is the persecutor of others. You can't use it because you will make bad law for other people. Haddam was represented by a woman who was an immigration lawyer, and she mobilised a lot of the bar to critique the CCR. Mainly the CCR got the critique at that point because the International Women Human Rights Law Clinic is not important enough to attack; we don't have

any power. As in the case when the ACLU got attacked, in this case the CCR got attacked.

Some immigration lawyers came to our defence. There was a big debate within the immigration legal community about whether you could say that you never knew this, you know, for legal purposes. It was also clear that nobody really liked the fact that Haddam wasn't somebody they could make a hero out of. But the criticism of us went on, and that was very undermining.

In the beginning, although I think we were able to counter it, Human Rights Watch took the position that Haddam would be persecuted if he were denied asylum and they did not look at the question of him persecuting others. The point about whether he would be persecuted is that maybe he would be persecuted. If he would be tortured, he is protected absolutely under US asylum laws, but he does not have the right to asylum if he is going to persecute others.

We were not able to get Human Rights Watch to come in with us, but I think they did back off of an early agreement to testify or something, they definitely backed off of that. But I have to say this case was very hard; people have to understand the pain of trying to do these cases taking on the Islamic right. I would say that there is a lot more support for taking on the Christian right in this country. If there isn't support for what you are doing, from the left for example, it is because you're doing women's rights work and they don't think that is important.

There were liberal arguments in the abortion cases saying, "Can you really make these establishment clause arguments?", but they were much more in a sort of intellectual sphere. The criticisms didn't have the venom that the Haddam case raised for those of us doing that. It was a different kind of debate. We felt very passionate about using the establishment clause and very frustrated with people who didn't see it. But it was still a debate, it wasn't an attack.

But in the Haddam case, we suddenly felt ourselves under attack from the left. There were certain things that the left accepted. They accepted that the FIS was a legitimate political movement. They didn't look at the things the FIS people said about what they would do if they won. The fact that the elections were called off was a huge thing used to say that was the cause of the violence, when in fact the violence began before the elections and if the FIS had taken power they would have used the same to get rid of their opponents. Then they would have had state power to get rid of their opponents, and they wouldn't have to do it as an armed group. The assassinations and the kinds of things that happened to people at the hands of the armed groups would have happened at the hands of the government had they been the government.

Maybe, if the FIS had been the government, the human rights people would have defended our folks. But one has to see that calling off elections is not a measure of a movement's legitimacy. There were all of those issues. Then there was this issue that the FIS used an anti-Western language that is very attractive to cultural

relativists. People are very afraid to take it on and there are legitimate aspects to it, that's for sure, but it doesn't legitimise a movement that wants to oppress and create a theocracy. That point was extremely difficult to get across, so it was lonely.

It was a lonely struggle. The women's movement didn't understand the issues really; Algeria was too far away; they were all looking at the Taliban, and the left became absorbed in post-9/11 issues that had to do with discrimination and huge violations of the rights of some Muslim people.

It was important that the CCR was in the Haddam case, and stayed in it. But I don't think, given what happened, that we were able to put all of the potential force of an institution behind the case. Because of the attacks, I think, it was very hard to gather broader support for what we were doing.

This says something about the very effective way in which the fundamentalist movement has been able to work here, that has not been matched by our forces. People here did not have enough information about what was really happening in Algeria. It took really quite a while for the *New York Times* to even begin to report on the civil war. Every article about Algeria talked about the calling off of the election, as if that were the reason for, and therefore justified, the rebellion.

We tried to let people here know [what would have happened to people in Algeria, had fundamentalists come to power] but those kinds of things were not on the agenda. The part of the women's movement that had more international connections here was very supportive and understood what was happening. But for the larger women's movement, it was too far away from what they were doing at some level. Or we didn't do a good enough job in pulling them into it, in terms of rallying real opposition from progressive forces to taking on this issue. Whereas, I always felt that it is really important to do both – it is really important to defend the rule of law, and also to defend the people who are fighting for human rights, and certainly fighting for women's rights. The problem is that when the state comes down on you, you are fighting for human rights also, so what is the vision of human rights that can include both these struggles?

The other problem that we face is: what do elections mean? How much are elections a sign of equality and democracy? I think it is a complicated question because, for example, when the US and Britain dissed Hamas the way they did after Hamas won the election, it did not advance the situation. But I think in Algeria, after the FIS had demonstrated that their goal was to create a theocracy and that they would use violence to do it, that was not the time to say, "wait a minute, just because it is elections, and..." There were thousands of people on the streets protesting [refers to progressive people – unions, women's organisations, the left – demonstrating in Algeria, calling on the Algerian government to call off the elections, for fear of a Taliban-like government] – that should have been enough. Now, what to do about Iran today? Would it help the movement in Iran for us to say to call off the election? It would have helped the movement in Algeria if people had said it was legitimate

to call off that election. Would it help the movement in Iran now for us to say that? I'm not sure.

As a conclusion, I think that the problem is that the reluctance to critique religion, or to see religion as dangerous, is problematic when it comes to using state tools to address the dangers of religion. Certainly I think that is reflected in the abortion case. It may well be that the FIS and Haddam had a level of credibility with the judge, for example, because judges became sympathetic to the oppression of Muslim people. Was that about separation of Church and state? I don't think so. Was it about secularism? Maybe it is about the weakness of the secular perspective, because if we had a stronger secular perspective you might have a better idea about why this is dangerous, why it could destroy whatever pluralism exists in this society.

And in the human rights system there is no separation between Church and the state. There is a religious tolerance principle that has been stretched. Because of religious states that are part of international systems, human rights doesn't have a principle of separation between Church and state. It has a principle of tolerance, and it has defined this principle broadly to say tolerance for other religions, tolerance for non-believers, etc. In the UN we don't have a very clear principle of secularism, is that right?

I think that what explains some of the problems here, like the problem of the veil issue in France, is that we in the US don't have a very strong understanding of what secularism means. If we really understood secularism as a critical goal, one would be very critical of the FIS, right? You would say, "How can we be supporting a group that says that it wants to set up a theocracy, whatever that theocracy is?" Maybe the fact that secularism is not the word on the agenda here plays a role in not identifying the degree to which something could be dangerous. It shouldn't be that way. If you have a group, as the FIS were doing, saying that democracy is *kufri*, democracy is heresy, and if we win it, it would be the last election – why isn't that taken kind of seriously? As opposed to being seen as an overstatement.

I don't think that the secularism issue played into the Haddam question in any direct way, except in terms of this reluctance to really take on the political manipulation of religion, which becomes a reluctance to take on people who act in the name of God.

And moreover, it is easier for people in the US to take on the Christian right than the Muslim right, because you don't feel like you are being discriminatory when you are taking on the Christian right because Christians are the majority in this country. When you are taking on the Muslim right it feels like you are on the cusp, on the edge, of discrimination, because you are dealing with the difference between a majority population versus an immigrant minoritised population. It is really crazy because we were saying today that the US is Christian and it is really Judeo-Christian-Muslim; you know, we look at Judaism and Islam and the parallels are just so striking. But somehow it is sort of OK to be Jewish in the US – not with

everybody, but it is certainly not OK to be Muslim. You are talking about a really excluded group and that plays differently in terms of the willingness to critique.

But I still think that, even with regard to the Christian right, where there is not the discrimination issue, there still is a sort of “who are we?” issue. The power that comes from being an oppositional force, the belief that drives oppositional forces, is really important. If women had not organised around the importance of bodily integrity with passion, if gay people had not organised with passion around the importance of being able to define one’s own sexuality and gender identity, religion would have washed right over us all – it really would. And the FIS would have won, I think, if it hadn’t been for Algerian civil society being able to oppose it, even without much support internationally.

## Endnotes

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*Karima Bennoune*

## Toward a More ‘Courageous Politics’

Talking about Muslim fundamentalism in the West

***Some Western intellectual discourses that see themselves as post-colonial in fact sometimes replicate a colonial worldview by emphasising inter-cultural dynamics and political struggles over intra-cultural dynamics and political struggles. This has certainly been the case in how some post-colonial, critical and human rights voices in the West talk about – or fail to talk about – the impact of Muslim fundamentalist movements on human rights in Muslim populations today. International and comparative law scholars need to take Muslim fundamentalism seriously, to recognise its related movements as a threat to a range of human rights, and to find a thoughtful way to talk about them. This project must involve recognising and giving voice to the progressive critics of fundamentalism who are Muslim or of Muslim heritage in our discourses and scholarship.***

### Introduction

My intention is to make a few simple points here, rather than overcomplicating things as is my wont. However, I am haunted by the words of the Algerian journalist, Malika Zouba, whom I interviewed about Muslim fundamentalism in 2007. She said, “simplicity is killing us.” What I want to say boils down into three basic points, so I will begin with those and then go on to overcomplicate them:

- Some Western intellectual discourses that see themselves as post-colonial in fact sometimes replicate a colonial worldview by emphasising inter-cultural dynamics and political struggles over intra-cultural dynamics and political struggles.
- Nowhere has this been clearer than in how some post-colonial, critical and human rights voices in the West often talk about – or fail to talk about – the impact of Muslim fundamentalist movements on human rights in what is called the ‘Muslim world’ and in Muslim diaspora populations today.
- As international and comparative law scholars, we need to take Muslim fundamentalism seriously, recognise its related movements as a threat to a range of human rights, and find a useful, thoughtful way to talk about them, no matter how difficult it is to do so in the contemporary moment. A key part of this involves recognising and giving voice to the progressive Muslim critics of fundamentalism in our discourses and scholarship.

For many years, I have been doing research on Muslim opponents of fundamentalism, especially in North African contexts and populations. I have found a common theme in the words of many progressive anti-fundamentalist North Africans – academics and activists alike. This is a regularly expressed frustration with some Western academics and human rights advocates – generally on the left or liberals or critical or human rights voices – who they feel do not acknowledge or support them, their logical counterparts, or even listen to their voices raised in opposition to Muslim fundamentalist movements. These particular Western left, liberal and human rights protagonists that my interlocutors critique are seen not to recognise both that the Muslim fundamentalist project is antithetical to their own left, liberal or human rights projects – and is central to many debates like those on regulation of headscarves and the intersection of terrorism and human rights.<sup>1</sup>

Mohamed Sifaoui, an Algerian journalist who has been both celebrated and assaulted for his opposition to Al Qaeda and company, says he always has to explain to French leftists and '*droits de l'homme*' that "the Muslim fundamentalists are *our* extreme right." As Tunisian-born sociologist Jeanne Favret-Saada acerbically notes, "the Islamists are happy to meet Europeans who are so naïve... and talk only about [religious] discrimination." It is perhaps logical that the particular political matrix is more visible to critics of Muslim heritage, than to Western liberals, post-colonial types and human rights advocates. As *beur* community organiser Mimouna Hadjam explains, "We did not discover Islamic fundamentalism on September 11, 2001. We have been living with it for 20 years." The opponents of fundamentalism argue that these fundamentalist groups have played on the lack of knowledge of their ideology and strategy, especially in Western liberal, left, critical and human rights circles.

## Terminological aside

Let me stop here to say a few words about the words I am using to talk about how we talk about this topic, though clearly I cannot define everything before my time is up. (This reminds me of the great joke about the law review article in which the first word was "law" – and it was footnoted.)

First: 'fundamentalism'. Marieme Hélie-Lucas, an Algerian sociologist who founded the network of Women Living Under Muslim Laws has defined fundamentalisms (note the 's') as "political movements of the extreme right, which, in a context of globalization... manipulate religion... in order to achieve their political aims."<sup>2</sup> There are many other definitions, but I find this one especially useful in my work. The term 'fundamentalism' refers to various theocratic projects found in all of the world's religious traditions, though here I focus especially on those in the Muslim contexts. Many in the women's human rights community, and others who oppose fundamentalisms, have roundly criticised Western academics, progressive movements and human rights organisations for failing to recognise and respond

to the unique challenges posed by these movements.<sup>3</sup> Though not without its own set of difficulties, the importance of the terminology of fundamentalisms is that it speaks across religious boundaries about movements within many traditions.<sup>4</sup> While nearly all these movements and their component parts push agendas that threaten human rights, not all of them engage in violence or terrorism.<sup>5</sup> Ultimately, however, we will have to confront both these ideologies and the tactic of terror that their proponents sometimes employ if we are to rise to the major human rights challenge which they together pose.

While some object to the use of the term 'fundamentalism' here on historical grounds, among others (this was a term first used in Protestant Christianity), many opponents of such movements – though certainly not all – in Muslim-majority contexts or populations prefer this label. It is seen as more accurate than 'Islamist' which is both potentially derogatory of Islam itself and also privileges 'Islamist' claims of authenticity. Furthermore, the term 'fundamentalist' situates such movements in a broader global context where, *inter alia*, the Christian fundamentalists and the Hindu fundamentalists, too, pose serious threats to human rights. Others who use the term 'fundamentalist' still recognise that the term is potentially laden with negative meanings, and has been used pejoratively by some to talk only about Muslims or to refer to all or most Muslims. I understand that some reject this term. I understand the critiques. But for the reasons described here I am deliberately choosing to use it.

That is not the only difficult verbiage in this domain. Another problem is what to call the broader group of people affected by this discussion. As made clear in the writing of Saleh Bechir and Hazem Saghieh (Tunisian and Lebanese intellectuals, respectively), the term 'Muslim community' has been problematised as a European invention which collapses all of the diversity in a population originating in countries from Indonesia all the way across to Morocco and beyond.<sup>6</sup> Inspired by the writing of Chetan Bhatt, the British expert on both the Islamic right and the Hindu right, I prefer to use the term 'Muslim population' which allows for heterogeneity, rather than 'community' which suggests more of a unitary, organised entity. However, even the term 'Muslim population' is rejected by some it implicates who consider themselves secular, or do not wish to be denoted by their religious identity alone, or also wish to include religious minorities from what is called the Muslim world in the category to which they are referring. For the sake of ease, I may sometimes (accidentally) use these terms, but please just consider the quotation marks to be hanging in the air in what you consider to be all the right places.

Sometimes I will use the term 'people of Muslim heritage', acknowledging that not all of that heritage, including those who feel great pride in it, are in fact practising the religion. The wonderful progressive network in France known as Le Manifeste des Libertés, a group of Muslim/North African/Middle Eastern activists and intellectuals that came together around an erudite manifesto in 2004, found a nice open formula to describe what I am talking about when they painted themselves as

a diverse group: “linked by our own individual histories, and in different manners, to Islam (*liés par nos histoires singulières, et de différentes manières, à l’Islam*)”.<sup>7</sup> While I concede the need to strategically essentialise to be able to talk about virtually anything, too much essentialising, even in the quest to be anti-racist or post-colonial or critical conceals the very heterogeneity that the colonial paradigm itself occludes. We need to be careful of confronting the problematic paradigm of the ‘clash of civilisations’ with our own version, with ours simply a sort of negative of Huntington’s. Hence, we need to think carefully about the implications of seeing what is called the ‘Middle East’ through only the prism of “great clashes between the West and the Rest”, to cite the name of this panel.

There are many other ways of dividing the world, each of which alters our way of understanding it. As a group of dissident intellectuals of Muslim heritage, including Salman Rushdie, wrote in 2006 in response to the controversy regarding Danish cartoons of the Prophet Mohamed<sup>8</sup>: “It is not a clash of civilisations nor an antagonism between West and East that we are witnessing, but a global struggle that confronts democrats and theocrats.”<sup>9</sup> Of course, they too were generalising – but it is a generalisation that may help us to see some of ours in a different light and to remember that there is a multiplicity of fault lines in the world – the clashes within civilisations are as determinative as those between them – and neither can be understood without grasping the other.

What then do we call animus against the difficult-to-name group of people and the religion that some of them profess, a phenomenon which has coloured all aspects of this debate? The concern with the concept of what some call ‘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. Soheib Bencheikh, the former Mufti of Marseille with a religious education from Al Azhar,<sup>10</sup> 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 critiques of what is claimed to be religious practice when it violates the rights of others.

Among the many negative consequences of the very real prejudice against Muslims that has flourished in recent years, in the words of one Muslim woman scholar, is also “the silencing of self-criticism and the slide into defending the indefensible. Muslims decline to be openly critical of fellow Muslims, their ideas, activities, and rhetoric in mixed company, lest this be seen as giving aid and comfort to the extensive forces of condemnation.”<sup>11</sup> Such silencing can have a stultifying effect on debates about human rights, terrorism and especially the status of women, an effect magnified by claims made by the US government to be acting to defend women’s rights in uses of force in the Muslim world.<sup>12</sup> This silencing may even extend to human rights advocates, international lawyers and post-colonial types in the West. Some seem to be less willing to decry violations of women’s human

rights, in Muslim-majority societies and within Muslim populations, including those that involve pressure or coercion to wear 'modest' dress, because of the rise in prejudice against Muslims. Such prejudice has indeed been greatly exacerbated in the post-9/11 era. While the underlying motives of such caution may be laudable, such self-censorship leads to distorted analysis.

It is as if we can only concentrate on the rights of one victimised group and one form of victimisation at a time. As Chetan Bhatt has noted in the context of the UK, "generally... black and multiracial feminism has been virtually alone in creating an activist political challenge to fundamentalism."<sup>13</sup> To be anti-racist or more fully post-colonial also means to support this challenge and to do so is not Islamophobic. In the era of the 'War on Terror', many read solely the inter-cultural aspects of these debates, not the intra-cultural. This is a mistake. For example, the reality is that there is strong *support* from *some* French anti-racists of Muslim descent for the 2004 French law banning religious symbols in public schools, in the context of rising fundamentalism and the pressures such forces place on women and girls in the Muslim population.<sup>14</sup> Some even claim that the majority of the Muslim population in France supports the law, a contention rarely reflected in the debate in English.

Furthermore, the accusation of Islamophobia sometimes occludes a serious policy debate about religion and women's human rights.<sup>15</sup> One must avoid projecting this Western concern onto what happens inside Muslim countries and populations where legitimate internal debate and political contestation over topics like dress codes and extremism continues. Furthermore, in the context of a substantial Muslim minority in a non-Muslim country, as in France, one must be mindful of both the problem of racism against Muslims from outside the community, and the political debates within.

There is no question that finding the right balance for addressing the issue of Muslim fundamentalism in the contemporary moment is incredibly difficult and requires one to tightrope-walk over perilous waters, making use of a vocabulary heavily laden with unfortunate political meaning today. One must somehow find a space for critique of both fundamentalism *and* racism, both sex discrimination *and* religious or ethnic discrimination, both the Islamic right *and* the Western 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 for those seeking to take 'critical' perspectives to adopt a narrow anti-racist or religious freedom position, looking at these questions through only one human rights lens, to focus on the exogenous debate, not the endogenous one.

The desire to be consciously non-discriminatory in one's approach to this issue is understandable. Some responses to Muslim fundamentalist groups suffer from what B.S. Chimni has called a kind of hegemonic construct of human dignity.<sup>16</sup> Some use their critique of Muslim fundamentalist violence and ideology as a springboard for racist discourses about Muslims writ large, or as a justification

for human rights violations, like torture. Such a hypocritical approach to Muslim fundamentalism narrows the space for legitimate critiques of these movements which then are deemed to risk blending in with the hegemonic discourses. The latter narratives lack self-consciousness about a range of failings closer to home including human rights violations in the 'War on Terror', the role of other religious fundamentalisms in liberal democracies, and Western contributions to the rise of Muslim fundamentalism.

One certainly wants to counter discourses like those emanating from Islamofascism Awareness Week, organised on US college campuses in October 2007 by conservative activist David Horowitz in which the subject of the critique slipped easily and mistakenly from fundamentalist terrorists to 'Islam' writ large.<sup>17</sup> However, to critique such an event should not necessarily lead us to deny that there are some Muslim fundamentalist armed groups that could be labelled 'fascist' in their ideology and indeed are sometimes so labelled in the Arabic language press.<sup>18</sup> Unfortunately, the absence of a systematic and principled human rights-based or progressive critique of these movements in Western scholarship and human rights narratives has left the terrain vacant, to be filled by discourses like those associated with Islamofascism Awareness Week.

It is worth pondering Mimouna 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 counterweight 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 to find thoughtful ways to support those who are working democratically for human rights and against fundamentalism within Muslim-majority countries and diaspora populations. Collectively, their endeavours represent one of the most important human rights struggles of our time.

In part, this means that in addition to continuing their work to criticise *state* practices in the context of the 'War on Terror', international human rights lawyers need to develop an analysis of and specific response to the phenomenon of Muslim fundamentalism and affiliated transnational jihadist movements. Any such analysis and response needs to be free from discrimination against Muslims – but not by pretending that the particular and grave challenge to international law from these fundamentalist and jihadist movements does not exist. Such a discussion needs to be conducted with self-criticism and impartiality, and without discriminatory overtones. Ordinary Muslims or the Muslim religion as a whole must not be confused with these specific fundamentalist political or armed movements and their adherents. Their primary victims, as even the US National Strategy for Combating Terrorism acknowledges, are other Muslims and people of Muslim heritage or those who live in Muslim-majority countries.<sup>19</sup> However, as that strategy fails to acknowledge, Western policies in the region have historically contributed to the rise of these movements – a fact that should be underscored.<sup>20</sup>

## The causes of a “disease masquerading as a cure”

The problem of fundamentalist movements in the Muslim world, especially those that engage in terrorism, has both endogenous and exogenous causes. Both the current encounter with globalisation and past encounters with colonialism arguably contributed to its emergence.<sup>21</sup> Furthermore, initial support for such ideological movements from many of the governments that are now fighting terrorism greatly exacerbated the situation. Western powers long believed, whether in the context of colonialism or of the Cold War, that they could nourish fundamentalists in Arab and Muslim countries as a counterbalance to secular nationalists and leftists whom they perceived as posing a greater threat to their interests.<sup>22</sup>

The classic example of this is the now-infamous support by the US (with significant British, Pakistani and Saudi involvement) of anyone willing to fight the Soviet Union in Afghanistan – no matter how extreme their ideology.<sup>23</sup> The Afghan war is crucial to understanding how this problem metastasised so quickly. Many of those founding or leading terror cells from the Philippines to Morocco fought in Afghanistan, where they built a sophisticated and dangerous network, and then took their training home with them.<sup>24</sup>

The other major external contributing factor, particularly to recruitment and sympathy for Muslim fundamentalist armed groups, and the apologetics on their behalf from various quarters, is that of disastrous Western policies toward Muslim-majority countries. Examples include 2003's illegal invasion of Iraq<sup>25</sup> and failure to equitably resolve the Palestinian-Israeli conflict.<sup>26</sup> Many international human rights activists recognise the legitimacy of grievances about these policies, and the bases for these grievances in international law. However, these causes are latched on to by fundamentalist movements that seek to advance their own agendas.<sup>27</sup> Their project, rather, is to construct theocratic, despotic states of their own that would deny the human rights of women,<sup>28</sup> minorities, and freethinking members of the majority.<sup>29</sup> As Algerian anthropologist Mahfoud Bennouna often said, such an ideology is “a disease masquerading as a cure”.<sup>30</sup> While the underlying sources of frustration must be addressed, including by and with international human rights law, these movements represent a grave threat to international human rights themselves. Furthermore, endogenous causes of fundamentalism in the Muslim world must not be forgotten, such as bad governance, lack of adequate religious reform, discriminatory attitudes about women and non-Muslims, as well as lack of enjoyment of human rights.<sup>31</sup>

International lawyers must neither overlook the terrible toll that terrorism has exacted within societies in the global South, nor make easy assumptions about attitudes and priorities in Muslim and Arab populations. Many are ardent opponents of terrorism and fundamentalism,<sup>32</sup> and have looked to the international community to recognise the threats that they themselves face from such movements.<sup>33</sup>

It is important to listen to the voices of those in Muslim-majority countries and diaspora Muslim populations who have exposed and opposed Muslim fundamentalist terrorism and whose human rights have been imperilled as a result. One example is Cherifa Kheddar, the president of Djazairouna, an association of Algerian victims of Islamist terrorism. Ms Kheddar's brother and sister were both murdered by Algeria's fundamentalist armed groups during the terrible 1990s.<sup>34</sup>

Since then, she has worked tirelessly in what was one of the most dangerous parts of the country to support victims of terrorism – and demand justice for them. In addition to the ongoing threat posed to people like Ms Kheddar by the resurgent terrorism of Al Qaeda in the Islamic Maghreb which seeks to rekindle the horrors of the 1990s in Algeria, she has also been penalised by the Algerian government for her opposition to an amnesty given to both non-state and government perpetrators. She was demoted in her government job and was threatened with losing her government housing (a very difficult sanction in Algeria's impossible housing situation).<sup>35</sup>

Another endangered and important opponent of jihadist terrorism is the Algerian journalist Mohamed Sifaoui whom I have already cited, and who is known for his infiltration of Al Qaeda in Europe, an act of courage that produced a celebrated exposé. Sifaoui is also an outspoken advocate of women's rights. He was attacked by two men who reportedly have links to Algerian armed groups on the streets of Paris in June 2008. A civil society campaign currently seeks to have his French police protection reinstated – something which has been denied to him so far.<sup>36</sup>

The real struggle against terrorism – as opposed to the 'War on Terror' which has so challenged international law – is a human rights struggle carried out in part by people like these with their voices and pens and organising efforts. The only way such efforts can succeed is with sustained and thoughtful support, with critique of both governments and their fundamentalist opponents. The only way we can truly understand the so-called clash between the Middle East and the West is by paying attention to people like these who force us to complicate our narratives. Harkening back to Zouba's warning, in the current moment, this requires a willingness to deal in complexity rather than simplicity. As Cherifa Kheddar said at the International Conference against Terrorism, held in Paris on 11 September 2007, "neither the cowardice of institutions, nor their simple condemnations of terrorist acts, will end fundamentalist violence, in the absence of a courageous politics, both at the regional and international levels."<sup>37</sup>

Counter-terrorist policies that violate international law clearly undermine the endeavours of people like Sifaoui and Kheddar. But a critical response that focuses solely on the impact of counter-terrorism, and not of fundamentalist terrorism itself, hinders their work as well. Instead, international lawyers need to develop what Gita Sahgal has called a "human rights account" of terrorism.

## Conclusion: "Thinking the new"

In the wake of 9/11, philosopher and political scientist Seyla Benhabib challenged intellectuals to "think the new"<sup>38</sup>. In Benhabib's words,

"[t]his is the task at which Susan Sontag, Fred Jameson, and Slavoj Zizek have failed us by interpreting these events along the tired paradigm of an anti-imperialist struggle by the 'wretched of the earth.' Neglecting the internal dynamics and struggle within the Islamic world and the history of regional conflicts in Afghanistan, Pakistan, India, and Kashmir, these analyses assure us that we can continue to grasp the world through our usual categories... These analyses help us neither to grasp the unprecedented nature of the events unfolding since September 11, 2001 nor to appreciate the internal dynamics within the Arab-Muslim world which had given rise to them."<sup>39</sup>

The international legal academy has struggled to meet this challenge of thinking the new. If international human rights lawyers, in particular, do not do so, we risk, as Benhabib presages, continuing with a "tired paradigm".<sup>40</sup>

Because of the terrible weight of identity politics on these topics, before anyone feels too subaltern, I want to again stress that I take issues of colonialism, neo-colonialism and post-colonialism very seriously for personal reasons. My family on my father's side is Algerian, and was heavily involved in the nationalist struggle against France. However, some of these same family members have been gravely affected by the rise of fundamentalism and fundamentalist violence in Algeria in recent years. My father was a prisoner of war, held by the French military for four-and-a-half years during the war of independence. However, in later years, as a professor of sociology at the University of Algiers, he was forced to stop teaching and flee his apartment due to death threats from fundamentalist armed groups. My search is for a paradigm that reflects the complexity and gravity of both these sets of experiences and both sets of challenges to human rights and both generations of liberation struggles.

*From a presentation: 'Remarks to the American Society of Comparative Law Panel V: Middle East – The great clashes between the West and the Rest', 4 October 2008.*

## Endnotes

1. For further elaboration of this key point, see also: WLUML (2005) 'Statement to the World Social Forum', Women Living Under Muslim Laws, 20 Jan, [www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-103376](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-103376)  
Marieme Hélie-Lucas (2006), 'The Enemy of My Enemy is Not My Friend: Fundamentalist non state actors, democracy and human rights', Women Living Under Muslim Laws, 3 Sep, [www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-544539](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-544539)
2. Marieme Hélie-Lucas (2001), 'What is Your Tribe? Women's Struggles and the Construction of Muslimness', *Dossier 23-24*, [www.wluml.org/node/389](http://www.wluml.org/node/389)  
Scottish sociologist Steve Bruce has written that "fundamentalisms rest on the claim

- that some source of ideas, usually a text, is inerrant and complete... fundamentalists also claim the existence of some perfect social embodiment of the true religion of the past." 'What is Fundamentalism?' in Steve Bruce (2000), *Fundamentalism* 13-14.
3. See, i.e., Rights and Democracy (2005), *Fundamentalisms and Human Rights: Report of the meeting, Montréal* (12-14 May).
  4. See Martin Marty and R. Scott Appleby (eds.) (1991), *Fundamentalisms Observed*; Kevin Phillips (2006), *American Theocracy: The peril and politics of radical religion, oil and borrowed money*; and Chetan Bhatt (1997), *Liberation and Purity: Race, new religious movements and the ethics of postmodernity* 77-107.
  5. For a useful typology of Muslim fundamentalist groups see, Awaaz – South Asia Watch (2006), *The Islamic Right – Key tendencies*, June.
  6. See Saleh Bachir and Hazem Saghieh (2003), 'The "Muslim community": a European invention', openDemocracy, 16 Oct, [www.opendemocracy.net/conflict-terrorism/community\\_2928.jsp](http://www.opendemocracy.net/conflict-terrorism/community_2928.jsp)
  7. *Texte de fondation de l'Association du Manifeste des libertés*, [www.manifeste.org/article.php3?id\\_article=113](http://www.manifeste.org/article.php3?id_article=113)
  8. For a definitive description and analysis of the cartoon controversy, see Jeanne Favret-Saada (2007), *Comment produire une crise mondiale : Avec douze petits dessins*.
  9. BBC News (2006), 'Writers Issue Cartoon Row Warning', 1 March, <http://news.bbc.co.uk/1/hi/world/europe/4763520.stm>
  10. Founded in 988 AD, Al Azhar is one of the most prestigious centres of Islamic learning in the world.
  11. See Commission on British Muslims and Islamophobia (2004), *Islamophobia: Issues, challenges, and action*. Trentham Books, 7-8, [www.insted.co.uk/islambook.pdf](http://www.insted.co.uk/islambook.pdf) at 9.
  12. See Karima Bennoune (2002), 'Making the World Safe for the Dallas Cowboy Cheerleaders', address Before the Michigan Journal of International Law Conference: 'Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women's Rights?' (6 April), *Mich. J. Int'l L.* 24: 461, 465.
  13. Bhatt, *supra* note 4 at XX.
  14. For example, one of France's leading anti-racist non-governmental organisations, SOS Racisme, supports the 2004 law. See Amelia Gentleman (2004), 'Angry Schoolgirls Head Back to Class in Muslim Veil Row', *The Observer* 29 Aug, at 24.
  15. See, for example, the critique of such deployment of Islamophobia by diaspora dissidents of Muslim heritage made in response to the cartoon controversy. "We refuse to renounce our critical spirit out of fear of being accused of 'Islamophobia,' a wretched concept that confuses criticism of Islam as a religion and stigmatization of those who believe in it." *Writers Issue Cartoon Row Warning*, *supra* note 11.
  16. B.S. Chimni (1993), *International Law and World Order: A critique of contemporary approaches* 120. For an example of this sort of flawed critique of Muslim fundamentalism, see Ruth Wedgwood (2004), 'Countering Catastrophic Terrorism: An American view', in Andrea Bianchi (ed.), *Enforcing International Law Norms Against Terrorism*, 103.
  17. For a description of this event by its protagonists, see [www.terrorismawareness.org/islamo-fascism-awareness-week/](http://www.terrorismawareness.org/islamo-fascism-awareness-week/)  
For criticism of this event, see Ali Eteraz (2007), 'Laughing at Islamo-Fascism Awareness Week', 8 Oct, [www.huffingtonpost.com/ali-eteraz/laughing-at-islamofasci\\_b\\_67565.html](http://www.huffingtonpost.com/ali-eteraz/laughing-at-islamofasci_b_67565.html)
  18. This is a word with powerful historical connotations. Nevertheless, critics of such movements from within Muslim-majority countries have been using this term to describe extremist movements. For example, in the wake of the London bombings, the Arabic-language international media, like *Asharq al Awsat* and the website Elaph,

- published articles by Arab writers about 'Islamic fascism'. See (2005) 'Un fascisme musulman ? Un tabou est tombé', *Courrier Int'l* 13-20 July, at 12. Note that some other ardent critics of Muslim fundamentalist movements have disputed the utility or accuracy of the application of this term. See e.g., Fred Halliday (2006), 'The Left and the jihad', 7 Sep, [www.opendemocracy.net/globalization/left\\_jihad\\_3886.jsp](http://www.opendemocracy.net/globalization/left_jihad_3886.jsp).
19. US National Strategy for Combating Terrorism, Sep 2006, [www.whitehouse.gov/nsc/nsct/2006/](http://www.whitehouse.gov/nsc/nsct/2006/) at 5.
  20. See, for example, Amnesty International (1995), *Afghanistan: International Responsibility for Human Rights Disaster*.
  21. Olivier Roy (2005), 'Why Do They Hate Us? Not Because of Iraq', *New York Times* 22 July, at A21.
  22. See e.g., Richard Sale (2002), 'Analysis: Hamas History Tied to Israel', United Press Int'l, 18 June; and Human Rights Watch (2001), Backgrounder on Afghanistan: History of the War, [www.hrw.org/backgrounder/asia/afghan-bck1023.pdf](http://www.hrw.org/backgrounder/asia/afghan-bck1023.pdf)
  23. See e.g., Amnesty International *supra* note 20.
  24. See Godfrey Jansen (1992), 'The "Afghans" – an Islamic Time Bomb', *Middle E. Int'l* 20 Nov, at 16.
  25. On the legality of the war, see Thomas Franck (2003), 'What Happens Now? The United Nations After Iraq', *Am. J. Int'l L.* 97: 608.
  26. See, e.g., (2006) *The Iraq Study Group Report* 54-55.
  27. See e.g., Nahda Younis Shehada (2004), 'The Rise of Fundamentalism and the Role of the "State" in the Specific Political Context of Palestine', in Ayesha Imam et al. (eds) *Warning Signs of Fundamentalisms* 135, and Bhatt, *supra* note 4, at 136-45.
  28. See the argument about the impact of fundamentalist movements on women's human rights in, Courtney Howland (1997), 'The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An analysis under the United Nations Charter', *Colum. J. Transnat'l L.* 35: 271 (especially 305-16).
  29. See e.g., Bhatt, *supra* note 4, at 107; Moghissi, Haideh (1999), *Feminism and Islamic Fundamentalism: The limits of postmodern analysis* 64-76; and Mansoor Moaddel (2005), *Islamic Modernism, Nationalism and Fundamentalism: Episode and discourse*.
  30. These are the words of Dr Mahfoud Bennoune, in Karima Bennoune (2002), "'A Disease Masquerading as a Cure": Women and fundamentalism in Algeria: an interview with Mahfoud Bennoune', in Betsy Reed (ed.), *Nothing Sacred: Women respond to religious fundamentalism and terror* 75, 86.
  31. Marc Saghie (2003), 'Un Siècle d'Islam Politique', *Courrier Int'l* 15 June, [www.mafhoum.com/press5/150S22.htm](http://www.mafhoum.com/press5/150S22.htm)
  32. See the words of Mohammed Sayed Tantawi, the Grand Imam of Egypt's al-Azhar, on 12 Sep 2001. "[K]illing civilians is a horrific, hideous act that no religion can condone." Quoted in James Reston Jr. (2002), 'Seeking Meaning from a Grand Imam', *Wash. Post* 31 March, at B04. See also the writing of Algerian journalist Mohamed Sifaoui, including Mohamed Sifaoui (2004), *Inside Al Qaeda: How I infiltrated the world's deadliest terrorist organization*; and Cherifa Kheddar (2007), 'Oui, c'est cette terre que nous avons vécue seuls et isolés: Le témoignage accablant de Cherifa Kheddar'. Speech by Cherifa Kheddar, Director of the Djazairouna Association of the Families of Victims of Terrorism, to the International Conference Against Terrorism, Paris, 11 Sep.
  33. See Nabil Charaf Eddine (2005), 'A force de louer la "résistance irakienne"', Elaph, reprinted in *Courrier International* 767, 13-20 July, at 32 (detailing shock of Iraqis travelling abroad at the failure to universally condemn armed group violence against civilians in Iraq because of these same groups' opposition to the US occupation).
  34. See Craig S. Smith (2006), 'Many Algerians Are Not Reconciled by Amnesty Law', *New*

- York Times* 28 June, [www.awid.org/eng/Issues-and-Analysis/Library/With-a-poster-in-each-hand-at-a-rally-Cherifa-Kheddar-joined-in-calling-for-justice-for-victims-of-terror-by-Islamist-insurgents-in-Algeria](http://www.awid.org/eng/Issues-and-Analysis/Library/With-a-poster-in-each-hand-at-a-rally-Cherifa-Kheddar-joined-in-calling-for-justice-for-victims-of-terror-by-Islamist-insurgents-in-Algeria)
35. For more information, see WLUML (2008), 'Algeria: Cherifa Kheddar Unfairly Dismissed', 29 May, [www.wluml.org/english/actionsfulltxt.shtml?cmd%5B156%5D=i-156-561740](http://www.wluml.org/english/actionsfulltxt.shtml?cmd%5B156%5D=i-156-561740) and Organisation Mondiale Contre la Torture (2008), 'Licenciement abusif de Mme Cherifa Kheddar', 22 May, [www.omct.org/index.php?id=OBS&lang=fr&articleSet=Appeal&articleId=7805&PHPSESSID=ef12f472dc1c30ca938d2a96aafb3ff7](http://www.omct.org/index.php?id=OBS&lang=fr&articleSet=Appeal&articleId=7805&PHPSESSID=ef12f472dc1c30ca938d2a96aafb3ff7)
  36. For more information, see WLUML (2008), 'France: Ensure police protection for Mohamed Sifaoui', 11 Aug., [www.wluml.org/english/actionsfulltxt.shtml?cmd%5B156%5D=i-156-562229](http://www.wluml.org/english/actionsfulltxt.shtml?cmd%5B156%5D=i-156-562229); Sifaoui, Mohamed (2008), 'Mon agresseur formellement indentifié', blog of Mohamed Sifaoui, 15 June, <http://mohamed-sifaoui.over-blog.com/article-20459573.html>; and Comité de Soutien à Mohamed Sifaoui (2008), 'Soutenons Mohamed Sifaoui', 9 July, <http://soutenons-mohamed-sifaoui.blogspot.com/>
  37. Kheddar, *supra* note 32, at 5 (translated from French by the author).
  38. Seyla Benhabib (2002), 'Unholy Wars', in Betsy Reed (ed.), *Nothing Sacred: Women respond to religious fundamentalism and terror* at 397. Here she was calling for creative engagement with the challenges posed by transnational fundamentalist terror networks. This is not to be confused with discourses that suggested abandoning fundamental precepts of international law in the wake of 9/11, exemplified by writers like Michael Glennon. See e.g., Michael Glennon (2003), 'Why the Security Council Failed', *Foreign Aff* May/June. There have indeed been some important attempts to push international human rights law thinking forward. See e.g., George Andreopoulos et al. (eds) (2006), *Non-State Actors in the Human Rights Universe*. However, as a discipline, international lawyers have yet to come to terms with the challenge of fundamentalism. As Susan Waltz notes in her blurb on the back cover of the Andreopoulos volume, "[s]cholarship has not kept pace with the politics..."
  39. Benhabib, *supra* note 38 at 397.
  40. *Ibid.*

## *Regroupement Féminisme & Laïcité Nouveau Parti Anticapitaliste (NPA)*

# In the Face of Mounting Reactions, Let us Develop Deep Solidarity

***In March 2010, regional elections took place in France. In Avignon, a local Nouveau Parti Anticapitaliste (NPA, 'New Anti-Capitalist Party') committee promoted as candidate a comrade wearing the Muslim headscarf. This candidature opened up a political controversy in France, though there had been no discussion about this within the NPA beforehand. A number of NPA members decided to organise themselves so as to be able to initiate a serious discussion about what was at stake in these controversies concerning secularism, feminism, anti-racism and, more largely, the necessity of developing solidarities in the face of mounting reactions. The central point was (and is) to make clear that no oppression can ever be made secondary because every oppression has concrete implications we must fight. That is to say that we are always and at the same time anti-racist and feminist.***

## Divisions and unity at the hour of the capitalist crisis

We have to take seriously the deepening of xenophobic feelings in Europe, together with nationalist feelings over identity and discriminatory measures. With the expected deepening of the social crisis, this could lead to pogroms where people described as Muslims (but also the 'Roma') will be in the firing lines as scapegoats. It is no cliché to say that our governments want at all costs to divide the exploited by provoking opposition between the victims of racism (Arabs, blacks, Jews, Chinese...), 'national' workers and immigrants, permanent and temporary workers, officials and private sector salaried workers, men and women, old and new generations. It is a major element in the situation.

Indeed, if this desire to divide and rule is the watchword of the capitalist crisis, as old as the class war, there is nothing that is routine about it. The question takes on a special importance at a time when capitalist globalisation is eviscerating political democracy (however bourgeois it may be) and dissolving the area of citizenship. At a time when neo-liberalism attacks the solid achievements of yesterday, collective rights such as retirement, social security, health or public education... At a time of a great historic change when the European bourgeoisies truly wish to demolish the social gains of the post-war world... It is vital in this deteriorating situation to consolidate the unity of solidarity, and to be at the same time, anti-racist, feminist and secular (*laïc*).

## **Feminism is not only something achieved, it is a combat and a project for emancipation**

We have been witnessing for the past 30 years a systematic counter-offensive by extreme reactionary religious movements against feminist gains. This appears in an open alliance between Anglo-Saxon Protestant conservatives, the Vatican and the representatives of Muslim countries in international conferences on women or population, against the right of abortion, against the free choice of sexuality, etc., in the context of the neo-liberal offensive.

In France, this basically reactionary movement took on all its force at the turn of the century. As women partisans of a class war feminism, we are called on to defend an outlook which has an anti-capitalist, ant-racist and international feminist perspective. We are fighting not only for equality between men and women in every field (professional work, the sharing of domestic and parental tasks, in political life, in sexuality, etc.) but also against any form of sexist education which builds and reproduces social and sexual divisions of labour in every sphere of society and produces moral and sexual norms that are differentiated for individuals as a function of their gender or sexuality. This struggle for coeducation goes along with the recognition of the right to the self-organisation of women who are mobilised for their emancipation, with the struggle for equality between heterosexuals and homosexuals and against discrimination against sexual minorities.

This understanding of the feminist struggle contradicts monotheist religious 'dogmas' which support a 'complementary' model of the sexes, based on the assignation of women as a priority to motherhood, the rejection of homosexuality as being 'against nature' and for which sex is only licit within the context of marriage. This prescription is a permanent source of inequalities between boys and girls and of undeclared hypocrisy. Who is going to regulate – and how – the 'virginity' of young men? The transgression of these norms has heavier consequences for girls, with the result that some of them wait until the last minute before talking about an unwanted pregnancy or are led to undergo surgery to remodel their hymen and their reputation! This is not to argue that there should be a sexual model that makes it obligatory for every young person to have sexual relations at a particular age. Everyone, boy or girl, should have his or her own experience, based on a personal choice. This implies the need for us to condemn utterly religious prejudices which restrict the life of young people and particularly young girls.

In the same way, the wearing of the headscarf or the Islamic veil cannot be regarded as a matter of indifference. From the point of view of the individual, the wearing of a headscarf can take on various meanings. Some girls have chosen to wear it as a sign of resistance or of politico-religious belonging, while others are obliged to do so from family pressures or pressures from the neighbourhood, etc. But whatever the motives of individual girls (very varied), the headscarf (and even more the full veil) is not just an item of clothing, like any other. To conceal the hair and the

body of women has the same meaning in all the monotheist religions. A woman's body should be hidden from everyone, except the husband, since it is supposed to arouse uncontrollable desire on the part of men. In this view of sexuality, women are represented either as dangerous seductresses or as totally asexual beings, with men being always regarded as feeble beings unable to resist their 'instincts'. In a country where the right to have an abortion is endlessly challenged, or where the victory over the Catholic moral order hardly dates from a generation and has not yet become stable in Europe, this can only be regarded as a 'regression' by many feminists.

This is why it is a gross error to choose a candidate wearing a Muslim headscarf<sup>1</sup>. This refusal to regard the veil as a matter of indifference is accompanied by an equally clear rejection on our part of the new law against the *burqa*, an opportunist measure designed as a diversion, in relation to the unheard of questioning of workers' social rights and the social rights of the unemployed of both sexes, which forms an attack on religious freedom and the ability to circulate freely in public places. We are firmly against the segregation of the sexes that is implied in the wearing of the full veil, but it is not by a law of this kind that one can guarantee the dignity of women. Here, as always, we must at the same time oppose government attacks and vigorously carry on our feminist combat.

## Defending secularism (*laïcité*)

However true it is that the laws on secularism (*laïcité*) were voted by a republican majority that was colonialist and opposed to votes for women, at the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> centuries, these laws represent a basic acquisition for us: a recognition of the freedom of conscience, the principle of equality between all citizens whatever their beliefs and convictions, free education (primary education at that time), the education of boys and of girls; the separation of church and state (an end of state control over the functioning of religions and an end of their being financed by the state, while religions no longer had the right to interfere in the functioning of the state). All these laws had the merit of curbing the privileges of the Catholic Church and of defining the area of citizenship independent of religious connections and vice versa.

At the moment when Sarkozy diminishes secularism (*laïcité*) by affirming the primacy of the priest over the teacher, by increasing the funds available for private schools, etc., we should reaffirm as clearly as possible our will to unite the exploited and oppressed of both sexes, independently of their religious affiliations. Thus to put forward a candidate (whatever his or her religion) wearing an ostentatious symbol of religious affiliation can only obscure this message. We hold that believers have every right to a place in the Nouveau Parti Anticapitaliste (NPA), but on three conditions:

- That they should keep their distance from the religious authorities and oppose any reactionary tendencies;
- That they should openly question the official pronouncements of their religion on sexuality, relations between men and women, homosexuality, the right to abortion, sexual apartheid, etc.;
- That everyone should admit that there should be no proselytism within the ranks of the NPA and that it is not religion that unites us, but the will to fight, here and now, against social injustice and capitalism and the will to promote an alternative society freed from the law of profit and from every oppression.

This means that it is not possible to set up religious tendencies within the NPA.

## **Our actions in working class districts**

This concept of solidarity and secularism (*laïcité*) in political combat should accompany our activities in working class areas. The multiple forms of social insecurity that face the inhabitants of working class districts are made worse by the systematic repression and the increasing stigmatisation of certain people (particularly of Muslim culture or the 'Roma') who are portrayed as scapegoats. It is imperatively urgent to put an end to racism and its semblance of informal controls, the quasi-military occupation of some working class districts, arbitrary arrests and discrimination over recruitment or accommodation.

These districts need developed public services, particularly in the fields of education, health, housing, child welfare, transport and culture. There should be a job for every adult, and social, material and pedagogical conditions for a real educational equality (re-establishment of the *carte scolaire*, increase in the means available for national education, an end to inequalities between schools in rich and poor areas). Young people need material conditions which enable them to study and train, without having to do part-time work. Social housing should be built (one million units are lacking), particularly in better-off areas, to avoid the ghettoisation of workers. People should live nearer their workplace. Free public transport should be instituted and developed. Health centres should be (re-)established, to permit access to health care for all. Training that provides qualifications and diplomas should be at the heart of the struggle for employment. Sackings of workers should be forbidden and enough jobs should be created to improve and extend the public services, thus putting an end to unemployment in areas where it reaches twice the national average and is even higher for young people, for immigrants and above all for women. Youth centres should be developed to give them access to various cultural activities. Local associations should be re-established and their funding increased, to encourage their intervention particularly in schools on various questions, particularly sexuality, contraception, abortion, but also violence against women, sexism, discrimination against lesbians, gays, bisexuals, transgender and intersexuals (LGBTI).

NPA activists are present in many collectives and associations engaged in working class districts. We should further develop our activities and bring our active help to the struggle for employment, health, housing, access to culture and the distribution of wealth. The fight against exclusion, racism and anti-Muslim propaganda is also a priority in these districts. But this struggle should nowhere relegate to a second place the question of the oppression of women and the violence that some of them undergo, nor the combat that many women in these districts carry on for their emancipation. We should be alongside all those who fight against patriarchal oppression in all its forms, including the imposition of the veil, and be alongside all those who fight against religious conservatism.

## **A multidimensional internationalism**

In our political struggles, we must take fully into account the concrete situations which vary according to the countries and regions concerned, but also everything which they have in common. Whether these situations take the form of racism, xenophobia or religious sectarianism, the persecution of minorities is not the concern only of 'post-colonial' metropolises, however affected they may be. Depending on the country, there are Christian or Muslim communities, Shiites or Sunnites, natives or immigrants, who are the victims. Attacks against women nowadays have an almost universal character and the increase of sexism is felt (almost?) everywhere.

We are no longer unhappily in the 1970s, when the currents of liberation theology were developing. Today, the rise of the far right and of religious reaction can be seen in Catholicism, Protestantism, Hinduism, Buddhism... and not only in Islam. This is active in the US, India and the Middle East, as it is in Europe. It leads to serious attacks against the right to abortion, going as far as its total suppression (Nicaragua!). It presses women in the Muslim world increasingly to wear the veil or the full veil.

Attacks against secularism (*laïcité*) have a truly international dimension, targeting even its foundation, the separation of church and state, and not simply some particular aspects in certain countries. At the initiative of Pakistan, the UN Human Rights Commission has condemned blasphemy in the same way as it has condemned racism, even though such a decision is opposed to freedom of conscience or expression and its implementation would lead to direct violence. Community courts begin to operate in countries such as Great Britain, which (in the case of *shari'a* law in particular) puts into question the rights that benefit the women concerned. Secularism (*laïcité*) is indeed one of the conditions – necessary indeed, though not sufficient by itself – of a shared citizenship, a common law and political democracy.

As anti-imperialists, we fight against globalised capitalism, the policies of war carried out by Washington, the attempts at domination carried on by the European

Union, and against our own French imperialism. We refuse to introduce a hierarchy of oppressions or to play the game of divide and rule, by only supporting certain victims, in the name of 'principal enemy'. In Afghanistan, for instance, we defend women, whether they are the victims of NATO armies, the allies of Washington or the Taliban. Internationalism obliges us to support the fights of all those oppressed and exploited throughout the world, not only against American imperialism but also against local reactionary regimes.

## Endnote

1. The nomination of a veiled woman as a representative of the NPA in the Vaucluse regional elections of March 2010 opened the debate on the political left to define fundamentalism, religious symbols, racism and secularism (*laïcité*).

*Marieme Hélié-Lucas*

## How Fundamentalism and its Values and Programme Have Entered the UN<sup>1</sup>

***On 19 December 2006, the United Nations General Assembly passed a Resolution on the 'defamation of religions'. The Member States were called on quickly to ensure conformity with this Resolution (Resolution 61/164, entitled 'Combating defamation of religions'). It was followed by a declaration of the Human Rights Council (A/HRC/4/2.12) in the same sense. The first international women's organisation to take note of and protest against this was Secularism Is A women's Issue (SIAWI), whose appeal 'A Call from SIAWI' is published in this article. It was almost the only organisation to do this. How did this happen? What place have religions taken for an essentially secular organisation, the UN, to give them such importance? We have to go back to the 1960s and look carefully at the slow but inexorable progress of fundamentalist ideas at the UN, spearheaded by Iran.***

While the Universal Declaration of Human Rights (in French, 'the Rights of Man' – *de l'homme*, still officially masculine) of 1948<sup>2</sup>, which only envisages the rights of women first and foremost in marriage and the family, has been ratified by the whole of the Member States, the Convention on the Political Rights of Women (1952) and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) immediately created stumbling blocks for theocratic countries and especially for Muslim countries that do not accept the supremacy of a universal principle that is not of divine origin. Most of them, invoking the freedom of religion and their right to their own culture, did not ratify them, except with numerous reservations which took away all their sense.

The Islamic Conference Organisation, set up in 1969, brings together very different countries: besides the theocracies, it includes those countries that were secular at that time, such as Turkey, Syria and Iraq.

Within two or three decades, we passed from 'universal rights', accepted by all the Member States of the UN, to a variety of 'cultural rights', rights of 'civilisations' and of 'religions'.

It should be noted that from its foundation, UNESCO has affirmed the equal value of all 'cultures' (without raising the problem of who speaks for these said cultures and what democratic processes had been put in place to ensure a solid representation of the various components of all cultures: cultures of the family, regional, ethnic, class or gender cultures, etc., without also considering the development of cultures

and subcultures over time). UNESCO did set up a programme of meetings, the 'Spiritual Convergence and Intercultural Dialogue', which aimed at exploring the 'common heritage' and 'shared values'. Religions were an 'essential component' of 'cultures' and "'civilisations'.

Note the lack of any epistemological reflection on the concepts of 'culture' and of 'civilisation', which are here treated as essentialised, ahistorical and intangible and can serve any political holdall.

UNESCO finances university chairs which are intended to carry out the pedagogical work of intercultural dialogue.

From 1984 on, the Iranian Republic has declared to the UN General Assembly that the Declaration on Human Rights was "imperialist", and in 1993 at Vienna, its representative proclaimed from the rostrum the 'Declaration of the Rights of Man in Islam'.

After Ali Khamenei, at the eighth session of the OIC at Tehran in December 1997, demanded a permanent seat for the OIC at the UN Security Council with the right of veto, and after he had attacked the culture of atheism in the West and his scorn for religions and morality, Mohamed Khatami, the President of Iran, elected in 1997, appeared as a saviour. He proposed the "alliance of civilisations" – thus peace rather than war – on 21 September 1998; and the UN General Assembly adopted Khatami's proposal on 4 November of the same year. The year 2001 was proclaimed 'Year for the dialogue of civilisations'.

Iran's initiative was supported by Austria, Belgium, Denmark, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, Spain and Sweden. For Kofi Annan, elected to the head of the UN in 1997, it provided a way out, to prevent the explosion of this institution.

At the end of 1998, the Iranian representative affirmed that "Diversity was a force", thus following closely UNESCO, which in 1995, had adopted the 'Declaration of Principles on Tolerance', which instituted the dialogue between diversities.

Also at the end of 1998, the Human Rights Commission and the OIC jointly organised a seminar of Muslim experts at Geneva, for the 50<sup>th</sup> anniversary of the Universal Declaration. There they put forward "The Islamic Perspectives on the Universal Declaration on Human Rights". In the words of Mary Robinson, who introduced the inaugural session, this meeting would contribute to a better understanding of the "cultural and religious basis of the Universal Declaration". Thus a document that was essentially secular and universal now officially became an avatar of diversity, culture and religion.

An Islamic Symposium on the Dialogue between Religions, organised by the OIC, was held at Tehran in 1999, and the UN Secretary-General was closely involved, both attending the symposium and following closely the progress of its work.

One can readily understand that when the UN Conference on Racism at Durban let political conflicts burst out, in particular concerning the Middle East, it was religions that officially took over from politics.

170 states took part at Durban in 2001. Iran led the attack, supported by numerous African countries. There were cries of "Death to America", anti-Jewish caricatures and a tone of general hostility to Western-style democracy. Many states also wished to assimilate criticism of religions with a racist crime, thus wanting to introduce the idea of inciting religious hatred, or in other words, re-establishing the crime of blasphemy, something that is incompatible with the freedom of expression.

This conference was also an opportunity for Islamic states, in the name of cultural identity, to demand that the wearing of the *burqa* and discriminatory treatment against women should be excluded from the debates.

The follow-up conference to the world summit against racism at Durban was held at Geneva in April 2009. As a change of container rather than one of content, the Human Rights Commission meanwhile in 2006 became the Human Rights Council.

The beginning of 2006 was also the moment when the controversy about the Danish cartoons broke out. Most of these were not very offensive, but at the end of months of effort, groups and individuals who were fundamentalist Muslims managed to arouse governments and crowds in the Muslim world.<sup>3</sup> Western governments and the UN were, therefore, ready to accept almost anything to avoid a conflict.

In the spring of 2006, from the start of the preparations of Durban II, some demands appeared to be incompatible with the UN's mission and with human rights. The preparatory committee was chaired by Libya, the vice-chairs went to the Islamic Republic of Iran and to Pakistan, and the rapporteur was Cuba.

The alliance against the 'main enemy', that is to say against North American imperialism, was clearly spelt out here. Within a few years, this had become an essential element of the UN game, and this alliance was especially evident when the UN endorsed the "defamation of religions".

A certain number of Western countries fought in the preparatory sessions of Durban II, "specifically against the idea that it was necessary, in the text of the final resolution of Durban, to appeal for the defence of defamed religions or limit the freedom of expression." Other countries simply withdrew from the conference so as not to endorse this. Civic movements also encouraged this course of action.<sup>4</sup>

Lengthy negotiations succeeded in withdrawing any reference "to the defamation of religions, in exchange for which, there was to be no discussion of the treatment of women, the execution of homosexuals, forms of slavery and religious intolerance".<sup>5</sup>

The vote by the UN General Assembly at the end of 2006 of a deeply anti-secularist and freedom-destroying Resolution on the "Defamation of Religions" was therefore the culmination of a long process of lobbying in the organisation by theocratic and

fundamentalist Muslim states, designed to put an end to universal values and to secularism. It was also the product of a political alliance, based on their common opposition to North American imperialism, between the countries of the Islamic Conference with the Non-Aligned countries – an alliance that now has a large majority at the UN.

In the terms of this Resolution, “any action against religions, prophets or beliefs” is considered to be defamation. Neither the international left nor human rights organisations seemed much concerned by this Resolution, which nevertheless calls on Member States to transform “their constitutions, their laws and their systems of education”, to make them conform to the Resolution.

The feminist world, increasingly impregnated with liberalism about human rights and decreasingly politicised, let this vote pass without any reaction – or hardly any.<sup>6</sup> It ought, however, to feel concerned in the highest degree, since behind its apparent defence of rights, it forms a virulent threat for women, who can no longer protest against the diktats of churches of every description, without being accused of making an attack and of defamation.

**“A Call from SIAWI (Secularism Is A Women’s Issue) against UN resolutions 61/164 and A/HRC/4/2.12 on ‘defamation of religions’**

“Secularism, i.e. separation of religion from politics, has been regularly attacked since its inception by the Catholic Church and ultra conservative political forces in Europe, even in France. During the past two decades, Muslim fundamentalists revived the struggle against secularism and developed multiple strategies at national, European and international levels. What is at stake is the evolution of the concept of secularism, in which the state, instead of being unconcerned with religions (apart from fulfilling its obligation to guarantee its citizens the individual freedom of practicing their religion), would be obliged to ensure equal political representation of religions. Again, the defence of secularism is a subject of burning topicality. Secular space goes shrinking and in many countries it has become inconceivable to dispense of a religious identity, even more so if one belongs to the population of migrant descent.

“Muslim fundamentalists rely on the notions of minority rights, religious rights, cultural rights to demand the right to interfere in state affairs in the name of culture and/or religion. They master the art of manipulation of human rights concepts.

“Numerous are their recent attempts to replace the general law (by definition changeable by the will and vote of the people) by religious laws (by definition immutable and imposed in the name of god to presumed believers). Canada barely escaped the introduction of religious arbitration courts in family matters, thanks to wide national and international women’s mobilization

(2006). Similarly France owes to a determined popular resistance and especially to women's resistance its final decision not to modify its secular law on religious symbols in schools (2005). However at the same time, a German woman judge relies on what she thinks is 'sharia' law in a case of divorce (April 2007) and Britain allows in certain cases 'traditional' courts to substitute themselves to the Kingdom's legal courts (2007).

"Let us take note of the fact that it were mainly women who were targeted by these legal measures – and this of course made it more acceptable to governments, always willing to trade women's rights for social peace. Up to the point of accepting that dearly acquired women's rights now written into laws may not apply to some categories of citizens, due to their ethnic background (the land of origin of their parents or grandparents) or to their supposed religious affiliation. These women citizens would thus be excluded from the democratic process and frozen into an alien 'nature', excluded in fact from citizenship.

"Let us note too, without surprise, that Catholic and Jewish authorities sided with Muslim fundamentalists' efforts. During the nineties, women already witnessed their unholy alliance against reproductive rights during the UN World Conference on Population and Development in Cairo and during the UN World Conference on Women in Beijing.

"It took a new turn when the same politico-religious forces questioned freedom of expression at international level. In this case, women are not their primary targets, and one may hope that other forces will join, even if late, their struggle for preserving total secularism of the state.

"Pressure was made on the European Union for the concept of blasphemy to be introduced in the language of the European Constitution. As per their strategic plans devised in their December 2006 meeting in Mecca, the countries of the Organisation of Islamic Conference have been lobbying the UN and the Human Rights Council. They were supported by several catholic countries. Together, they finally succeeded: the UN and the HRC passed resolutions [see details in the analysis of Jeanne Favret-Saada]<sup>7</sup> demanding from states 'vigorous measures' to forbid the 'spreading of ideas and documents... defaming religions'. Will be considered defamation 'any action against religions, prophets and creeds'. States should modify accordingly 'their constitutions, laws and educational systems'.

"All this in the name of Human Rights...

"Once more we witness the ideological confusion between protecting individuals from racism, discrimination and intolerance and legitimizing the most backward forces in religions. Indeed 'Muslims' or supposed Muslims must be protected against the first plague, but against the second as well which will force them to bend to rules they have not chosen and

the international community to watch the abuse in silence, in the name of respect for creeds.

“The experience of those of the Muslim countries who lived under the boot of religious extreme rights show that freedom of consciousness, freedom of thought, freedom of movement, freedoms of expression are rights that denied in the very name of religious rights. And it is then also in the name of religious rights and cultural rights that international human rights organizations including the Commission of Human Rights at the UN abstain from intervening.

“The experience of these countries also shows that citizens are denied the right to define for themselves their religion and their culture, while the most damageable forms from the point of view of human rights were then imposed on them.

“There is another confusion between extreme right politico-religious forces which pretend to be under attack when one does not follow them in all their interpretations and follies – and religion itself. To oppose fundamentalist is thus equated to an attack on the religion they claim to represent, be it Christianity, Islam or other – and there are numerous recent examples of such situations.

“It is criminal for the UN and for the HRC to support such a manipulation of human rights concepts.

“We call on all freedom loving forces to become fully aware of the seriousness of the situation, in particular women who are first targeted when secularism recedes.

“The HRC... calls on NGOs to suggest adequate ways of implementing these resolutions. No doubt fundamentalists of all creeds will seize the opportunity to support laws that will destroy liberties. We call on NGOs and individuals not to let them occupy the floor and to clearly take a stand viz the HRC.

“Beyond, we call for an increased vigilance and for citizens organizations in each of our countries, to stop the changes in their ‘constitutions, laws and educational systems’ that would put an end to secularism, i.e. to change identity as citizens for communal identity.”

– SIAWI, 7 May 2007 ([www.siawi.org/article49.html](http://www.siawi.org/article49.html))

## Endnotes

1. One can usefully read:  
Malka Marcovich (2008), *Les nations désunies: Comment l'ONU enterre les droits de l'homme*. Paris: Jacob Duvernet.

Jeanne Favret Saada (2010), *Jeux d'ombres sur la scène de l'ONU : Droits humains et laïcité*. Paris: L'Olivier.

2. Agora Vox (2009), 'Quand L'ONU menace les droits humains', 20 April, [www.agoravox.fr/actualites/international/article/durban-2-quand-l-onu-menace-les-54742](http://www.agoravox.fr/actualites/international/article/durban-2-quand-l-onu-menace-les-54742)  
In the same article can be found an interesting analysis of the liberal retreat which the Universal Declaration of 1948 represents in relation to the texts of the French Revolution in 1789:  
"The Rights of Man, revealed by the century of the Enlightenment, are the natural inalienable rights belonging to every individual, which no authority or organised group can take away. These rights were recognised by the French National Assembly in 1789 in a luminous text, a real liberal manifesto of the first French Revolution.  
"In 1948, just after the war, the representatives of 58 nations adopted a document of a very different nature, which proclaimed (rather than recognised) a new series of the rights of man, in which were found some principles of natural law mixed with social rights, with considerations of nationality and with declarations of intent about subjects as varied as 'the standard of living', the 'requirements of morality', 'public order', the protection of authors' rights, cultural life or even 'the development of friendly relations between nations'.  
"What Jeanne Kirkpatrick would call a 'letter to Father Christmas' was pompously named the *Universal Declaration of Human Rights* and placed under the guardianship of the UNO... While the rights of 1789 aimed to protect men against abuse by the state, by religions and all forms of 'government', those of 1948 mixed in some social norms, which defined what society should provide people with. A perfect nonsense which introduced coercive articles into the Rights of Man, and thus left these in the hands of their direst enemies, the states."
3. Jeanne Favret-Saada (2007), *Comment produire une crise mondiale avec douze petits dessins* ('How to produce a world crisis with a dozen little cartoons'). Paris: Les Prairies ordinaires.
4. Alain Gresh (2009), 'Durban II, délire et désinformation', *Nouvelles d'Orient*, 22 April, <http://blog.mondediplo.net/2009-04-22-Durban-II-delire-et-desinformation> – under the authorship of Alain Gresh, particularly free of suspicion of opposition to Islamic fundamentalism.
5. Association des citoyens laïques républicains (2009), 'La France doit se retirer de Durban 2' ('France should withdraw from Durban 2'), *Petition Buzz*, 11 March, [www.petitionbuzz.com/petitions/durban2](http://www.petitionbuzz.com/petitions/durban2)  
In France – which would not withdraw – secular citizens' associations argued equally for the withdrawal from Durban 2: "The attacks which went on in the corridors against Republican values were unacceptable. The working document of this conference in its present state is a violently anti-Western text, calling among other things, for censorship and the muzzling of freedom of expression – for open criticism of our liberal societies – for the stigmatisation of only one state, Israel – for the promotion of sexist arguments against women – for the promotion of communalism – for a reference to the transatlantic slave trade and not the Muslim trans-Saharan slave trade – for a refusal to condemn states that practised discrimination, and even repression against their own society."
6. See note 2.
7. Jeanne Favret-Saada (2007), UN: Towards an offence of 'defamation of religions', *SIAWI*, 3 June, [www.siawi.org/article97.html](http://www.siawi.org/article97.html)



# Contributors

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**Rhonda Copelon** was a professor at the City University of New York (CUNY) Law School, a human rights attorney and a vice-president of the Center for Constitutional Rights (CCR). She broke new ground in opening US federal courts and international tribunals to gender-based violence and international human rights violations.

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**Lalia Ducos** is an Algerian women's rights activist, now living in France. She is the President of the Women's Initiative for Citizenship and Universal Rights (WICUR), which she founded in 2009.

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**Alia Hogben** is the Executive Director of the Canadian Council of Muslim Women ([www.ccmw.com](http://www.ccmw.com)). She is a social worker who has worked in the field of services to children, adults with developmental handicaps and with abused women and girls. She has taught at a college and is a regular columnist with the *Kingston Whig Standard* in Canada.

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**Maryam Namazie** is spokesperson for Iran Solidarity, Equal Rights Now – Organisation against Women's Discrimination in Iran, the One Law for All Campaign against Sharia Law in Britain and the Council of Ex-Muslims of Britain. She produces TV International, is Central Committee member of the Worker-communist Party of Iran and a National Secular Society Honorary Associate.

The **Nouveau Parti Anticapitaliste (NPA, New Anticapitalist Party, France)** was founded in January 2009, after the then existing Ligue Communiste Révolutionnaire (LCR, 'Communiste Revolutionary League') launched an appeal to all those who were convinced the capitalist system must be overthrown, to unite and build a new party together.

**Pragna Patel** is a founding member of Southall Black Sisters (SBS) and Women Against Fundamentalism. After training as a solicitor, she became Director of SBS in 2009. She has been centrally involved in some of SBS's most important campaigns around racism, gender-based violence, immigration and religious fundamentalism, and has written extensively on her experiences of working on these issues.

**Gita Sahgal** was a founder member of Women Against Fundamentalism and former Head of the Gender Unit at Amnesty International, which she left after making public her disquiet about Amnesty International's promotion of salafi-jihadis. She is a founder of the Centre for Secular Space, which opposes fundamentalism, amplifies secular voices and promotes universality in human rights.

**Lino Veljak** is Professor of Philosophy and Head of the Department of Philosophy at the University of Zagreb, Croatia. He is co-founder of the organisation Protagora, which defends the rights of non-religious people, and is author of six books and 150 scientific papers in the fields of philosophy and social theory.

**Staša Zajović**, founder of the movement Women in Black in Belgrade (1991), has edited over 30 books about feminism, antimilitarism and fundamentalism, authored over 30 papers, and is author of two books: *Always Disobedient* (2007) and *Transitional Justice – Feminist Approach* (2007).

# Recommended Further Reading

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## About WLUML

WLUML is an international network that provides information, solidarity and support for all women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam.

The network aims to increase the autonomy of women by supporting the local struggles of women from within Muslim countries and communities and linking them with feminist and progressive groups at large; facilitating interaction, exchanges and contacts; and providing information as well as a channel of communication.

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The dossiers explore a broad range of discourses, interpretations and strategies of women on issues of feminism, nationalism, internationalism and religion.

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