Laïcité, the Republic, and the Veil

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The issue of state secularity has arisen numerous times in history. The Greeks and Romans both had different ideas about secularity, equality, and citizenship, which have shaped the ideas of countries today.\(^1\) France professes itself a secular state with the goal of guaranteeing equal rights and opportunities to all citizens.\(^2\) However, in practice, the secular laws surrounding a certain piece of clothing worn by Muslim women are promoting institutionalized inequality. The *hijab* (or *voile*, or veil, or *foulard*, or headscarf) has been an emblematic Muslim tradition practiced for centuries, but the French government sees it as a sign of separation and inequality between men and women. The veil, its history, and the reasoning behind it must be understood before it can be judged. Muslim women who choose to wear the veil have a right to freedom of religion as given in international human rights documents and this right is being infringed upon by the French government and their legal interpretations of the nature of secularism (*laïcité*).

Laws concerning France’s secularist nature, with regard to the veil, have been debated internationally for years since France is one of the few countries that has actively taken a specific stance against Muslim women’s veiling. Sahar Amer, of the University of North Carolina at Chapel Hill, states it best: “In France today, the veil and the debate surrounding it in public high schools crystallize all the problems France has to deal with in terms of postcolonialism, national identity and the

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Maghrebian immigrant situation.”

A look at France’s conflict-ridden history can begin to explain why public displays of religion are taken so seriously. Maximilien Robespierre’s persecution of all religions but Catholicism in the 1790s led to a revolt in an attempt to end his tyrannical reign. This bloody past has led France to reject the public practice of religion, and so the idea of the “generic French citizen” emerged as one who did not have outward markers of religion that separated him/her from the majority of French society. As Professor of Anthropology John R. Bowen states,

The legacy helps to explain the degree to which many teachers and intellectuals see the contemporary presence of Islam in the schools as threatening to turn back the clock on at least two struggles: the fight to keep religion from controlling young minds, and the struggle to forge a common French identity.

But this form of equality denies people their individual freedoms and does not allow them to express their ideas, opinions, beliefs, and values in society in ways that are not disturbing to the general public, but could actually create inter-cultural and inter-faith dialogue and allow for people’s religions to remain an important part of life. Complete and total secularism creates a neutral society in every sense, and that should not be a goal. Full neutrality allows a type of censorship to exist in society because, in this case, it denies certain people the right to express themselves religiously.

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3 Amer, Sahar. “Uncovering the Meaning of the Veil in Islam.” University of North Carolina at Chapel Hill. pp. 1. This is an article written by a professor in the Department of Asian Studies at the University of North Carolina at Chapel Hill.
4 Bowen, 24.
5 Bowen, 25.
In France, *laïcité* further evolved in concert with the Loi du 9 décembre 1905 relative à la séparation des Églises et de l’État. This law, as an article in *Le Monde* stated, “contraindrait les personnes à montrer leur visage à l’entrée du service public ou du moyen de transport public et à conserver le visage découvert tout au long de leur présence au sein du service public.” However, it does not use the word “laïcité,” which, in fact, is never clearly defined in French law. *Laïcité* cannot be taken to mean the same thing as “secularism” does in the United States. Joan Wallach Scott points this out in her book, *The Politics of the Veil.* “*Laïcité* means the separation of church and state through the state’s protection of individuals from the claims of religion. (In the United States, in contrast, secularism connotes the protection of religions from interference by the state.)”6 This means that there is a neutral public sphere without signs of religion, because that is seen as separation amongst the people. But in order to have this neutral sphere, people still need to have freedom of religion. There are many interpretations of what *laïcité* really means which makes it difficult to determine when a law in the name of *laïcité* goes too far. It cannot be compared to the concepts of secularism in other nations, like the United States, because the history surrounding its conception has had a very different influence on its practice today. The 1905 law specifically states, “La République ne reconnaît, ne salarie ni ne subventionne aucun culte,” so there would be no state-sanctioned religion.7 But in practice, minority religions are much less

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accepted by the state today and, in fact, "[the] government subsidizes the Catholic religion far more than it does other religions."  

With great North African immigration and colonialism in the 19th and 20th centuries, France found itself more and more invested in Islamic affairs. In the beginning of the 20th century, Algerian men had been immigrating to France to work with the eventual goal of returning home. But after Algeria won its independence from France in 1962, there was a “demographic transformation of the immigrant population” because the Algerian men brought over their families and the Arab population in France grew. By the 1980s, the children of these immigrants had begun to demand their rights as French citizens. In September 1989, an incident occurred, called “L’Affaire du voile,” where a middle school principal denied three young Muslim girls entrance because they refused to remove their headscarves. The principal defended his actions in the name of laïcité, but many in the international community viewed it as blatant discrimination against Muslims. (The principal later called the incident a problem of “insidious jihad.”) This finally raised questions of rights with respect to laïcité, because of perceptions that “les droits individuels de ces jeunes filles n’avaient pas été respectés.” The state then made a step toward the less neutral idea of equality when the Conseil d’Etat “found that the wearing of the head scarf was not a violation of the separation of church and state since the law applied to buildings and curriculum but not to students unless they engaged in

8 Bowen, 27.
9 Bowen, 67.
10 Scott, Joan Wallach. The Politics of the Veil, 22.
activities that disturbed the peace.”12 Despite this ruling, not much changed, since “the legacy of the Algerian War, the long-term suspicion of Islam, the visible difference that ‘native French’ thought they saw between themselves and these new strangers,” as well as global events like the 1989 fatwa issued on Salman Rushdie by the Iranian Ayatollah Khomeini and the first Palestinian intifada in 1987,13 caused a growing fear of Islam in France.14

In September 1994, Minister of Education François Bayrou responded to this fear “with a directive that required principals to ban all ‘ostentatious’ signs from schools. He made it clear that the directive was aimed at excluding all headscarves from schools.”15 Continued war in Algeria and the explosion of bombs in Paris and Lyon in 1995 further perpetuated French society’s Islamophobia because political Islam was being used as a tool to show that, “headscarf = Islam = terrorism.”16 French society began to associate the removal of the headscarf with a myriad of other good things happening.17

By 2004, the situation had reached a critical point, one in which “there would no longer be compromises or mediation—it was either Islam or the republic.”18 On March 15, 2004, then-President Jacques Chirac signed into law a bill that banned "the wearing of symbols or clothing by which students conspicuously manifest a

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14 Bowen, 67.
15 Bowen, 89.
16 Bowen, 90.
17 Bowen, 99.
18 Scott, Joan Wallach. The Politics of the Veil, 35.
religious appearance" in public primary and secondary schools. Islamophobia then seemed rampant in society because while Muslim women and girls protested the law, they were in a minority who did. However, “Le Monde took a strong position against the law... charging that such a law would ‘stigmatize, marginalize, and exclude a part of the population when the country has more than ever a need for integration.” This poignant position on the subject brings to light the idea that the law is a form of discrimination, a violation of human rights, and an unnecessary step in the direction of a neutral but virtually unequal and oppressive republican society.

Some believe that this law of 2004 was spurred on by the events of September 11, 2001, in the United States. The international community became even more wary of fundamentalist Islam after those events. Islam itself and all Muslims began to be associated with the radical people who committed the terrors of 9/11 so much that, “le hijab tend à être identifié par une majorité d’acteurs de la société française... comme l’expression d’une islamité menaçante et le symbole d’un nouveau fondamentalisme musulman qui mettrait en danger les valeurs laïques et républicaines.” These values about the republican view of equality are not something for which they should strive because they promote the suppression of individual freedoms. The idea of the hijab relating to fundamentalist Islam must also be addressed. Ideally, “Les services publics doivent apprendre à distinguer

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20 Bowen, 128.
l’islam du radicalisme,” by allowing the veil to be worn by Muslim women so non-Muslim French citizens can observe that these women are not fundamentalist and potentially dangerous Muslims, but are simply devout followers of their religion who are only trying to express themselves and their relation to their religion.22

On April 11, 2011, French president Nicolas Sarkozy “formally banned the wearing of full veils in public places... [and France became] the first country in Europe to impose restrictions on a form of attire that some Muslims consider a religious obligation,” as stated in The New York Times.23 According to this article, the law “is viewed by supporters as a necessary step to preserve French culture and to fight what they see as separatist tendencies among Muslims.” However, these so-called “separatist tendencies,” in reality, are simple expressions of belonging to a certain religion. Believing in different religions should not separate people, and in fact does not in many other countries, but rather brings people together in a sort of unified diversity. But in France, fewer than 2,000 Muslims wear the niqab, or face-covering veil. So, as Sarah Joseph asks in her CNN article, “Burqa ban turns a right into a crime,” what purpose does this ban serve? “We are told it is for security, the preservation of ‘French values’ and to alleviate the oppression of women.”24 Again, the idea of French values is brought into the picture. However, as evidenced by the protests surrounding this ban (and the March 2004 law) in France, the criticism

from the international community, and the societal attitude they have created, these French values are flawed. These values are permitting the French police to impose fines on and require citizenship lessons of veil-wearing women. It is understandable that veil-wearing women should be required to remove their veils “for security purposes” at airports and other places where identity checks are called for, but in other public places, this ban has no legitimate role, other than the oppression of these women’s rights.

The French Constitution only mentions religion in relation to the claim that it will be a secular state. However, it also says that l’Etat “assure l’égalité devant la loi de tous les citoyens sans distinction d’origine, de race ou de religion. Elle respecte toutes les croyances.” The aforementioned laws defy these statements in the constitution because the prohibition of a religious garment is not “respecting” their beliefs. Muslim women in France who wear the veil choose to because they are devout followers of their religion and they believe the Quran mandates it. The banning of it should not be to “alleviate the oppression of women,” as stated in The New York Times article, because these women are not being oppressed by their veils, but rather by the law not permitting them to wear them. In her lecture, “Do Muslim Women Really Need Saving?” Lila Abu-Lughod describes why Muslim women choose to wear the veil: “Everywhere, such veiling signifies belonging to a particular community and participating in a moral way of life in which families are paramount in the organization of communities and the home is associated with the sanctity of

25 Erlanger, Steven.
26 Joseph, Sarah.
women.”28 This sense of belonging is very important to these women and should not be denied them. Just like celebrating holidays and worshipping together bring people together, so does the veil for these women. As in any other religion (like Catholics or Jews who constantly wear a cross or star of David around their necks), outward signs of Islamism help create a community, one that is not necessarily fundamentalist, especially in France, where Muslims are a minority.

The French idea of “equality” is total neutrality, meaning a lack of any factors that separate the French people from each other. This came from the French Revolution which, in 1789, caused a complete recreation of the governmental system after the feudal regime was taken apart. The revolutionaries conceived of a democracy as “the complete sacrifice of the individual to the res publica,” where “there were no politically relevant differences within ‘the people.’”29 This idea extended much farther than the French Revolution of the 18th century. As President Jacques Chirac noted in a speech in 2003 about religious symbols, “It is the neutrality of the public space that permits the peaceful coexistence of different religions.”30

In a society such as this, people may be seen as equal, but they are surrendering their individuality to achieve it. However, one might even argue that religion is not a “politically relevant” difference because it exists mainly within the private sphere. John R. Bowen addresses this in his book, Why the French Don’t Like

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30 Bowen, 29.
Headscarves, when he distinguishes between “religion” and “le culte,” which is the actual French term used to specify what the French state regulates and which freedom is given. “Le culte” is the “outward expression” of one’s relationship to God, which includes “the celebration of the culte, as in the mass; its buildings; and the teaching of its principles.” In this sense, “le culte” becomes part of the public sphere and, according to the French, is therefore something that should be controlled in order to ensure the republican view of equality.

The hijab developed in Islam as a humble form of dress for Muslim women. It signifies modesty and allows women to participate in the public sphere without sacrificing their morality and humility. It also represents one of the most basic concepts of Islam, as exemplified in this statement by The Institute of Islamic Information and Education:

Why do Muslim women have to cover their heads? This question is one which is asked by Muslim and non-Muslim alike. For many women it is the truest test of being a Muslim. The answer to the question is very simple - Muslim women observe HIJAB (covering the head and the body) because Allah has told them to do so.

Muslim women who follow their religion closely choose to wear the hijab as a sign of their belonging to the religion as well as for a service to God. Quran 33:59 is the most cited reference for the obligation of hijab: “O Prophet, tell your wives and daughters and the believing women to draw their outer garments around them (when they go out or are among men).” A woman’s modesty is one of her most

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31 Bowen, 17.
33 Ali, Mary C.
34 Ibid.
essential qualities as well as a powerful tool. She may show herself to her family members, but with unrelated men, she should be covered, according to some interpretations of the Quran. In today’s view, the wearing of the hijab is a choice to be made by every Muslim woman. This choice must be made based on how the woman feels about the different interpretations of the Quran and her own values and beliefs about modesty. However, for the amount of Muslim women who do wear the veil, it is empowering:

A Muslim woman who covers her head is making a statement about her identity. Anyone who sees her will know that she is a Muslim and has a good moral character. Many Muslim women who cover are filled with dignity and self esteem; they are pleased to be identified as a Muslim woman. As a chaste, modest, pure woman, she does not want her sexuality to enter into interactions with men in the smallest degree.35

Many politicians who judge the veil may not fully understand its uses and the reasoning behind it and therefore cannot properly judge its supposed separating nature.

The issue of women’s rights that is brought up with this concept of laïcité in relation to veil-wearing women is not entirely valid. Some feminist scholars say that the veil is “inherently oppressive”36 because women wear them out of fear: “fear of fathers, fear of brothers, fear of deathly reprisals because the woman’s or family’s honor has been besmirched, or fear of family and local community ‘values.’”37 Many see Muslim women as being forced to wear the veil because of living in a patriarchal

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35 Ali, Mary C.
society. But it is the complexity of the reasoning behind the veil that has caused it to be ignored by scholars and political figures.\textsuperscript{38} A sociological study by Françoise Gaspard and Farhad Khosrokhavar found that young women who wear scarves wear them to accomplish two things: “defining themselves in Islamic terms and entering the world of post-secondary education and work.” Furthermore, “these women tended to be educated and successful, and to regularly pray, fast, and observe dietary rules.”\textsuperscript{39} The majority of Muslim women in France are not forced to wear the veil by their husbands or any other person but choose to because it actually empowers them: devout Muslim women cover themselves to be seen for their minds instead of their bodies. A woman who wears the veil chooses to because then she is “concealing her sexuality but allowing her femininity to be brought out.”\textsuperscript{40} This turns women into intellectual beings instead of sexual beings, which gives them authority to a certain extent and makes them equal to men. Gaspard and Khosrokhavar also noted that they “did not find women with allegiances to political Islamic groups; to the contrary, all the girls and women emphasized their right to make their own decisions.”\textsuperscript{41} The veil, in part, gives them this right and is also for educational purposes within Islam.

Veil-wearing women are liberated within their niqab because they are not being objectified by men. It is also a separation of men’s and women’s spheres, which some people see as inequality for women, but in reality is quite the opposite.

\textsuperscript{38} Bowen, 70.
\textsuperscript{39} Bowen, 71.
\textsuperscript{40} Ali, Mary C.
\textsuperscript{41} Bowen, 71.
Anthropologist Hanna Papanek described it as “portable seclusion”\textsuperscript{42} which became a “liberating invention because it enabled women to move out of segregated living spaces while still observing the basic moral requirements of separating and protecting women from unrelated men.”\textsuperscript{43} Islam itself does not oppress women but gives them the option to maintain their modesty from men outside their family with the veil. Granted, these women are choosing to exhibit themselves in a different way than many other women in France, but that is their choice. They are not forced, as evidenced by the previous studies. So, as Lila Abu-Lughod points out in relation to women who wear burqas in Afghanistan, “if this is the case, why would women suddenly become immodest?”\textsuperscript{44} Just like in Afghanistan, the so-called “liberation” from the veil with this April law was ill-received by the affected women in France because the veil has been their choice and their way of life for so long, they do not want to change it and they should definitely not be forced to change it. It is ingrained in their belief system, which is not so easily modified with oppressive laws by Chirac and Sarkozy. Nor would they want to change it, just as many religious people in the world would not want to change some of the fundamental beliefs associated with the practice of their religion.

Even more than this basic disregard for the Muslim belief system, the French government and laws go against many human rights documents. The French document from 1789, La Déclaration des droits de l'homme et du citoyen, declares in Article 10 that, “Nul ne doit être inquiété pour ses opinions, mêmes religieuses,

\textsuperscript{42} Quoted in Abu-Lughod, 785.
\textsuperscript{43} Abu-Lughod, 785.
\textsuperscript{44} Ibid.
pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.”45 The veiling laws violate this Article because they make it illegal for women to wear the veil when it in no way disturbs the public order. The French Constitution’s Preamble recalls this Declaration of the Rights of Man of 1789, which clearly influenced many of its articles.46 A number of laws in history have been changed because they were declared unconstitutional and not in accordance with the Declaration of the Rights of Man. So how have the laws from 1905, 1994, 2004, and 2011 been able to endure for this long? They are clearly in violation of the right to free expression of religion. Furthermore, as this Declaration gives everyone the rights to “liberty, property, security, and resistance to oppression” in Article 2, and then states in Article 4, “Liberty consists in the freedom to do everything which injures no one else,” the veiling bans from 2004 and 2011 violate the rights given to veil-wearing women in this Declaration. The Constitutional Council was created by the Constitution to determine the constitutionality and legality of French laws and referenda.47 Since the veiling laws violate this Declaration, the Constitutional Council has a duty to repeal them and declare them unconstitutional.

The French Declaration of the Rights of Man and of the Citizen was approved by L’Assemblée Nationale in 1789 but was soon followed by the French Revolution, after which the Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793) was adopted. This document reinforces its predecessor in Article 7,

47 See “The Constitution of October 4, 1958.” Title VII.
which states: “The right to express one’s thoughts and opinions by means of the press or in any other manner, the right to assemble peaceably, the free pursuit of religion, cannot be forbidden.” Under the new veiling laws, Muslim women are not being allowed to pursue their religion freely. The Declaration also states: “There is oppression against the social body when a single one of its members is oppressed: there is oppression against each member when the social body is oppressed.”

Following this logic, the entire French body politic would be oppressed because of these veiling laws by Jacques Chirac and Nicolas Sarkozy. They should all then have a duty to fight the government’s oppression. However, this is not recognized, since the majority of French society shares the republican concept of equality being neutrality that (ironically) also developed during the French Revolution.

The French government and people are accountable to the international community as well. In 1983, France ratified the Convention on the Elimination of All Forms of Discrimination Against Women. Article 2 of said Convention states:

States Parties... undertake:

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

49 Article 34.
The secular laws specifically target Muslim women, which is blatant discrimination on the part of the French government, not the “elimination” of it. The law of 1905 that separated Church and State should have been repealed after this Convention was ratified since it has the potential to (and in this case, did) discriminate against women of a particular group. So in keeping with the Convention signed during François Mitterrand’s term,52 France would have the responsibility to remove said law and prevent new ones like it from forming since their ratification did not come with reservations pertaining to this Article or any others that relate to this topic.53

The Universal Declaration of Human Rights (UDHR) was created in 1948 as a response to the events of World War II, where over six million Jews died because of their religion.54 To keep this kind of persecution from happening again in the future, Article 18 of the UDHR states:

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in a community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance.55

The wearing of the veil is the manifestation of observance of Islam for certain devout women who interpret the Quran as mandating it. Denying them the right to manifest their religion is a type of persecution because it explicitly discriminates against one specific religion and one aspect of the practice of it. Since the UDHR was

53 “United Nations Treaty Collection.”
a response to the Holocaust, this type of discrimination should not be permitted. The European Convention on Human Rights states virtually the same thing as the UDHR in Article 9 as well.\textsuperscript{56} The international community therefore has a responsibility to take action against these laws with more than just protests. The United Nations should be intervening and sanctions should be set against France and Nicolas Sarkozy while these laws exist.

In keeping with Shari'a law, all people should have freedom of religion, as stated in Article XIII of the Universal Islamic Declaration of Human Rights: “Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.”\textsuperscript{57} The burqa, niqab, and hijab are related to worship of Islam because they are observances of religious mandates in the Quran. Contemporary Islamic thought has embraced this concept of freedom of conscience, like in the UDHR and the Declaration of the Rights of Man. These veiling laws are discrimination against one religion, Islam, and against the devout women of that faith. If France were truly a secular, neutral society, all signs of religion would either be permitted or banned. While the law of March 15, 2004 bans “the wearing of symbols or clothing by which students conspicuously manifest a religious appearance,”\textsuperscript{58} in practice the people told the most often to change their clothing because of this law are Muslim girls and young women.\textsuperscript{59} Furthermore, the law Sarkozy passed on April 11, 2011 specifically banned the face veil, which is only


\textsuperscript{58} Choudhury.

worn by Muslim women, because it is an ostentatious sign of a religion that Sarkozy sees as disturbing the public. It is not a coincidence that Sarkozy has banned an article of clothing that is exclusively Muslim, but has not addressed the wearing of habits by Catholic nuns in public places. Why are these habits, which are simply another form of religious dress for devout adherents to that religion, not seen as disturbing to the public? This even goes against the idea of the republic, which Sarkozy claims to support. Bowen relates the headscarf, the nun's habit, and France's past:

The headscarf and mosque are not objectively more visible than the nun's habit and the cathedral, but they are, or were, subjectively shocking because they were new or foreign—or perhaps, as reminders of a bloody, recent colonial past, not foreign enough, not foreign in an innocuous way as a Baha’i temple would be. Muslims' demands to live their religion publicly also made explicit the contradictions already in place between French ideas about religion's private character and the still-public role of France's Catholic heritage. The public ubiquity of crosses and churches could be ignored—had to be ignored—for reasons of civil peace, but ignoring crescents and mosques was more difficult.

Catholic nuns in France are free to wear their habits in any public place without fear of being fined, unlike niqab-wearing Muslim women. Sarkozy’s and much of French society’s Islamophobia are exhibited in these laws, especially when viewed in contrast with their Catholic counterparts and even the republican ideal of equality and neutrality.

French society itself has a skewed version of what it means to be “equal.”

The French revolutionaries created this version of equality as neutrality to

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60 The law forbade Jewish skullcaps (yarmulke), Sikh turbans, large crosses, and headscarves. See Rebecca Rogers, “Reading *The Politics of the Veil.*”

61 Bowen, 20.
guarantee everyone’s rights, but in practice it has denied these rights to minority
groups and to Muslim women in particular. The republican ideals of the French
have created a stifling living space for Muslim women who choose to wear the veil.
Their individual freedoms of liberty and the right to practice and observe their
religion, as outlined in many international human rights documents, are being
violated. The laws of laïcité from 1905, 2004, and 2011 explicitly discriminate
against this small group of about 2,000 women in all of France.62 The wearing of the
hijab does not disturb the public in any way and while it is an obvious sign of a
religion, it is not the only one that is in existence in French society today, but it is the
only one explicitly banned in the 2011 law and one of the few in the 2004 law.
Neither of these laws addresses the Catholic nun’s habit, which is highly comparable
to the hijab, since only devout female members of the religion wear it, and by choice.
This choice helps define them and give them a sense of belonging, while also turning
them into intellectual instead of sexual beings in the eyes of other members of
society.

Muslim women in France who choose to wear the veil are not being forced by
men but instead are using it to reaffirm their beliefs and to respond to the male
tendency to objectify women or evaluate them based on their looks as opposed to
their minds. Therefore, it is not a violation of women’s rights to wear the veil. It is
actually a violation of CEDAW to prohibit it, as France has done. The veil is an
essential aspect of their religion and if they choose to observe the practice, it should
be permitted. Freedom of religion is one of the most basic freedoms granted to

62 Joseph, Sarah.
humans in numerous human rights documents. It should not be violated so outrageously. Discrimination such as this should not be overlooked by the international community. The UDHR is recognized internationally as essential to the human rights doctrine and CEDAW has been signed by 98 countries. Yet, the gross denial of these women’s rights continues even when countries in the international arena have the responsibility to react to it and at least attempt to end the oppression.

Islamophobia has become rampant in western and developed society after the tragic events of September 11, 2001. However, the world must learn to differentiate among fundamentalist Muslims and the vast group of other Muslims, who are not dangerous terrorists, but are just trying to live their lives in accordance with Shari’a law and by following the Quran and the words of God. They want to live in peace. The world must let them.
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