

# The Veil as a Subject for Comparative Legal Analysis

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## Introduction

The Muslim woman's veil<sup>1</sup> is a commonplace article of clothing in many parts of the world, one which many of its wearers scarcely give a moment's thought. Yet it is also sometimes a highly charged signifier that, in different places and at different times, has stood for gender repression or equality, political orthodoxy or revolution, liberal human rights values or rank oppression. These associations have, in turn, provoked a disparate collection of legal responses from the cultures in which these competing meanings have been generated. These starkly different legal responses make the veil a particularly useful subject of study for the comparative legal scholar or teacher interested in the impact of history and culture on law. This paper will briefly illuminate the differences in understandings of the veil across several legal/cultural systems in order to illustrate this subject's potential.

### A. The Veil Within Islamic Contexts

Muslims have given many interpretations to the Quran's command that men and women should dress modestly.<sup>2</sup> Generally, these variations reflect the impact of different cultural traditions rather than religious disagreements.

One version reads the Quran as providing religious and legal sanction for men to impose draconian veiling requirements upon women, consistent with cultural systems that are unapologetically patriarchal. The treatment of women by the Taliban in Afghanistan provides a recent example where the legal consequences for noncompliance with veiling laws included beatings and worse. Yet this is by no means the only view. In fact, some Muslim women see the veil as a way to assert control over when and how men look at them.<sup>3</sup> From this perspective, the veil makes a statement of gender independence and may in a real sense promote what Westerners would regard as gender equality.

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<sup>1</sup> This article of clothing has many names; I've chosen the one that is probably the most familiar to American readers.

<sup>2</sup> For an extended analysis of this internal controversy from a feminist perspective, see Nancy J. Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom*, 170-198.

<sup>3</sup> See Hirschmann at 182-184.

Given this gulf in the “original” understandings of the veil, it is not surprising that laws about veiling (whether to, how much) across Muslim countries are quite heterogeneous. Thus, the veil is instructive at the outset in reminding us that neither Islam nor Islamic law are monoliths. Culture and history are embedded in the differing approaches to the subject of the veil within the world’s many Islamic legal contexts.

## **B. The Veil and Political Speech**

Moving from these “original” gender-related meanings, the veil has also acquired distinctly political meanings in places where the veil is seen as a symbol of opposition to the political establishment. The Turkish Republic, for example, emerged from the ashes of a theocratic empire, and from the start, the new republic’s founders sought to replace the symbols of the old regime with those that they felt represented modernity and progress. Thus, where the sultans had required that their subjects’ to don attire reflecting their religious affiliations,<sup>4</sup> the new republic’s framers favored the suits, ties, and fedoras of Western Europe. They also sharply restricted the wearing of the traditional fez by Muslim men and veils by Muslim women, especially in government settings and universities. Today, Turkey faces a rising Islamist movement bent on eroding Turkey’s strict secularism. Female adherents of this movement have sought to wear the veil in government settings, and these acts have been interpreted as direct political challenges to Turkey’s constitutional secularism. In short, the meaning of the veil in Turkey (and in other places) is has become distinctly political.

France, like Turkey, has also banned the veil along with other religious symbols in public schools on grounds that these institutions are strictly secular. But France does not share Turkey’s recent experience as an Islamic empire. Instead, France is a predominantly Christian nation whose former empire included large numbers of Muslims. This imperial legacy has left France with one of Europe’s largest Muslim immigrant populations, a situation that unsettles French nationalists. In this context, France’s ban on veils and other religious symbols in schools, adopted in 2004, might be viewed at least in part as reflecting nationalist, anti-immigrant sentiments. Similarly, the current effort to extend the veil ban to all public places—a restriction that would go beyond the limits imposed in Turkey—has been challenged by those who argue that such a sweeping measure stigmatizes French Muslims at a time when there is a significant need to incorporate them into the French polity.<sup>5</sup>

## **C. The Veil and Personal Autonomy**

Intolerance of the veil has lead to condemnation in some quarters that is rooted in another perspective—namely, that the veil is an expression of religious liberty and individual

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<sup>4</sup> Sahin v. Turkey, Application No. 44774/98, European Court of Human Rights, paragraph 29.

<sup>5</sup> “Only 367 Muslim Women in France Wear Full Veil – Report,” New York Times, July 29, 2008, <http://www.nytimes.com/reuters/2009/07/29/world/international-uk-france-veil.html>. According to this article, President Sarkozy has not endorsed this plan but has stated that the veil is “not welcome” in France.

autonomy. Many American observers tend to criticize Turkish and French restrictions from this perspective, for there is general agreement that under the United States Constitution, wearing the veil is an act of religious self-expression that should be protected against state interference. Indeed, to the extent that wearing a veil is meant to convey political speech in addition to religious expression, the American perspective tends to find additional justification for restraining the state.<sup>6</sup> At the same time, of course, these same observers are critical of policies in places like Taliban Afghanistan and Iran, where veiling is compulsory; the nominal unifying idea in these criticisms is that veiling as a form of religious or political expression ought to be the choice of the individual, not the state.

## Summary

Across these various cultures, the veil takes on different meanings, reflecting the religious, cultural, political, and ultimately legal landscapes within which these meanings are generated. In some Muslim cultures it is key to a patriarchal ordering of society; in others it is a means of thwarting or at least limiting the power of men over women. In Turkey, laws addressing the veil focus on political meanings, while in France there are charges that similar restrictions are inspired by anti-immigrant bias. In the United States, the meaning of the veil is mediated through the concept of individual autonomy, resulting in constitutional restrictions on the power of the state to both limit and require the veil. These disparate responses illustrate the potential of the veil as a focus for further comparative legal study and as a device for teaching comparative legal techniques that emphasize the role of history and culture in the production of law.

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<sup>6</sup> For a comparison of French and (likely) American constitutional responses to the banning the veil in schools, see Anita L. Allen, *Undressing Difference: The Hijab in the West*, 23 Berkeley J. Gender, L., & Justice 208 (2008).