DEBATING THE BURQA: HOW THE BURQA DEBATE CAN REVEAL MORE THAN IT HIDES.

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In numerous countries throughout Europe a common debate has raged over whether state action should be taken to ban the burqa from the public sphere.[1] While issues over Muslim women's dress have long been debated politically, particularly in France where the *foulard affair* resulted in hijabs being banned from public schools in 2004,[2] the current proposals for banning the burqa from public space entirely is a remarkable and extreme extension of this debate. Further, what has been particularly interesting is that while the debate over banning the burqa first arose in France, the debate has come to envelop much of Europe simultaneously.[3] This paper will focus on a claim that has been prevalent by those advocating for a ban throughout the debates - that the wearing of the burqa is an oppressive practice and that multiculturalism is failing women within minority cultures.[4]

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1 For ease of reference this paper will use the term burqa to refer to both the niqab and the burqa simultaneously as a reflection of the fact that the popular media has failed to distinguish between the two. However, it is important to note that there are crucial differences between the two garments, both in terms of their cultural and geographical specificity and actual construction. The niqab covers the entire body, head and face but leaves an opening for the eyes. The burqa is a full body veil, which conceals the wearer's entire face, leaving the wearer to see through a mesh screen. Interestingly, it is actually the niqab which is most commonly worn in Europe, a point which will be returned to later in this paper.

2 The controversy over the hijab (Islamic headscarf) was sparked in October 1989, when three female students were suspended for refusing to remove their headscarves during class in a school in Creil. During the next fifteen years the matter was hotly contested until finally legislation was passed in 2004 which prohibited the wearing of any religious symbols in public school. This meant that the law also covered other religious symbols such as crosses and the Jewish yamaka. However, the primary purpose of the law was to prohibit the wearing of the wearing of the hijab. For more information see: John Bowen *Why the French Don't Like Headscarves: Islam, the State and Public Space* (Princeton University Press, New Jersey, 2007).

3 At the point of writing only France has passed a law nationally. However, certain cities in Italy have passed by-laws banning the garment from certain public areas as has Barcelona in Spain. Belgium's lower house overwhelmingly voted for a ban, but the bill awaits approval by the senate. The countries in which a ban has been discussed politically are numerous, including Austria, Germany, the Netherlands, Switzerland, Italy, Greece, Spain and Denmark.

4 A number of arguments have been made to justify a ban such as the secularity of the state, security, protecting the national culture and so on. However, this paper chooses to restrict itself solely to claims made relating to the oppression of women.

To take just a few examples of when this claim has been made the Speaker of the French Parliament, Bernard Accoyer, has said the full veil is "the symbol of the repression of women."[5] Meanwhile, French President Nicolas Sarkozy has argued that the burqa is "a sign of subservience" and therefore banning it "is a question of freedom and of women's dignity."[6] Echoing this sentiment Spain's Justice Minister Francisco Camano argued that garments such as the burqa are "hardly compatible with human dignity."[7] In similar vein an Austrian minister has stated that "[t]he burqa symbolises the submission of women."[8] These avowed statements of concern for women have been so uniform so as to prompt one commentator to contend that "[w]hen it comes to burqas, everyone it would seem is a feminist."[9] Numerous Western feminists have welcomed these statements of their leaders' avowed commitment to sexual equality and have agreed with the representation of the burqa as inherently oppressive against women.[10] Accordingly, Western women concerned with women's rights have been amongst the most ardent proponents of a ban of the burqa.

Yet the discursive construction of the burqa as monolithically oppressive is contestable and raises a number of issues. This paper will firstly briefly explore how the claim that the burqa is oppressive relies on a particular construction of the liberal notions of choice and agency. Secondly, this essay will survey multiculturalist claims and explore how multiculturalism is also being questioned in debates over the burqa. The third section aims at contextualising the burqa and critiquing how these debates have been framed. The fourth section will then turn to explore whether there are other meanings which can be accorded to the burqa. This section will also explore why the conceptions of choice and agency, within which debates over the burqa have been framed, are unhelpful on the basis they are reductionist and simplistic. Finally, this essay will conclude with some remarks as to why the notion that multiculturalism and feminism are opposed needs to be challenged, arguing that a more nuanced understanding of women in minority cultures allows us to go beyond this constricted dichotomy.

5 Quoted in: "France MP's Report Backs Muslim Face Veil Ban" *British Broadcasting Corporation* (Britain, 26 Jan 2010) <http://news.bbc.co.uk/2/hi/8480161.stm>.

6 Quoted in: "Sarkozy Says Burqas Have No Place in France" *Reuters* (United Sates, 22 June 2010) <http://www.reuters.com/article/idUSTRE55L2YV20090622>.

7 Quoted in: Natalie Orenstein "France Hardly Alone on Burqa Ban" Newsdesk (21 July 2010) <http://newsdesk.org/2010/07/france-hardly-alone-on-burqa-ban/ on the 10th of December 2010>.

8 Quoted in: David Rogers "Women's Minister Considering Burqa Ban" Austrian Times (Austria, 23 December 2010) <http://www.austriantimes.at/news/General_News/2009-12-23/19123/Women's_minister_considering_burka_ban>.

9 "The Burqa Debate: Are Women's Rights Really at Issue?" *Reuters* (Germany, 24 June 2010) <http://www.spiegel.de/international/europe/0,1518,702668,00.html>.

10 Western feminists who have supported a ban of the burqa on the grounds of oppression include: Elizabeth Badinter, Julia Onken, Alice Schwarzer, Sushi Das and Elizabeth Farrelly.

I. Liberal Notions of Choice and Agency

It is not surprising that choice has become a central way in which advocates for a ban have validated their claim that the burqa is an oppressive practice against women, given the importance of liberalism to modern European states.[11] This section will therefore provide a very brief outline of the hegemonic position choice and agency occupies within liberal theory. Whilst liberalism has been formulated in numerous different ways by theorists,[12] generally it may be said that the basis of liberal ideology rests upon fundamental postulates about the nature of man as a rational, autonomous and atomized individual.

Based on this conception of man viewed in abstraction from community liberalism argues that the best society is one that gives primacy to individuals to make their own choices according to their own interests as opposed to the choices or interests of the wider community. In its traditional form, as articulated by John Stuart Mill, the supremacy of the individual is justified by the utilitarian argument that the overall good, as the aggregate sum of all individuals' good, is best maximised by allowing individuals to pursue their own life projects.[13] In its more modern form, liberalism has been dominated by Kantianism under which utilitarian arguments are rejected and the individual as an end in themselves is given primacy.[14] From this conception of liberalism, what justifies the rights of the individual is not the maximisation of general welfare or the promotion of the good, but rather that assigning such rights to individuals allows them to choose their own values and ends, consistent with a similar liberty for others.[15] On this basis the best possible societal arrangement is one that does not "[p]resuppose any particular conception of the good, for any other arrangement would fail to respect persons as beings capable of choice; it would treat them as objects rather than subjects, as means rather than ends in themselves."[16]

Therefore, according to this view, whilst it is proper for the state to guarantee the *rights* of the individual it is an improper curtailment of the freedom of the individual to preference any version of the *good*. On this deontological view, what matters above all is not the ends we choose but our

11 Indeed the influence of liberalism on the modern political, economic, social and cultural institutions of the West is difficult to overestimate or exaggerate. As noted by the legal theorist Roberto Unger, "though liberal theory is only an aspect of modern philosophy, it is an aspect distinguished by both the degree of its influence and the insight it conveys into the form of social life with which it is associated. All other tendencies have defined themselves by contrast to it; so it offers the vantage point from which to grasp the entire condition of modern thought." See: Roberto Unger *Knowledge and Politics* (Free Press, New York, 1975) at 8.

12 Note Kenny's observation that liberalism is best seen as a "historically evolutionary, culturally contingent, and internally divisive 'family' of partisan political ideas." Michael Kenny *The Politics of Identity: Liberal Political Theory and the Dilemmas of Difference* (Wiley-Blackwell, Cambridge, 2004) at ix.

13 Geoff W G Leane "Ways Not to Think About Social Theory: Rethinking Environment, Law and Society" (1997) 12 *Canadian Journal of Law and Society* 193 at 207-208.

14 See John Rawls *A Theory of Justice* (Oxford University Press, Oxford 1971).

15 Michael Sandel *Democracy's Discontent: America in Search of a Public Philosophy* (Harvard University Press, United States, 1998) at 10.

16 *Ibid* at 9.

capacity to choose them and this capacity, being prior to any particular end it may affirm, resides in the subject.[17] In order that each individual be liberated to pursue their version of the good life, as a free rational being, the state must not preference a certain form of the 'good life' as the individual must pursue this for themselves according to the dictates of their own interests. This form of liberalism therefore places a premium on the ability of individuals to make choices for themselves in isolation from wider considerations.

Given the importance liberalism places on the individual's right to choose for themselves what is in their own best interests, one can see that the contention that the wearing of the burqa is not a matter of choice is critical in legitimizing banning the burqa on grounds of oppression. Implicit to the argument that the burqa is a symbol of submission is the assumption of a lack of choice by those who wear the burqa. That is to say that if the burqa signals submission then it logically follows that those who wear the garment lack choice and this removes any question of agency from the wearer. Thus, dictatorial culture and the lack of choice and agency by those who wear the burqa has been a consistent theme in the discourse over debates on the burqa. As Bilge notes: [18]

> "the eviction of veiled women from the realm of agency is achieved through a syllogism: Agency involves free will; no woman freely chooses to wear the veil because it is oppressive to women; thus veiled women have no agency."

This representation of the burqa is important because in order to justify such an extension of state powers over a form of women's dress, the women who wear it must be constructed as in need of help.[19]

II. Multiculturalism

One of the most virulent critiques of the way choice is constructed by liberals has come from multiculturalist theorists who reject the Kantian notion of the individual as an autonomous, atomized being capable of making choices in abstraction from their culture. Instead they argue that all human individuals are born involuntarily into groups, such as families and ethnic communities, and these groups form, to a considerable extent, their identities.[20] It is therefore not desirable, nor even possible, for an individual to make their choices in abstraction from their family, ethnic groups, or

17 Michael Sandel *Liberalism and the Limits of Justice* (Cambridge University Press, Cambridge, 1982) at 6.

18 See Silma Bilge "Beyond Subordination vs. Resistance: An Intersectional Approach to the Agency of Veiled Muslim Women" (2010) 31(1) Journal of Intercultural Studies 9

19 Usamah Ansari "Should I Go and Pull her Burqa Off?: Feminist Compulsions, Insider Consent, and a Return to Kandahar" (2008) 25(1) *Critical Studies in Media Communication* 48.

20 Michael Freeman "Past Wrongs and Liberal Justice" (2002) 5 *Ethical Theory and Moral Practice* 201 at 206.

culture as these always function as an identity reference point from which position individuals construct their version of the good life. As Kymlicka has argued, culture forms the context of choice.[21] That is to say that: [22]

> the context of individual choice is the range of options passed down to us by our culture. Deciding how to lead our lives is, in the first instance, a matter of exploring the possibilities made available by our culture.

Multiculturalists also take contention with the notion that liberalism and the institutions it embodies are neutral as between individuals and their pursuits of the good life. Instead, they argue that every country and its respective institutions embody the values and norms of its culture and that this has a discriminatory effect for those who do not share that culture. The point was well articulated by Sandel when he wrote that: [23]

> [a]ll political orders thus embody some values; the question is whose values prevail, and who gains and loses as a result. The vaunted independence of the deontological subject is a liberal illusion. It misunderstands the fundamentally 'social' nature of man, the fact that we are conditioned beings all the way down.

According to this view "institutional bias is an inevitable result of the way in which public institutions, processes and even concepts have developed historically in particular places."[24] On this basis public decision making runs the risk of perpetuating institutional bias as minority claims continue to be assessed according to the stereotypes that inform the cultural values and norms of dominant majorities.[25]

Accordingly, multiculturalists argue that states' purported fairness in fact obscures the reality that the institutions of the state were created for, and continue to reflect, the interests of white, heterosexual, able-bodied men at the cost of marginalizing, ignoring and stifling groups that do not fit into this paradigm. On the strength of this critique multiculturalists such as Kymlicka have argued for a "differentiated citizenship" that treats people from different cultures differently than individuals from the majoritarian culture on the basis of their different cultural norms and values. In Kymlicka's own words, marginalised groups "(d)emand a more inclusive conception of citizenship which recognizes (rather than stigmatizes) their identities, and which accommodates (rather than excludes) their differences."[26] Thus whilst liberalism rests on the concept of the individual as separate and divorced from groups, multiculturalism seeks to recognize how individuals are culturally situated and the importance of groups in shaping peoples identity and choice sets.

21 Will Kymlicka *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Clarendon Press, Oxford, 1995) at 82-84.

22 *Ibid* at 126.

23 See Sandel *Liberalism and the Limits of Ju*stice, above n 17, at 11.

24 Avigail L. Eisenberg *Reasons of Identity: a Normative Guide o the Political and Legal Assessment of Identity Claims* (Oxford University Press, Oxford, 2009) at 3.

25 *Ibid* at 3.

26 Will Kymlicka *Contemporary Political Philosophy: an Introduction* (2nd ed, Oxford University Press, New York, 2002) at 327.

This politics of identity appears to violate the liberal idea that individuals should be the authors of their own lives, and that autonomous persons are capable of achieving some kind of critical detachment and reflection upon the communities and cultures they inhabit. Giving prominence to such identities as race, gender or sexuality within political theory therefore fails to sufficiently respect the value of individual self-determination.[27] However, whilst the pursuit of such policies can be seen as contrary to liberalism, some of the most influential and highly regarded multiculturalists such as Kymlicka and Taylor are self-defined liberalists who see their work as a progression or, rather, a fulfilment of liberal ideals as opposed to a rejection of them. This, they argue, is because the pursuit of such policies has the effect of encouraging virtues that are at the heart of liberalism such as equality and autonomy. As Kymlicka has noted, the "overwhelming majority of debates about multiculturalism are not debates between a liberal majority and communitarian minorities, but debates among liberals about the meaning of liberalism."[28] These theories of multiculturalism have been extremely influential on modern European states who have tried to give some credence to the differences represented by cultures by adopting some form of multiculturalism. Ways in which cultural difference has been accommodated are numerous and range from policies of making translators available to those unable to speak the mother tongue of a state, exceptions on abattoir standards for kosher and halal meats, and exceptions to safety standards for Sikhs so as to be able to wear their turbans whilst cycling. These accommodations by European states seemed to assure the ascendancy of multiculturalism within liberalism prompting Kymlicka to declare in 1999 that "multiculturalists have won the day."[29]

However, presently the place of multiculturalism is now being questioned, as is evident in debates over banning the burqa.[30] Whilst debates over multiculturalist policies have been formulated on a number of grounds, one of the most recurring arguments is that multiculturalism serves to exacerbate issues of inequality between the sexes in minority cultures. This issue first rose to prominence from feminist Susan Okin's influential article 'Is Multiculturalism Bad for Women?' in which she tackled the question of:[31]

27 Anthony Laden *Reasonably Radical: Deliverative Liberalism and the Politics of Identity* (Cornell University Press, New York, 2001) at 4.

28 Will Kymlicka *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford University Press, Oxford, 2001) at 7.

29 Will Kymlicka "Comments on Shachar and Spinner-Halev" in Christian Joppke and Steven Lukes (eds) *Multicultural Questions* (Oxford University Press, Oxford, 1999) at 113.

30 A retreat from multiculturalist policies was illustrated in no uncertain terms by German Chancellor Angela Merkel when she stated that attempts to build a multicultural society have "utterly failed." See: "Merkel says German Multicultural Society has Failed" *British Broadcasting Corporation* (Britain, 17 October 2010) <http://www.bbc.co.uk/news/world-europe-11559451>. See generally: Christian Joppke "The Retreat of Multiculturalism in the Liberal State: Theory and Policy" (2004) 55(2) *The British Journal of Sociology* 237.

31 Susan Molly Okin "Is Multiculturalism Bad for Women?" in Susan Molly Okin, Joshua Cohen, Michael Howard and Martha Nussbaum (eds) *Is Multiculturalism Bad For Women?* (Princeton University Press, Princeton, 1999) 7 at 9. For other scholars who have questioned the effects of multiculturalist policies on women see: Gita Saghal and Nira Yuval-Davis

> what should be done when the claims of minority cultures or religions clash with the norm of gender that is at least formally endorsed by liberal states (however much they continue to violate it in their practice)?

In this article she mounted an argument for the proposition that multiculturalist policies have had the effect of being positively harmful to some women in minority cultures. Her basis for this contention is that non–Western cultures tend to be more patriarchal and thus, by allowing their cultural practices to exist in majority liberal cultures, we are condemning women in these minorities to having less freedom than they would enjoy under the majority's culture.
On this basis Okin concluded that: [32]

> [n]o argument can be made on the basis of self-respect or freedom that the female members of the culture have a clear interest in its preservation. Indeed, they *may* be much better off if the culture into which they were born were either to become extinct (so that its members would become integrated into the less sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women—at least to the degree to which this is upheld in the majority culture.

The argument that multiculturalism adversely affects women within minority cultures has been enthusiastically espoused by numerous commentators some of which have gone so far as to describe multiculturalism as a form of 'legal apartheid' for the vulnerable.[33] In this way discourse was presented which placed multiculturalism and feminism at odds with one another. Throughout debates over banning the burqa the notion that multiculturalism is "failing" Muslim women has featured prominently both within political discourse and academic scholarship.[34] However, it can be argued that conceiving the burqa as monolithically oppressive, and multiculturalism and feminism as theories that have opposing interests is a simplistic way in which to frame arguments over the burqa. The following section therefore aims to expand these reductionist accounts of the burqa by arguing that this way of framing the debate is part of larger historical processes and theories which deserve critiquing.

"Introduction: Fundamentalism, Multiculturalism and Women in Britain" in Gita Saghal and Nira Yuval-Davis (eds) *Refusing Holy Orders: Women and Fundamentalism in Britain* (Virago, London, 1992) 7.

32 See Okin, above n 31, at 22.

33 Eisenberg, above n 24, at 6.

34 See Silma Bilge "Between Gender and Cultural Equality" in Engin Fahri Isin (ed) Recasting the Social in Citizenship (University of Toronto Press, Toronto, 1998) 100

III. Contextualising the Burqa: Orientalism and Post-Colonial Feminism

A number of feminist scholars, whom for ease of reference may be referred to as 'Third World feminist scholars',[35] have taken contention with Western feminists' condemnation of the burqa.[36] It is contended by these scholars that the construction of the burqa as a symbol of Muslim women's oppression has historical antecedents grounded in colonialism. These scholars have drawn upon the famous observation made by Edward Said in *Orientalism* that through discursive representation the East is seen as the embodiment of ancient rituals, despotism, barbarity and tradition whereas the West is the incarnation of progress, democracy and civilisation.[37] The assumption that eastern cultures are 'traditional' in contrast to Western 'modernity' serves to construct these cultures as ahistorical and permanently rooted in timeless traditions with unchanging meanings. This precludes an understanding that minority cultures, just like the cultures of the West, are continually transforming and changing and that cultural symbols, such as the burqa, are under continuous renegotiation and reshaping as to their meaning. These juxtaposing conceptions of the West and East are not grounded in any material reality, but rather become entrenched through what Said calls Orientalism's citationary nature.[38] That is to say that later representations of Muslims gain authority by citing earlier representations, which refer to each other in an endless chain that has no need for the actualities of the East.[39]

This binary juxtaposition of a 'traditional' East with a 'modern' West has in large part been premised on the Western perception of Eastern women as subjugated "victims of their culture".[40] Implicit to the idea that Eastern women were victims of their culture was the notion that these women needed someone to intervene on their behalf. The need to save women from their cultures became a central justification for colonialism, the phenomena of what Spivak in her memorable phrase called "white men saving brown women from brown

35 Understandably the term is not without critique itself. In particular the term 'third world' has been the subject of extensive criticism as a construct invented by the West. See generally: Gayatri Chakravorty Spivak *The Post-Colonial Critic: interviews, Strategies, Dialogues: Feminist and Post-Colonial Theory* (Routledge, London, 1990). Nonetheless, it is a useful term to denote the fact that the scholars to be drawn upon in this section are scholars whose work exists as a critique against mainstream Western scholarship.

36 The term 'Western feminists' is not used to describe all the works produced by feminists who were born into Western states. Rather it refers to works which adopt a 'Eurocentric' version of feminism, which it is argued is mainstream within Western states.

37 Edward Said *Orientalism* (Vintage Books, New York, 1979).

38 Ibid at 76-77.

39 Lila Abu-Lughod "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others" (2002) 104(3) *American Anthropologist* 783.

40 Marjorie Agosin *Women, Gender and Human Rights: a Global Perspective* (Rutgers University Press, New Brunswick, 2001) at 230.

men."[41] Thus for example, British colonial officials in Egypt specifically invoked the veil and treatment of women under Islam as a justification for colonialism.[42]

Here it is important to note that whilst it was men that intervened directly, Western women were among the main proponents for intervention in the interests of women in the 'dark worlds'. Scholars, such as Abu-Lughod and Loomba have traced a number of examples of pleas by Western women to intervene in the interest of their oppressed sisters. To use but one example, in an editorial in 1893 Josephine Butler argued that Indian women were: [43]

> …between the upper and nether millstone, helpless. Their helplessness appeals to the heart, in somewhat the same way in which the helplessness and suffering of a dumb animal does, under the knife of a vivisector. Somewhere, halfway between the Martyr Saints and the tortured 'friend of man' the noble dog, stand, it seems to me, these pitiful Indian women, girls, children, as many of them are. They have not even the small power of resistance which the Western women have.

In this way Western women during the colonial period, in seeking to speak on the behalf of those they viewed as oppressed, appropriated the voices of Third World women.

It can be argued that this reliance on the status of women as a justification for colonialism in turn shaped the anti-colonial struggle, with nationalist discourse relying upon the figure of women to strengthen notions of culture and tradition. Thus, because French and British colonizers encouraged Muslim women to remove the veil and emulate European women in Algeria and other North African and Middle Eastern countries, the veil became a powerful symbol of national identity and opposition to the West during independence and nationalist movements.[44] As Sa'ar has noted:[45]

> The discursive link between political disempowerment, culture and women, which originated in the particular historical juncture of modernity and colonialism quickly gained the status of an historical truism. As such it was uncritically adopted, also by the major counter-narratives, notably postcolonial nationalism, pan-Arabism, and political Islam.

Since the late 1970's Third World feminists, as well as post-colonial and multiculturalist theorists, have critiqued Western women's representations of Third World women[46] by drawing attention to these historical contexts and

41 Gayatri Chakravorty Spivak "Can the Subaltern Speak?" in Bill Ashcroft, Gareth Griffiths and Helen Tiffin *The Post-Colonial Studies Reader* (2nd ed, Routledge, Oxford, 2006) 24 at 33.

42 Lila Abu-Lughod "The Muslim Woman. The power of images and the danger of pity" [2006] *New York* 1 at 1. The treatment of women was also used to justify colonialism in India and Algeria amongst others. See generally: Ania Loomba, *Colonialism-Postcolonialism* (1st ed, Routledge, Oxon, 2005) at 171.

43 Ania Loomba *Colonialism-Postcolonialism* (1st ed, Routledge, Oxon, 2005) at 171.

44 Caitlin Killian "The Other Side of the Veil: North African Women in France respond to Headscarf Affair" (2003) 17(4) *Gender and Society* 567 at 570.

45 Amalia Sa'ar "Postcolonial Feminism, the Politics of Identification, and the Liberal Bargain" (2005) 19(5) *Gender and Society* 680 at 686-687.

46 I use this term in the sense adopted by Mohanty. She argues that "third world women" designates both geographical location and socio-historical conjunctures. It thus incorporates so-called minority people or people of colour within the United States. Therefore, even though the women who wear the burqa are more often than not second or third generation

the different subjectivities of women from non-Eurocentric cultures.[47] On the basis of these criticisms scholars writing in this tradition have attempted to incorporate the difference of Third World women into their scholarship. However, it can be argued that what has emerged from this challenge of taking into account women's difference has ended in Oriental clichés and the appropriation of other women's voices in much the same way as occurred during colonialism. Here it is useful to explore the work of Chandra Mohanty who, building upon work by post-colonialist scholars such as Said, has explored how Western feminists discursively represent women from the Third World in their scholarship. In particular, Mohanty has argued that Western feminists' assumption that women have a coherent group identity prior to their entry into social relations, ignores how the ideologies of masculinity, femininity and sexuality are inherently racialized.[48]

On this basis she argues that applying the notion of women as a homogenous category serves to colonize and appropriate the pluralities of women who occupy social classes and ethnic frameworks that are different from those of the Western feminists who are representing them. In doing so it ultimately robs Third World women of their historical and political agency. In Mohanty's own words:[49]

> [w]estern feminist discourse by assuming women as a coherent, already constituted group, which is placed in kinships, legal and other structures, defines Third World women as subjects outside of social relations, instead of looking at the way women are constituted as women through these very structures.

This means that women from the Third World are defined as women by a Western definition, but with what Mohanty calls the "Third World difference".[50]

What is meant here is that while women are seen as constituting a homogenous category, when women from the Third World are represented certain Oriental stereotypes are superimposed upon their identity as women. Thus as Mohanty notes the discursive representation of the average Third-World' women is one who "leads an essentially truncated life based on her feminine gender (read: sexually constrained) and being 'Third World' (read: ignorant, poor, uneducated, tradition bound, religious, domesticated, family oriented, victimized etc)."[51] On this basis it is argued that by constructing the women who wear it as a discrete and self-contained group, the similarities and differences both within and outside are ignored. Thus, attempts to incorporate difference has often ended up by categorizing other women into what Mohanty calls "tightly packaged discrete cultural units."[52]

Europeans the way in which they are represented nonetheless fits within the paradigm of third world women. See: Chandra Mohanty *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Duke University Press, Durham and London, 2004) at 44.

47 See Bilge "Between Gender and Cultural Equality", above n 34, at 123.

48 See Mohanty, above n 46.

49 Chandra Talpade Mohanty "Under Western Eyes: Feminist Scholarship and Colonial Discourses" (1988) 30 *Feminist Review* 62, at 79.

50 Ibid at 79.

51 Ibid at 80.

52 Quoted in: Bilge "Between Gender and Cultural Equality", above n 34, at 123.

Here it is important to expand on a point noted in the first footnote to this paper - that the 'full- cover' garment most commonly worn by Muslim women in Europe is in fact the niqab and not the burqa. While bans both proposed and enacted would ban both garments, the fact that the discourse forwarded by proponents on a ban has referred to the garment uniformly as the burqa is not an insignificant matter of semantics. Rather it can be seen as a reflection of a Western tendency to ignore cultural specificities and complexities in favour of a synecdochical simplicity and points to a deep disconnection between those supporting the ban and the Muslim women whose name they supposedly speak in.[53]

Ironically, it can be argued that multiculturalism's focus upon the rights of cultures to certain cultural practices (Sikh's to wear their turbans, Muslims to halal meat etc) has been part of what has led the majority to associate the minority primarily with these cultural practices. Such practices (in this instance the burqa) become the sole identity point for people within that culture with the consequent result that those within that minority become, in the majority's perspective, mere apparitions of their culture, stripped of all humanity. Thus women who wear the burqa become merely a burqa and a symbol of Islam and nothing more. As Watson has noted, the plethora of books written by Western women about "women behind, beyond, or beneath the veil gives the impression that Muslim women's main activity and main contribution to society is being in a state of veil."[54]

This representation of Third World women as being the embodiment of oppression allows Western women to discursively represent themselves in binary opposition. This is because it is only through representing the eastern women as other, or as peripheral, that Western women make their own subjectivities dominant.[55] Thus while women of the Third World are viewed as being culturally and traditionally bound, Western women are (self)-represented as educated, modern, as having control over their own bodies and sexualities, and the freedom to make their own decisions.[56] This ironically has meant that Western feminists whom have long fought against the imposition of their identity as being passive and lacking in agency have denied to Third World women the very agency which they have claimed for themselves.

The idea that minority women are oppressed and Western women liberated also reflects liberal ideals of the autonomous and transcendental subject. This is because liberalism presupposes an abstract subject, which is separate and

53 While it can be pointed out that the author of this paper has also been guilty of using the term burqa, despite its inaccuracies, this has been as a purposive reflection of the fact that this paper is primarily about discussing and critiquing the discourse, ideas and arguments surrounding the debates. It was therefore seen as appropriate to accurately reflect how these arguments have been presented.

54 Helen Watson "Woman and the Veil: Personal Responses to Global Process" in Akbar S Ahmed and Hastings Doonan *Islam, Globlalization and Postmodernity* (Routledge, London, 1994) 141 at 141.

55 Meyda Yegenoglu *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press, Cambridge, 1998) at 93: "[T]he 'inner' space of the Orient...its women... its harem...is the very ground upon which a Western woman's identity is anchored and founded."

56 See Mohanty "Under Western eyes", above n 49, at 79.

apart from the particular and the local, and constructs the boundaries of the liberal subject as "human civilised and universal."[57] However, in order to establish a self affirming referential point colonial discourse "inscribed the history of its others as backward and traditional and thereby placed cultures of different kinds in a teleological and chronological ordering of history."[58]

Thus, it can be seen that through juxtaposing Third World women with Western women, only Western women are endowed with agency and choice. This has meant that the clothing choices of Western women, arguably just as culturally loaded and patriarchal in their own way, are made to appear as though they are only motivated by choice. In sharp contrast a women who dons the burqa is portrayed as only conforming to the dictatorial confines of their culture and traditions; choice is completely absent from the equation. This can be linked to a general failure to look at the behaviour of the majority as cultural, on the basis that they are the referent point, while always ascribing the label of culture to the behaviour of minority groups.[59] In Volpp's words: [60]

> [w]ithin these discourses, only minority cultures are considered traditional, and made up of unchanging and longstanding practices that warrant submission to cultural dictates. That is to say, that while non-Western people are assumed to be governed by cultural dictates, Westerners are presumed to be acting by choice, as the capacity to reason is thought to characterize the West.

If Western women only achieve their own discursive (not material) liberation through a contrast with Third World women then this serves to throw some scepticism as to why certain causes are picked up by Western feminists to the exclusion of others. It can be argued that within this paradigm of oppression and liberation there is a tendency to concentrate upon oppressions that are conceptualized as being intrinsic to the culture of the other, thereby eliding forms of oppression which could be viewed as an outcome of the majority's society. In this way issues which are critical to the lives of Muslim women, such as racism, unequal opportunity, poverty, and crime are omitted from the picture. As Leila Abu-Lughod notes, it is unlikely that it would be so easy to mobilize Western women if it were not a case of "Muslim men oppressing Muslim women; women of cover for whom they can feel sorry and in relation to whom they can feel smugly superior".[61]

The argument that Western feminists have conceived of women as a homogenous category relates to a further problem which exists within the feminisms which have gained the greatest ascendency in the west: its narrow focus on amending issues of gender discrimination. While fighting gender discrimination is important and allows women to put all their efforts into tackling a single issue, it is submitted that viewing sites of oppression as unrelated and singular is a problematic and reductionist way of conceiving of issues. Thus, with respect to the way in which the debate over the burqa has

57 Leti Volpp "Feminism versus Multiculturalism" (2001) 101(5) *Columbia Law Review* 1181 at 1201.

58 See Yegenoglu, above n 54, at 95. See also David Lloyd "Race Under Representation" (1991) 13 *Oxford Literary Review* 63 at 69.

59 See Volpp, above n 56, at 1189.

60 Ibid at 1191.

61 See Abu-Lughod "Do Muslim Women Really Need Saving?", above n 39.

been framed, it can be seen that the spotlight was placed upon the burqa in isolation from any larger historical and cultural context and to the exclusion of other issues which might affect the lives of women who wear the burqa.

This approach leads to the elision of larger forms of oppression as it fails to link gender issues with other issues affecting the lives of women.[62] It can be argued that this singular focus upon gender (which is equated with rights) in contrast to multiculturalism (which is equated with culture) allows for these two theories to be seen as oppositional to one another.[63] However, as pointed out by Shachar positing multiculturalism as a peril for women's equality rights fails to recognise that inter-group inequalities and intra-group injustices are related to one another and are part and parcel of interlocking power hierarchies.[64] That is to say that one form of oppression cannot be viewed in isolation from another as it ignores how these oppressions can be overlapping and how an individual who is oppressed in one relationship may be dominant within another.[65] This absolution of responsibility rests on the assumption that relations between women are presumed to be non-oppressive, whereas the bonds of race are presumed to oppress immigrant women.[66] On this basis it can be argued that viewing issues with only a focus upon gender (and with respect to the burqa, gender only with respect to one narrow issue) omits how women, whilst being subject to discrimination on the basis of their gender, may simultaneously be guilty of forms of oppression such as class and race. Thus, according to Crenshaw, feminist interventions over cultural practices such as the burqa demonstrate that: [67]

> …political strategies that challenge only certain subordinating practices while maintaining existing hierarchies not only marginalize those who are subject to multiple systems of subordination but also often result in oppositionalizing race and gender discourses.

A. The Role of the Native Informant

An important way in which the interpretation of the burqa as a sign of oppression has been legitimised is through what in post-colonial literature has been referred to as the native informant or the oriental insider. The native informant is a person from a culture (in the case of the burqa necessarily a woman born into an Islamic culture) who by his or her claimed access to the culture from an insider's position, is privy to truths about the cultural practices. On the basis of this insider knowledge they claim the authority of

62 Sa'ar, above n 45, at 686-687.

63 See Bilge "Beyond Subordination", above n 18.

64 Ayelet Shachar "The Puzzle of Interlocking Power Hierarchies: Sharing the Pieces of Jurisdictional Authority" (2000) 35(2) *Harvard Civil Rights – Civil Liberties Review* 385.

65 For example, western woman may be subject to the discrimination of the glass ceiling, without seeing how this very subordinate location may simultaneously reflect privilege, for example, as one that relies on domestic labour and child care from exploitative work situations. See: Sherene H Razack *Looking White People in the Eye: Gender, Race and Culture, in Courtrooms and Classrooms* (University of Toronto Press, Toronto, 1998) at 13.

66 See Volpp, above n 56, at 1215-1216.

67 Kimberle Williams Crenshaw "Beyond Racism and Misoygny: Black Feminism and 2 Live Crew" in Cathy J Cohen, Kathleen B Jones and Joan C Tronto, *Women Transforming Politics: an Alternative Reader* (New York University Press, New York, 1997) 549 at 550.

being the legitimate voice of their culture and assert that they speak for those who are unable to have a voice, due to the fact that they are still trapped within the culture from which they themselves have escaped.[68] Throughout the debate over the burqa numerous women from Islamic cultures were called upon to express the view that the burqa was indeed the symbol of subjugation which politicians and Western feminists claimed it was. Thus, women such as Kelek of Germany, Armara of France and Hirsi Ali of the Netherlands, became public figures and were hailed as heroines by the majority societies with whom their views cohered.[69] Their views, often rooted in stereotypes and clichés, have constructed these women as the passive victims of their culture in need of intervention by women and men who have been liberated.

In this way, just as the juxtaposition of Third World women as helpless and voiceless victims in need of saving enables the construction of the emancipated Western woman, the dialectics used by the native informant use a similar mirror image with an internal other, the traditionalist not yet emancipated woman.[70] The fact that these women express views which do not fit within the paradigm of Muslim women as victim does not challenge how the liberal notion of agency has been constructed in this debate, because rather than illustrating that women from Islamic cultures are not monolithic in their experiences and ideas, these women encourage the view that they are the 'exception to the rule which proves the rule'. However, it is important to note that this argument does not claim that these women are not a real reflection of *their* subjective experiences, but rather that they cannot be taken as having the legitimacy to speak for others (whom it must be remembered have not requested that they speak on their behalf). To claim that the subjective experiences of one may speak objectively for all women who wear the burqa serves to appropriate and silence the voices of those whose experiences may tell a different story.

B. The Perils of the False Consciousness Argument

The notion that women who wear the burqa do not have any agency is by necessity grounded in notions of false consciousness.[71] This is because while it may be argued that *some* women residing in Europe who wear the burqa may be forced to wear the garment, in the sense of an overwhelming coercion of their will by patriarchal forces, it is submitted that it is highly difficult to maintain that all women who wear the burqa are forced in that sense of the word as there are simply too many accounts which give a different interpretation. Rather what advocates for a ban seem to be intimating is that

68 See Ansari, above n 19. See also: Sourayan Mookerjea "Native Informant as Impossible Perspective: Information, Subalternity, Deconstruction and Ethnographies of Globalization" [2003] *Canadian Review of Anthropology* 40 at 125.

69 See Bilge "Between Gender and Cultural Equality", above n 34, at 119.

70 Ibid at 118-119.

71 I use the term false consciousness in the sense defined by Engles. "Ideology is a process accomplished by the so-called thinker. Consciously, it is true, but with a false consciousness. The real motive forces impelling him remain unknown to him; otherwise it simply would not be an ideological process. Hence he imagines false or apparent motives." See: Friederich Engels "To Franz Mahring, 14 July 1983" in Karl Marx, Friedrich Engels, and Robert C Tucker *The Marx-Engels Reader* (Norton, New York 1972) 765 at 767.

the women who claim that they choose to wear the burqa are in reality the product of a "false consciousness" or have so internalized the patriarchy of their culture that they no longer have any sense of agency whatsoever. It is largely in this sense which women who wear the burqa supposedly do not have choice.

It is submitted that the notion that the burqa should be banned to save women from their false consciousness is inherently problematic. Under this conception what women who wear the burqa have to say about their own desires, experiences and motivations becomes irrelevant as they are not agents in their own right: they are merely expressing the views of patriarchy. Thus, from this perspective even when women claim to have a different subjective understanding of what they are doing, if an emancipated subject determines that they are in fact acting out the designs of patriarchy, then their power as an agent is discursively removed.[72]

Arguments relating to false consciousness can be critiqued on the basis that they serve to place the person alleging the false consciousness of another in the position of an objective referent point, privy to truth beyond the sight of those under the influence of false consciousness. Thus, when the false consciousness argument is adopted, the perspectives of those who wear the burqa are delegitimized in favour of those who are (self) represented as emancipated. Yet as Parekh has noted, the question of how these women perceive themselves and their situation, is one of critical importance as: [73]

> [i]f some of them do not share the feminist view, should we say that they are indoctrinated victims of culturally generated false consciousness, and in need of liberation? That is patronizing and denies them the very equality we espouse.

On this basis, drawing on Bracke, it can be argued that, false consciousness can be seen as a way in which European claims to objectivity are maintained. Thus, while false consciousness is generally seen as an exhausted mode of thinking about agency and subjectivity, (in that it is now seldom applied to Western subjects) it is nevertheless "widely resurrected in relation to pious women in general, and (pious) Muslim women in particular."[74] On this basis it can be argued that false consciousness has effectively reintroduced through the back door a way in which Western women can reclaim legitimacy in speaking for women of other cultures and races. Thus, just as under colonialism, Western women claim the ability to speak for those who are so victimized and hapless that they have no voice which is their own.[75]

72 See for example Badinter quoted in: Monica Mookherjee "Affectative Citizenship: Feminism, Post-Colonialism and the Politics of Recognition" (2005) 8(1) *Critical Review of International Society and Political Philosophy* 31 at 34.

73 Bhikhu Parekh "A Varied Moral World" in Susan Molly Okin, Joshua Cohen, Michael Howard and Martha Nussbaum (eds) *Is Multiculturalism Bad For Women?* (Princeton University Press, Princeton, 1999) 69 at 69.

74 Sarah Bracke "Conjugating the Modern/Religions, Conceptualizing Female Religious Agency: Contours of a Post-Secular Conjuncture" (2008) 25(6) *Theory, Culture and Society* 51 at 61.

75 See Spivak "Can the Subaltern Speak?", above n 41, at 33.

Furthermore, it can be argued that even if we adhere to a view by which we explain women who wear the burqa as a product of false consciousness under patriarchy, banning the burqa as a symbol of sexist discrimination still raises a further issue: how can we force someone to be free? Frantz Fanon in his theorizing of colonialism argued that liberation cannot be given, it must be grasped.[76] According to Fanon it is only through the struggle for power that identity is shaped and pride and respect for self is restored. If this is the case, if freedom is only something which can be grasped by the subjugated themselves, then it can be argued that any attempt to liberate the subjugated will be ineffective as the net result will be to shift the site of patriarchy elsewhere. As Madeline Bunting has noted, the tradition of forcing people to be free has a long and undistinguished history rooted in colonialism and needs to be abandoned.[77]

IV. The Burqa as a Symbol of Resistance

A number of scholars have raised contention with the dominant conception of the burqa as a symbol of oppression. One analysis that conceptualises women who wear the burqa as having agency is the view that the burqa is a means through which Muslim women can free themselves from the Western obsession with sexualising women.[78] From this perspective, women who wear the burqa are seen as taking a political stand against Western society which is viewed as socially ill from an intensely sexualised culture suffering from rape, pornography and family disintegration.[79] This view does not see burqa wearing women as victims of their culture, but rather as agents manipulating a cultural symbol in order to signal a political stance on Western sexualisation. From this view the burqa is an act which attempts to liberate Muslim women from "the Western male glance which either desires or dismisses."[80]

A second analysis, in which wearing the burqa has also been constructed as an act of agency, is based on the notion that the women who wear the burqa intend to symbolise their solidarity with Islam and Islamic culture. Here it is argued that wearing the burqa, far from being an act of submission to patriarchy, is a political statement in which the wearers challenge the oriental associations of the garment.[81] In this interpretation the burqa is the symbol of Muslim women's silent protest against the imposition of alien cultural constructs and ideologies that threaten to alienate them from their own heritage.[82] From this perspective the burqa can be viewed as a

76 Frantz Fanon *Wretched of the Earth* (Grove Press, New York, 1968) at 35-107.

77 Madeline Bunting "Racism Veiled as Liberation" *Guardian United Kingdom* (United Kingdom, 14 July 2010) <http://www.guardian.co.uk/commentisfree/belief/2010/jul/14/forced-into-freedom-france>.

78 See for example: Fadwa El Gundhi *Veil* (Berg Publishers, Oxford, 1999).

79 Nawar Al-Hassan Golley "Is Feminism Relevant to Arab Women?" (2004) 25(3) *Third World Quarterly* 521 at 528-529.

80 See Bunting, above n 76.

81 Leila Ahmed "The Veil Debate- Again" in Fereshteh Nouraie-Simone (ed) *On Shifting Ground* (Feminist Press, New York, 2005) 153 at 164-165.)

82 Pat Mule and Diane Barthel "The Return to the Veil: Individual Autonomy vs. Social Esteem" (1992) 7(2) *Sociological Forum* 323 at 327.

radical act of resistance and an act by which Muslim women construct and renegotiate their identity. These different analyses of how the burqa can be interpreted serve to challenge the Orientalism associated with the notion that these women are merely the victims of their culture who are in need of intervention. Instead their arguments are based on the notion that women who wear the burqa are agents in their own right and therefore capable of emancipatory change on their own behalf.

While it is submitted that it is indeed important to challenge the notion that the burqa is capable of only signifying one meaning, (the oppression of women), it can be argued that we also need to be wary of these interpretations of the burqa. This is because the burqa cannot be seen as a practice that is either uniformly oppressive or universally liberating. Indeed it is submitted that the whole point is that the burqa is not uniformly anything.[83] To suggest otherwise is to declare that the subjectivities of the women who wear the burqa are uniform, thereby erasing the experiences and knowledge of the women themselves, an approach warned against in the preceding sections. Thus, it is argued that what is needed within this discourse is a recognition that the forces which motivate the desires, motivations and agency of the women who wear the burqa are plural and therefore cannot be constructed monolithically. From this perspective essentialising discourse in all its forms should be rejected.

Further, it is submitted that we need to explore whether there are forms of agency and choice which are not represented by any of these analyses of the burqa. The following will thus address two authors who have argued for a more complex way of conceiving of women's agency in order to explore whether there are ways in which the burqa can be conceived which do not fit within the normal liberal paradigms which define agency behaviour. In so doing attention will be drawn to the fact that viewing multiculturalism and feminism as competing theories is an unhelpful dichotomy.

V. Moving to a More Nuanced Understanding of Women's Agency

A. Challenging Women's Status

Pat Mule and Diana Barthel throw light on how agency is more multifaceted than is often presented by exploring how the status of women is made of two components, namely autonomy and esteem. These authors argue that when conservative movements such as Islamic fundamentalism arise both the costs attached to autonomy and the benefits attached to traditional sources of esteem increase.[84] Thus, attempting to gain more autonomy (or choice) is not simply a case of women having the world to gain by freeing themselves from patriarchy. Rather there is also the world to lose: the world of traditional societal esteem. This view is therefore cognizant of the fact that changes in the opportunity structure and surrounding cultural climate favours certain paths to, and expressions of, identity while discouraging

83 See Bilge "Between Gender and Cultural Equality", above n 34, at 123.
84 See Mule and Barthel, above n 81, at 326.

others.[85] When this distinction between autonomy and esteem is made it can be seen that wearing the burqa does not necessarily represent women's independent action nor patriarchal coercion tout simple. Rather it reflects women's efforts to maintain or gain esteem within patriarchy.[86]

From this view, it can be argued that the struggle for equality faced by women within the West may have parallels with that of Muslim women in a rather unexpected fashion. That is to say that the actions of numerous women in the West also reflect attempts to mediate between autonomy and esteem. This argument is made on the basis that while women in the West may now have more autonomy than they previously had with the advent of women's rights, the esteem bestowed on women is still largely defined by whether or not they adhere to the ideas of femininity prescribed as desirable by patriarchy. One example of a cultural practice over which western women who do not adhere risk a loss of esteem, is the practice that women are expected to be free of leg hair. Failing to conform to this cultural practice, especially when other cultural practices are ignored (for example, the wearing of makeup, feminine clothes etc), generally results in a loss of esteem and considerable societal sanctions for non-compliance.

Despite the fact that cultural practices such as shaving ones legs can be viewed as a practice in which women attempt to maintain or increase their esteem, it is not normally claimed that the women who adhere to such practices are the product of a false consciousness or that no agency is involved because they are only acting out patriarchal designs. Rather most feminists have moved to a more sophisticated notion of what women are doing in which women can claim agency through the very cultural constructs which constitute patriarchy.[87] Thus for example, numerous women have made the claim that they feel liberated by wearing forms of clothing that are seen to be sexually provocative, on the basis that drawing attention to their sexuality is empowering to them. Rebecca Daugherty, for example, has noted how during the punk movement women wore cut up clothing and revealing skirts in order to draw attention to their sexuality in order to individuate and reclaim their sexuality as their own.[88]

Here it is interesting to note Foucault's observation that: [89]

> [p]ower invests [the dominated], passes through them and with the help of them, relying on them, just as they, in their struggle against power, rely on the hold it exerts on them.

When we consider power in this more complex and nuanced way we realize that: [90]

85 Ibid at 326.
86 Ibid at 324.
87 This is known as 'third wave feminism' or 'lipstick feminism'.
88 Rebecca Dougherty "The Spirit of 77: Punk and the Girl Revolution" (2002) 6 *Women and Music* 27 at 32.
89 Gilles Deleuze and Seán Hand *Foucault* (Continuum International Publishing Group, London, 2006) at 25.
90 Arlene Elowe Macleod "Hegemonic Relations and Gender Resistance: The New Veiling as Accommodating Protest in Cairo" (2002) 17(3) *Signs* 533 at 534.

> …women, even as subordinate players, always play an active part that goes beyond the dichotomy of victimization and acceptance, a dichotomy that flattens out a complex and ambiguous agency in which women accept, accommodate, ignore, resist, or protest - sometimes all at the same time.

From this perspective women can never be wholly agent or victims. Instead power relationships should be viewed as an ongoing relationship of struggle, a struggle complicated by women's own contradictory subjectivity and ambiguous purposes.[91]

B. Challenging What is Viewed as Agency

While the theorist Mahmood welcomes analyses of the burqa which question the construction of burqa wearing women as hapless victims in need of saving, she also points out that the analysis of women as symbols of resistance can also be problematic. This, she argues, is because the construction of the burqa as either a sign of submission or a sign of resistance adheres to a limited conception of agency which is rooted in the logic of "repression and resistance."[92] Her critique is predicated on the basis that the tendency to constitute women who wear the burqa as agents (or non-agents) is based on an almost axiomatic liberal feminist belief in agency as the "capacity to realize one's own interests against the weight of custom, tradition, transcendental will, or other obstacles."[93] That is to say that whether the actions of an individual are viewed as encompassing agency or not is based on whether their actions seek to maintain traditions or challenge them. Thus, even though the analyses of the burqa as a symbol of submission and a symbol of resistance are diametrically opposed (the subordination analyses casts burqa wearing women as non-agentic, while the resistance analyses turns them into rational-choice dissidents) they rely on the same understanding of agency.[94]

The view that agency only relates to acts which challenge, rather than uphold traditions was aptly articulated by the leading French feminist intellectual Elizabeth Badinter when she noted that: [95]

> [t]he veil... is the symbol of the oppression of a sex. Putting on torn jeans, wearing yellow, green or blue hair, this is an act of freedom with regard to social conventions. Putting a veil on the head, this is an act of submission. It burdens a women's whole life.

Here it can be seen that this construction of choice forwarded by Badinter opposes the decision to wear types of veiling such as the burqa on the ground that as an act in accordance with, and therefore not in contest with, Islamic norms of female modesty, it does not rise to the status of "an act of freedom in regards to social conventions."[96] As Mahmood and Hirschkind note: [97]

91 Ibid at 534.
92 Saba Mahmood *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press, Princeton, 2005) at 118.
93 Ibid at 112.
94 See Bilge "Beyond Subordination", above n 18, at 21.
95 Norma Claire Moruzzi "A Problem with Headscarves: Contemporary Complexities of Political and Social Identity" (1994) 22(4) *Political Theory* 653 at 662.
96 Saba Mahmood and Charles Hirschkind "Feminism, the Taliban, and the Politics of Counter-Insurgency" (2002) 75(2) *Anthropological Quarterly* 339 at 352.
97 *Ibid* at 352.

> [t]his points out the degree to which the normative subject of feminism remains a libratory one: one who contests social norms (by wearing torn jeans and dying her hair blue), but not one who finds purpose, value, and pride in the struggle to live in accord with certain tradition sanctioned virtues.

From this vantage point it can be seen that the definition of agency adopted within these analyses of the burqa are *content* dependent as they recognise as choice only those in line with Western secular or liberal values to the exclusion of other non-liberal values.[98]

The narrowness of conceiving the burqa as a symbol of either liberation or submission is illustrated when we try to apply the same logic to the clothing choices of women in the West. As Modood and Hirschkind ask: [99]

> Can our bras, ties, pants, miniskirts, underwear and bathing suits all be so easily arranged on one or either side of this divide? Can our daily activities and life decisions really be captured and understood within this logic of freedom or captivity?

It is submitted that it cannot: indeed when considered under this light the notion that any article of clothing can inhabit either of these poles seems extremely tenuous.

It can be argued that the way in which debates over the burqa have been framed is in part attributable to the fact that feminism is not merely an analytic structure: it is also a political project and as such a prescription. This political project is rooted in liberal notions of progression in which the aim is the continuous destroying of traditional structures in the name of modernity and enlightenment.[100] This again leads us back to Orientalist assumptions in which Western liberal feminists construct themselves as emancipated and progressive and write the cultural practices of minorities as passive, traditional and regressive. The narrow definition of choice and agency predicated on challenging traditional structures and grounded in a universalising liberalism also makes the assumption that the subject's real desires conflicts with social conventions and traditions. However, as Abu-Lughod has noted: [101]

> [w]estern feminists who take it upon themselves to speak on behalf of oppressed Muslim women assume that individual desire and social convention are inherently at odds, but this is not something borne out by the experience of Islamic society.

It is argued that this narrow focus on the logic of repression and resistance serves to elide dimensions of human actions which have ethical and political statuses that do not adhere to the binary logic of either repression or resistance. On this basis it can be argued that a more expansive agency needs to be conceived in order to give cognizance to other forms of agency that fall outside of liberalism. This requires that the definition of agency adopted

98 See Bilge "Between Gender and Cultural Equality", above n 34, at 122.
99 See Mahmood and Hirschkind "Politics of Counter-Insurgency", above n 95, at 352.
100 Saba Mahmood "Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival" (2001) 16(2) Cultural anthropology 202 at 206.
101 Abu-Lughod "The Muslim Woman", above n 42, at 1.

within these analyses goes beyond recognising agency as only those actions which cohere with Western secular/liberal values to the exclusion of other non-liberal values.[102]

VI. What Can Be Concluded About Debates Over Banning the Burqa

Firstly, it is important to note that none of the above arguments attempt to refute the argument that the burqa is capable of being patriarchal and that for some women the burqa is subjectively experienced as oppressive. Hence rather than arguing that the symbolism putatively imported to the burqa cannot exist, this paper attempts to point out the dangers of viewing the garment as monolithic and capable of a solitary meaning. This paper has therefore examined some of the problems of the way the debate has been constructed in order to reveal how the claims made by advocates of the ban, as well as the wider feminist discourse, reflect assumptions about Muslim women that need to be challenged. Indeed it is submitted that the discourse surrounding the burqa reveals a good deal more about the strands of feminism associated with the West than it does about the garment itself. Here it is argued that it is difficult to make the case that burqa is anything without referring to the subjectivity of the women who actually wear the garment. To emphatically declare that the burqa has one meaning; that of submission obfuscates and distorts historical and contextual specificity under its weight.[103]

Secondly, the form in which this attempted liberation has taken appears particularly nonsensical with more than one commentator remarking on the irony of attempting to liberate women by turning them into criminals.[104] Here it is important to note that in France the law banning the burqa includes a provision detailing that a man who forces a woman to wear a burqa has the possibility of facing prison time whereas women wearing the burqa will only be fined. While it is submitted that the inclusion of this provision is likely to have only minimal effect, as proving that a women has been forced will surely face difficulties, nonetheless it is argued that the symbolism of the provision is significant. Indeed, if the concern is that Muslim women are being forced to wear the garment against their will, then the passage of this section, in lieu of banning the burqa, would have been an important step in the right direction. This is because it would serve to give credence to the argument that some women may indeed choose to wear the burqa, whilst at the same time recognizing that women have the right to be free of coercion. In contrast it can be argued that the current law places its focus on the wrong person, as even if we accept the analysis of burqa wearing women

102 See Bilge "Beyond Subordination", above n 18.

103 See Mahmood and Hirschkind "Politics of Counter-Insurgency", above n 95, at 352.

104 Myriam Francois Cerrah quoted in: "The Burqa Debate: Are Women's Rights Really at Issue?" Spiegel Online (Germany, 24 June 2010) <http://www.spiegel.de/international/europe/0,1518,702668,00.html>.

as monolithic victims (and the above suggests strongly we should not) then the focus should never be on the victim, but rather on those that perpetrate the wrong.

Thirdly, it is submitted that pitting multiculturalism and feminism against each other leads to a reductionist view of issues under which one either gives credence to the rights of minorities over their cultural practices at the expense of women, or one upholds the universality of the equality of women's rights at the expense of multiculturalism. This simplistic binary is misleading as focusing solely on one site of oppression, such as gender, can often obscure other forms of oppression, such as race and class. Furthermore, it also ignores how the way in which gender practices are themselves constructed through factors such as race and class. Thus, positing multiculturalism and feminism as oppositional creates polarizing divisions which obscure forms of oppression that are the result of intra rather than inter group relations.

The answer therefore is not to reject multiculturalism, but rather to ask for a recognition that is conscious of the fact that the lives of those from other cultures cannot be reduced into a single issue. Thus, it is argued that if we are truly concerned with the welfare of women who wear the burqa, we must aim at targeting the multiple sites of oppression which they inhabit as minorities of a different race, religion and often a lower class; sites of oppression which cannot be displaced onto the group itself, but rather are a reflection of the society of the majority. Therefore, what is needed is not a withdrawal from multiculturalism but a new conception of differentiated citizenship cognizant not only of intra-group and inter-group inequalities, but also of the complex ways in which they are connected to one another.[105] Whilst this approach is not as easy as targeting a visual symbol of difference, it is surely the only strategy which does not demonize or vilify the culture of the women involved nor seek to erase their subjectivities in the pursuit of their liberation.

105 See Bilge "Between Gender and Cultural Equality", above n 34, 125.