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Guy Haarscher

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Secularism, the Veil and "Reasonable Interlocutors": Why France Is Not That Wrong

Guy Haarscher*

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1. TWO KINDS OF INTERLOCUTORS

I would like first to distinguish carefully between interlocutors I call "reasonable"—whether or not they defend the right of girls in high school to wear the veil—and advocates of views I consider "unreasonable." Of course, the very notion of reasonableness depends on certain basic shared values. In the present case, these values are liberal-democratic, that is, human rights and popular sovereignty. If one chooses to defend a given position from inside the realm of these values, one must necessarily begin the process of argumentation by proposing some premises that will be generally accepted by the relevant audience, that is, individuals who, from a moral point of view, value the principles of liberal democracy and whatever consequences they might entail.

In such a context, there are two categories of people who, in my opinion, are "for" or "against" the veil at school for *un*reasonable motives, that is, justifications that are incompatible with the values of human rights and democracy. The first category of people are racists

* Free University of Brussels (ULB).

who hate—among other stigmatized groups—Muslims and for that reason want to reject whatever seems to be related to values cherished by people they definitely do not want to live with. So they are "against" the veil because they want to preserve, say, the "white" nature of the West. Of course, they very rarely speak in such a blunt way in the public sphere, as, in order to be listened to, one must at least pay lip service to the values of an audience dedicated to defending the basic equality of human beings, and thus to reject any form of racism. There are hidden forms of racial prejudice, and we shall see that it is often very difficult in these cases to detect, behind the respectable "surface" of supposedly liberal-democratic arguments, the core of a racist position. In countries where racist speech is criminalized—as is the case of many European States—a judge's task is made still more difficult because of such a process of "disguising" racist assumptions. Still, the racist does not defend a position that can be considered acceptable in the realm of Rawlsian "reasonable pluralism" which characterizes political liberalism.[1] In the argumentative process about the veil, interlocutors who want to rapidly get rid of their opponents often, unfortunately, will try to confuse a racist rejection of Muslims with a reasonable position. To weaken an opponent, one can—very unfairly indeed—try to give him a very bad reputation, while forgetting that it is not because two currents of thought defend the same thesis on a particular point that they can be confused or even identified to each other. In short, there are democrats and racists against the veil. I try here to discuss the question with the former, not the latter, although we shall see that the distinction is more complicated than it appears at first glance.

Conversely, Islamic fundamentalists defend the veil for unacceptable reasons. They give justifications that are at odds with liberal-democratic values. They want to "colonize" the democratic public sphere. In short, they despise democracy and human rights and simply want to seize any opportunity to promote their undemocratic conceptions. I can make a similar argument about these Islamist proponents: they should not be confused with liberal-democratic advocates of the veil at school. And there is always the tendency of confusing the latter with the former in order to radically weaken the "reasonable" position taken by an opponent.

I do not want to argue here with racists or Islamists who are "against" or "in favor of" the veil for the wrong reasons. My aim is to confront the respective positions of advocates and opponents of *hijab* at

1. The notion of "reasonableness" I defend here is very close to Rawls's concept of "reasonable pluralism." *See* JOHN RAWLS, POLITICAL LIBERALISM 36-37 (Columbia Univ. Press 1993).

school who seriously and sincerely defend liberal-democratic values.[2] Such a controversy is perfectly normal in the framework of deliberative democracy, where various interpretations of the basic values of the *polis* are tested against each other in the public sphere.

What distinguishes democrats from racists and fundamentalists consists in that the former—be they for or against the wearing of the veil at school—share some ideals concerning the school's missions in terms of transmitting values. Even if, between the Left and the Right or between religious and non-religious people, some nuances can appear in such a context, generally speaking the nuances affirm that science courses must be given without any interference, notably for religious reasons; they want their children to be taught a strict respect of equality between women and men, as well as between heterosexuals and homosexuals; they think that the history of World War II—and notably the Holocaust—should be explained without any pressure or intimidation, because it forms the very basis of our democracies ("never that again!"); and they defend coeducation and the right of individuals of both genders to meet, work together and love each other without any intrusion by families and society in general into their privacy or their most personal choices.

On the other hand, what divides democrats, racists and fundamentalists in the present context is the following: some argue that these values can be taught and defended—which is vital indeed for the future of our children—while accepting the veil at school, whereas others consider this not to be possible. I agree with the latter for the following reasons.

2. THE *HIJAB* CONTROVERSY AND *"LAÏCITÉ"* ACCORDING TO THE FRENCH *CONSEIL D'ETAT*

The *hijab* controversy first began in France in 1989. No provisions in the 1905 Law of Separation of Churches and State, the 1958 Constitution, or the body of administrative law dealt with the veil.[3] The phenomenon was new; at least it was new in French schools. There has always been, in countries where Islam is the religion of the majority, a

2. I shall use the word *"hijab"* to refer to the "simple" scarf covering the head of the woman, as opposed to, for instance, the *burqa*, which covers the whole body and face. The debate about wearing veils at school only concerns the *hijab*. There is a wide consensus that the *burqa* should not be allowed. The French are even contemplating legislation on the subject in order to prohibit the *burqa* in all public places. *See French Burka Ban a Step Closer*, RFI, May 12, 2010, http://www.english.rfi.fr/france/20100512-french-burka-ban-step-closer.

3. *Loi du décembre 1905 concernant sde éparation des Eglises et de l'Etat* (adopted Dec. 9, 1905), http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070169&dateTexte=20100126 (last visited Jan. 26, 2010).

"traditional" veil that has taken very different forms according to time and place. But in big cities, particularly in Iran, under the rule of the Shah, modern and emancipated women did not wear the veil. Then in 1979, Khomeini came to power in Tehran, and one could see on television what occurred to women who wanted to keep living without the veil (which is called *chador* in Iran). The Guardians of Revolution forced these women to wear the veil, and in a very violent way indeed. But after all, such an action was at least intellectually clear: an official religion requires that a State be used as a "secular arm" to impose the Truth and the Good on individuals who are neither ready nor able to discover and follow the divine Path by themselves. What these events meant was in a sense confused by the fact that the Iranian Shiite revolution could be interpreted, concerning some of its aspects, in a Leftist way. The Shah had been a staunch ally of the United States, and the 1979 revolution promoted—at least in the eyes of naïve intellectuals such as Michel Foucault—some popular and social objectives that generated admiration from some members of "the Left."[4] These people were heavily criticized by those who had not already forgotten the naïveté of the intellectuals who had defended Communism for its supposedly social progressivism, and had played down (or had not wanted to see) the despotic character of that political movement. Opponents of the "blindness" of intellectuals emphasized the fact that, again, a supposedly progressive movement had fallen prey to a very illiberal tendency. Imposing the veil was the most blatant symptom of the ascent of official religion in the Muslim world.

Actually, Iran is the only Muslim country where what was called by French sociologist Gilles Kepel "reislamization from the bottom" succeeded.[5] In all Arab countries, the movement failed, and the repression that ensued was particularly brutal. But Iranians were able to topple a pro-United States government *and* establish a religion by very violent means. Ten years later, in 1989, in France, a few girls came to a public school in Creil, in the vicinity of Paris, each wearing a *hijab*. The director of the school decided to ask the girls to take the *hijabs* off. When the girls refused to do that, the school director expelled them from school; a controversy immediately ensued. The then Socialist Minister of National Education, Lionel Jospin, was embarrassed because the Left and Right were deeply divided about the subject. One might be surprised

4. He traveled to Iran in 1979, just before Khomeini seized power, and he found that the revolutionaries showed a form of "new spirituality." Later, he deeply regretted his naïveté.

5. *See* GILLES KEPEL, LA REVANCHE DE DIEU CHRÉTIENS, JUIFS ET MUSULMANS À LA RECONQUÊTE DU MONDE 56-81 (Editions du Seuil 1991), *quoted by* GUY HAARSCHER, LES DÉMOCRATIES SURVIVRONT-ELLES AU TERRORISME 62 (J.M. Dubray, 3d ed. 2008).

to learn that there was a controversy about the veil, or, more precisely, that wearing the veil could be defended in the name of liberal-democratic principles. Indeed, as we have seen, the Iranian revolution had shown that an opposition existed between democratic liberty (women in Tehran and other big Iranian cities did not want to wear the *chador*) and official religion (the *Pasdaran*[6] forced them to do so). In France in 1989, the controversy was supposed to take place *inside* the domain of democratic debate, so that a change of meaning had necessarily occurred. In other terms, how was it then possible for a part of the democratic polity to *defend* the veil? The answer was that in Creil the girls themselves wanted to come to school with their Islamic scarves. They interpreted the scarves not in terms of religious *imposition*, but in terms of religious *liberty*. The basic assumption was that, as an act of liberty, the wearing of the veil should be permitted (tolerated) and even protected as a right.

But the other half, so to say, of the polity considered the veil to amount to an intrusion of fundamentalist religion into the domain of the "State" (the public school). These French citizens had not forgotten Iran, and they knew that a command could be internalized by the girls when they were exposed to more or less informal pressures. So Jospin asked the highest administrative council—the *Conseil d'Etat*—to deliver an advisory opinion about the compatibility of the claim (wearing the veil in public school) with the secularism (*laïcité*) of the State that the 1958 French Constitution guaranteed.[7] The answer the judges gave at the end of 1989 might sound surprising to many Americans, who often think that French secularism is biased against religion. Indeed, the *Conseil d'Etat* declared that as such, the wearing of the veil was not against *laïcité,* and was an exercise of freedom of religion. The administrative court added that if supplementary elements were present, the school directors would be entitled to take some measures including a possible veil ban. What were these "supplementary elements"? The *Conseil d'Etat* mentioned pressures on girls to force them to wear the veil—pressures that included provocation, proselytizing, propaganda, acts against the dignity or the freedom of the pupil, and breach of school order.[8] In short, the Council considered that the shared values underpinning the education system's missions had to be preserved. Were that not possible when the veil was

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6. That is, the Guardians of Revolution.

7. 1958 CONST. art. 1, *available at* http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf (last visited Mar. 23, 2010) ("France shall be an indivisible, secular, democratic and social Republic.").

8. Conseil d'Etat, Section de l'Intérieur, 27 novembre 1989, n° 346893, Avis "Port de foulard islamique," [Advisory Opinion Concerning the Wearing of the Islamic Scarf], *available at* http://www.rajf.org/spip.php?article1065 (last visited Jan. 26, 2010).

accepted, then—*but only then*—could school authorities legally forbid the veil.

After the advisory opinion was delivered, school directors *had* to accept the girls who "only" wore the veil if the abovementioned supplementary elements were not present. So they were not authorized to take general a priori measures of prohibition. Such a position is certainly appealing to American constitutional-law specialists. Basically, it corresponds to the idea that freedom of religion is a fundamental right that should not be curtailed except when a certain kind of behavior endangers the respect of some essential values. Indeed, the State has a compelling interest in protecting the latter. In the United States, such protection is granted to political symbolic speech at school. In a famous case concerning armbands worn by students who wanted to protest against the Vietnam War, the U.S. Supreme Court concluded, after arguing very similarly to the French *Conseil d'Etat,* that if the students did not disrupt the organization of the courses, they had the right to wear the armbands.[9] More generally speaking, liberty must be the rule and limitations the exception, which runs counter to the idea of an a priori prohibition. The U.S. Supreme Court would certainly consider such a prohibition to be overbroad, as it would also limit the liberty of good students who "only" wore the veil (or an armband) and behaved as any other "normal" pupil would.

In Belgium, the same kind of events took place in 1989 and after, but the legal reaction was substantially different. Belgian public-school directors were authorized to decide themselves whether they would allow the veil to be worn in school. Some schools adopted pedagogical projects according to which the wearing of the veil could promote

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9. *See* Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 514 (1969);

> As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others.

Id. Of course, this is a matter of political (symbolic) speech. But it seems to me that, particularly in the United States, if political speech is permitted, religious speech will *a fortiori* not be prohibited. It was for a long time—and in a sense it still is—more difficult to argue in the United States, as religious opinions have been considered more valuable—and thus in a better position to be protected—than "simple" political opinions, at least in the domain of conscientious objection. *See generally* U.S. v. Seeger, 380 U.S. 163 (1965); Welsh v. U.S., 398 U.S. 333 (1970).

integration: girls would not be "stigmatized," and such a policy was expected to pacify inter-ethnic relations. Directors of these "pro-veil" schools were quite aware that some supplementary elements (in the sense given to the phrase by the French *Conseil d'Etat*) might be present: in these circumstances, particularly when extremists were very active, there was an intrinsic link between the veil and the kind of behavior every democrat agreed should be avoided. But in France, the basic idea was that such a link between the *hijab* (permitted) and a disrespect of the abovementioned values related to the missions of the public school system (forbidden) *could not be* a priori *presupposed.* In Belgium, the school boards were authorized to prohibit the veil if they believed their pedagogical project would be better served by a general ban on ostentatious religious and political signs.

Since 1989, different strategies have been adopted in France and Belgium regarding the veil. In France, schools had to accept girls wearing the Islamic scarf unless "supplementary elements" were present. In Belgium, school boards did whatever they pleased. They had—and still have—discretionary power to accept or refuse the veil.

3. THE 2004 FRENCH LAW: REASONABLE OR UNREASONABLE?

Approximately fifteen years later, the vast majority of French directors and teachers, and more generally the members of the public education system, considered the situation to be simply unmanageable. They argued that wearing the veil was almost always related to a context of pressures, violence, and deterioration of the status of women. Of course, they recognized that a girl could wear the veil for various personal reasons. It is difficult and quite intrusive to sound out the hearts and fathom the intentions. But the "supplementary elements" seemed to be clearly present when the girls wanted to wear the scarf in class. And even if some girls wore the veil *and* respected all the rules of the school, distinguishing between the "good" veil and the "bad" veil (the colonization of the public space by more or less disguised fundamentalists) led to unacceptably intrusive practices. For most teachers and school administrators, case-by-case decisions had become unmanageable. At the same time, the movement in favor of the veil had become increasingly radical, which meant that it was decreasingly possible to separate the "supplementary elements" from the simple dressing habit.

Outside the educational system, opinions were much more balanced. But the teachers and directors could argue that they had to deal with the problem on a daily basis, that they "knew" the intractable difficulties generated by the veil, and that the rest of France had only an abstract

view of the question. So when, in 2003, the school authorities asked the Parliament to take its responsibilities, French President Jacques Chirac wisely decided to create a commission of experts that could deal objectively with the situation and write an informed report. Bernard Stasi, a highly respected French Centrist politician, headed the commission. Among the members were "pro-veil" academics. Other commission members favored a general measure of prohibition. The commission met during several months. In the end, all members favored a law prohibiting the veil in public school (there was only one abstention, and no negative vote). Several members of the Stasi commission had changed their mind because the meetings and hearings had shown them the paramount presence of what I called above the "supplementary elements." In March 2004, the statute prohibiting ostensible religious signs at school was passed.[10]

In Belgium, the solution was not the same as in France: the school boards had discretionary power to permit or forbid the *hijab*. But reactions after fifteen years of experience were similar: teachers and directors were confronted with a growing presence of Islamic fundamentalism. But they did not have to ask the legislator to prohibit the veil: they just had to use their discretionary power. In 2010, 95 percent of Belgian schools—Flemish as well as French-speaking—prohibit the veil. The schools that have in good faith tried to implement a liberal "veil policy" have been obliged to abandon it. Recently in the same country, the Flemish Council of Education took a general measure of prohibition.[11]

In France and Belgium, teachers and directors reacted the same way in different legal environments. The policy consisting of separating the "simple" wearing of the veil from attacks on the above-mentioned values had been imposed by the French *Conseil d'Etat* in 1989, and experimented with by a substantial number of schools in Belgium. Under the pressure of the school "actors," the French Parliament had legislated, and the vast majority of Belgian schools had finally decided, to prohibit the Islamic scarf. One should respect the choice made by educators, who are responsible for our children and are often mistreated and notoriously underpaid. So today the question is: are the advocates of

10. *See* Commission de réflexion ur l'application du principe de laïcité ans la République, Rapport au Président de la République, Dec. 23, 2003, http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf (last visited Jan. 26, 2010).

See also Loi n 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, http://www.senat.fr/apleg/pjl03-209.html (last visited Jan. 26, 2010).

11. *See* Belga, *Anvers: école sans voile*, LE SOIR, Sept. 12, 2009.

legislation in Belgium that would contain provisions similar to the ones included in the advisory opinion of the French highest administrative jurisdiction in 1989 ready to disregard fifteen years of basically negative experience? Many commentators simply think that history has definitely shown that such a solution is unmanageable.

That position is debatable, and, as I noted at the beginning of this article, there is always the possibility of a reasonable disagreement between democratically minded citizens concerning the veil at school. One must observe that such a possible disagreement necessarily entails that any solution must be pragmatic and open to reasonable compromises or "accommodations." My point so far has consisted of showing that for public schools, there are many lessons to be learned from grass-roots experience. This experience suggests that allowing the veil in *secondary school* is not practicable. Such a policy amounts to an unreasonable accommodation. Of course, in a free society, there are many kinds of behavior, and, a fortiori, of speech, that we dislike but should nevertheless be ready to tolerate. A well-known theory providing a criterion for establishing the limit between what should be permitted and what should be prohibited is based on the distinction between conduct and speech (including symbolic speech—which the wearing of the veil obviously is). The latter distinction was used by the French *Conseil d'Etat* when, in 1989, it followed the so-called "American way." But American constitutional law also allows for a legitimate prohibition of speech when it is essentially entangled with conduct. When the separation between speech and conduct is deemed impossible on the basis of a considered judgment, speech may be legitimately limited.[12] The fact that we are here in a context of real vulnerability (the concerned girls are for the most part not adult) only adds to the strength of the argument.

Unfortunately, very often, participants in the veil controversy do not respect the distinctions I drew in the beginning of the article. Indeed, it is very easy—and thus quite tempting—to (sometimes deliberately) confuse the position of an opponent with the theses defended by other adversaries who base their reasoning on undemocratic premises. By the way, this is the reason why notions like "genocide" are so often used in heated controversies: it ordinarily pays off to paint the other in black in order to a priori disqualify whatever arguments he might use in the course of the debate. Such a strategy was once called by French

12. *See* R. L. WEAVER & D. E. LIVELY, UNDERSTANDING THE FIRST AMENDMENT 108 (LexisNexis 2003) ("[W]hen speech and non-speech elements coalesce, incidental restrictions on First Amendment freedoms can be justified by an important enough interest in regulating the non-speech factor."); U.S. v. O'Brien, 391 U.S. 367 (1968).

sociologist René Girard the "poisoning of the source." It consists of transferring the weight of the argument from the statement to the subject of enunciation: if *"he"* says so, it is not even necessary to enter into an analysis of the content of his discourse, because his moral character has been a priori questioned. So again: there are—to simplify the situation for pedagogic purposes—democrats and racists who advocate a prohibition of the veil at school, as there are democrats and fundamentalists who take the opposite position. In order not to have to listen to the arguments put forward by the "other" (and thus not to be obliged to rebut them), the best cynical strategy consists of deliberately confusing the respectable interlocutor with the "bad guy."

To summarize the position I defend here, I shall say that it is deliberately pragmatic and nuanced. As I said in the beginning, I wanted first to distinguish between reasonable and unreasonable interlocutors, knowing that of course everybody can have the temptation to confuse the reasonable interlocutor with the unreasonable one: such a rhetorical trick helps paint the opponent in black, making his "defeat" easier. Reasonable interlocutors are deeply committed to defending liberal democratic values. Nevertheless, they adopt opposed positions concerning the wearing of the *hijab* at school. So I began with the core values that the reasonable interlocutors are ready to defend. Of course some of these values can be interpreted in different ways, which is perfectly normal in democracy. Such variations exist between the Right and the Left, or between the religious and the secularist (they have different conceptions of the neutrality of the State in spiritual matters[13]). They might have implications concerning abortion, gay marriage, euthanasia, etc. So liberal-democratic values may be defended in different ways, but in any case they are opposed to racism and fundamentalism. The racist and the fundamentalist have their own reasons to respectively oppose or defend the veil at school: the first hates Muslims, the second hates secularism, the West and "unbelievers."

4. THE "WOLF IN THE SHEEPFOLD"

Now, very often, extremists adopt a strategy that is not frontal. I have called elsewhere the latter "the wolf in the sheepfold"[14]: they claim

13. In the United States, there are different interpretations of the Establishment Clause of the First Amendment, for instance Jeffersonian wall of separation *versus* non-preferentialism, etc. For a criticism of Justice Black's use of the wall metaphor, *see Everson v. Bd. of Educ.*, 330 U.S. 1 (1947); the dissenting opinion of Justice Rehnquist in *Wallace v. Jaffree*, 472 U.S. 38 (1985). For non-preferentialism, *see, e.g.*, the arguments of Chief Justice Burger in Lynch v. Donnelly, 465 U.S. 668 (1984).

14. For a more elaborate analysis of this concept, *see* Guy Haarscher, *Rhetoric and its abuses: how to oppose liberal democracy while speaking its language*, *in* RECALLING

that their premises are compatible with the principles of liberal democracy—at least they pay lip service to them. Then they draw some consequences from these premises. We are here in the realm of sophistry (deliberate distorsion of the argumentative process in order to mislead the audience). In short, the speaker is in bad faith—he does not sincerely adhere to the values of human rights and democracy, and he simply uses premises that are accepted by the audience he wants to persuade in order to attain his aim in a more efficient way. Under such conditions, an illiberal position may look democratic—all the more when the audience is not well informed and does not reason correctly. Medieval philosophy made a distinction between a sophism and a paralogism: the first one consists of a *deliberate* error of reasoning (in order to confuse the audience), the latter amounts to an *involuntary* error that is often generated by "smart" sophists. Generally speaking, a sophism is made by an orator, while a paralogism is made by an "innocent" audience.

Such a strategy can create the illusion that there are reasonable interlocutors everywhere and that all participants in the debate are liberal democrats. This problem is very serious because, as I said before, even reasonable interlocutors often disagree about interpretations of the core values they share. So fundamentalists or racists "wolves" disguising themselves in "sheep" might present their positions as reflecting another "normal" disagreement between reasonable interlocutors in democratic deliberation. For instance, individuals who have not abandoned the idea that the State should protect an "official" religion will promote *freedom of* religion, not in order to sincerely defend human rights, but in order to reconquer positions lost by churches and confessions in a secularized world. The Muslim intellectual Tariq Ramadan used such a strategy when the play *Mahomet* by Voltaire was not shown in Geneva during the ceremonies related to the three hundredth birthday of the author, because there were too many pressures and threats coming from religious activists.[15] Ramadan denied that this amounted to censorship (or the most perverse form of the latter: *self*-censorship) and declared that it was a matter of "delicacy": he wanted the "sensitivities" of Muslims to be respected. Almost everybody in constitutional democracies is against censorship, which has acquired a very bad reputation—but who would

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VICO'S LAMENT: THE ROLE OF PRUDENCE IN LAW AND LEGAL EDUCATION (J. Mootz III, Jr., ed.), 83 CHI.-KENT L. REV. 1225, 1225-59 (2008).

15. A public reading of the play was programmed in 1994 in Geneva for the 300th anniversary of Voltaire's birthday. It was cancelled, notably under the pressure of Tariq Ramadan. Twelve years later, on December 8 and 10, 2005, the reading could finally take place. In 2006, *Le Monde* published an article stressing Ramadan's role in the 1994 events. *See* Herve Loichemol, *Une fatwa contre Voltaire?*, LE MONDE, Feb. 15, 2006. The Muslim intellectual tried to justify himself in the same newspaper (Feb. 24, 2006).

declare himself against "delicacy" and against the respect of religious (or other) sensitivities? So the result remains the same: the unpopular "speech" is suppressed, but the reason given is no more "extremist" (religious bigotry). "Delicacy" has made disappear—it has "vaporized," as George Orwell would have said[16]—the very act of censorship. "Delicacy" involves a horizontal egalitarian relationship of respect, whereas censorship entails a vertical relationship between a dominant protected religion and an individual exercizing his right to free speech. Of course the argument is intrinsically sophistic in that nobody is obliged to see a play or a movie, or to read a book—the sensitivities of individuals who simply do not want to be confronted with the "shocking" speech (the latter notion being taken *sensu lato*) are preserved, as these people just have to abstain from looking at the work of art.

A similar rhetorical strategy is used by the extreme right. Very often today, instead of speaking of biological "races," the racists speak in terms of "cultures." The difference between both approaches is important, as the term "culture" is quite legitimate in democratic societies: actually, many people—in particular when they belong to vulnerable minorities in danger of oppression or assimilation—defend their right to live according to the standards and traditions of what they call their "culture." A "race" is a different thing: a stigma that is imposed on people against their will by other people who—to say the least—do not want to live with them and to grant them equal rights. So when the racist declares that immigrants belong to another "culture," he does not say anything that, prima facie, could be considered to be at odds with the basic tenets of constitutional democracies. He sometimes even goes farther in the process of accomodating his discourse to the values of human rights: he affirms that cultures are equal, which again seems perfectly acceptable, as equality belongs to the core values of democracy. A multiplicity of cultures is compatible with the universalism of human rights, while of course racism strictly speaking fragments humanity into different hierarchized biological categories. But he adds a third element: cultures must be separated and should develop on different territories in order not to be corrupted. The mingling of cultures would, the argument goes, unavoidably lead either to conflicts (because the respective values are incompatible with each other) or to a cosmopolitan subculture, a "Macworld," and the result would be deleterious for all. The new

16. GEORGE ORWELL, NINETEEN EIGHTY-FOUR (Penguin Books 2000) (1949), *reprinted in* Newspeak Appendix ("*Unperson:* A person who had been vaporized, and all records of him/her had been wiped out. All other party members must forget that the unperson ever existed, and mentioning his/her name is thought crime.").

"racist" mentions crime, security, irreconcilable habits, etc.—all legitimate categories in a democratic debate.[17]

Now one must consider the rhetorical change that is taking place when such a new language is adopted. Instead of speaking of hierarchized, unequal "races," the new racist—the wolf in sheep clothes—speaks of equal cultures. He simply adds that, in order to be preserved, these cultures must not be hastily mingled, which would be at the disadvantage of all. The latter argument is actually very weak, but it helps the racist arrive at the same results by using a rhetorical strategy that makes him look like a reasonable interlocutor defending a "normal" democratic opinion. That is, he argues in favor of getting rid of the immigrants—not accepting new ones and driving the others home (at least in the most radical version of that form of "palatable" and disguised racism). One clearly sees the parallel between such an argumentative process and the rhetoric used by Ramadan: the latter speaks of delicacy instead of censorship in order to get to the same result, that is, suppression of the shocking speech. The new racist speaks of cultures and equality to advocate rejection of immigrants. George Orwell' *Nineteen Eighty-Four* can be mentioned again: the language of liberty serves oppression, the Minister of Propaganda is called the Minister of Truth, etc. The wolf is so to say in the sheepfold. The opponent of liberal democracy has become politically correct. He does not any more use a shocking language which is frontally at odds with the tenets of liberal democracy.

I think that these examples clearly show that the difference between unreasonable and reasonable interlocutors could be at least partially hidden, and thus difficult to clarify in concrete circumstances. People may argue in favor of the wearing of the veil at school because they think that such a policy will best promote their own (debatable but legitimate) conception of liberal democracy, but they may also defend it because they despise secularism and want religion to reconquer the State. If they only invoke freedom of religion or tolerance of the "other" to make their point, the difference between them and reasonable interlocutors will not be visible any longer. And, of course, the same process may take place in the other way around: a contemporary racist will say that he is against the veil because he wants, just as the reasonable interlocutor does, to struggle against fundamentalism—even if what he really aims at is the rejection of an "other" he considers inferior.

We must thus be able to make a difference—I confess that it is a very difficult task indeed—between two kinds of interlocutors that apparently hold the same positions. The distinction I made in the

17. *See* PIERRE ANDRÉ TAGUIEFF, SUR LA NOUVELLE DROITE (Galilée) (1994).

beginning of this article between reasonable and unreasonable interlocutors seems essential to me, but the reasonable language used by the unreasonable individual creates a deleterious confusion in the democratic debate. You rarely find in the current political discussions people who clearly defend Nazism or the radical rhetoric of Al-Qaeda. When everybody pays lip service to democratic values, the task of the philosopher, which consists in—according to Chaim Peremean—the systematic study of confused notions,[18] becomes all the more complex and problematic.

5. REASONABLE ACCOMMODATION, ORWELL AND THE HARM PRINCIPLE

Concerning the veil controversy, I only discussed the positions taken by reasonable interlocutors. And of course, the arguments I gave in favor of a general prohibition of the *hijab* at school allow for a reasonable disagreement with other individuals being equally committed to democratic values. I did not take into account bogus advocates of the latter values: I only dealt with normal disagreements[19] stemming notably from different sensitivities and intuitions concerning the role of religion in a modern democratic State. My main argument consisted of saying that the French and the Belgians had first tried to make the wearing of the veil at school compatible with core democratic values, and that they did not succeed. I do not pretend that such a policy is absolutely untenable in all contexts. Indeed, the examples of Britain and the Netherlands (or the Scandinavian countries)—to remain in the European context—have often been used to try to show that a multiculturalist policy granting a great deal of autonomy to religious groups was possible. I think that the French example is not easily universalizable and that it would be a little demagogic to exploit the 2004 assassination of Theo Van Gogh in Holland and the 2005 bombings in London to absolutely reject such attempts at dealing with cultural diversity. But it remains that the French experience—and particularly the 2004 law—is not reducible to racism or even to a "softer" assimilationist bigotry.

18. Chaïm Perelman, *De la justice*, *in* ETHIQUE ET DROIT (Editions de l'Université de Bruxelles 1990) ("One can draw the conclusion, which might seem disrespectful, that the proper object of philosophy is the systematic study of confused notions.").

19. I repeat that such disagreements are inevitable in democracy: they depend on the diversity of positions concerning liberty, equality, economic efficiency, private morality, ecology, etc.

Actually, there is a fundamental ambiguity of the now trendy notion of "reasonable accommodation."[20] The veil controversy can easily be interpreted by using the latter concept: if there are no "supplementary elements" as defined above, the accommodation of religion in the public school can be considered reasonable, that is: the inconveniences generated by such a benign "intrusion" of religion in the secular public neutral sphere are sufficiently counterbalanced by the expected benefits in terms of freedom of religion and tolerance of the other. But if the "supplementary elements" are almost always present because the advocates of the veil are "wolves in the sheepfold," that is, unreasonable interlocutors hiding themselves behind an appearance of reasonableness, then the accommodation will be considered a first step in the (re)conquest of the secular public sphere. Instead of being "reasonable"—in the sense I gave to the term in the beginning of this article—accommodation will have deleterious consequences for the very fabric of liberal democracy. In other terms, reasonable accommodation does only make sense if one reasons as follows: democratic values come first, and there is—to use a Rawlsian terminology[21]—a priority rule that makes them prevail. Then it will be possible (reasonable) to violate in a benign way the accepted principles (by tolerating a visible religious commitment in the domain of the "State") in order to accommodate the Other. But if the wearing of the veil involves in the majority of the cases the "supplementary elements" the French *Conseil d'Etat* mentioned, accommodation will be considered *un*reasonable. The "slippery slope" argument will be legitimately used in such a context: you begin with something benign, then you are inescapably drawn to the bottom of the slope—that is, you are committed to accepting much more than you were ready to do in the beginning. It seems to me that the Swedish example I gave before shows that accommodation cannot be considered reasonable without due reflection.

The arguments ordinarily given pro and contra the veil at school are numerous, and often mind-boggling and confusing. I hope that if one looks at them from the perspective I have defined, a certain philosophical clarity about the controversy can emerge. I only considered the situation in secondary school, that is, in cases when girls are already pubescent, but not yet adult: they are still vulnerable. The "harm principle" advocated by John Stuart Mill in *On Liberty*[22] requires that if an

20. *See* Charles Taylor and Gérard Bouchard, et al, *Canadian Report on Accommodation Practices Related to Cultural Differences,* Mar. 31, 2008, http://www.accommodements.qc.ca/index-en.html.

21. *See* JOHN RAWLS, A THEORY OF JUSTICE 40 (Harvard University Press 1971).

22. JOHN STUART MILL, ON LIBERTY 61 (Penguin Classics 1985) (1859) ("The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the

individual does no harm to the others, the State has no right to intervene and force him to do something, or prevent him from doing it. Acting for the good of the individual against his will would amount to paternalism. So in the case of adult girls—for instance at the university—a general measure of prohibition would not be acceptable in the framework of liberal values. But as far as non-adults are concerned, Mill recognizes the legitimacy of a certain amount of paternalism: it is accepted that parents and teachers "know better" than the child or the teenager what is good or bad for him. But I have not used such an argument here because—even concerning the young girls—it seems a little too illiberal to me. I was ready in the beginning to accept as a matter of principle the position of the French *Conseil d'Etat* (or the very similar conception of the United States Supreme Court in the armbands case). The only reason why I abandoned that position was that one of its basic premises seemed to be definitely flawed: the supplementary elements were not, in the huge majority of the cases, separable from the "simple" wearing of the *hijab*. This is the reason why I think that the 2004 French law can be interpreted in reasonable terms, and that the conventional wisdom accusing the French of a kind of innate inability to accommodate the other is at least partially unfair. Of course, elements of nationalist bigotry—French assimilationist chauvinism—are certainly present in a certain part of the population and in the political parties. And there are advocates of dogmatic secularism, that is, an ideological antireligious form of *"laïcité."* But again, the latter cannot fairly and without prejudice be hastily identified with the reasonable position that was taken by the very respectable members of the Stasi commission. It remains that, in a more favorable context, a position similar to the one taken in 1989 by the French *Conseil d'Etat* might also be deemed reasonable. Nevertheless, what I know about the Dutch, British and Swedish solutions to the problem leaves me with some doubts about their liberal democratic credentials.

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dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. . . . The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.").