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Islam's (In)compatibility with the West?: Dress Code Restrictions in the Age of Feminism

LISA M. LA FORNARA*

ABSTRACT

Many secular Western countries have adopted some form of legislation regulating a woman's ability to wear traditional "Islamic" coverings. These governments often cite concerns for gender equality to justify the regulations. Although it is certainly true that some women are forced to wear hijab, many women cover by choice. These women's choices may be rooted in their faith, but the decisions are also commonly linked to other factors like culture. Thus, this Note argues, regulations that prevent a woman from choosing how to dress do not enhance her rights. Rather, the regulations replace a feared authoritarian man with an overly paternalistic government. The conflict between Western choice feminism, secularism, and hijab was readily prevalent in the summer of 2016, when some French beaches implemented the so-called "Burkini Ban." Though the local governments contended the bans were based on concerns for secularism and hygiene, this Note argues the policies are more easily explained by widespread Islamophobia. Ultimately, this Note concludes Western countries' attempts to force choice feminism on a religion—or perhaps more appropriately a culture—they do not fully understand actually hinders progress toward gender equality.

INTRODUCTION

Muslim women's dress restrictions are among the most studied aspects of *sharia* and the most cited justifications underlying the argument that Islam is fundamentally irreconcilable with Western values. This Note will examine Islam's compatibility with Western

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culture through the lens of feminism and its interplay with traditional Islamic dress restrictions. Ultimately, it will argue that Islam is not inherently incompatible with Western values; however, Western societies' general reluctance to directly engage with Islam—and the misinterpretations and Islamophobia resulting therefrom—has created a tension between Western feminism and Islam, as it assumes that Islam innately promotes women's oppression.

This paper will proceed in six parts. First, it will explore the verses in Islamic authority that are commonly cited to explain why some Muslim women wear *hijab*.¹ Second, it will briefly explore gender inequality in Muslim majority countries, particularly Saudi Arabia and Afghanistan, of which the West often views *hijab* as a symbol. Third, it will examine why Muslim women cover absent legislative mandates, including the question whether wearing *hijab* is a religious obligation or a personal choice. This section will further explain how *sharia*-minded feminists work within the confines of Islam to combat gender inequality. Fourth, this Note will briefly present the Western perspectives on the dress restrictions, their effects on women, and Western feminists' response. Fifth, it will provide an overview of Western regulation of Muslim women's dress and the effects thereof. Finally, using the 2016 French Burkini Ban as a case study, it will show that the West's attempts at regulation have frustrated its objective of promoting feminism and equality and have deepened the divide between Islam and the West, with the burden falling on Muslim women.

I. RELIGIOUS TEXTS AND AUTHORITY

Sharia, or Islamic law, is primarily based in two textual sources: the Quran and the *sunna*.² The Quran is the holy book of Islam and is believed to be the direct word of Allah as revealed to the Prophet Muhammad.³ *Sunna*, which literally translates to “way of life or rule of behavior,” refers to the Prophet Muhammad's actions and oral pronouncements.⁴ Similarly, *hadith* contains the Prophet Muhammad's oral pronouncements as recounted by others and is subsumed under

1. For purposes of this paper, the italicized term “*hijab*” will serve as a term of art referring to all traditional Islamic dress. When not italicized, “hijab” will refer to the specific garment discussed *infra* note 36.

2. Amna Arshad, *Ijtihad as a Tool for Islamic Legal Reform: Advancing Women's Rights in Morocco*, 16 KAN. J.L. & PUB. POL'Y 129, 131 (2006).

3. See Rachel Saloom, Comment, *Is Beheading Permissible Under Islamic Law? Comparing Terrorist Jihad and the Saudi Arabian Death Penalty*, 10 UCLA J. INT'L L. & FOR. AFF. 221, 225 (2005).

4. *Id.*

sunna.⁵ If there is a conflict between the Quran and the *sunna* and reconciliation is not possible, the Quran's text prevails.⁶

Where the Quran and *sunna* are silent with respect to a particular legal issue, jurists supplement these sources with *ijtihad*, the process of interpreting *sharia*'s primary texts.⁷ Only the *ulama*, religious scholars highly knowledgeable in Islamic law, may legitimately engage in *ijtihad* and the scholars' distinct methods of interpretation ultimately created the five different schools of Islam.⁸ Finally, *fiqh* is Muslim jurisprudence and refers to the science of ascertaining and applying *sharia* principles.⁹

There are three main passages in the Quran to which believers turn to justify women's dress restrictions. The first relates to a woman's sexuality and reads,

Tell also the women of the Faithful to lower their gaze, and they should guard their chastity, and they should not display any of their charms [*khimar*] publicly save what is decently observed, and they must draw their veils over their bosoms; and they should not display any of their charms.¹⁰

This verse goes on to state that women are permitted to display their "charms" to male family members, other women, male servants who no longer feel sexual desire, and children who are too young to recognize a woman's nakedness.¹¹ Classical Arabic dictionaries define the term

5. *Id.* at 225. To help determine the *hadith*'s legitimacy, the text is accompanied by the chain of individuals through which the information came, ending with the name of the individual who directly heard the Prophet make the statement. See SEYYED HOSSEIN NASR, IDEALS AND REALITIES OF ISLAM 71 (New rev. ed. 2000) (explaining the science of authenticating *hadith*, Prophetic traditions, and the validity of the chains of prophetic transmission).

6. Saloom, *supra* note 3, at 225–26.

7. Arshad, *supra* note 2, at 132.

8. It is undisputed in the Islamic world that there was a decline in and eventual cessation of major substantive legal analysis through *ijtihad*. *Id.* at 132–33, 150.

9. See Saloom, *supra* note 3, at 227.

10. WOMEN IN ISLAM: AN ANTHOLOGY FROM THE QUR'AN AND HADITHS 46–47 (NICHOLAS AWDE ED. & TRANS. 2000).

11. The full text reads: "Tell also the women of the Faithful to lower their gaze, and they should guard their chastity, and they should not display any of their charms [*khimar*] publicly save what is decently observed, and they must draw their veils of their bosoms; and they should not display any of their charms to anyone except their husbands, or their fathers, or their husbands' fathers, or their sons, or their husbands' sons, or their brothers or their brothers' sons, or their sisters' sons, or their womenfolk, or those whom they possess with their right hand, or those male servants who feel sexual desire no longer, or children too young to be aware of the nakedness of women. And women should not move

“*khimar*” as a head covering, lending credence to the position that the verse declares devout Muslim women must cover.¹² Moreover, when this verse was revealed, women wore head coverings tied back behind their necks, which left the neck and upper chest exposed. Thus, this revelation was interpreted to mean that such coverings were insufficient and increased modesty was required.¹³ This verse is further expounded in some *hadiths*, such as the assertion that ‘A’isha¹⁴ said, “May Allah have mercy on the women of the first Muhajirun. When Allah revealed, ‘That they should draw their head-coverings across their breasts’ (24:31), they tore their mantles and veiled themselves with them.”¹⁵

The second pertinent verse is Quran 33:59 which provides, “Prophet, tell your wives, your daughters, and women believers to make their outer garments (*jilbab*) hang low over them so as to be recognized and not insulted.”¹⁶ This verse is similarly reinforced by *hadiths*, one of which states, “When the Quranic verse (the *jilbab* verse 33:59) was revealed, the women of *al-ānṣār* tribe [in Medina] went out [of their houses] with a black cloth on their heads.”¹⁷ Another *hadith* asserts that “Umar ibn al-Khaṭṭāb said: God and I were in agreement over the Verse of the Veil—I said to the prophet: ‘If only you would order your wives to veil themselves, for they are spoken to by wicked men as well as those with honourable intentions!’ And so the Verse of the Veil was revealed.”¹⁸

The third and final verse holds, “Children of Adam, We have given you garments to cover your nakedness and as adornment for you; the garment of God-consciousness is the best of all garments – this is one of God’s signs, so that people may take heed.”¹⁹ *Hadiths* similarly reaffirm the significance of female coverings, such as one which states: “A’isha narrated that the Messenger of God (peace be upon him) used to pray the morning prayer and with him were believing women who were shrouded in sheets (*murūt*). Then they went back to their houses and

their legs in such a way when they walk as to attract attention to the charms they have concealed.” *Id.*

12. See Hera Hashmi, *Too Much to Bare? A Comparative Analysis of the Headscarf in France, Turkey, and the United States*, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 409, 412 (2010).

13. See *id.*

14. ‘A’isha was one of the prophet Muhammad’s wives. Mary Thurkill, ‘A’isha, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0005.xml> (last visited Feb. 20, 2018).

15. Hashmi, *supra* note 12, at 413.

16. *Id.* at 412.

17. *Id.* at 413.

18. WOMEN IN ISLAM, *supra* note 10, at 50.

19. Hashmi, *supra* note 12, at 411–12.

nobody knew them.”²⁰ Further, “the Prophet is reported to have said, ‘When a woman reaches puberty, no part of her body should remain uncovered except her face and the hand up to the wrist joint.’”²¹

The debate over whether these verses make *hijab* compulsory has regularly surfaced throughout the Muslim community and has gained particular attention in Muslim-majority countries. This debate often accompanies a surge in Islamic conservatism in Muslim-majority states. For example, Egypt experienced a wave of Islamic conservatism in the early 2000s,²² and attempting to expel uncertainty as to whether *hijab* is compulsory or merely advisory, in December 2003, the Grand Mufti of Egypt, Sheikh Ali Jumua of the Egyptian Fatwa Authority, issued an Islamic legal ruling stating *hijab* is obligatory for adult Muslim women.²³ Jumua further stated, “Unlike the cross sometimes worn by Christians, or the skullcap worn by Jews, the *hijab* is not a symbol of Islam but rather □ Islam orders female adults to wear *hijab* as obligatory religious clothing. It is part of every Muslim woman’s religious practice.”²⁴

Despite these factors, many still argue that *sharia*’s dress restrictions are not strictly required, but dictated by personal choice. These believers argue that the restrictions have become a central part of Muslim culture and, at most, traditional Islamic dress is a form of religious expression rather than religious obligation.²⁵ In support of their argument they show that what today is labeled as “Islamic” conservative dress actually has cultural roots dating back before the time of the Prophet.²⁶ For example, in Assyria and other Eastern Mediterranean and Asian territories, such dress indicated a woman’s societal rank, as wearing clothing that comports with modern definitions of *hijab* reflected that a woman was married or a member of

20. *Id.* at 413.

21. Urfan Khaliq, *Beyond the Veil? An Analysis of the Provisions of the Women’s Convention in the Law as Stipulated in Shari’ah*, 2 BUFF. J. INT’L L. 1, 20 (1995).

22. See Lisa Anderson, *Egypt’s Cultural Shift Reflects Islam’s Pull*, CHI. TRIB. (Mar. 21, 2004), <http://www.chicagotribune.com/news/chi-0403210513mar21-story.html>.

23. Hashmi, *supra* note 12, at n.38. Although it is unclear whether this fatwa actually affected Egyptian women’s willingness to cover, as of 2014, only approximately 14 percent of Egyptians believe that devout Muslim woman should be free to choose whether they wear *hijab*. See Jacob Poushter, *How People in Muslim Countries Prefer Women to Dress in Public*, PEW RES. CENTER (Jan. 8, 2014), <http://www.pewresearch.org/fact-tank/2014/01/08/what-is-appropriate-attire-for-women-in-muslim-countries/>.

24. Shaykh Nuh Ha Mim Keller, *Why Hijab?*, AL-ISLAM, <https://www.al-islam.org/hijab-muslim-womens-dress-islamic-or-cultural-sayyid-muhammad-rizvi/why-hijab>.

25. See AMINA WADUD-MUHSIN, *QUR’AN AND WOMAN* 10 (1992).

26. NINA BOSANKIĆ, *PSYCHOSOCIAL ASPECTS OF NIQAB WEARING: RELIGION, NATIONALISM AND IDENTITY IN BOSNIA AND HERZEGOVINA* 24–25 (2014).

the elite.²⁷ Peasants,²⁸ servant girls,²⁹ and prostitutes,³⁰ however, did not cover. Scholars agree that whether a woman wore *hijab* during these historical times was motivated by culture and social status, not religious beliefs.³¹ Further, men in some societies also wore veils during this time and, even today, in some nomadic Middle Eastern communities, men cover their entire face except the eyes when they turn twenty-five as a cultural practice.³² Similarly, men and women in countries such as Qatar and the United Arab Emirates are culturally required to wear conservative dress similar to *hijab*.³³

Finally, some Muslims who claim that traditional Islamic dress is not religiously mandated interpret the Quran's passages to mean that *hijab* was simply intended to identify women as Muslims so as to protect them from harassment.³⁴ As such, they argue that the first women to veil did so not to conceal but because the coverings "announced the religious status of the women . . . drawing attention to the fact that these women were Muslims and therefore were to be treated with respect."³⁵ Under this reasoning, the traditional dress is not a religious requirement but an optional social safeguard.

Determining whether traditional Islamic dress is, in fact, Islamic or whether the dress is dictated by culture is important because the distinction is crucial to distinguishing between gender inequality resulting from cultural practice and gender inequality originating within the religion. If the dress restrictions are firmly rooted in Middle Eastern culture rather than in Islam, the coverings are a cultural choice rather than a religious practice, and thus any resulting gender inequality is associated with—rather than part of—the religion. If the coverings are religiously mandated, however, any resulting inequality

27. *Id.*

28. See NIKKI R. KEDDIE, *WOMEN IN THE MIDDLE EAST: PAST AND PRESENT* 206 (2007).

29. See Kathleen A. Protuán Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law – Do Muslim Women Really Have Fewer Rights than American Women?*, 16 N.Y. INT'L L. REV. 65, 101–02 (2003).

30. See KEDDIE, *supra* note 28, at 204–05.

31. See Miller, *supra* note 29, at 101–02.

32. See BOSANKIĆ, *supra* note 26, at 25.

33. Zainab Salbi, *Muslim Women Who Don't Wear the Hijab Are Just as Muslim as Those Who Do*, N.Y. TIMES (Jun. 28, 2016), <http://nytlive.nytimes.com/womenintheworld/2016/06/28/muslim-women-who-dont-wear-the-hijab-are-just-as-muslim-as-those-who-do/>. Though some women wear the *abaya*, *shayla*, or *burqa*, the garments are more closely linked to "national pride and dignity" than to religion. Rana Sobh, Russell Belk & Justin Gressel, *The Scented Winds of Change: Conflicting Notions of Modesty and Vanity Among Young Qatari and Emirati Women*, 37 ADVANCES CONSUMER RES. 905, 905-06 (2010).

34. See SHERIF ABDEL AZEEM, *WOMEN IN ISLAM* 73–74 (1995); Miller, *supra* note 29, at 101.

35. Miller, *supra* note 29, at 101.

would arguably be indistinguishable from religious practice. Therefore, the roots of the dress restrictions are important to determine whether the religion is inherently imbalanced or if the suggested gender inequality can more fairly be attributed to another source.

II. MANDATED HIJAB AND GENDER INEQUALITY IN AFGHANISTAN AND SAUDI ARABIA

Some women cover because they are legally obligated to do so; however, even in Muslim majority countries, legislation requiring women to wear *hijab*³⁶ is rare. Of the forty-nine Muslim majority countries, Iran and Saudi Arabia are the only two recognized states that legally force women to cover.³⁷ The *burqa*³⁸ was also previously

36. The Quran directly mentions three types of dress: (1) *hijab*; (2) *jilbab*; and (3) *khimar*. The term “*hijab*” is defined as “something akin to a curtain or ‘separation’ that allows for privacy.” Russell Goldman, *What’s that You’re Wearing? A Guide to Muslim Veils*, N.Y. TIMES (May 3, 2016), http://www.nytimes.com/2016/05/04/world/what-in-the-world/burqa-hijab-abaya-chador.html?_r=0; accord *In Graphics: Muslim Veils*, BBC NEWS, http://news.bbc.co.uk/2/shared/spl/hi/pop_ups/05/europe_muslim_veils/html/4.stm (last visited Feb. 20, 2018). The term is colloquially used to refer to a common headscarf that covers the hair and neck but leaves the face and body uncovered. Hijab styles vary based on geography and fashion trends. Similar garments include the *al-amira* and *shayla*, both of which conceal the hair and neck while leaving the face exposed. The *al-amira* is a two-piece covering that consists of a close-fitting cap and an accompanying tube-like scarf that hangs closely around the face. The *shayla* is a long, rectangular scarf popular in the Gulf region and is worn loosely around the head and tucked or pinned in place at the shoulders. Although the *shayla* covers the hair and back of the neck, it leaves part of the throat exposed. The second covering discussed in the Quran, *jilbab*, indiscriminately refers to a protective article of clothing, not a specific garment. The *jilbab*’s appearance varies slightly depending on geographical location. In Indonesia, for example, a *jilbab* encompasses any head-to-toe style of modest dress, especially a head scarf, but in North Africa and the Arabian Peninsula, *jilbab* typically means a long dress or tunic. The third and final covering mentioned in the Quran, the *khimar*, is a garment that historically encompasses all modest clothing that shields women “from the gaze of unrelated men.” *Id.* Though some countries deem any veil or head scarf to be a “*khimar*,” it is more specifically defined as a long, cape-like veil that hangs down to just above the waist and covers the hair, neck, and shoulders completely. Other conservative garments include the *abaya*, the required covering for women in Saudi Arabia and common throughout the Arabian Peninsula and parts of North Africa, which loosely covers the entire body including the head, leaving only the face, hands, and feet exposed; and the *chador*, commonly worn by Iranian women and consisting of “semicircles of fabric draped over the head like a shawl . . . [and] held in place under the neck by hand.” *Id.*; see also Adam Taylor, *Germany’s Potential Burqa Ban Has a Problem: Where Are the Burqas?*, WASH. POST (Aug. 19, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/08/19/germanys-potential-burqa-ban-has-a-problem-where-are-the-burqas/>.

37. See Salbi, *supra* note 33.

38. Once described as “tent-like,” a *burqa* covers the entire body, including the entire face and hands, and is thus highly controversial within feminist discussion. The *burqa*

obligatory in Taliban-controlled Afghanistan.³⁹ Interestingly, the Islamic State initially required women in its territories to wear *niqabs*⁴⁰ or *burqas*, but it later banned the *burqa* in some areas on account of security concerns after a veiled woman used a pistol to kill two Islamic State members at a checkpoint in Sharqat, Iraq.⁴¹

Because both Taliban-controlled Afghanistan and Saudi Arabia have been ruled by harsh interpretations of *sharia*, these countries, among others, are often cited as examples of *sharia* in practice.⁴² Western audiences are often mortified by the countries' subpar histories with human rights—particularly women's rights—which Western audiences attribute to the government's implementation of *sharia*.⁴³

When criticizing gender inequality and women's oppression in the Middle East, detractors first look to Taliban-controlled Afghanistan, an

differs from the combined *abaya* and *niqab* as the *burqa* covers the hands and has mesh or loosely crocheted fabric covering the eyes. The *burqa* was required under Taliban control and is most commonly found in Afghanistan and South Asia. In Kabul, most *burqas* are blue, but in other areas they can also be brown, green or white. See Goldman, *supra* note 36; Taylor, *supra* note 36.

39. See BOSANKIĆ, *supra* note 26, at 27–28.

40. The *niqab* is a face veil that covers the lower half of the face but leaves an open split for the eyes and is paired with a headscarf or other garment that covers the hair. Depending on a woman's personal preference, a *niqab* may be worn in conjunction with the garments discussed *supra* note 36. Though not strictly required, women in Saudi Arabia commonly pair *niqabs* with *abayas* when in public. The garment is also commonly worn in South Asia and North Africa. See Goldman, *supra* note 36.

41. See Kavitha Surana, *Update: Conflicting Reports over Whether ISIS Banned Face Veils in Iraq*, FOREIGN POL'Y (Sept. 6, 2016, 2:38 PM), <http://foreignpolicy.com/2016/09/06/even-in-isis-territory-a-backlash-for-burqas/>.

42. The Afghan constitution stated that, "In the Republic of Afghanistan no law shall run counter to the principles of the Sacred Religion of Islam and other values enshrined in this Constitution." CONST. OF REB. OF AFG., Jun. 1990, ch.1, art. 2, www.embassyofafghanistan.org/page/constitution, <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1014&context=afghanenglish>.

Similarly, though many individuals count Saudi Arabia among the few nations that have an unwritten constitution, Article 1 of its Basic Law states that the country's constitution is "The Holy Qur'an and the Prophet's Sunnah." SAUDI ARABIA CONST. art. 1 (amended 2005) https://www.constituteproject.org/constitution/Saudi_Arabia_2005.pdf.

43. The validity of the West's belief that gender inequality is inextricably intertwined with Islam is outside the scope of this paper. Rather, it is only the West's link between Islam and gender inequality in the Middle East that is relevant as this view has encouraged Western regulation of traditional Islamic dress in the West, regardless of the view's merit. See generally *The Islamic Veil Across Europe*, BBC NEWS (Jan. 31, 2017), <http://www.bbc.com/news/world-europe-13038095> (exploring the various ways Western European countries have regulated *hijab* and asserting that debates over regulation "take[] in religious freedom, female equality, secular traditions and even fears of terrorism").

easy target.⁴⁴ Afghanistan was once viewed as a moderate state, with gender equality explicitly protected in the country's 1964 constitution.⁴⁵ In May of 1992, however, the Taliban founded the Islamic State of Afghanistan and, consequently, many Afghans lost important freedoms.⁴⁶ Ordinances enacted by the Taliban unforgivingly regulated women's behavior⁴⁷ and required women to wear the *burqa* because, as one Taliban official stated, "The face of a woman is a source of corruption for men who are not related to them."⁴⁸ The *burqa* not only completely conceals women but also restricts their movements.⁴⁹ As one Anglo-Afghan journalist reported, the *burqa's* veil is so thick that the wearer finds it difficult to breathe. Moreover, the small mesh panel included to permit sight so thoroughly limits vision that even crossing the street safely can be difficult.⁵⁰ Mandating that women wear the *burqa* could also impose financial burdens, as the garment costs an average Afghani two months' salary.⁵¹ Women deemed to have violated the Taliban's mandates on propriety were savagely punished, even for minor infractions.⁵² For example, one woman was whipped by Taliban guards because her *burqa* slipped as she walked her children down the street.⁵³

44. Importantly, Afghani men were also victims of the Taliban's uncompromising policies. For example, men were beaten or criminally sanctioned for offenses such as shaving their beards or inappropriate male-female eye contact and could be imprisoned or murdered for their religious or political affiliations. See Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, 3 NW. U. J. INT'L HUM. RTS. 4, 24 (2005). Additionally, in some circumstances, men could be punished if their wives violated certain rules, such as traveling in a taxi without a male escort. Shannon Middleton, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & COMP. L. REV. 421, 443 (2001).

45. The provision stated that "both women and men, without discrimination and privilege, have equal rights and obligations before the law." Purva Desphande, *The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia*, 22 WOMEN'S RTS. L. REP. 193, 196 (2001).

46. See *id.*

47. Other Islamic countries were shocked by and ultimately rejected the Taliban's "strict interpretation of the Qu'ran." Iran, also a theocratic state, was critical of the Taliban's policies, and Pakistani officials worked to differentiate their policies from those of the Taliban. Middleton, *supra* note 44, at 459.

48. *Id.* at 442.

49. See *The Taliban's War against Women*, U.S. DEPT OF STATE (Nov. 17, 2001), <https://www.state.gov/j/drl/rls/6185.htm>.

50. See *id.*

51. See Desphande, *supra* note 45, at 197.

52. One unmarried woman who was caught with an unrelated man in the street was publicly flogged with 100 lashes. Married women found with unrelated males were punished by death by stoning. Other methods of punishment for legal violations included public amputations and executions. See *The Taliban's War against Women*, *supra* note 49.

53. See Desphande, *supra* note 45, at 197.

The image of a woman in a *burqa* soon came to represent the comprehensive gender inequality and brutality that plagued Taliban-controlled Afghanistan. Before the Taliban took control of Kabul, schools were coeducational and women accounted for seventy percent of all teachers.⁵⁴ Though gender discrimination undoubtedly existed during this earlier time, women were trained to be professionals and accounted for about fifty percent of civil servants and forty percent of medical doctors.⁵⁵ Despite a Taliban official's admission that the Quran provides for education for everyone, the Taliban implemented region-specific rules forbidding girls over the age of eight from attending schools to avoid "corruption."⁵⁶ Only schools licensed by the Taliban were permitted⁵⁷ and even some home schools were closed.⁵⁸ Further, although hundreds of thousands of women were widowed by two decades of war, women were not permitted to work, with the exception of a few positions as health workers and surveyors with international aid organizations.⁵⁹

Taliban legislation also held that a woman must not leave her house without her husband's permission or without a male escort.⁶⁰ Any ambiguity regarding the Taliban's intentions to keep women in the home was eviscerated in January 1996, when, in response to complaints about an incident in which a Taliban official hit a woman with a car, the local governor commented, "It is a good lesson to other women not to go outside of their houses. Women in their houses or in the grave."⁶¹ When in public, women were required to walk quietly and refrain from laughing or talking loudly and were forbidden to look at strangers.⁶² Under Taliban rule, Afghani women were denied freedom of expression, peaceful assembly, and religion as well as rights to health services, employment, and the rights to partake in government and be free from torture.⁶³

54. See PHYSICIANS FOR HUMAN RIGHTS, *THE TALIBAN'S WAR ON WOMEN: A HEALTH AND HUMAN RIGHTS CRISIS IN AFGHANISTAN* 75 (1998).

55. See *id.*

56. See Middleton, *supra* note 44, at 450–51.

57. To be licensed, a school must not allow girls over eight years of age to attend and must only teach the Quran. *Id.* at 451.

58. *Id.*

59. As a result of this prohibition, many women were forced to beg in the streets or into prostitution. See PHYSICIANS FOR HUMAN RIGHTS, *supra* note 54, at 73; Desphande, *supra* note 45, at 197.

60. See Middleton, *supra* note 44, at 442.

61. Desphande, *supra* note 45, at 197.

62. Middleton, *supra* note 44, at 442–43.

63. See *id.* at 443–54.

Saudi Arabia has similarly drawn widespread criticism for its objectionable gender policies. Saudi Arabia requires that all women wear *hijab* when in public and has a religious police force—the al-Mutawa'een—that strictly enforces the law by administering beatings to women who reveal their faces, hair, or bodies in public or who otherwise commit infractions of moral codes relating to dress or behavior.⁶⁴ The mandate's rigidity and relentlessness was best illustrated in March 2002 when the al-Mutawa'een refused to allow fifteen girls to escape their burning dormitory because they were not properly veiled.⁶⁵ The girls consequently died in the fire.⁶⁶

To many Westerners, the dress requirements have come to symbolically represent other mandates creating gender inequality in Saudi Arabia. One such policy requires that every Saudi woman have a male guardian who has the power to make a range of critical decisions on her behalf.⁶⁷ Pursuant to this system, adult women must obtain their guardian's permission to travel, marry, or exit prison, and women may also be required to provide proof of their guardians' consent before working or being granted access to healthcare.⁶⁸ Absent assistance from their guardian or another male relative, women regularly encounter barriers conducting a range of transactions, from renting an apartment to filing legal claims.⁶⁹

Additionally, Saudi Arabia withholds privileges from women that many Westerners consider to be basic rights. For example, the country does not require education, or even basic literacy, for women and, because schooling is not compulsory, many fathers will not allow their daughters to attend.⁷⁰ Women who do attend school face additional obstacles in education as women and men are not permitted to attend

64. Saudi women will further be denied equal access to education or employment if they do not cover properly. See Travis, *supra* note 44, at 14, n. 251.

65. See, e.g., *Palpitations at the Kingdom's Heart*, ECONOMIST (Aug. 22, 2002), http://www.economist.com/world/africa/displayStory.cfm?story_id=1291310; *Saudi Arabia: Religious Police Role in School Fire Criticized*, HUM. RTS. WATCH (Mar. 14, 2002, 7:00 PM), <https://www.hrw.org/news/2002/03/14/saudi-arabia-religious-police-role-school-fire-criticized>.

66. See *Palpitations at the Kingdom's Heart*, *supra* note 65.

67. A woman's guardian is normally the woman's father or husband, but in some cases may be her brother or even her son. *Boxed In: Women and Saudi Arabia's Male Guardianship System*, HUM. RTS. WATCH 2 (July 16, 2016), <https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi-arabias-male-guardianship-system>.

68. *Id.* at 3.

69. See *id.*

70. In 1980, only 55 percent of Saudi girls were enrolled in primary school and 23 percent in secondary schools. In 1998, only 48 percent of Saudi women were literate, compared to 73 percent of Saudi men. Desphande, *supra* note 45, at 22.

class or use libraries together.⁷¹ In the case of King Saud University's library, for example, women are only allowed to use the library one morning per week.⁷² Despite these obstacles, Saudi women have made incredible strides in regard to obtaining education, though this progress is largely unknown to, or at least unacknowledged by, the West.⁷³ Saudi Arabia has also received international criticism on account of its long-standing policies prohibiting women from driving.⁷⁴ Indeed, in April 2016, Saudi Arabia's deputy crown prince Mohammed bin Salman Al Saud stated that the country was not ready for women to drive. He went on to say, however, that this topic is dictated by cultural, not Islamic, norms.⁷⁵

III. THE INTERNAL PERSPECTIVE

A. *Why Women Cover*

In societies where *hijab* is not legally mandated, there is little that unites Muslim women who opt to cover. Studies show that women who cover come from various familial and societal situations. Some come from families where their mothers choose not to cover but are receptive to arguments in favor of covering, some come from families that strongly oppose *hijab*, and some come from families where most women, if not all women, wear the headscarf.⁷⁶ Further, a woman who covers in some

71. *See id.*

72. *See id.*

73. Statistics from the Saudi education ministry show that women constitute almost fifty-two percent of university graduates in Saudi Arabia and the female literacy rate has risen to ninety-one percent, up from just two percent in 1970. Sarah Drury, *Education: The Key to Women's Empowerment in Saudi Arabia?*, MIDDLE EAST INST. (July 30, 2015), <http://www.mei.edu/content/article/education-key-women%E2%80%99s-empowerment-saudi-arabia>.

74. In November 2016, Saudi Prince Alwaleed bin Talal published a four-page letter arguing that women finally be granted the right to drive and citing financial, social, and religious benefits of lifting the current prohibition. *See* Katie Forster, *Saudi Prince Says Women Should Be Allowed to Drive*, INDEPENDENT (Nov. 30, 2016 11:58 GMT), <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-women-drive-prince-alwaleed-bin-talal-twitter-letter-should-be-allowed-a7446936.html>. In late September 2017, the country announced that it would lift the ban on female drivers. The change is scheduled to take effect in June 2018. *See* Ben Hubbard, *Saudi Arabia Agrees to Let Women Drive*, N.Y. TIMES (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/world/middleeast/saudi-arabia-women-drive.html>.

75. *See* Jess Staufenberg, *Saudi Arabia Is 'Not Ready' for Women Drivers, Says Deputy Crown Prince*, INDEPENDENT (Apr. 28, 2016, 9:39 BST), <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-is-not-ready-for-women-drivers-says-deputy-crown-prince-mohammed-bin-salman-a7004611.html>.

76. *See* Hashmi, *supra* note 12, at 414.

situations may not cover in all situations and may abandon *hijab* during one period of her life, only to later resume the practice.⁷⁷ This fluidity, most prevalent amongst Muslim women in the West, is largely because women's decisions to cover are motivated by multiple factors that may shift throughout their lives.⁷⁸ Indeed, one American Muslim woman explained her decision to remove her hijab was as much about her evolving femininity and American culture as it was about Muslim culture.⁷⁹

Most women state that their decision to cover is based, at least in part, on belief, piety, and worship of God through the religious observance of modesty.⁸⁰ These arguments generally parallel arguments that covering is mandated by *sharia* and is an important piece of Islamic culture. In addition to the vast diversity within the faith as to whether covering is necessary, there is no consensus as to the extent to which a woman should cover.⁸¹ There are a wide range of coverings available to Muslim women, ranging from a headscarf that covers only the hair and neck to a *burqa* that covers the entire body, including the face. Therefore, many Western Muslim women, operating on the belief that covering is not required, argue that there is no direct correlation between a woman's decision to cover—or the extent to which she covers—and her dedication to Islam.

Rather, utilizing the argument that *hijab* is cultural, not religious, these women argue that women who choose not to cover may be just as religious as those who don the full *burqa*.⁸² As one woman explained, "I do not wear [*hijab*] to make evident my religious learnings. . . . [I]n religion it is clear that you should do things for God and not for people."⁸³ The woman further stated, "[I]t is not because I wear the voile that I am a better Muslim . . . or a worse Muslim. It is a personal choice that I take on."⁸⁴ These women argue that there is considerable danger in assuming that *hijab* is a defining feature of a "good" Muslim

77. See Asma Khalid, *Lifting the Veil: Muslim Women Explain Their Choice*, NPR (Apr. 21, 2011, 12:01 AM), <http://www.npr.org/2011/04/21/135523680/lifting-the-veil-muslim-women-explain-their-choice>.

78. See *id.*

79. See Tom Gjelten, *American Muslim Women Explain Why They Do—or Don't—Cover*, NPR (Feb. 2, 2016, 10:59 AM), <http://www.npr.org/sections/codeswitch/2016/02/02/465180930/american-muslim-women-explain-why-they-do-or-dont-cover>.

80. See Hashmi, *supra* note 12, at 414–15.

81. See Salbi, *supra* note 33.

82. See *id.*

83. JOHN R. BOWEN, WHY THE FRENCH DON'T LIKE HEADSCARVES: ISLAM, THE STATE, AND PUBLIC SPACE 78 (2008).

84. *Id.*

woman.⁸⁵ Because many devout Muslim women opt not to cover, this position's proponents contend that, in the course of debate over the necessity to cover, Muslims must equally defend both the right to choose to wear hijab and the right to refuse.⁸⁶ Some of these progressive Muslims are further concerned that legislation criminalizing a woman's choice to cover gives non-Muslims who are uncomfortable with the practice a legitimate justification to harass wearers.⁸⁷

In addition to legal and religious motivations, some women cover because of familial or societal pressure to do so. For example, when asked about her decision to cover, one woman stated that she chose to take off her hijab during college, but her friend became so upset that the woman put the hijab back on to preserve the friendship.⁸⁸ Further, in some cases Muslim women living in the West cover as a way to stay connected to their home culture in Muslim-majority countries. Some second-generation Western Muslims assert that wearing *hijab* helps them navigate "their dual identities of religion and nationality and allows them to be part of both worlds."⁸⁹

Other women choose to cover because they see *hijab* as a source of personal empowerment. Although Westerners may perceive this justification as oxymoronic, women who cite self-empowerment as a reason for covering say that they wear *hijab* out of respect for themselves. Such women argue that in Western society—where women are commonly critiqued, valued, and sexualized based on their appearance—wearing *hijab* forces people to interact with a woman according to her character and personality. On this point, Hebah Ahmed, a Muslim American woman who wears a *niqab* and has a master's degree in Mechanical Engineering, stated,

I want people to know that when I choose to cover this way it's because I am fighting against a systematic oppression against women in which women's bodies are being sexualized and objectified. This is a different perspective and a different form of empowerment in which I think when I'm in public, my sexuality is in my control and people have to deal with my brain and who I

85. See Salbi, *supra* note 33.

86. See *id.*

87. See Nancy Graham Holm, *Banning Burqas and Niqabs in Europe: The Politics of Full-Face Veiling*, HUFFINGTON POST (Aug. 21, 2014, 03:44 PM), http://www.huffingtonpost.com/nancy-graham-holm/banning-burqas-and-niqabs_b_5653889.html.

88. See Salbi, *supra* note 33.

89. Hashmi, *supra* note 12, at 415–16.

really am and not judge me by my body. . . . To me, this is liberating and this is empowering.⁹⁰

Another American-Muslim woman echoed Ahmed's sentiment, stating that "I really like the purpose behind the hijab[:] a woman covering herself so that a man should know her for her mind, not her body."⁹¹ Other women have similarly asserted that wearing *hijab* helps discourage unwelcome flirting or sexual attention and serves as an "outward indication of [their] belief and expectation to be treated with respect."⁹²

Societal and cultural sentiment toward Islam may also affect a woman's decision to cover. For example, many Muslim women in the West were initially more likely to wear *hijab* after the September 11 terrorist attacks in New York City because they hoped to act as "diplomats for Islam" and serve as a positive counter image to al Qaeda.⁹³ As anti-Muslim sentiment and Islamophobia took hold, however, Muslims became targets of Western hostility and consequently women's enthusiasm to openly represent their religion waned.⁹⁴ For instance, in response to the hostility toward and harassment of some readily-identifiable Muslim women after the September 11 attacks, the American Muslim Women's League consulted an Imam⁹⁵ to inquire whether it was "acceptable for women to remove their head-covering[s] under such extreme conditions."⁹⁶ Further, Asma Uddin, an American Muslim attorney, stated she wore a hijab because she was trying to prove that Muslim women in headscarves are also empowered, but she ultimately stopped covering because it "interfer[ed] with her work as a lawyer."⁹⁷

B. Sharia-Minded Feminism

Western feminists often criticize Islam for encouraging women's oppression and therefore call for a move away from what they perceive to be an inherently inequitable religion. What these feminists often

90. CNN, *French Niqab Ban Debate Between Hebah Ahmed and Mona Eltahawy*, YOUTUBE (Apr. 23, 2011), <https://www.youtube.com/watch?v=dtDzDXg2GQU&t=4s>.

91. Hashmi, *supra* note 12, at 416.

92. *Id.* at 415.

93. See Khalid, *supra* note 77.

94. See *id.*

95. An Imam is a religious leader in the Muslim community.

96. See Nimat Hafez Barazangi, *The Absence of Muslim Women in Shaping Islamic Thought: Foundations of Muslim's Peaceful and Just Co-Existence*, 24 J.L. & RELIGION 403, 418 (2008).

97. Gjelten, *supra* note 79.

overlook is that many feminists within the religion rely solely on Islam's fundamental texts and beliefs to argue that true Islam is not discriminatory. These so-called *sharia*-minded feminists advocate for religious reform rather than abandonment without relying on Western feminist principles or sources.⁹⁸ In fact, they argue that the West's attempt to impose its version of feminism on Islam is ultimately doing more harm than good.⁹⁹

When arguing that Islam is fundamentally equalitarian, *sharia*-minded feminists commonly cite Islam's progressive stance on gender equality during the life of the Prophet. During his farewell address, for example, the Prophet directed his followers to "[t]reat your women well and be kind to them for they are your partners and committed helpers."¹⁰⁰ The Quran's enhanced protections for girls and women were revolutionary and significantly departed from previous patriarchal tribal practices during Jahiliyyah.¹⁰¹ Islam was the first religion in the world to legally mandate that women be granted rights as independent persons.¹⁰² The Quran outlawed female infanticide, a practice that had been common during Jahiliyyah.¹⁰³ The Quran also allowed women refuse marriage proposals, manage their dowries, and seek divorce.¹⁰⁴ Additionally, men and women were entitled to identical property ownership rights, women were permitted to inherit property, and women could deny men's attempts to control their finances.¹⁰⁵

As a result of their enhanced rights, women ascended to significant and powerful positions in early Muslim society. During the Prophet's life, women held noteworthy positions in a variety of influential arenas, including religion, politics, education, law, economics, and the

98. See generally Asifa Quraishi, *What if Sharia Weren't the Enemy?: Rethinking International Women's Rights Advocacy on Islamic Law*, 22 COLUM. J. GENDER & L. 173 (2011) (arguing that advocacy for women's rights is better left to *sharia*-minded feminists who can reform the religion from within instead of imposing a new structure).

99. See *id.* at 227.

100. Christie S. Warren, *Lifting the Veil: Women and Islamic Law*, 15 CARDOZO J.L. & GENDER 33, 33 (2008) (quoting The Prophet Mohammad, *Prophet Mohammad's Last Sermon*, MODERN RELIGION, http://www.themodernreligion.com/prophet/prophet_lastsermon.htm (last visited Nov. 22, 2017)).

101. Jahiliyyah refers to "the period of ignorance" in which Arabs lived in pre-Islamic Arabia. Women were considered chattel and, as such, had no individual legal rights. Accordingly, young girls were often sold into slavery or committed to marriage at a very young age. Female infanticide was common. Moreover, women could be forced to marry and some men married multiple women strictly to gain control of the women's resources. *Id.* at 41–43.

102. *Id.* at 42.

103. *Id.*

104. *Id.*

105. See *id.*

military.¹⁰⁶ Additionally, the Prophet's wives and daughters actively helped him establish the religion and he reportedly sought his wives' counsel on various issues.¹⁰⁷ One example of women's increased confidence in light of their newly enumerated rights is the story of Fatima, the Prophet's daughter, who is reported to have publicly challenged the first Caliph, Abu Bakr, after he denied her claim to inherit her father's land.¹⁰⁸

Unfortunately, women's rise to positions of prominence was a temporary phenomenon, the termination of which closely coincided with the Prophet's death in 632 A.D.¹⁰⁹ In fact, the Prophet's attempts to radically alter women's place in society may have caused a backlash that reinforced society's desire to preserve the gender divide. In spite of the increase in gender equality during the early years of Islam, "the possibility is real that most of the misogynistic traditions and interpretations of [*sharia*] arose as a form of male resistance to the power and active public roles of women during the early years of the religion."¹¹⁰ For example, Ibn 'Umar, the second Caliph's son and a notable specialist in *hadith* and law, reportedly admitted that the community resisted the Prophet's expansion of women's rights during the early years of Islam.¹¹¹ In so doing, 'Umar commented, "When the Prophet was alive we were cautious when speaking and dealing with our women in fear that a revelation would come [from God] concerning our behavior. But when the Prophet died we were able to speak and deal with them [more freely]."¹¹²

Although the Islamic community took an initial step back following the Prophet's death, it later recommenced efforts to make Islamic society more equitable, albeit to a lesser degree. The majority of practicing Muslims recognize well established and accepted *fiqh* that grant women rights that, until recently, were not fully available to Western women.¹¹³ For example, settled *fiqh* not only insist on the spiritual equality of the sexes, but also include a woman's right to consent, or refuse to consent, to marriage; to initiate divorce proceedings; to own and inherit property; to maintain exclusive control over her income and property; to pursue an education, including scholarship on religious law; and to serve in military combat, including

106. *Id.* at 42–43.

107. *Id.* at 43.

108. See Barazangi, *supra* note 96, at 418.

109. Warren, *supra* note 100, at 43.

110. *Id.*

111. *Id.* at 46.

112. *Id.*

113. See Quraishi, *supra* note 98, at 217–18.

service on the front lines.¹¹⁴ Similarly, there has been a revival of *fiqh* rules rejecting the existence of a woman's "religious obligation" to perform housework, and asserting that a man with multiple wives must treat each woman equally.¹¹⁵ Rather than attempting to substantially alter *sharia* or convince followers to abandon it, "[t]here is a strong tone in this discourse that if men were to properly abide by their Islamic obligations, then the lives of many Muslim women would improve."¹¹⁶

Moreover, new progressive scholarship recognizing equality and justice within Islam has enabled *sharia*-minded feminist groups to explore the possibilities for reform with regard to the intersection of women's rights and family law. Motivated by new interpretations of religious texts, these themes include the recognition of equality between men and women in Islam;¹¹⁷ the modern authority of *ijtihad*; the differentiation between what is universally controlling and what is contextually specific and thus only meant to concern Seventh Century Arabia; the socio-historical context of revelation; and the need to distinguish between actual revelation and conclusions reached through *ijtihad*.¹¹⁸ These developments are especially important as they allow feminist groups to operate completely within the existing Islamic framework while simultaneously challenging so-called "Islamic" gender inequality and oppression.¹¹⁹

Because established *fiqh* contain a mixture of equalitarian and prejudiced tenets, *sharia*-minded feminists tend to take the difference between *fiqh* and actual *sharia* very seriously. Activists regularly point out that many gender biases are in the *fiqh* rules, not Quranic *sharia*, and thus, they argue, stems from "the fallible human element in *ijtihad* reasoning."¹²⁰ Therefore, these groups do not advocate for abandoning *sharia*, but for reworking it to promote equality that aligns with basic Quranic values. One such activist organization is the Malaysian group Sisters of Islam, which asserts that "Islam has been used to justify laws and practices which oppress women. This occurs as a result of customs, traditions, and values which regard women as inferior to men."¹²¹ Accordingly, the organization advocates for a reconstruction of Islamic

114. *Id.* at 218.

115. *See id.* at 224.

116. *Id.*

117. *See, e.g.*, NIMAT HAFEZ BARAZANGI, WOMAN'S IDENTITY AND THE QUR'AN: A NEW READING 60–62 (2004).

118. Zainah Anwar & Jana S. Rumminger, *Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform*, 64 WASH. & LEE L. REV. 1529, 1541 (2007).

119. *Id.*

120. Quraishi, *supra* note 98, at 214–15.

121. *Id.* at 215.

principles, procedures, and practices so as to fully implement basic Quranic ideals of equality and justice.¹²² Other like-minded activist groups include the Saudi League of Demanders of Women's Right to Drive Cars, the Nigerian Women's Aid Collective, and the BAOBAB.¹²³

Working strictly within the established Islamic structure, advocates have pushed for the inclusion of female judges in *sharia* courts, arguing women can bring unique perspective to the legal implementation of traditional *fiqh* rules that inordinately affect women.¹²⁴ Some progressive *sharia*-minded feminists in Nigeria have gone so far as to suggest new *ijtihad* that de-criminalizes unwed pregnancy because its effects unfairly and disproportionately fall on women.¹²⁵ Though these groups have had limited success in limited territories, their efforts have resulted in better *fiqh* education for women and girls.¹²⁶ Although it may seem counter-intuitive to strengthen women's relationships with Islam, this is a significant development because fluency in *sharia* provides women with a legitimate, credible basis on which to build arguments.¹²⁷

Unlike Western feminists who exhibit "traits of a rescue mentality that imagines itself to be bringing liberation to Muslim women from the outside" and who seek to impose ideas on the Muslim community through a sort of colonial feminism, feminists who can persuasively present arguments that originate inside the recognized *fiqh* are more likely to be successful within Muslim communities.¹²⁸ Western feminists who attempt to "liberate" Muslim women without taking the time to fully distinguish between the fabricated constructs of Muslim women's oppression and reality have severely frustrated both Western and Islamic feminists' efforts.¹²⁹ The anti-*sharia* strategies many Western advocates employ directly undermine *sharia*-minded advocates' chances of success, as Islamic feminists are branded as having been deluded by the West. Thus, even where *sharia*-minded advocates directly invoke the Quran or *sunna*, their points are often marginalized by religious congregations and the advocates are ridiculed as "pawn[s]" or "sell-out[s]" to Western forces seeking to corrupt Islam.¹³⁰

Therefore, both the general Muslim community, which views Western feminism as disrespectful to women, and *sharia*-minded feminists, whose efforts are frustrated by outside intrusion, resent

122. See *id.*; Anwar & Rumminger, *supra* note 118, at 1538–39.

123. See Warren, *supra* note 100, at 57–58.

124. Quraishi, *supra* note 98, at 224–25.

125. *Id.* at 179, 224.

126. *Id.* at 225.

127. See *id.* at 225–26.

128. *Id.* at 219–220, 231–32.

129. See BOSANKIĆ, *supra* note 26, at 20.

130. Quraishi, *supra* note 98, at 227.

Western feminists' attempts to intervene. For instance, a group of prominent Iranian women held that the East treats women merely as "working machines" and the West treats them as sex objects, while only Islam regards them as "true humans."¹³¹ These women reasoned that, rather than obsessing over equality of the sexes as Western feminists do, Islam concentrates on the sexes' complementary nature, thereby acknowledging the benefits arising from the differences between the sexes that the West overlooks. Using this reasoning, these women explicitly reject the very premise of Western feminism, which they see as provoking women against men.¹³² This lack of Western understanding of the benefits some Muslims identify in gender differences is a major reason for the injurious effect of Western Feminists' intervention on *sharia*-minded feminism.

Finally, because of the West's reluctance to recognize this alternative, *sharia*-based feminism has placed *sharia*-minded advocates attempting to appeal both to traditional Muslim communities and the West in increasingly difficult positions. As scholars have noted, "[n]o matter how [a woman] chooses to dress, she simultaneously symbolizes two contradictory messages: wearing recognizably Muslim dress, she is viewed as oppressed by many Western observers but as Islamically credible by most Muslims; without it, Westerners are likely to consider her liberated, but to many Muslims she is Western—corrupted and un-Islamic."¹³³

IV. THE EXTERNAL PERSPECTIVE

When examining women's rights in Muslim-majority countries, Western observers tend to, quite literally, count heads and thereby infer that the more women who cover in a society, the less liberated the women in that society are.¹³⁴ This tactic is largely utilized because many Westerners associate the headscarf with female oppression and restrictive policies implemented in the name of *sharia*.¹³⁵ This approach is woefully misguided, however, because "oppression cannot be generalized to Islam or the meaning of the headscarf."¹³⁶ Further, not all Muslim women opt to cover and those who do cite a wide variety of reasons for doing so, only one of which is forceful imposition. There is

131. ASEF BAYAT, MAKING ISLAM DEMOCRATIC: SOCIAL MOVEMENTS AND THE POST-ISLAMIC TURN 72–73 (2007).

132. *See id.* at 72.

133. Quraishi, *supra* note 98, at 247.

134. *See id.* at 245.

135. *See* Hashmi, *supra* note 12, at 416.

136. *Id.* at 416.

additional variability amongst Muslim women who cover, as some women cover only at certain times or places, depending on context.¹³⁷

The extensive disconnect between the West's general perception of Islam as a misogynistic and oppressive force and many Muslim's interpretation of the religion as a unifying and protective faith largely comes from incomprehensive and biased media coverage. It is concededly true that many Muslim-majority countries have objectionable policies with respect to female rights and empowerment. In Saudi Arabia, women did not obtain the right to vote until 2015 and in some remote parts of Afghanistan, girls cannot attend school.¹³⁸ Though these facts are certainly distressing to feminists, the clear problem with assuming that Muslim-majority countries' policies are fully reflective of *sharia* or Islamic doctrine more generally is that there are multiple extraneous factors—such as pre-Islamic history and culture—that contribute to the cited oppression but are often overlooked, if not blatantly ignored. As discussed above, in many cases, the poor treatment of women is more closely linked to cultural and tribal practices than Islamic edicts.¹³⁹

Though it is impossible to evaluate Islam's effects on women's rights independently of external cultural influence, it is clear that not all Muslim women are categorically repressed, as Muslim women in Western cultural contexts are an active and empowered segment of society.¹⁴⁰ According to the Gallup Center for Muslim Studies, Muslim American women are one of the most highly educated female religious groups in the United States and are more likely to work in professional fields than females who observe other religions.¹⁴¹ Consequently, Muslim women have the highest degree of economic gender parity of any religious group.¹⁴² Similarly, in the United Kingdom, of the thirteen Muslim citizens elected to serve in Parliament, eight were women.¹⁴³

137. See Quraishi, *supra* note 98, at 246.

138. See Melanie Elturk, *Why Do We Police What Muslim Women Wear to the Beach?*, ELLE (May 2, 2016), <http://www.elle.com/culture/career-politics/news/a35847/islamic-swimwear-burkini-enslavement-or-freedom/>.

139. See *id.*

140. A comparison of Western Muslim women's rights with those of Muslim women in Muslim-majority countries is admittedly problematic as Muslims are minorities in Western countries and Western legal systems tend to be more secular than legal systems in Muslim-majority countries. Despite these obstacles, an analysis of the treatment of Muslim women within smaller Islamic communities in the West is useful as it shows, on a smaller scale, how Islamic tenets and decrees affect the treatment of women amongst devout believers.

141. See Elturk, *supra* note 138.

142. See *id.*

143. *Id.*

Because Muslim-majority countries are generally located in the Middle East, feminists focus their attention on this area and Muslim women's successes in other places are generally overlooked. For example, the United States' war in Afghanistan quickly evolved to encompass a campaign for women's liberties within the then-existing theocracy.¹⁴⁴ The concerns underlying this campaign were well founded as, in extreme cases, Afghani women who disobeyed the Taliban were punished in atrocious ways, including stoning, acid attacks, or even immediate execution.¹⁴⁵ The Islamic validity of these actions, however, was never seriously questioned in the Western media and reports that another town or village had been captured by American forces were often accompanied by shots of women throwing off their *burqas*.¹⁴⁶ These sorts of images persuaded many Westerners that women's oppression in places like Taliban-controlled Afghanistan was reasonably representative of women's status throughout Muslim controlled territories, and that if given the opportunity, all covered women would immediately discard traditional Islamic dress.¹⁴⁷

The West's misinterpretation of *sharia's* dress restrictions is also perpetuated by widespread Islamophobia. Anti-Islamic sentiment dates back as far as the Crusades, where there is testimony about the "backward and perverse Muslims [who] destroy the achievements of the Christian civilization."¹⁴⁸ This hostility persisted, in varying degrees, throughout the Middle Ages. One example of this opposition is the painting of Dante's *Divine Comedy*, in which the Prophet Muhammad is illustrated in the First Circle of Hell.¹⁴⁹ Though these tensions eased over time, the Islamic Revival¹⁵⁰ enflamed lingering anti-Islamic sentiment in Western societies. In France, for instance, conflict with *sharia's* dress restrictions began "not with the arrival of Muslim immigrants, but with the arrival of Islamists."¹⁵¹

144. See LEILA AHMED, *A QUIET REVOLUTION: THE VEIL'S RESURGENCE, FROM THE MIDDLE EAST TO AMERICA* 223 (2011).

145. See BOSANKIĆ, *supra* note 26, at 27–28.

146. See AHMED, *supra* note 144, at 223.

147. See *id.* at 223–24.

148. BOSANKIĆ, *supra* note 26, at 18–19.

149. See *id.*

150. The Islamic Revival refers to calls for an increased influence of Islamic values on the modern world in response to Western and secular trends. Proponents view a return to Islam in its purest form as the solution to the evils in Islamic societies and modern society as a whole. *Islamic Modernism and Islamic Revival*, OXFORD ISLAMIC STUD. ONLINE, <http://www.oxfordislamicstudies.com/article/opr/t253/e9> (last visited Nov. 22, 2017).

151. Kelsey Harkness, *What's Behind the French Burkini Ban*, DAILY SIGNAL (Sept. 1, 2016), <http://dailysignal.com/2016/09/01/whats-behind-the-french-burkini-ban/>.

Anti-Islamic sentiment is especially strong in modern society after more than a decade of terrorist attacks planned and implemented by Islamic extremists.¹⁵² Westerners' fear of Islamic extremists has transformed into resentment and antagonism toward Muslims generally, particularly Middle Eastern Muslims, as a general lack of knowledge regarding the basic tenants of Islam and *sharia* has created an absurd, yet commonly accepted, stereotype that "headscarf = Islam = terrorism."¹⁵³ Because women who wear *hijab* are easily identifiable as Muslims, they typically face increased harassment and aggression.¹⁵⁴ The West's fear of terrorism, and its consequent antipathy toward Islam, was clearly evident when some argued that a French ban on headscarves in schools was appropriate because, "[t]he veil is a proselytizing device, intended to intimidate the Muslim schoolgirls and to claim a zone of Islamist power in the school . . . and the dress code is the beginning of something larger, which is the Islamist campaign to impose a dangerous new political program on the public school curriculum in France."¹⁵⁵

The influx of Islamic refugees during the conflict in Syria and elsewhere in the Middle East has further enhanced anti-Muslim sentiment in the West, particularly in Western Europe.¹⁵⁶ In some cases, the antagonism some Westerners feel toward Middle Eastern Muslims automatically applies, regardless of the individual's home country or personal beliefs. As Ayesha Imam, the director of BAOBAB for Women's Rights, stated, "[t]he tendency to treat the Muslim world as monolithic only helps to legitimize the religious right's monopolistic claim to speak for all Muslims and to de-legitimize the assertions of progressive scholars and rights activists."¹⁵⁷

Further, there is a widely held belief among Westerners that Muslim women cover because, and only because, men force them to do so. Collectively, Westerners tend to value individual freedoms, with feminists specifically focusing on a woman's ability to take control of her own life without being subject to a man's authority. Thus, there is an inherent tension between Western feminism and Western perceptions of *hijab*. This tension was blatantly clear in 2009, when France's president Nicolas Sarkozy stated that the *burqa* was not a religious symbol, but "a sign of enslavement" that was not welcome in France because "we

152. See BOWEN, *supra* note 83, at 87.

153. *Id.* at 90.

154. See Barazangi, *supra* note 96, at 418.

155. Harkness, *supra* note 151.

156. See Taylor, *supra* note 36.

157. Quraishi, *supra* note 98, at 217.

cannot accept in our country women imprisoned behind a mask, deprived of all social life, of their identity.”¹⁵⁸

V. REGULATION IN THE WEST

Motivated by concerns for gender equality and by Islamophobia, many Western countries have implemented legislation that regulates, if not outright prohibits, women’s ability to wear *hijab*. Such regulation has appeared in parts of France, Switzerland,¹⁵⁹ Belgium,¹⁶⁰ Italy,¹⁶¹ Austria,¹⁶² Morocco,¹⁶³ the Netherlands,¹⁶⁴ and Spain.¹⁶⁵ Additionally, citizens have called for bans on *hijab* at local levels in Germany,¹⁶⁶ Denmark,¹⁶⁷ and Britain.¹⁶⁸

Interestingly, in some cases, Islamic groups are among those most passionately supporting the bans. In Britain, a progressive Muslim organization called Muslim Education Center of Oxford (MECO) actively campaigned to force parliamentary debate over whether to ban the *niqab* and *burqa*. This group views Islam’s adoption of women’s coverings as “the blind importation of Saudi tribal customs” and seeks to restore Quranic Islam by rejecting the aspects of Islamic practice that it views to be centered in “cultural Islam,” including *hijab*.¹⁶⁹ MECO cites the *niqab* as a pre-Islamic custom from Byzantium that women wore for cultural reasons, though the garment was later incorporated into Islamic society and imbued with a “veneer of religion as justification.”¹⁷⁰ In defense of their decision to push for legislation that will outlaw the coverings, the group stated, “[t]he Islam I believe in

158. CNN, *supra* note 90; Taylor, *supra* note 36.

159. See Holm, *supra* note 87.

160. Stefanie Walterick, *The Prohibition of Muslim Headscarves from French Public Schools and Controversies Surrounding the Hijab in the Western World*, 20 TEMP. INT’L & COMP. L.J. 251, 275–76 (2006).

161. See *id.* at 277.

162. Leah McGrath Goodman, *Burkini Swimsuits Spark Anti-Muslim Outrage—and Fast Sales*, NEWSWEEK (Aug. 8, 2016, 7:30 AM), <http://www.newsweek.com/2016/08/19/burkini-swimsuits-spark-anti-muslim-outrage-sales-488138.html>.

163. See *id.*

164. See BOSANKIĆ, *supra* note 26, at 30.

165. *The Islamic Veil Across Europe*, BBC NEWS (Dec. 6, 2016), <http://www.bbc.com/news/world-europe-13038095>.

166. On December 6, 2016, Chancellor Angela Merkel remarked that full-faced veils should be prohibited in Germany “wherever it is legally possible.” *Id.*

167. *Id.*

168. BOSANKIĆ, *supra* note 26, at 30.

169. Holm, *supra* note 87.

170. *Id.*

wants equality for women and asking them to wear a mask in public is not equality."¹⁷¹

The inherent problem with framing the issue in this way is that groups, such as MECO, that are both Islamic and in favor of regulation are rare. Rather, the bans' proponents are often secularists or non-Muslim.¹⁷² Thus, debate over the propriety of legislation that would regulate Muslim women's coverings tends to divide the population along religious lines, deepening divides and structuring the debate as an apparent assault on citizens' freedom to practice a single religion. Consequently, the coverings take on an increasingly important symbolic role within Islam, thereby eroding arguments that the coverings are more cultural than religious and cementing non-believers' conviction that the coverings are an inherent and inseparable part of a Muslim woman's religious practice.¹⁷³

A. Conflict with Western Choice Feminism

The severity of the West's feminist concerns over imposed coverings are reflected in the fact that a French law prohibiting women from wearing a *niqab* in public provides for heavier fines on men who force women to wear *niqab* than the fines the veiled woman herself must pay.¹⁷⁴ Notably, in the seven years since France's *niqab* ban became effective, no one has ever been fined for forcing a woman to cover.¹⁷⁵ Some Western feminists have relied on their perceptions of *sharia* and have defended the French *niqab* ban, arguing that the "veil [] indicates that females accept their various, burdensome roles . . . [as] subservient marriage partners, daughters, sisters, nieces, sisters-in-law, aunts, grans and so on."¹⁷⁶ Similarly, Egyptian-American journalist and activist Mona Eltahawy asserted that full face veiling threatens women's rights because it equates piety to the disappearance of women.¹⁷⁷ Some Western feminists go so far as to argue that, even when women voluntarily cover, such dress should be outlawed because

171. *Id.*

172. See generally Jolanda van der Noll, *Public Support for a Ban on Headscarves: A Cross-National Perspective*, 4 INT'L J. CONFLICT & VIOLENCE 192 (2010) (examining why members of the public in the United Kingdom, France, Germany, and the Netherlands support a ban on headscarves).

173. See Quraishi, *supra* note 98, at 247.

174. See Angelique Chrisafis, *France's Burqa Ban: Women Are Effectively Under House Arrest*, GUARDIAN (Sept. 19, 2011, 4:00 PM), <https://www.theguardian.com/world/2011/sep/19/battle-for-the-burqa>.

175. See *id.*

176. YASMIN ALIBHAI-BROWN, REFUSING THE VEIL 108 (2014).

177. See CNN, *supra* note 90.

“[w]omen who make the decision to veil are colluding with gender repression across the Muslim world.”¹⁷⁸

There is a clear irony in some Western feminists’ argument. They argue women should be legally prohibited from having the choice to wear *hijab* so as to prevent men from removing a woman’s choice to wear *hijab*. Accordingly, there is a split among Western feminists, some of whom argue that the bans are essential to show that a woman has the full support of the law behind her should she need to stand up against a man.¹⁷⁹ It is nonsensical, however, to presume the best way to protect a woman’s freedom to decide how she dresses, practices her faith, and is received by society is to completely take away her ability to choose how to present herself. Accordingly, recognizing the hypocrisy of such bans, other Western feminists argue that “[I]f pressure to wear the *hijab* is seen as oppression . . . why is social pressure or legal pressure to not wear it excused as female emancipation? . . . This pseudo-feminist argument . . . goes against the feminist values it claims to defend.”¹⁸⁰

Moreover, the bans have been largely ineffective in deterring women from covering and increasing feminist objectives. At the time France’s *niqab* ban was passed, only an estimated 2,000 women—of France’s population of 7.5 million—were reported to regularly wear a *niqab*.¹⁸¹ Most women who wore the *niqab* before the ban have not stopped wearing it. Accordingly, majority of the women who have been fined under the law are repeat offenders who refuse to alter their dress, making it more difficult and more expensive for Muslim women who choose to wear the *niqab* to express their culture or religious beliefs than for women of other traditions.¹⁸² Indeed, in places where bans are in place, there have been increases in the number of women who cover, leading some experts to conclude that the bans have encouraged Muslim women who previously did not cover to adopt the practice as an act of protest.¹⁸³

Western feminists’ attempts to impose Western-style feminism on Islam through legal restrictions have severely hindered Muslim women’s ability to attain the desired gender equality. Rather than “liberating” women from *hijab*, the regulations have made Muslim women who cover by choice more likely to stay home as these women are hesitant to risk being fined for their preferences.¹⁸⁴ Western

178. ALIBHAI-BROWN, *supra* note 176, at 96.

179. See CNN, *supra* note 90.

180. Elturk, *supra* note 138.

181. Some argue that even this estimate is too high. See Taylor, *supra* note 36.

182. One French woman, for example, has been fined thirty-three times. See *id.*

183. See *id.*

184. See *id.*

feminists' general assumption that Muslim women cover solely by force, rather than by choice, has focused advocates' efforts on what is largely a moot issue in the Western context. This assumption has thwarted advocates' ability to effectively combat real gender equality in Muslim culture. Therefore, not only have bans intended to protect a women's choice and to fight gender oppression had the opposite effect, but they have also created the appearance that Western feminists intend to restrict a woman's ability to practice her religion and have thereby fortified the bond Muslims feel toward *hijab*. This misunderstanding perpetuates a vicious cycle in which Muslim women are inspired to cover, an outcome Western feminists largely interpret as evidence that Islam needs further feministic reform.

VI. THE BURKINI BAN: A CASE STUDY

The most recent regulation of traditional Islamic dress to capture international attention is the so-called Burkini Ban in various French cities.

In contrast to American principles of Freedom of Religion that mandate the tolerance of religious expression, the French doctrine of *laïcité* holds that religion is a purely private affair. Therefore, not only should it be kept separate from the state, but it has no place in the public sphere at all.¹⁸⁵ As a general principle, most Frenchmen believe the most important thing with which a French citizen should identify is the Republic itself. Therefore, a citizen's identification as "French" must supersede any identification she may feel as a Muslim, a Christian, or a Jew.¹⁸⁶ In explaining *laïcité* and France's preference for assimilation to preserve French culture, one man reasoned, "[w]e have to place ourselves in the public space, by abstracting from our individual characteristics, from where we came from, our roots. This is the idea of the social contract."¹⁸⁷

France has the largest Muslim population in Europe¹⁸⁸ and has attracted global criticism of the persistent tension between *laïcité* and *hijab*. In 2004, France banned headscarves—along with other "ostentatious" religious articles such as crosses, Jewish yarmulkes, and

185. See BOWEN, *supra* note 83, at 14.

186. *Id.* at 202.

187. *Id.* at 14.

188. An estimated five to six million Muslims live in France and comprise approximately eight percent of the country's population. See Sarah Bienkowski, *Has France Taken Assimilation Too Far? Muslim Beliefs, French National Values, and the June 27, 2008 Conseil D'État Decision on MME M.*, 11 RUTGERS J. L. & RELIGION 437, 441–42 (2010).

Sikh turbans—from public schools. Though the law appears facially neutral, indicators suggest the law was enacted with the intent to eliminate the hijab's presence in French public school classrooms; a notion supported by the fact that the law later yielded to allow exceptions for symbols, such as small crosses, that are associated with other religions.¹⁸⁹ Similarly, in 2011, France passed the so-called “Burqa Ban,” which prohibited women from wearing *burqas* or *niqabs* in public. Unlike the 2004 law, this ban did not outlaw Sikh turbans.¹⁹⁰

Many human rights advocates have criticized these bans as “[i]nvasive and discriminatory measures” that “restrict women’s choices and are an assault on their freedoms of expression [and] religion and [their] right to non-discrimination.”¹⁹¹ In response, France has cited concerns for public safety and respect for the “minimum set of values of an open and democratic society.”¹⁹² The European Court of Human Rights weighed in on the issue and upheld the French laws, ruling that the government’s justifications were sufficient to warrant the bans.¹⁹³

The most recent regulation of *hijab* in France is the so-called “Burkini Ban.” The burkini is commonly described as an Islamic swimsuit. It is made of the same material as traditional bathing suits¹⁹⁴ but fits like a tunic and leggings, leaving only the face, hands, and feet exposed.¹⁹⁵

Despite Western tendencies to label the burkini as foreign, the garment is actually a product of the West. It was invented in 2007 by Lebanese-Australian Aheda Zanetti, who created the garment to allow all Muslim women to actively participate in Australian culture without concerns of offending notions of traditional Islamic modesty.¹⁹⁶ Although the swimsuit was designed with Muslim women in mind, many non-Muslims also wear the suit to protect their skin or simply because they are more comfortable in a burkini than a traditional bathing suit. According to Zanetti, approximately forty percent of her clients are non-

189. See Walterick, *supra* note 160, at 260–61.

190. See *Burqas Banned, Not Sikh Turbans: French Embassy*, HUFFINGTON POST (Mar. 3, 2016, 9:06 AM), <http://www.huffingtonpost.in/2016/02/02/burqas-banned-not-sikh-turbans-french-embassy/>.

191. Kim Hjelmggaard & Jane Onyanga-Omara, *Top French Court Overturns Controversial Burkini Ban*, USA TODAY (Aug. 26, 2016, 5:11 PM), <http://www.usatoday.com/story/news/world/2016/08/26/french-court-rule-beach-burkini-ban/89392280/>.

192. Harkness, *supra* note 151.

193. Holm, *supra* note 87.

194. See Shabana Mir, *The Deadly Burquini, or, What Exactly is an “Islamic Swimsuit”?*, USCANNENBERG (Aug. 13, 2009), <http://religiondispatches.org/the-deadly-burquini-or-what-exactly-is-an-islamic-swimsuit/>.

195. See Elturk, *supra* note 138.

196. See Taylor, *supra* note 36.

Muslim women of various ages, ethnicities, religions, and backgrounds.¹⁹⁷

Invoking *laïcité* as a formal justification¹⁹⁸ and prompted by public sentiment following the August 2016 terrorist attack in Nice,¹⁹⁹ Nice and thirty other towns in Southern France implemented legislation banning the burkini from its beaches.²⁰⁰ French leaders labeled the burkini as a “symbol of Islamic Extremism” that enslaves and “hide[s] women’s bodies in order to better control them.”²⁰¹ When challenged, French officials presented a variety of defenses, including concerns for disruption to public order, hygiene, and “decency.”²⁰² The ban drew significant attention and international outrage when media sources released an image of four armed, male police officers surrounding a woman in a burkini as she removed her tunic on a French beach.²⁰³ The woman was ticketed for “not wearing an outfit respecting good morals and secularism.”²⁰⁴ Media sources further reported that other beachgoers applauded the officers and shouted at the woman to “go home.”²⁰⁵

This incident sparked fierce debate both within France and internationally. Some opponents of the ban appealed to Christian decency by drawing comparisons to a nun’s beach attire while others criticized the incident as “anything but the Liberté, Equalité, Fraternité” on which France was founded.²⁰⁶ The incident, opponents argued, was an act of humiliation, coercion, and cultural imperialism. Former London mayoral candidate Zac Goldsmith joined this view stating, “When a western secular democracy chooses to use armed police to force women to change their clothes on a beach, surely they have

197. *See id.*

198. Alexandra Sims, *Burkini Ban in Cannes Overturned as French Court Rules Decree Violates Basic Freedoms*, INDEPENDENT (Aug. 30, 2016, 16:03), <http://www.independent.co.uk/news/world/europe/burkini-ban-cannes-latest-overturned-french-court-rules-violates-basic-freedoms-a7216901.html>.

199. *See* Rishi Iyengar, *French Court Overturns Controversial Burkini Ban*, TIME (Sept. 2, 2016), <http://time.com/4477248/nice-france-burkini-ban-overturned/>.

200. *See id.*

201. Steve Chapman, *The Bare Truth about French Burkini Bans*, CHI. TRIB. (Aug. 19, 2016, 12:48 PM), <http://www.chicagotribune.com/news/opinion/chapman/ct-burkini-france-swimsuit-ban-muslim-perspec-20160819-column.html>.

202. Sims, *supra* note 198.

203. *See* Iyengar, *supra* note 199.

204. Sara Nelson, *France Burkini Ban Photos Spark Heated Debate: What If A Nun Was Forced to Remove Her Habit?*, HUFFINGTON POST (Aug. 24, 2016, 11:25 AM), http://www.huffingtonpost.co.uk/entry/burkini-ban-sparks-debate-what-if-a-nun-was-forced-to-remove-her-habit_uk_57bd6eeae4b042aee74dfc07.

205. *Id.*

206. *Id.*

lost.”²⁰⁷ Proponents of the ban responded that it was not about forcing women to remove their clothing but about reclaiming French culture.²⁰⁸ Former French president Nicolas Sarkozy commented that France does not “imprison women behind fabric” and called the burkini a “provocation” that supports radical Islam.²⁰⁹

When condemning the burkini as a sign of Islamic extremism and a violation of *laïcité*, French officials have largely neglected a key element: the Muslim community’s response to the garment. The burkini is portrayed to many Muslims as an agent of assimilation and integration into Western culture,²¹⁰ and the *ulama* has not reached a consensus as to whether *sharia* permits a Muslim woman to swim in a burkini. Some Wasatī and Saudi jurists argue there is no harm in women participating in such activities so long as the rules of modesty are respected; Salafi scholars, however, argue that it is inappropriate for a woman to participate in sporting activities outside of the home as it threatens to “corrupt[] Muslim society by promoting Westenization.”²¹¹ The *ulama* has agreed that it is inappropriate for men and women to swim together and thus even those who would allow women to swim in burkinis insist on gender segregation.²¹² Moreover, though Wasatī jurists generally approve of the burkini, they have clearly indicated that not all burkini designs are sufficiently modest. As one jurist cautions, “tight fitting burkinis that resemble diving suits are a little too revealing for a woman who wants to be modestly covered according to Islam.”²¹³

As is true with other Western bans on Muslim women’s attire, banning the burkini—a garment designed to allow Muslim women to fully participate in Western culture—because of the improper association of *hijab* with Islamic extremism and women’s oppression is inherently problematic. Not only does the ban undermine Western feminists’ aim of allowing women the freedom to choose how to dress, but it also prevents Muslim women who feel religiously obliged to wear

207. *Id.*

208. *See id.*

209. The Nice mayor’s office claimed the woman had not been forced to disrobe but was merely demonstrating that she was wearing a swimsuit under her tunic. Angelique Chrisafis & Martin Farrer, *Sarkozy Calls Burkinis A ‘Provocation’ that Supports Radical Islam*, THE GUARDIAN (Aug. 25, 2016, 2:14 PM), <https://www.theguardian.com/world/2016/aug/25/burkini-ban-sarkozy-calls-swimsuits-a-provocation-that-support-radical-islam>.

210. *See* Shanon Fitzpatrick, *Covering Muslim Women at the Beach: Media Representations of the Burkini*, UCLA CENTER STUD. WOMEN (Feb. 1, 2009), <https://escholarship.org/uc/item/9d0860x7>.

211. Uriya Shavit & Ofir Winter, *Sports in Contemporary Islamic Law*, 18 ISLAMIC L. & SOC’Y 250, 271 (2011) (internal quotation marks omitted).

212. *See id.*

213. *Id.* at 270–71.

hijab from partaking in Western culture. This separation deepens the unnecessary divide between traditional Muslim women and Western society, thereby reinforcing the perception that Islam restrains women and is incompatible with Western values.

It also seems contradictory to hold that a woman in a burkini is dressed immodestly and the only way for her to conform to mandated societal notions of decency is to replace the burkini with a Western-style swimsuit that leaves the majority of her body exposed. This perverse outcome creates a self-fulfilling cycle as it reinforces Muslim societies' common belief that Western feminism leads to the over-sexualization of women. Moreover, a Muslim woman's refusal to abide by such inverted standards reinforces Western notions that Muslim women are commanded to cover and are thus unwilling, if not unable, to participate in Western society.

CONCLUSION

Although *sharia*-minded feminists argue that Islam, in its pure form, is inherently equalitarian, Western feminists' attempts to eliminate perceived gender inequality through regulation of *hijab* have largely been unsuccessful, if not outright injurious. Therefore, though feminists working within the faith argue Islam may harmoniously exist alongside Western notions of gender equality, it seems clear that the religion and its community will not accept the forced imposition of Western feminists' methods—which often encourage devout women to choose between Western expectations and their faith—as a means of accomplishing the desired egalitarianism.

Not surprisingly, Western Muslim women often refuse to conform to a system that asks them to modify their religious beliefs or practices. This “defiance” reinforces the West's flawed perception of gender in Islam and results in increased calls for feminist reform in Muslim societies. In the desperate attempt to promote reform within a religion they do not fully understand and aided by widespread anti-Islamism, Western feminists have begun pushing for, and in some cases implementing, legislation that limits Muslim women's choice to wear *hijab*, a custom some consider to be a central part of their culture or essential to their religious practice. Accordingly, Western feminists have worked to replace a feared system wherein individual men or governments force women to go out covered—a construction that fails to explain why the majority of women, especially women living in Western countries, wear *hijab*—with a system that forces women to go out uncovered.

This tension and its implications have resulted in the widespread but ultimately unfounded belief that Islam is fundamentally incompatible with Western notions of gender equality, and only after the stigmas associated with the competing forms of feminism are negated can any real harmony between the West and Islam emerge.