



No Ordinary Garment? The Burqa and the Pursuit of Tolerance

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PM138 Peter Kurti, *Multiculturalism and the Fetish of Diversity* (2013)

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Executive Summary

Islam is asserting itself in new ways in Australia where Muslim groups are increasingly asking that precedence be given to *sharia* law over secular laws passed by our parliaments. There are also calls for greater public acceptance of Islamic practices in economic and social life. Some of those social practices extend to religious and cultural customs concerning vesture such as the *burqa*, a garment that looms larger in public conversation than religious clothing worn by Hindus and Jews.

This report examines arguments about the burqa and investigates the way Australia balances the right of an individual to live in obedience to a religion with the wider obligation of the state to promote social cohesion. After weighing opposing arguments about the acceptability of the burqa, the report defends the right of women to wear it, and argues that religious sensibilities must always be protected by the law whenever possible.

Individuals in an open, liberal society should enjoy the fundamental right to live in obedience to any religion of their choosing. Australians are generally very tolerant of different religions. The limits of this tolerance can soon be reached, however, if any particular religion threatens to unsettle the stable secular social compact.

There are indications that the Australian compact may be under some strain. For example, a recent Roy Morgan poll found that 55.5% of respondents opposed the wearing of the burqa in public. Advocates of religious liberty often base their argument on a conception of religion that has renounced political claims. But Islam has not generally renounced political claims.

The issue of the burqa arises today not because of concerns about fashion but because of a concern about

those political claims — a concern that those who wear it are, at the very least, appearing reluctant to adopt this country's civic culture. The desire to wear the burqa openly in Australian society, therefore, represents more than an expression of a human right to freedom of religion.

The report weighs carefully the two principal opposing arguments usually adopted when debating the acceptability of the burqa in Western societies. Each argument seeks to establish different boundaries about the limits of acceptability and tolerance.

The Amenity of Public Space Argument holds that the burqa fails to observe the norms and conventions of public space and so should have no place in it. This approach takes little, if any, account of the individual's right to religious liberty and so fails to acknowledge all claims of conscience that may be grounded in deeply held religious convictions. The report argues that this argument ought to fail because it draws the limits of tolerance too narrowly.

The Equality Under the Law Argument holds that the religious symbolism of the burqa warrants that it is granted the equivalent status of any other religious symbol, such as a crucifix. It is thoroughly committed to the principle that an individual should be free to live as he or she chooses. However, the argument reduces the principle of religious liberty to the nostrums of identity politics where anything of any meaning to anyone is worthy of protection. It is a tactic that sidesteps the more challenging moral discipline of exercising tolerance.

This report defends the right to wear the burqa but rejects the relativist position that it is enough simply to

appeal to the sincerity with which a particular belief is held. The social and communal context in which religious belief is practised — and which undergirds the principle of the individual's right to freedom of religion — must also be weighed.

Questions of religious liberty will arise most acutely when the minority point of view is unpopular with the majority, or even distasteful to it. It is in such circumstances that the exercise of tolerance becomes most pressing and, possibly, most difficult. Whereas tolerance is certainly warranted by diversity, the exercise of such tolerance does not entail neutrality about that which is tolerated. Tolerance and dissent are compatible.

In many ways the burqa is at odds with an open, liberal society in which seeing another's face is an important element in interpersonal exchange. Wearing a veil implies hiddenness and withholding oneself. However, the freedom to wear a burqa as an authentic expression of religious belief is not something we should set aside lightly. Nor should the reasons for tolerating the burqa be cast in the mould of cultural relativism where nothing can be considered unacceptable.

This report argues that it would be a drastic step for the law to require a Muslim woman to appear in public without the covering she believes is required by her religious beliefs. Even though some women may wear the burqa for cultural reasons, the religious significance it has for others means their right to enjoy freedom of religion must be upheld by the state unless specific circumstances, such as giving evidence in a court of

law, require that her face be visible. Furthermore, the report rejects an analysis in terms of a simplistic binary opposition between Australians on the one hand and Muslims on the other for there are a little under 500,000 Muslims in Australia, comprising 2.2% of the population.

The act of wearing the burqa is, frankly, a complex one that raises questions about the integration and cultural assimilation of Australian Muslim members of society that go beyond simply expression of piety. In addition, the political thrust of Islamism, which holds that Islam should provide the governing framework for society, means increasingly that the exercise of the right to freedom of religion is likely to provoke unease and dissent amongst non-Muslim Australians.

Anxiety about the burqa is not just provoked by its appearance but also by the attitude towards Australians and their society of those who wear it. What we think about the burqa is one thing; what those who wear it think about *us* is a different and equally important question. However, the ends ostensibly served by a burqa ban do not justify the intolerant means. But such a position still leaves issues about the burqa unresolved.

It is, of course, easiest to champion the freedom of those who act as we do. But freedom is most evidently safeguarded when we defend a practice which is distasteful to some, and when we are also clear about the sound moral reasons for permitting that practice to continue. A free society will always be debating the limits of tolerance under the law — and balancing those limits against the exercise of a fundamental human right.



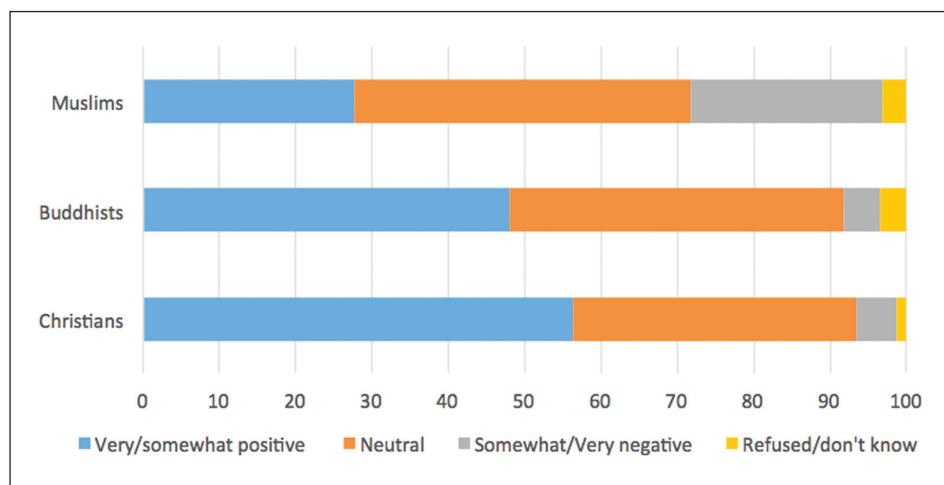
Head covering awareness day workshop in Sydney. Photo courtesy of Muslim Women Welfare of Australia

Introduction: Can the Secular-Religious Compact Hold?

Australia's longstanding social compact on religious diversity has been strained in recent years. One cause of this strain is the increasing secularity of Australian society, which is no longer inclined to accept the moral norms propounded by institutional religions such as Christianity or Judaism. One of the best examples of

this development is the secular response of the wider society to religious objections to same-sex marriage. Arguments based on notions of 'fairness' and 'justice' have frequently outweighed those based on 'revelation' or 'tradition'. This development is neither necessarily good nor bad; it just is so.

Figure 1: Australians' personal attitudes to Christians, Buddhists, and Muslims, 2014. Percentage of people who were positive, neutral or negative



Source: Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation Survey's National Report 2014*

A second cause of strain is the emergence of Islamic assertiveness in Australia. For example, some young Muslims born and educated in Australia have recently travelled to Syria and attached themselves to the forces of Islamic State, whose stated goals include establishing the caliphate. Other Australian Muslims openly support groups such as Hizb-ut Tahrir ('Party of Liberation'), which also calls for the caliphate and demands precedence be given to Islamic *sharia* law over secular law passed by democratically elected parliaments. Moreover, Muslim leaders tend to be very sensitive to any criticism of the behaviour and attitudes of Australian Muslims and can often be quick to present themselves as victims of what they have called 'politically convenient' sanctions imposed by the Australian state.¹

Australians are generally most tolerant of different religions, but the limits of this tolerance can soon be reached if any particular religion threatens to unsettle the stable compact of the overall secular state. What weight should be given to the demands of religious groups that the liberal state not only recognise religious claims but also protect the right of believers to express and act on those claims in accordance with their faith traditions? One of the factors that makes this more difficult for Western liberal societies when Islam is the religion in question is that, for many Muslims, Islam is not just a religion but an entire political system that demands giving precedence to God's revealed law (*shariah*) rather than laws passed by a democratically elected legislature. These opposing outlooks are colliding, as described by the British philosopher Roger Scruton:

It is a precious achievement of Western civilisation, not observable everywhere in the world today, and largely misunderstood by Islamists, who envisage a form of perfect and unquestioning obedience to a law laid down by God, on the part of subjects who have renounced forever their freedom to dissent from it.²

This report is the final in a series of three examining how effectively Australia balances the fundamental human right of an individual to live in obedience to a religion *with* the state's power to place constraints on the exercise of that right. The challenge to strike this balance appropriately becomes pressing when those accustomed to the secular-religious compact of liberal Western societies are required to deal with a religion, such as Islam, that recognises no separation between the sacred and secular spheres.

The series as a whole is concerned with the tolerance of religious difference and, in particular, with the extent to which limits on freedom of religious expression are warranted in a liberal society. These limits need not solely concern speech; so this report will examine instead the impact that an item of religious clothing — the burqa — is having on the secular-religious compact in Australia. As each of the reports forms a discrete component of an overall discussion about the tolerance of religious difference, it will be helpful to begin this third report with a brief recap of the arguments made in the preceding two reports.



Multiculturalism, Identity Politics, and Threats to Religious Liberty

The first report, *Multiculturalism and the Fetish of Diversity*, addressed the problem of the emergence of 'hard' multiculturalism, which conceives of the nation as a collection of ethnic and cultural groups, each deserving of equal treatment and respect. The policies of hard multiculturalism go far beyond upholding the fundamental human right not to be discriminated against articulated in the *Racial Discrimination Act 1975*. They are intended to preserve and manage distinctive group identities, and to describe a series of newly defined group rights flourishing under the aegis of 'identity politics'. Identity politics is the political philosophy of self-identifying social groups perceiving their distinctiveness based on gender, ethnicity, race, religion or sexual orientation. Indeed, US writer Myron Magnet says identity politics is "a shorthand way of saying that your personal unhappiness stems from larger political forces... and that only vast political change can solve your individual problems."³ There can be any number of groups, each of which is likely to feel aggrieved if its own needs are felt not to have been recognised and met. By defining an individual or a group in opposition to the wider society, identity politics invests the unexceptional existence of diversity with the potential to cause both social division and the diminution of liberty.⁴

The persistent demand for public policy to commit to protecting diversity legitimises difference, especially those differences that groups believe constitute their very identities. Thus, hard multiculturalism, which often imposes a legally enforceable standard of tolerance, can be a liability for a liberal democracy by placing the interests of particular ethnic, cultural and religious groups ahead of the fundamental rights and freedoms of the individual and, in some circumstances, the best interests of the nation state.⁵ The best way managing the cultural and ethnic diversities that arise naturally

and comfortably in a country like Australia is to resist creating group-specific, identity-based policies and uphold instead, the principle of freedom under the law. Law applied equally to every citizen will not necessarily have an equal impact, but the unequal impact of a law does not entail that that law has been applied unequally.

If the law requires certain standards of behaviour to be met, can religion be invoked as a reason for not complying with those standards? On the whole, members of religious communities do not resort to the categories of identity politics to define themselves, preferring instead to use the categories of tradition, doctrine and practice. Nonetheless, they do frequently argue for exemptions from particular laws that threaten to impose undue burdens on the practise of their faith in accordance with their religious beliefs. The second report, *The Forgotten Freedom: Threats to Religious Liberty in Australia*, argued for a renewed commitment to the fundamental right to religious liberty using the contentious example of same-sex marriage to illustrate the nature of the threat currently posed.⁶ Religious believers whose beliefs lead to the conviction that homosexuality and, by extension, same-sex marriage, is immoral, are now more likely to find themselves in conflict with the values of a secular society and facing accusations of equality denial and homophobia. These are the very circumstances, I argued, in which believers may demand the freedom to express their religiously inspired views about human sexuality. Whilst some believers maintain that it has become increasingly difficult to give public expression to moral positions that are informed by faith, others dispute this and argue that debate about faith and its impact on public life is continual and lively — as it should be.⁷

No limits on religious liberty?

It might seem inconsistent to hold, on the one hand, that no minority group should enjoy exemptions from general laws applicable to all citizens, as argued in the first report and, on the other, to consider granting exemptions to members of a faith community, as argued in the second. However, this inconsistency is more apparent than real. Resolution turns, in part, on the important distinction between identity rights, which apply to groups (and are often open to divergent interpretations), and fundamental human rights, which apply to individuals and are upheld with considerable consistency by the courts.⁸ Resolution also turns on the important distinction between sanctioning cultural or religious 'identity group' practices that may possibly threaten the welfare and cohesion of society, and coercing religious believers — such as Christian clergy or Christian marriage celebrants — to engage in practices contrary to their beliefs that enable a specific identity group to realise its identity everywhere.

Table 1: Religious affiliation in Australia, 2006 & 2011, percentage of population

	2006	2011
Buddhism	2.1%	2.5%
Christianity	63.9%	61.1%
Hinduism	0.7%	1.3%
Islam	1.7%	2.2%
Judaism	0.4%	0.5%
Other Religions	0.5%	0.8%
No Religion	18.7%	22.3%
Not stated	11.2%	8.6%
Total*	100.0%	100.0%

* May not add to 100 due to rounding.

Source: ABS Census Table Builder, 2006 & 2011 Census of Population and Housing

Advocates for the burqa within liberal societies such as Australia do not usually appeal to the nostrums of identity politics when they advance their argument but to the individual's fundamental right to religious liberty. Thus, the right to wear the burqa should attach to the Muslim woman as an individual instead of to the woman as the member of a specific identity group. However, the right to religious liberty to which advocates appeal tends to be based on a conception of religion that has renounced all political claims. In the case of Islam, by contrast, political claims have generally not been renounced, and so the burqa comes to represent so much more than the expression of a human right to religious liberty.

The United Nations Universal Declaration of Human Rights 1948 (the Universal Declaration) informs most contemporary definitions of religious liberty.⁹ In addition to recognising that the purely internal freedom of individuals to believe or think what they like is beyond the reach of the state, the Universal Declaration implies two external freedoms. First, a positive religious liberty to manifest belief both in private and in public. Second, a negative religious liberty to be free from coercion or discrimination on the grounds of religious belief.¹⁰ The International Covenant on Civil and Political Rights 1966 (the ICCPR) developed this negative liberty and set out a more specific freedom from coercion. Importantly, however, the ICCPR permits the state to set limits to religious freedom — although only to external expressions of belief — when the protection of public safety, public order, or the rights and freedoms of others are at risk.¹¹

The right to freedom of religion is therefore not to be understood as — and can never be in practice — an absolute right, but is always subject to limits the state considers essential to preserving the community. This is hardly surprising, since the way a belief is expressed is likely to have an impact on other people. As Enid Campbell and Harry Whitmore argued nearly 50 years ago:

As a practical matter, it is impossible for the legal order to guarantee religious liberty absolutely and without qualification... Governments have a perfectly legitimate claim to restrict the exercise of religion, both to ensure that the exercise of one religion will not interfere unduly with the exercise of other religions, and to ensure that practice of religion does not inhibit unduly the exercise of other civil liberties.¹²

This means it is possible to imagine circumstances in which that right to religious liberty will be trumped by other factors, such as the demands of social cohesion and cultural integration. That's one reason a liberal democracy such as Australia is unlikely ever to tolerate a faith-based defence of female genital mutilation or marriage between an adult and a child. But there are other, far less extreme examples that, nonetheless, provoke calls to place limits on freedom of religious expression and practice. One such example current in Australia is the wearing by Islamic women of the head and body covering known as the burqa or niqab.*

* For a concise description of these garments, see 'Explainer: Why do Muslim women wear a burka, niqab or hijab?' *ABC News* (2 October 2014), <http://www.abc.net.au/news/2014-09-23/why-do-muslim-women-wear-a-burka-niqab-or-hijab/5761510>.

De-coding the Burqa

The *burqa* is a full-length enveloping outer garment worn by women in public, which includes a covering to conceal the face and a mesh screen for the eyes. The *niqab* is a veil typically attached to a full-body covering concealing the head and face but leaving the eyes exposed. The two garments are often confused. Discussions about 'burqa bans' in Australia are usually concerned with the *niqab* since the *burqa* is seldom worn here. In this report, the word *burqa* is used to refer to both *burqa* and *niqab*, and the 'veil' is used interchangeably with both terms.

For many Muslim women, wearing a garment that conceals the face is an act of piety, a physical statement about belief and allegiance. For some, it is a gesture of cultural expression identifying them with a particular community and tradition. Others hold that this distinction is as important as the social impact of the *burqa*, which suggests a lack of integration on the part of Muslims in Australia. Whatever the motive for wearing the *burqa*, the report assumes that each woman wearing it has a reason — and that there can be no exercise of liberty, religious or otherwise, when a woman is coerced into wearing any particular form of dress.

Islamic scholars have different opinions as to whether the *burqa* and the *niqab* are compulsory garments. The *Qur'an* is not specific — and those who wear the garments, or advocate their use, appeal variously to cultural or religious convention. Some scholars hold that Islam does require women to wear coverings, but there is no agreement about what must be covered. In 2014, a Saudi cleric provoked uproar amongst Islamic theologians when he declared that not only is there no requirement for a woman to wear the *niqab*, but that she is also free to wear makeup.¹³ In the *Qur'an*, Sura 33 Verse 59 has been translated as saying:

O Prophet! Say to your wives and your daughters and the women of the believers to draw their outer garments close around themselves; that is better that they will be recognized and not annoyed.

However, as is often the case with interpreting any religious text, there is no agreement about what this verse requires of a Muslim woman in her daily life. Nor will this report suggest an interpretation of this, or any other, religious text. Whether or not the *Qur'an* can be interpreted as demanding the *burqa* to be worn, a woman might nonetheless freely choose to adopt the clothing as an act of piety or as the expression of faith, in much the same way a Christian woman might choose to wear a crucifix or cross on a chain around her neck. These gestures are of personal importance and involve matters of personal choice. But no Muslim woman in Australia should be forced to wear a *burqa*.

Although no longer a Muslim, Ayaan Hirsi Ali has described her own experience of choosing to wear the *hijab*, or headscarf, in the minority Somali Muslim community in which she was raised in Nairobi: "It was about power tripping and showing off that we were superior to those other loose women on the streets... We were told they were sluts, that's how we spoke of them."¹⁴ A freely made decision to wear a covering for religious or cultural reasons can be an important statement of Islamic identity, as it clearly was for young Hirsi Ali. For other women, however, the choice might not be so freely made and the decision to wear a covering garment might be imposed upon them by physical force or by social pressure from family or community.

Ban Burqas in Parliament?

In September 2014, the Abbott Government bungled an attempt to ban the *burqa* from the Australian Federal Parliament. Fairfax Media reported that the Prime Minister's Chief of Staff, Peta Credlin, told Liberal National MP George Christensen that she was "sympathetic to a *burqa* ban in Parliament House on security grounds, but warned him not to inflame community tensions while debating the head wear."¹⁵ So as not to conflate the alleged security concerns with the debate about the appropriateness of wearing the *burqa* in public spaces, Credlin suggested the parliamentary *burqa* ban be for the same reason that motorcycle helmets and balaclavas are banned — that is, because they obscure the face of the person wearing it. Any Muslim women who wished to enter the Parliament building wearing a *burqa* was to be required to sit behind a glass enclosure.

This ad hoc policy was not implemented, because singling out Muslim women for what they wore attracted criticism

and was considered an unacceptable impingement on individual freedoms. However, the incident indicated that the *burqa* was a controversial item of apparel, something emphasised both by the 'security' fudge and the parallel with helmets Credlin sought to employ, and by the more general discussion sparked about the place of the *burqa* in Australian society. In an effort to hose down the controversy, Prime Minister Tony Abbott said that while he found the *burqa* 'confronting', he recognised the right of people to dress as they see fit in a free society. "Frankly, I wish it was not worn but we are a free country," Abbott said, "We are a free society and it's not the business of government to tell people what they should and shouldn't wear."¹⁶

Abbott's experience of finding the *burqa* 'confronting' may be attributable as much to an awareness of the oppressive religious and social values it symbolises for some people as to the physical appearance presented by

a shrouded figure in a Western town or city. The Prime Minister's summation seemed to carve out a reasonable position consistent with the framework of freedom of choice that is usually applied to resolve the burqa debate. Australia is a country that prides itself on its easygoing multicultural acceptance of different cultures, religions and races, and Abbott's position was in keeping with attitudes of tolerance that extend to Muslims. Plans to introduce a parliamentary burqa ban were promptly dropped: the ban was unpopular, seemed oppressive, and was, at some level, seen to be unnecessary.¹⁷ Australia's Human Rights Commissioner, Tim Wilson, concurs as a matter of principle. Although he has admitted to finding

the burqa no less confronting than its critics, Wilson defends the right to wear the burqa as an expression of religious faith. "I will always defend people's right to choose how to dress, particularly when it comes to religious items... while disagreeing with how people might exercise those rights," Wilson has said, adding that, "It is not the business of Government to tell people what they should and shouldn't wear."¹⁸ Although the religious status of the burqa is open to question, Wilson is surely right to state that governments, ordinarily, should not be in the business of telling citizens how to dress.

The Burqa and the Demands of Citizenship

Nevertheless, the burqa provokes unease among many, and some still call for the burqa to be banned altogether. However, a legal ban on any form of behaviour needs to define precisely what is unacceptable to a democratic society. A ban also needs to be enforceable otherwise the legislature will only have succeeded in getting a bad piece of legislation on the statute book without achieving much at all. Although he does not support a ban on the burqa, philosopher Russell Blackford notes that "we are not required to approve of it or of whatever messages it is thought to communicate."¹⁹ Those who choose to wear a burqa, therefore, are not currently enjoying an exemption under any current generally applicable law. Rather, they are simply enjoying the right enjoyed by every Australian to wear whatever clothing they wish. Is there any defensible reason why they should not be permitted to continue to do so?

The Opposition Labor party pounced on Abbott over his reported remarks and condemned them as divisive and discriminatory. Deputy Labor Leader Tanya Plibersek even went so far as to compare a Muslim woman's decision to wear the burqa with the Prime Minister's predilection for red Speedos (a specific garment required to be worn as part of the uniform of a surf lifesaver) saying that she'd prefer it if he didn't wear them.²⁰ In thus placing the same value on one person's choice of sportswear as on another's choice of religious vesture, Plibersek's remark is a good example of the glib relativism that characterises much of the contemporary debate about multiculturalism. At the same time, the debate about the burqa demonstrated that religious, cultural and ethnic differences that are supposed to be celebrated in a multicultural society were making some people uncomfortable. According to Tasneem Chopra of the Australian Muslim Women's Centre for Human Rights, the burqa debate put Muslims at a disadvantage because it marked Muslim women as different. "The [Muslim] community in general is feeling under siege," she said. "There is a constant demarcation between Muslim and Australian as if they can't coexist."²¹

Chopra's comment is ironic because the burqa, worn so as to shield Muslim women from everyday social interaction with others in public, presents the very kind of demarcation to which she objects. Whether or not the burqa is freely worn, affording freedom to wear it in a public space does not entail a positive right to do so in any circumstances. Nor can permission to appear veiled in public amount to an exemption "from a generally applicable, religion-blind law that requires individuals to show their faces when they walk in banks."²² As Blackford notes, Parliament will always have to weigh carefully the extent of the exemptions granted under a law against the broader secular concerns that motivated the law in the first place. Furthermore, freedom to wear the burqa in a public space cannot be used to assert a right to wear it in the workplace, particularly when the employer is private.

Much everyday communication between human beings is *affective*... and much of this is carried out through facial expressions... Even in cases where they cause no outright safety issue, and so prevent the performance of special duties, garments that envelop the body and hide the face may adversely affect morale and work performance. [original italics]²³

Secular concerns and religious claims present a complex of issues the state has to weigh. Just such a weighing happened recently in Canada when Zunera Ishaq, who came to Canada in 2008, was due to take her citizenship oath but wanted to do so wearing her niqab. The Federal Court overturned a decision of the Immigration Minister that purported to ban anyone from taking the oath with their face covered. Justice Keith Boswell declared that the minister's attempted ban amounted to a violation of the government's own regulations which permitted "the greatest possible freedom in the religious solemnization" of the citizenship oath. Ishaq's right to express her religious belief was so fundamentally a part of what

it means to be a Canadian citizen that nothing should prevent her from wearing her veil. Commenting on the case, political scientist Clifford Orwin said:

Liberal democracy isn't about compulsory baring of ourselves (or our faces) to others. Nor is it about consorting as one big 'family'. It's about reconciling majority rule with the right of each of us to lead a life of our own, in religious matters as elsewhere. Ms Ishaq seeks to combine her duties as a Muslim with those of Canadian citizenship. That's what religious citizens are supposed to do.²⁴

It is clearly important to respect and even acknowledge the values and beliefs of those from different cultural backgrounds who wish to live as citizens of the liberal state. The case of Ishaq is an example of how far the state can be willing to go in accommodating the duties

of citizenship and the obligations of a religion. If Ishaq were to press a claim that her duties as a Muslim required her to live according to Sharia law, the court would then have to decide the extent to which those asserted duties were compatible with those of Canadian citizenship.

The determination of commentators such as Orwin not to consort "as one big family" can readily give rise to the hardening of group identities associated with the forms of multiculturalism criticised earlier in this report. As argued above, freedom of religion is a far more fundamental form of human right — attaching as it does to individuals — than that associated with the identity politics of the group. And the one should not be mistaken for the other. It is precisely the challenge of reconciling the individual's freedom of religion with the broader demands of citizenship in the liberal state that makes the formulation of a position about the burqa so difficult.

Eweida versus Azmi: the Limits of Tolerance and Equality

Fundamental though it may be, the right to religious liberty must not be understood as the right to evade criticism about beliefs or conduct informed by a religious conviction. Nor should it be understood to entail the view that standards of belief and conduct are entirely subjective or relative in character. After all, one view of things is simply not as good as any other. Rather, when a practice or point of view that is distasteful to some is defended, it is because there are sound moral reasons for permitting a member of a disfavoured minority to keep on doing and believing what she or he does.²⁵ Equally, there must be sound reasons, both moral and legal, for refusing a person the freedom to manifest their religious belief as and how they wish.

Thus, when a Christian woman, Ms Eweida, was told by British Airways she was forbidden to wear a cross at work, the European Court of Human Rights found in her favour (overturning a decision of the UK's Court of Appeal). The ECHR found that the employer's ban on jewellery had an adverse impact on employees who wanted to testify to their faith by wearing a symbol of faith, and that it was an impact not borne by those who manifest their faith by wearing a turban or hijab. The Court also recognised the need to balance the interests of an employer (such as in projecting a corporate image) against those of an employee in manifesting their religion and found that the English court had weighed the interests of the employer too heavily:

There was no evidence that the wearing of other, previously authorised, items of religious clothing, such as turbans and hijabs, by other employees, had any negative impact on British Airways' brand or

image. Moreover, the fact that the company was able to amend the uniform code to allow for the visible wearing of religious symbolic jewellery demonstrates that the earlier prohibition was not of crucial importance.²⁶

By contrast, in an earlier case in the UK, the Employment Appeal Tribunal found that the appellant, Ms Azmi, had not been discriminated against on the grounds of religion when she was suspended by her employer for refusing an instruction not to wear her niqab when in class assisting a male teacher. The EAT found that the employer was justified in insisting that her face be visible to pupils.²⁷

The decision in Ms Azmi's case is consistent with the principle that while there needs to be the freedom for people to give expression to their cultural practices and values, the state should not confer formal public policy recognition on those practices that are at odds with the public interest and the fundamental principles of the liberal democratic tradition. The cultural relativism and political correctness advanced by hard multiculturalism pose a real threat to the moral strength of that tradition.²⁸ Yet the view that the state should remain neutral in matters of religious and cultural practices has become more prevalent because of a concern to uphold the principle of equality in both public policy and legislative activity. Of course, citizens in a liberal democracy must enjoy equal standing before the law. However, when the free exercise of religious belief and practice is threatened in the name of equality, the very roots of a commitment to equality under the law are threatened.²⁹

The state can neither afford to, nor is able to, adopt a position of complete neutrality about competing religious

demands. Yet this poses a political problem because the best thing for the state to do to calm religious passions is to decline to adopt any official position on any religion. To the extent that the state thereby gives all religions equal treatment, the state may be said to be neutral. Of course, those who wish to assign their religion a more public role in the ordering of society may be frustrated by the experience of being treated in this kind of equal way. Yet, as philosopher Brian Barry notes, “The giving up of public ambitions is precisely what neutrality between religions does require, to the extent that those ambitions would, if realised, violate the conditions of equal treatment.”³⁰

Even with equality of treatment, some people are still likely to complain that they have been treated unfairly by the law and may claim that justice warrants the granting of exemptions to the obligation to obey. Barry weighs the claim that failure to offer special treatment can amount to unequal treatment, and finds it wanting. The inequality of the impact of a law is not a sign of unfairness, for laws are bound to impact people differently:

The essence of law is the protection of some interests at the expense of others when they come into conflict... The notion that inequality of impact is a sign of unfairness is not an insight derived from a more sophisticated conception of justice than that found previously in political philosophy. It is merely a mistake.³¹

Discussions about the notion of equality need to be undertaken with some care. It is important to be precise about the form of equality that is being questioned. On the one hand, equality can be understood as a form of moral commitment that informs different policy questions — think of this as ‘equality of process’. On the other, equality can be thought of as an objective to be pursued as a policy aim or outcome — think of this as ‘equality of outcome’. Clearly, the equality that is of value and needs to be upheld is the equality of process rather than the equality of outcome. Barry describes equality of process (he calls it ‘equal treatment’) in terms of a series of rules that define a choice set which is the same for everyone. Within that choice set, people select a course of action best suited to their preferred outcomes, given their beliefs about the way in which actions are connected to the satisfaction of preferences. “If uniform rules create identical choice sets, then opportunities are equal.”³²

The golden thread woven through the Western liberal tradition is the principle of individual moral agency and the assumption of the inherent equality of all human beings. This moral equality is the equality of process requiring that every individual within the state is entitled to protection under the rule of law, and whose rights may not simply be set aside arbitrarily in the event the exercise of those rights causes inconvenience to, or restricts the freedom of others. By contrast, when there is a commitment on the part of the state to equality as an outcome of policy, attempts to exercise the right to religious freedom will often come into conflict with such notions of equality.

Box: Attitudes to Islam in Australia

In its 2013 report *The World’s Muslims: Religion, Politics and Society*, the Pew Forum on Religion and Public Life found that many of the Muslims surveyed in various parts of the world generally favoured a woman’s right to choose whether to wear the veil in public. Sub-Saharan Africa was the one region surveyed where most Muslims *do not* think women should have the right to decide whether they wear a veil. The survey also found that in a number of countries (but not all), Muslim women were more supportive of women’s rights than were Muslim men. Out of the 23 countries where women were asked about a woman’s right to decide whether to wear a veil in public, women voiced greater support than men in 12 countries. There were no countries surveyed where Muslim women were substantially less likely than Muslim men to support a woman’s right to choose to wear a veil.³³ It is arguable that a survey of Australian Muslims would also find in favour of a woman’s right to make her own choice about the veil.

The 2011 Census showed that between 2006 and 2011 Islam experienced the second highest growth (after Hinduism) from 340,394 to 476,291 and that Muslims now account for about 2.2% of the population.³⁴ For the most part, Muslims are well integrated and are able to live comfortably in a society that is broadly very supportive of multiculturalism.

The Scanlon Foundation’s 2012 Mapping Social Cohesion report found that agreement for the proposition ‘accepting immigrants from many different countries makes Australia stronger’ remained steady between 67% (2007) and 65% (2012).³⁵ When the report asked specifically about multiculturalism for the first time in 2013, it found that 84% of respondents agreed that multiculturalism ‘has been good for Australia’.³⁶ By 2014, the number had increased to 85%.³⁷ The report does not define ‘multiculturalism’ but the term can be understood to describe the ethnic and cultural diversity of the population. Australians welcome the presence of migrants, and the cultural contribution they make to society.

However, since 2010 the Scanlon Foundation surveys have also tested openness to diversity by asking respondents about their attitudes to the members of three faith groups — Christians, Buddhists and Muslims. “There has been a large measure of consistency in response across four surveys: 5% or fewer respondents indicated that they were ‘very negative’ or ‘negative’ towards Christians or Buddhists, but a significantly higher proportion, close to 25%, towards Muslims.”³⁸

Heightened awareness of Islamist extremism in the Middle East, together with fears about the loyalty of a small proportion of Australian Muslims who may be inclined either to travel overseas to join ISIS or to execute plans of attack within this country similar to the Martin Place siege in Sydney in December 2014, are likely to have contributed to such a high feeling of negativity. Yet some Muslims deny that the attitudes and behaviour of their co-religionists have been a factor in the rise in negative feelings about Muslims. "There has been so much negativity from the media, from the government," says Silma Irham of the Australian Muslim Women's Association. "Until the Federal Government changes its rhetoric and stops using Muslims as the cause of hardships facing the population, things aren't going to improve... The level of Islamophobia directed towards Australian Muslims has grown and it's a result of the current public discourse, where the Muslim community here is linked to what's happening overseas."³⁹

There are levels of intolerance in Australia, but the 2014 Scanlon Foundation survey found them to be low: "On the basis of Scanlon Foundation polling and a number of additional surveys conducted over the last 30 years, there is support for the conclusion that the core level of intolerance in Australia is close to 10% of the population. Using a broader definition (incorporating both the strongest and next negative response), levels of intolerance and rejection of cultural diversity are probably in the range 25% to 30% of the population."⁴⁰

Despite the concerns of Irham, 'negativity' towards Muslims in Australia is much lower than in some European countries. Whereas the 2014 Global Attitudes Survey published by the Pew Research Centre found that only 26% of Britons had an 'unfavourable' attitude to Muslims (comparable to the findings of the 2014 Scanlon Foundation survey), the figure was much higher in Spain (46%), Greece (53%), and Italy (63%).⁴¹

Two Arguments: For and Against Banning the Burqa

When religious and cultural differences provoke anxiety, it is important to engage in a critical way with the fact of difference and with questions about equal treatment that arise from this; it is also important to weigh the moral value of different standards of belief. The act of wearing the burqa is, frankly, a complex one that raises questions about the integration and cultural assimilation of Muslim members of society that go beyond the simple expression of piety. Sidestepping these complexities will be unhelpful in the long term for it will mark a failure to evaluate critically the burqa and its symbolic weight.

Broadly speaking, commentators have adopted one of two quite different arguments when assessing the acceptability of the burqa in Western societies. Each approach establishes different boundaries to the limits of what can be, or ought to be, tolerated.

The first argument holds that the burqa fails to observe the norms and conventions of public space in liberal societies and should be afforded no place in them. This represents an uncompromising approach that takes little account of the individual's right to religious liberty. The second argument, by contrast, holds that the religious symbolism of the burqa warrants that it is afforded the comparable and even equivalent status of all other religious symbols such as a crucifix. Every individual is entitled to live life as he or she chooses. This approach, however, threatens to reduce the complexities of upholding the right to freedom of religion to the formularies of identity politics in which anything of meaning to any individual is worthy of protection.

The Amenity of Public Space Argument

Advocates of a burqa ban often frame their arguments in terms of the idea of disturbance to the public order, not in the form of physical unrest but in the apparent repudiation of liberal civic culture. They argue that giving any religious tradition completely free rein to organise itself may diminish the liberty of citizens whom the state is bound to protect. The principle concern underlying pressure to restrict wearing of the burqa is with the strength of social cohesion rather than with the desire to see certain (or even any) religious practices *per se* restricted or outlawed. As Russell Blackford has noted, in recent years this kind of concern has fuelled pressure in European countries such as Belgium, Spain and the Netherlands to restrict the appearance of the burqa in public. In 2010, France passed legislation that imposed a ban on any clothing that covered the full length of the face.⁴²

Even in the tolerant environment of Australia, the appearance of the burqa (or even the niqab) worn openly and in public is discomfiting to some. Critics such as John Hirst argue that the burqa diminishes the moral value of the public square and inhibits opportunities for healthy civic friendship. Writing in *The Australian*, Hirst was unequivocal:

Wearing a burqa amounts to an act of contempt towards the rest of the people in the public space... It discourages normal human interaction since nearly all the signals that we look for when we engage with each other are hidden — and hence it encourages mistrust. It parades aloofness from ordinary mortals... If you think this is simply a matter of dress choice, you would regard an AK-47 slung over the shoulder as a fashion accessory.⁴³

Even though there are not many women who wear the burqa in Australia, Hirst argues: "We are pained that our open and friendly style has been compromised by this spectacular defiance of our protocols."⁴⁴

Other burqa ban advocates, such as psychologist Phyllis Chesler, argue forcefully that in a liberal democracy, the adoption of a religious or cultural practice such as wearing the burqa expresses values that are in direct

conflict with the prevailing social, moral and political culture. Even when the decision to wear the garment is freely made, the visual impact it makes is harmful to society. "The sight of women in burqas can be demoralizing and frightening to Westerners of all faiths, including women, not to mention secularists. Their presence visually signals the subordination of women."⁴⁵ Indeed, Chesler also argues the much stronger point that in addition to representing the subordination of women, the burqa signifies the entire political ideology of Islam with its designs upon directing behaviour in every aspect of social, personal and family life.

Were these designs to be extended to the West, it will spell out the end of modernity, human rights, and the separation of state and church, among other things; in short, the end of liberal democracy and freedoms as now practised.⁴⁶

According to those who advance this argument, freedom of religion must always be curtailed when the religion in question expresses anything that runs contrary to the prevailing secular culture of the liberal state. These critics acknowledge differences of culture between those who would wear the veil and the society in which they would wish to do it. But these differences are likely to be so great that it is simply not possible to argue that a burqa is just like another item of religious vestiture, such as a yarmulke, and so should be accepted as such. The burqa is no ordinary garment.

Yet the Amenity of Public Space Argument is hardly an adequate response in an integrated multicultural society such as Australia. Of course, burqa ban advocates hold that the burqa itself signals a very lack of willingness to integrate in such society and that its use should therefore be restricted. Yet the argument fails to acknowledge that claims of conscience are often grounded on deeply held moral or religious convictions that inform the way in which the citizen goes about daily life. The argument ought to fail because the limits of tolerance need not be drawn so narrowly. Can the second argument — the Equality Under the Law Argument — which attempts to defend a form of social and moral equivalence, fare better?

The Argument from Equality Under the Law

Martha Nussbaum places great weight on the assumption of the shared, equal dignity enjoyed by all human beings. Since all human beings are equal bearers of dignity, she says, they enjoy equality with respect to that dignity.⁴⁷ The concept of the equal dignity of all citizens, whereby citizens enjoy the right to shape their lives as best they can within the limits of the law, must inform the political principles that govern a society in which differences in culture, religion and ethnicity are to be found. This is the principle that guided the Canadian Federal Court in its decision concerning Ishaq noted earlier. As Michael Ignatieff has observed:

The essential constraint of democratic government is that it must serve majority interests without sacrificing the freedom and dignity of the individuals who comprise the political community to begin with and who on occasion may oppose how it is governed.⁴⁸

The broad form of the Argument from Equality Under the Law is influenced by Immanuel Kant's moral principle by which he required us to test whether we'd wish our own action to be cast as a universal law applicable to all. The connection between Kant's principle of universal law and his principle that we are to treat others as ends in themselves — and never as means — is important to Nussbaum, who has noted that:

The problem with the person whose principle can't pass the test of universal law is that she is using others for her own ends, rather than treating them as ends in themselves, in other words, as people of equal dignity whose goals and purposes are to be respected as of equal importance with her own.⁴⁹

Nussbaum goes on to argue that rules adopted by the majority concerning religious behaviour are especially vulnerable to the test of reflective consistency by, for example, calling something bad "when it's done as other people do it, while carefully preserving our space to go on doing the same thing ourselves... When fear is running high, such arguments are all the more likely to be made and accepted."⁵⁰ She considers the wearing of the burqa to be a good current example of the debate about the rights of a minority group as compared with those of the majority.

Many arguments are adduced for banning the burqa, ranging from concerns about security to concerns for the health of women who are veiled. Nussbaum tests a number of them, including the concern about security, and finds each one wanting. When full-face identification is needed, she says citizens must be required to show themselves: but the requirement of extra or specific searches is quite different from "an outright ban on all public wearing of a type of clothing that some sincere believers think religiously mandatory."⁵¹ It's not the covering that inspires fear and mistrust, she maintains,

but rather *Muslim* covering. Having tested the substance of arguments for banning the burqa, Nussbaum is convinced of their inadequacy:

All are cases of seeing the mote in your brother's eye while failing to appreciate the large plank that is in your own eye: for all target situations alleged to be present in Muslim communities while failing to note their ubiquity in the majority culture. Familiar practices are insulated from critical scrutiny. Only the unfamiliar receives suspicion.⁵²

Nussbaum dubs this "the inconsistency of narcissism" whereby the person making the arguments "is putting herself up above others and failing to respect them as equals. To that extent, she is just using [the arguments] as tools of her own purposes." If we are genuine in our respect for equality of conscience, says Nussbaum, "we are bound to reject the arguments."⁵³ In addition, Nussbaum argues that Australia is similar to the United States in that it is a nation defined "in terms of shared values and ideals... in a way that does not require homogeneity — in dress, custom, religious belief, or even outward religious observance."⁵⁴ Nussbaum maintains this national and societal self-understanding of shared values can provide a powerful counterweight to anxieties provoked by religious difference.

The weakness of Nussbaum's approach is that she attempts to resolve the conflict between pursuit of the equality of process and pursuit of the equality of outcome, referred to earlier, by deploying the categories of identity politics to assert the right of an individual member of the group to the exercise of religious liberty. "Liberty of conscience protects the conscience of the individual, not that of the larger group to which that individual belongs," she argues. "The person's own interpretation of the religion is what counts for conscience."⁵⁵ The defence of that kind of exercise of conscience is hardly the same thing as the defence of religious liberty where due attention is paid to traditions, doctrines and practices. The superiority afforded to individual conscience is precisely what follows from a commitment to the equality of outcomes where all beliefs are given the same weight because they are beliefs held by someone. The defence of religious liberty is simply not the same as the defence of the sincerity with which an individual believes something to be true. As philosopher Roger Trigg notes:

Religion is typically carried in communities, and individuals are members of wider religious institutions... Beliefs have a life in social context, and, shorn of that, much of the social significance of religion must be removed.⁵⁶

It is the drive to secure equality as an outcome of policy that has helped fertilise the erroneous view that the

state should never express a view or compromise its neutrality. State neutrality is an impossibility, particularly in the context of religious freedom where it is simply not possible for the state to refuse to make a judgment about the character of a religious belief or the action that belief imposes on the believer. For example, it would be hard to imagine the state having nothing to say about a religious belief that, say, required parents to slaughter their first-born male child to propitiate a cantankerous deity. There are times when the state has to make a

judgment about the restraint of religious freedom. As Trigg has observed:

Democracy is built on the free judgements of its members and would not be necessary if everyone always agreed. It is a system not just for making decisions, but for containing, and even respecting, disagreement. Without the possibility, and the fact of disagreement, there can be no political freedom.⁵⁷

Cultural Relativism and Reverse Zero-Tolerance

In its attempt to defend the wearing of the burqa, the Argument from Equality Under the Law ultimately fails because it elevates equality above all other considerations and, as deployed at least by Nussbaum, dismisses dissent or opposition to minority practices as unprincipled narcissism. The Equality Argument goes too far in its opposition to the Amenity of Public Space Argument. While upholding the right to wear the burqa, it fails to take into account the principle of the individual right to religious liberty on which the right to wear the burqa must be based, and instead resorts to promoting the distinctive identity of the group, a tactic highly favoured by the advocates of hard multiculturalism's identity politics. Such a tactic sidesteps the more challenging moral discipline of exercising tolerance.

The freedom of those who act as we do is the easiest to champion but as Trigg notes, freedom is only truly and evidently safeguarded "when the majority allows beliefs to be manifested of which it disapproves."⁵⁸ Of course, the more questionable or unpopular the minority position, the more likely it will be that questions of religious liberty arise most acutely. The capacity of the majority to exercise tolerance will be tested increasingly as adherents of different religions press their respective demands about the way society should be organised — demands that are often likely to be incompatible. As these demands are pressed, so religious passions are likely to be inflamed and religion to begin to function as a political force.

Tolerance is warranted by diversity, but the exercise of such tolerance does not entail neutrality about that which is tolerated. After all, tolerance is not incompatible with dissent. Indeed, it is important to note that even with the low levels of intolerance in Australia recorded in the 2014 Scanlon Foundation report, anxieties provoked by religious differences do still arise. When they do, they impose a strain on a society's lived experience of shared values. In the face of such strain, mute acceptance of difference — which can be a very passive response — is unlikely to ease the strain.

At the same time, when a more active engagement with difference takes the form of questioning the beliefs, practices and values of others, it can be met with a

rebuttal for being judgmental. This is due largely to a contemporary enthusiasm for the idea that everyone must be treated equally and that criticism or judgment of another's point of view cannot be tolerated. As the English politician Michael Gove has remarked on the status of Christianity in contemporary Britain:

Relativism is the orthodoxy of our age. Asserting that any one set of beliefs is more deserving of respect than any other is a sin against the Holy Spirit of Non-Judgmentalism.⁵⁹

This muting of criticism might be termed 'reverse zero-tolerance' where all behaviour is considered desirable and beyond judgment, particularly if associated with particular ethnic groups. Reverse zero-tolerance is adopted to quell discussion about issues that go to the heart of claims about identity. This kind of non-judgmentalism extends to the acceptability of religious or cultural practices such as wearing a burqa, in the case of Muslims. Reverse zero-tolerance admits no discretion as to the moral value of the position in question and can become a warrant for cultural relativism.

Yet there are times when a judgment about undesirable behaviour must be made. For instance, Australian legislatures have already made such judgments when confronting religious or cultural practices such as female genital mutilation, honour killing, or the arranged marriage of under-aged persons. In the case of other behaviours, such as the wearing of religious vesture, citizens may (or must) make their own judgments about civil behaviour; in those circumstances, the intervention of the legislature is hardly warranted.

In such situations, the absence of intervention on the part of the state entails neither acceptance of nor respect for the issue in question. The absence of state intervention also creates a kind of moral space in which the individual citizen is free to form their own view about the practice, whether it's one of approval or disapproval. We have become uncomfortable with the practice of expressing disapproval about something, but British sociologist Frank Furedi argues that in fact it is disapproval rather

than approval that confers real meaning upon the notion of tolerance:

The act of tolerance demands reflection, restraint and a respect for the right of other people to find their way to their own truth. Once tolerance signifies a form of automatic acceptance, it becomes a performance in expected behaviour... When tolerance acquires the status of a default response connoting approval, people are protected from troubling themselves with the challenge of engaging with moral dilemmas.⁶⁰

The problem is that the contemporary exercise of tolerance often avoids engaging with judgments about relative values. In other words, tolerance often amounts to little more than a position of indifference to views and opinions. But a practice such as wearing a burqa hardly generates feelings of indifference; indeed, as we have seen, it excites strong and often opposing points of view. Yet if someone who disapproves of it nonetheless tolerates the practice of wearing the burqa, the exercise of that tolerance is likely to be grounded in a moral conviction about the meanings and values that the burqa represents for that person. To that extent, tolerance will unavoidably entail an element of judgement.

Upholding the Integrity of Religious Belief

Both the Amenity of Public Space Argument and the Argument from Equality Under the Law about the merits of banning or not banning the burqa attempt to describe the boundaries of what is acceptable in a liberal society. The first argument is based on the notion of cultural compatibility, the second on the principle of consistency of treatment. While formulated in very different ways, and coming to different conclusions, each argument owes much to the Christian conception of personhood, which has significantly influenced the development of Enlightenment thinking about the liberal democratic tradition and the principle of individual freedom, which gives it its moral strength. As Roger Scruton has argued, the 'civic culture' of the liberal state is the fruit of the Enlightenment in the sense that it is the means whereby "social membership has been freed from religious affiliation, from racial, ethnic and kinship ties, and from the 'rites of passage' whereby communities lay claims to the souls of their members."⁶¹ The citizen (or immigrant) is required to do nothing more than adopt this civic culture and assume the duties that are implied.

It was the question of civic culture that lay at the heart of the decision of the United Kingdom's Employment Appeal Tribunal against Azmi, considered earlier. The tribunal's finding was consistent with the principle that while freedom of religion needs to be respected and protected, the state should not confer formal public policy recognition on religious practices and customs when they are at odds with the civic culture and the fundamental principles of the liberal democratic tradition. The law 'discriminated' against Azmi in the sense that it gave priority to the principles of the education system within which she worked and to the interests of the pupils with whom she was engaging, and determined that the head covering she wanted to wear would affect her ability to do her job. It's a good example of Michael Ignatieff's point that the wellbeing of the majority must always be balanced against the freedom of the individual; this observation is important but does not lend itself readily to a formula that can be

applied in such a way as to provide a clear answer in any given set of circumstances.

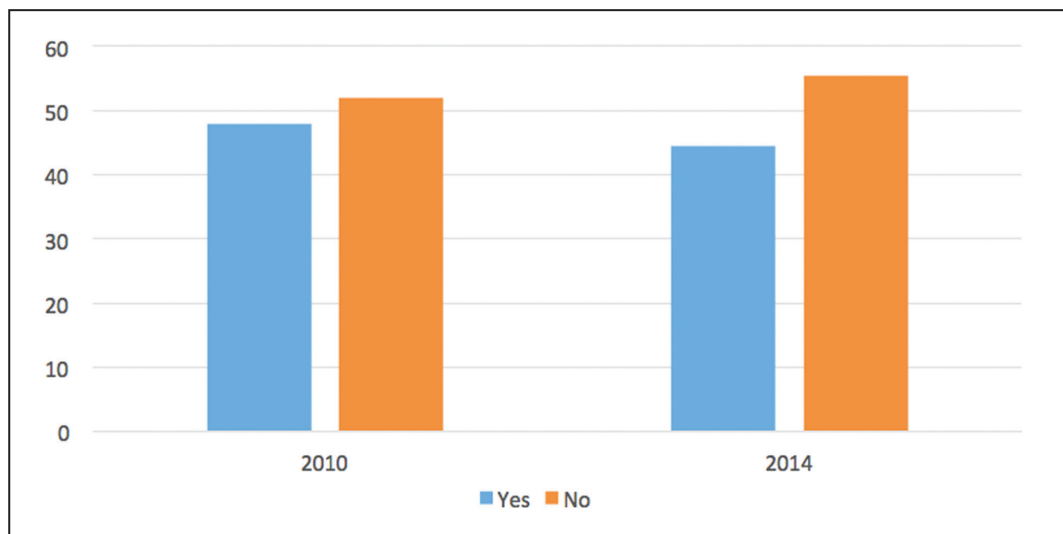
In many ways the burqa is at odds with an open, liberal society in which seeing another's face is an important element in interpersonal exchange, and wearing a veil implies hiddenness and withholding oneself. However, the freedom to wear a burqa as an authentic expression of religious belief is not something we should set aside lightly. The law is an important instrument for building social cohesion by ensuring the equal treatment of all citizens and avoiding the fragmentation of identity politics. While we cannot simply slip into the mindset of thoughtless cultural relativism, whereby nothing can be considered unacceptable, we do need to accept that for the law to require a Muslim woman to appear in public without the covering she believes is required by her religious beliefs would be a significant and possibly traumatic development. The law would effectively be used to force an individual to act against her conscience and her belief about what her religious tradition required of her; and unlike a law prohibiting a practice such as female genital mutilation that aims to *safeguard* the individual, a law banning the burqa would be deployed *against* the individual. A burqa ban, to pick up Ignatieff's words, would represent a terrible 'sacrificing [of] the freedom and liberty' of those affected, with no guarantee of positive impact on social harmony or the placing of limits on the secular-political ambitions of Islam. The more likely outcome in these directions, moreover, could conceivably prove counter-productive. Even though some women may wear it for cultural reasons, the religious significance that the burqa has for some women means their right to the exercise of religious liberty must be upheld by the state unless specific circumstances — such as giving evidence in a court of law — require that a woman's face be visible. The ends ostensibly served by a burqa ban do not justify the intolerant means: and there are many things the law should not do to curb individual freedom.

Coda: A Burqa Ban is Un-Australian — But So Is Islamism

The issue of the burqa arises today in Australia precisely because of a widening concern that those who choose to wear it are failing — or at least appearing reluctant — to adopt this country's civic culture and to assume the duties implied by it. A Roy Morgan poll published in September 2014 found that 55.5% of 1,328 participants opposed wearing the burqa in public, up by 3.5% from

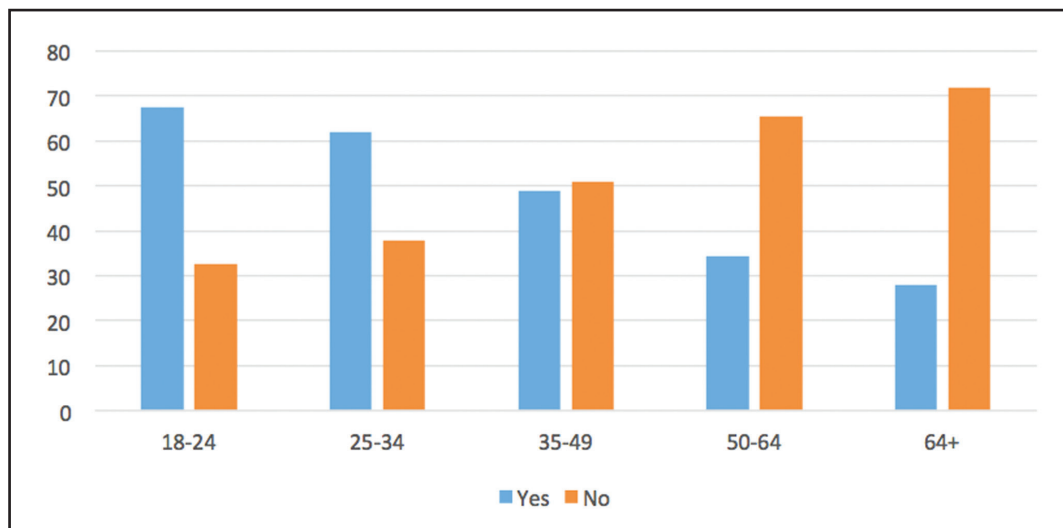
a previous poll in August 2010. Victoria recorded the lowest level of opposition (55%) and Western Australia the highest (60.5%). The proportion of those saying women should not be allowed to wear the burqa while giving evidence in court had fallen by 1.5% since August 2010 to 79.5%.⁶²

Figure 2: Attitudes of Australians to wearing a burqa in public, 2010 & 2014.
Percentage of people responding to the question: *Should women be allowed to wear burqas in public places?*



Source: <http://www.roymorgan.com/findings/5825-australian-attitudes-to-wearing-burka-september-2014-201409230736>

Figure 3: Attitudes to the wearing of burqas in public places differ by age.
Percentage of people responding to the question: *Should women be allowed to wear burqas in public places?*



Source: <http://www.roymorgan.com/findings/5825-australian-attitudes-to-wearing-burka-september-2014-201409230736>

Of course, the debate about the burqa concerns much more than the choices an individual makes about what to wear in open society, in a way that other choices — such as what to wear at the beach — do not. It is also about more than the right to give expression to one's religious beliefs. Indeed, far from being indifferent to religious concerns, critics of the burqa are mindful of the ways in which deeply held religious beliefs can influence, and even dictate, one's attitude and behaviour.⁶³

Australians have experienced the deepening impact made by some Muslim beliefs and actions on society in numerous, disconcerting ways in recent years. In September 2012, Muslim rioters in central Sydney bore placards calling for those who insult Islam to be beheaded;⁶⁴ in February 2014, a middle-aged Muslim man in Newcastle, NSW, was charged with sanctioning the marriage of his 12-year-old daughter to a 26-year-old man. He was subsequently found guilty of procuring her for sex and now awaits sentencing.⁶⁵ In February 2015, a 19-year-old man was charged with marrying a 15-year-old girl in the backyard of her father's Sydney home;⁶⁶ and in December 2014, the NSW Government launched a campaign to eradicate the practice of female genital mutilation.⁶⁷ In 2014, jihadists also launched deadly assaults on non-Muslim Australians: first in Melbourne, when 18-year-old Numan Haider attacked police officers before being shot dead;⁶⁸ and then in Sydney when Man Haron Monis held a number of hostages in a CBD café declaring that Australia was now under attack from the Islamic State.⁶⁹ Two hostages died, and he was also shot

dead. Commenting on the siege a few days later, Nick Cater remarked:

The culture of grievance and hatred that possessed Man Haron Monis is utterly at odds with the spirit of Sydney and Australia. The astounding sense of entitlement that justifies taking the life of a complete stranger in pursuit of some half-baked utopian ambition is incomprehensible to normal Australians.⁷⁰

Although he was commenting specifically on the circumstances of the siege, Cater's remark about the incomprehension of 'normal Australians' extends in varying degrees to all the acts perpetrated by Muslims that run counter to the values and norms of our society.

However, this does not imply that all issues raised by the burqa have been resolved. It is important to remember that the anxiety of Nick Cater's 'normal Australian' is provoked not so much by the physical appearance of the burqa (even though it can frustrate accepted norms of social interaction in Australia) as by the attitude of those who wear it towards Australians and their society. In other words, it's not what we think about the burqa but rather what those who wear the burqa think about *us*. Women who choose to wear the burqa, and the men who support them, must remain free to dress as they please but they bear the responsibility for ensuring that the burqa remains a symbol of Islamic religious and cultural values, and not a symbol of the failure of Muslims to integrate in to 21st century Australian society.

Endnotes

- 1 Natalie O'Brien, 'Prime Minister Tony Abbott accused of bullying Muslim leader Ibrahim Abu Muhammad', *Sydney Morning Herald*, (22 February 2015). See also, for example, Gopi Chandra Kharel, 'Australian Terror Crackdown: 'Religion of Peace' Comment by Tony Abbott Angers Muslim World', *International Business Times* (23 February 2015) <http://www.ibtimes.co.in/australia-terror-crackdown-religion-peace-comment-by-tony-abbott-angers-muslim-world-624323>
- 2 Roger Scruton, *How To Be a Conservative*, (London: Continuum, 2014), 67
- 3 Mryon Magnet, 'Identity Politics Crashes at City Hall', *City Journal* (18 November 2014) <http://www.city-journal.org/2014/eon1118mm.html>
- 4 Peter Kurti, *Multiculturalism and the Fetish of Diversity*, (St Leonards: The Centre for Independent Studies, 2013)
- 5 See 'Rabbi Sacks on Multiculturalism's Dangers,' *Commentary Magazine* (8 June 2013)
- 6 Peter Kurti, *The Forgotten Freedom: Threats to Religious Liberty in Australia*, (St Leonards: The Centre for Independent Studies, 2014)
- 7 I am grateful to David Marr for challenging my position on this. "All that's changed is that religious opinions rather less than before trump secular opinions in the public sphere. You're having a somewhat tougher time convincing people. But no one is shunting these debates into the dark" (private correspondence with the author, 2 April 2015)
- 8 Tim Wilson made this distinction clear in January 2014 when he was appointed as Human Rights Commissioner. See, for example, <http://rightnow.org.au/writing-cat/interview/interview-with-new-human-rights-commissioner-tim-wilson/>
- 9 Peter Kurti, (2014), 7
- 10 Article 18(1) of the Universal Declaration of Human Rights 1948 states: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.'
- 11 These provisions are set out in Article 18(2) of the International Covenant on Civil and Political Rights (ICCPR) 1966: 'No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.' Article 18(3): 'Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' Article 18(3) was adopted from Article 9(2) of the European Convention on the Protection of Human Rights and Fundamental Freedoms 1950.
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