

**ISLAMIC BURKAS AND MANOLO BLAHNIKS**  
**REFRAMING INTERNATIONAL NOTIONS OF WOMEN'S HUMAN RIGHTS**

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*Fatima, a Muslim woman living in Paris, looks with disgust at the long skirt and turtleneck she is about to put on. Although most of her skin will be covered by the clothing, she feels like the contours of her body will be exposed to the public and that men will gaze at her with desire as she travels to the private Islamic school that she teaches at. Once she arrives at school, Fatima will put on the burka that she feels most comfortable in—the piece of clothing that loosely covers her from head to toe, demonstrating her commitment to Allah and protecting her from the leers of men on the street. Fatima cannot wear the burka on the train that she takes to work because the French Parliament, in an attempt to protect her from her own culture and religion, has banned the burka.*

*Across town, Danielle, a Catholic woman living in Paris, looks at the beautiful pair of Manolo Blahniks she is about to put on her feet with a bit of a grimace. The shoes are beautiful and she knows they will match her dress perfectly and garner envious stares from women on the street and appreciative stares from men, but their three-inch heels will make it difficult to walk and strain her back, while the tiny straps will dig into her feet. She knows that by the end of the day her feet will ache, but in the meantime she will look fabulous. Besides, the comfortable flats in the back of her closet simply aren't appropriate to wear for her job teaching at the lycee.*

INTRODUCTION

On June 22, 2009, French President Nicolas Sarkozy announced to a joint session of the French Parliament that burkas were no longer welcome in France and called on the parliament to introduce legislation banning burkas.<sup>1</sup> According to President Sarkozy, "The problem of the burqa is not a religious problem. This is an issue of a woman's freedom and dignity . . . [it] is not a religious symbol. It is a sign of subservience; it is a sign of lowering. I want to say solemnly, the burqa is not welcome in France."<sup>2</sup> A parliamentary Commission charged with investigating the possible burka ban ultimately proposed a "partial ban": any veil covering the wearer's face would be prohibited in public places, such as hospitals, schools, and public transport, but women

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<sup>1</sup> Sarkozy: burkas unwelcome in France, June 23, 2009, [http://www.upi.com/Top\\_News/2009/06/23/Sarkozy-Burkas-unwelcome-in-France/UPI-60521245766674/](http://www.upi.com/Top_News/2009/06/23/Sarkozy-Burkas-unwelcome-in-France/UPI-60521245766674/).

<sup>2</sup> *Id.*

could continue to wear the veils on the street.<sup>3</sup> Although some politicians describe the possible ban on burkas as "in keeping with the republican spirit of secularism,"<sup>4</sup> the true objective of the potential ban, as evidenced by President Sarkozy's statement, is to protect Islamic women from oppression.

The proposed ban has sparked "heated debate among intellectuals, human-rights groups, and Islamic clerics arguing about individual freedoms versus assimilation."<sup>5</sup> Many argue that the ban is motivated by anti-Islamic paranoia and that it promotes the oppression of women—specifically Muslim women—by denying women of their right to choose what to wear.<sup>6</sup> If enacted, the ban would likely be challenged in both France's courts and the European Community's courts.<sup>7</sup>

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<sup>3</sup> *France moves toward partial burqa ban*, CNN WORLD, Jan. 26, 2010, <http://www.cnn.com/2010/WORLD/europe/01/26/france.burqa.ban/index.html> [hereinafter *France Moves*]. A parliamentary committee in Belgium also recommended a ban on face-covering veils, which will be voted on by the full Belgium Parliament in April 2010. The committee cited national security and women's rights as the motivation behind the ban. *Belgium Moves to Become First European Country to Ban the Burka*, MAIL ONLINE, Mar. 31, 2010, <http://www.dailymail.co.uk/news/worldnews/article-1262545/Belgium-set-European-country-ban-burka.html>.

<sup>4</sup> *Sarkozy: burkas unwelcome in France*, *supra* note 1. French culture places very high value on secularism and the principle of *laïcité* (defined as "the free exercise of religion where 'the state neither recognizes nor subsidizes any religion.'") Mukul Saxena, *The French Headscarf Law and the Right To Manifest Religious Belief*, 84 U. Det. Mercy L. Rev 765, 769 (2007) (quoting Embassy of France in the U.S., Freedom of Religion and Sects, <http://www.ambafrance-us.org/atoz/religion.asp>); see Yael Barbibay, *Citizenship Privilege or the Right to Religious Freedom: The Blackmailing of France's Islamic Women*, 18 Cardozo J. Int'l & Comp. L. 159, 174 (2010) (discussing *laïcité* and the French laws and constitutional provisions related to it). France uses the notion of *laïcité* to, among other things, encourage assimilation of minorities rather than celebrating, or even recognizing, diversity. See *id.* at 172-73. France's proposed burka ban is likely at least partially motivated by *laïcité*. This paper, however, focuses on the most vocally proffered motivation: protecting Islamic women from oppression.

<sup>5</sup> Janine di Giovanni, *France's Burka Ban Uncovered*, HARPER'S BAZAAR (2009). <http://www.harpersbazaar.com/magazine/feature-articles/burka-ban-0909>.

<sup>6</sup> *Id.*

<sup>7</sup> *France Moves*, *supra* note 3. The ban could potentially violate the Convention on the Elimination of Discrimination against Women (CEDAW), as well. GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 U.N.T.S. 13. CEDAW requires states to, among other things, guarantee women "the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (Article 3), equal participation in the political and public life of the country (Article 7), equal opportunity to represent their governments at the international level (Article 8), and equal access in the field of education (Article 10). *Id.* Banning the burka could deny women of many of these rights by limiting their access to the entire public sphere, including politics and education, and denying them choice of dress and belief. In fact, a burka ban would completely eliminate burka-wearing Muslim women in public. Although the ban's intent would be to eliminate only the burka, in practice a ban would eliminate women under burkas as well. Women who wear burkas are a distinct minority group in France who already face alienation and discrimination. Much like the ban on headscarves in public schools, a burka ban would increase feelings of alienation and oppression among French Muslims. See

France's proposed ban illustrates an ethnocentric Western-biased view about women's human rights. Many Westerners, in the United States, France, and other countries, continue to view Muslim women as in constant need of protection. This paper argues that France's proposed burka ban exemplifies the Western world's misguided preoccupation with Muslim women's clothing and suggests that a more balanced approach to women's human rights would reveal that certain Western cultural practices and clothing, such as high heeled shoes, are also harmful to women. This paper uses high heeled shoes—apolitical and areligious articles of clothing that can cause physical injury to women, and according to many scholars, are worn as a result of male oppression of women—to demonstrate the outrageousness of regulating women's clothing in order to protect them. From a purely gender perspective, banning the burka is akin to banning high heels but states will consider banning the burka (whereas they will not consider banning high heels) because the burka is a conspicuous symbol of Islam (whereas high heels are a conspicuous symbol of Western beauty ideals). This argument highlights the dangers of viewing women's human rights through an ethnocentric Western-biased lens and implores Western citizens, politicians, and governments to view women's human rights in a more balanced way.

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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, 251-252 (2006) (arguing that the headscarf ban was likely "to increase feelings of alienation among Muslim youth, discourage integration, increase school drop-out rates for Muslim students, and cause French Muslims to feel marginalized and oppressed.") Women who feel strongly about wearing their burkas may choose to remain at home rather than enter the public arena in clothing that they consider vulgar. Moreover, women who are forced to wear burkas in public would be forbidden to leave their homes or access public services because they would not be allowed to remove their burkas. After the headscarf ban was passed, there were many concerns about Muslim girls who were forced by their families to wear scarves being subjected to abuse and harassment at home for not wearing their scarves or being forcibly removed from the school by their parents. *Id.* at 261. A similar result is likely with a burka ban—women who were once allowed by husbands and neighbors to move freely through the public sphere while wearing a burka, may be forced to remain at home if they cannot wear their burkas. Respecting the rights of women who wish to wear burkas or other Islamic dress can only enhance their participation in the public sphere whereas denying women of their Islamic dress can significantly reduce their access to the public sphere. See Manisuli Ssenyonjo, *The Islamic Veil and Freedom of Religion, The Rights to Education and Work: A Survey of Recent International and National Cases*, 6 CHINESE J. INT'L L. 653, 709 (2007) (arguing that Muslim teachers should be allowed to wear headscarves while teaching).

Part I describes the historical background of tension between France's majority non-Muslim population and France's ever expanding minority Muslim population. Part II explains Islamic requirements in female dress. Part III discusses the Western world's obsession with burkas and the perceived oppression of Muslim women, arguing that such a burka-centric approach to women's rights is dangerous for all women. Part IV sets forth an argument for banning high heeled shoes as a harmful cultural practice in the Western world. This section is not intended to actually spur legislative action prohibiting high heels in Western countries. The argument against high heels is meant to illustrate an example of harmful cultural practices in the West that are often overlooked because of the dominant view that Western women are free while Muslim women are oppressed. By making a strong argument against high heels, the section should cause Western citizens to pause and rethink their current conceptions about what exactly women's freedom looks like. Finally, this paper concludes that imposing dress codes on women is a dangerous game for a government to play and that governments should focus on underlying causes of female oppression rather than outer manifestations of that oppression. Moreover, the paper urges Westerners to be careful in pointing their fingers at Muslim cultures when their own cultures also perpetuate female oppression.

### **I. Tension between Dominant French Culture and France's Muslim Population**

France has a history of tension between its majority non-Muslim population and its ever growing minority Muslim population.<sup>8</sup> Approximately 5 million Muslims (roughly ten percent of France's population) live in France.<sup>9</sup> Many non-Muslims French citizens and politicians are wary of French Muslims, associating "an increase in the Muslim population with an increase in

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<sup>8</sup> 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, 254 (2006).

<sup>9</sup> *Id.*

Islamic extremism, fundamentalism, and even terrorism.”<sup>10</sup> Muslim women’s dress, especially the wearing of the headscarf (*hijab*) is extremely controversial in France.<sup>11</sup> In March of 2004, a new law passed prohibiting the wearing of any clothing or symbols that “exhibit conspicuously a religious affiliation” in public schools.<sup>12</sup> Although the law is facially neutral, applying to Muslim and non-Muslim religious symbols equally, it is widely understood that the primary purpose of the legislation was to prevent Muslim girls from wearing headscarves in school.<sup>13</sup> Justifications for the law include a desire to “facilitate assimilation of Muslims into mainstream French culture, reduce Islamic fundamentalism and extremism, and counter sexism in the Muslim community.”<sup>14</sup> The law is extremely controversial and sparked debate among feminist and women’s groups who “sharply disagree over whether the ban is a vindication or violation of Muslim girls’ human rights.”<sup>15</sup> Despite concerns that the law could violate various international human rights treaties—such as the Convention on the Elimination of Discrimination against Women (CEDAW),<sup>16</sup> the International Covenant on Civil and Political Rights,<sup>17</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>18</sup>—the

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<sup>10</sup> *Id.* at 255

<sup>11</sup> *Id.* at 251

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Nusrat Choudhury, *From the Stasi Commission to the European Court of Human Rights: L’Affaire du Foulard and the Challenge of Protecting the Rights of Muslim Girls*, 16 COLUM. J. GENDER & L. 199, 202-03 (2007).

<sup>16</sup> The CEDAW Committee has expressed concerns about the ban impeding women’s access to schools. JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL 2* (Princeton University Press 2007).

<sup>17</sup> Article 18(3) of ICCPR provides that “[f]reedom 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 fundamentals rights and freedoms of others.” GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171.

<sup>18</sup> In 2005, the European Court of Human Rights ruled in *Leyla Sahin v. Turkey*, that Turkey’s prohibition on headscarves in schools did not violate the Convention for the Protection of Human Rights and Fundamental Freedoms despite the complainants allegations that the prohibition violated Article 8 (right to respect for private and family life), Article 9 (religious freedom), Article 10 (freedom of expression), Article 14 (prohibition of discrimination), and Article 2 of Protocol 1 (right to education). *Sahin v. Turkey*, 41 Eur. Ct. H.R. 8 (2005). Although this decision ruled on a Turkish case, the Court’s precedent applies to issues dealing with all European Union countries. Scholars disagree, however, as to whether the Court would reach the same decision concerning

law has not been formally legally challenged. The proposed burka ban is more radical than the ban on hijabs because the burka ban would apply in all public places, not just public schools. The ban would only affect a small number of women, however, as the French government estimates that less than 2,000 women actually wear a full Islamic veil in France.<sup>19</sup>

## II. Female Islamic Dress

Religious scholars generally agree that modest dress is a religious obligation for Muslim women.<sup>20</sup> The minimum requirement is that the clothing should be loose-fitting and “cover the entire body, with the exception of the face and the hands.”<sup>21</sup> The extent and form of this modest dress varies across Muslim communities, with some requiring only modest dress without any specified accouterment and others requiring specific forms of covering (generally referred to as veils) for women beyond puberty. The most common veil in the Western world is the *hijab*, a square scarf that covers the head and neck but not the face.<sup>22</sup> Other forms of veils include the *khimar*, a longer veil covering the head, neck, and shoulders and hanging to the waist, the *chador*, a full-body cloak that does not cover the face, the *niqab*, a veil that covers the face leaving only the eye area open, and the *burka*, a veil that covers the entire body and face leaving only a meshed opening for vision.<sup>23</sup> The burka is the most extreme covering and is the main target of France’s proposed ban, although the ban would also apply to the *niqab* and other veils that cover the face.

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France’s law because of drastic differences in underlying circumstances between France and Turkey (e.g., Turkey is Muslim-majority while France has only a minority Muslim population). Walterick, *supra* note 8, at 279-80.

<sup>19</sup> *France Moves*, *supra* note 3.

<sup>20</sup> Manisuli Ssenyonjo, *The Islamic Veil and Freedom of Religion, the Right to Education and Work: A Survey of Recent International and National Cases*, 6 CHINESE J. INT’L L. 653, 655 (2007).

<sup>21</sup> *Id.*

<sup>22</sup> See *In Graphics: Muslim Veils*, BBC NEWS, [http://news.bbc.co.uk/2/shared/spl/hi/pop\\_ups/05/europe\\_muslim\\_veils/html/1.stm](http://news.bbc.co.uk/2/shared/spl/hi/pop_ups/05/europe_muslim_veils/html/1.stm) (last visited April 9, 2010).

<sup>23</sup> *Id.*

Some women are coerced into wearing a form of Muslim covering by governments, as under the Taliban in Afghanistan and under Ayatollah Khomeini in Iran, or by communities and families who use both societal pressure and physical abuse to impose the covering. Other women, however, *choose* to wear their covering for various reasons, including “a belief that it is an obligation of the faith, the demands of family, a self-elected act of modesty or a statement repudiating the west's commodification of female beauty.”<sup>24</sup>

Many feminist scholars (and French President Sarkozy) view Islamic covering as “a sign of male domination over women’s bodies and lives” and “a tool of oppression, alienation, [and] discrimination.”<sup>25</sup> The burka, in particular, is described as creating “invisible, subservient nonentities.”<sup>26</sup> According to President Sarkozy, “[t]he burka is not a religious sign. It is a sign of subservience, a sign of debasement.”<sup>27</sup> From this view, Islamic veils, especially the burka, are inherently oppressive, representing a belief that women are less than men. Moreover, burkas are seen as imposing intolerable physical restrictions on the women wearing them. For example, in *Zoya’s Story*, a collection of women’s stories about Taliban oppression, Zoya, a member of the Revolutionary Association of Women in Afghanistan (RAWA), describes a woman in a burka as “a live body locked in a coffin.”<sup>28</sup> The narrator in *My Forbidden Face*, the story of a sixteen year old Afghan girl, provides a similar description of wearing a burka:

I can feel the rustle of my own breath inside the garment. I’m hot. My feet get tangled up in the material. I’ll never be able to wear this. I now understand the stiff robot-like walk of the “bottle women”, their unflinching look directly in front of them. . . . These phantoms that now roam the streets of Kabul have a terrible time avoiding bicycles, buses and carts. It’s even worse trying to run away from the Taliban. This is not a garment. It’s a moving prison.<sup>29</sup>

<sup>24</sup> Geraldine Brooks, *Double Jeopardy: Muslim Women Can’t Win*, FIN. TIMES, July, 10 2004, at 26.

<sup>25</sup> Ssenyonjo, *supra* note 20, at 655 (quotation omitted).

<sup>26</sup> Helen Jones, *Visible Rights: Watching out For Women*, 2 SURVEILLANCE & SOC’Y 589, 591 (2005).

<sup>27</sup> *Burkas Make Women Prisoners, Says President Sarkozy*, TIMES ONLINE, June 23, 2009.

<sup>28</sup> JOHN FOLLAIN & RITA CRISTOFARI, *ZOYA’S STORY* 209 (William Morrow 2002).

<sup>29</sup> LATIFA, *MY FORBIDDEN FACE: GROWING UP UNDER THE TALIBAN: A YOUNG WOMAN’S STORY* 40-41 (Miramax Books 2002).

Not all feminist scholars view veiling as inherently oppressive, however. Many feminist scholars argue that it is deeply problematic and historically inaccurate to condemn burkas as inherently oppressive to women. These scholars argue that Islamic veils—including burkas—are not inherently oppressive and, like Western notions of fashion, are a function of “socially shared, standards, religious beliefs, and moral ideals.”<sup>30</sup> When not forcefully imposed on women, the burka can actually be a reflection of a woman’s desire to demonstrate her faith, modesty, and respectability, a means of allowing herself greater access to the public sphere, and a means of protection from harassment from unwanted men.<sup>31</sup> In Pakistan, for example, many women view the burka “as a liberating invention because it enabled women to move out of segregated living spaces while still observing the basic moral requirements of separating and protecting women from unrelated men.”<sup>32</sup> Islamic coverings may indicate social prestige in some societies, with women in burkas being viewed as more respectable than those wearing hijabs.<sup>33</sup> Proponents of this view are not arguing that women should or must wear coverings. Instead these scholars simply posit that, when women voluntarily choose to wear them, Islamic coverings are a form of dress and symbolic expression and not a symbol of female oppression.<sup>34</sup>

### **III. Western Obsession with Burkas and the Dangers of a Burka-centric Approach**

France’s proposed burka ban is just one of many instances of Western countries using the “oppression of Muslim women” as a justification for both domestic and foreign policy.<sup>35</sup>

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<sup>30</sup> Lila Abu-Lughod, *Do Muslim Women Really Need Saving?*, 104 AMERICAN ANTHROPOLOGIST 783, 785 (2002).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 786.

<sup>34</sup> Even scholars who recognize that Islamic coverings are not inherently oppressive may still recoil in horror at the sight of a woman in full covering, be it in person or on a book jacket. This is not because these scholars view veils as inherently evil but is evidence of an almost instinctual reaction created by Western culture’s obsession with women under burkas. Gillian Whitlock, *The Skin of the Burqa: Recent Life Narratives from Afghanistan*, 28 *Biography* 54, 54 (2005).

<sup>35</sup> See Abu-Lughod, *supra* note 30.

Historically, colonizing powers, as well as religious missionaries, used the plight of the Muslim woman—conspicuously symbolized by the burka—to justify colonization and proselytism.<sup>36</sup>

The French, for example, justified their control over Algeria and appealed to women by highlighting the plight of the veiled Algerian women:

Perhaps the most spectacular example of the colonial appropriation of women's voices, and the silencing of those among them who had begun to take women revolutionaries . . . as role models by not donning the veil, was the event of May 16, 1958 [just four years after Algeria financially gained its independence from France after a long bloody struggle and 130 years of French control—L.A.]. On that day a demonstration was organized by rebellious French generals in Algiers to show their determination to keep Algeria French. To give the government of France evidence that Algerians were in agreement with them, the generals had a few thousand native men bused in from nearby villages, along with a few women who were solemnly unveiled<sup>37</sup> by French women . . . Rounding up Algerians and bringing them to demonstrations of loyalty to France was not in itself an unusual act during the colonial era. But to unveil women at a well-choreographed ceremony added to the event a symbolic dimension that dramatized the one constant feature of the Algerian occupation by France: its obsession with women.<sup>38</sup>

A member of the Revolutionary Association of Women in Afghanistan (RAWA) tells an eerily similar account of a recent meeting in Madison Square Garden in February of 2001:

When the time came for me to go on stage, after Oprah Winfrey had read [Eve Ensler's poem] "Under the Burqa," all the lights went off save for one that was aimed directly at me. I had been asked to wear my burqa, and the light streamed in through the mesh in front of my face and brought tears to my eyes. A group of singers was singing an American chant, a melody full of grief, and I was to walk as slowly as possible. . . . I had to climb some steps, but because of the burqa and the tears in my eyes, which wet the fabric and made it cling to my skin, I had to be helped up the stairs.

Slowly, very slowly, Oprah lifted the burqa off me and let it fall to the stage.<sup>39</sup>

More politically, this obsession with Muslim women and appropriation of their suffering to support domestic and foreign policies, is demonstrated in the United States' Bush

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<sup>36</sup> *Id.* at 784-485.

<sup>37</sup> This unveiling was forceful and involuntary. Whitlock, *supra* note 34, at 60.

<sup>38</sup> See Abu-Lughod, *supra* note 30, at 784-85 (citing Marnia Lazreg).

<sup>39</sup> FOLLAIN & CRISTOFARI, *supra* note 28, at 211.

Administration positing “Afghan women as cultural icons in need of liberation—a claim that helped justify the overthrow of the Taliban government in Afghanistan”<sup>40</sup> and by France’s current attempts to ban the burka. While this fascination with veiled Muslim women may help garner domestic support for certain domestic and foreign policies, it also “diverts attention away from sex inequality closer to home and exoticizes third world women in ways that put the spotlight on cultural restrictions while obscuring other restrictions and obstacles these women face.”<sup>41</sup> Focusing on veiled Muslim women as the ultimate symbol of oppression is problematic because it misrepresents and misunderstands Muslim culture and the practice of veiling, diverts attention away from underlying factors of oppression, and diverts attention away from domestic oppression and abuse while imposing imperialist Western notions about what it means to be free from oppression.<sup>42</sup>

Westerners are often shocked to learn that women continue to wear burkas even after Westerners have fought to free those women from their burkas.<sup>43</sup> In Afghanistan, for example, even after liberation from the Taliban, women continue to don burkas.<sup>44</sup> Sociologist Lila Abu-Lughod wonders: “Did we expect that once ‘free’ from the Taliban they would go ‘back’ to belly shirts and blue jeans, or dust off their Chanel suits?”<sup>45</sup> The notion that all Muslim women long to be freed from their burkas ignores the historical and cultural significance that the burka

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<sup>40</sup> Catherine Powell, *Lifting our Veil of Ignorance: Culture, Constitutionalism, and Women’s Human Rights in Post-September 11 America*, 57 HASTINGS L.J. 331, 332 (2005). President Obama has warned of the dangers of such an approach: “It is important for Western countries to avoid impeding Muslim citizens from practicing religion as they see fit—for instance, by dictating what clothes a Muslim woman should wear. We can’t disguise hostility toward any religion behind the pretense of liberalism.” Giovanni, *supra* note 5.

<sup>41</sup> Powell, *supra* note 40, at 334.

<sup>42</sup> This is not to say that the burka and images of the burka cannot be used for good in the West as a means of increasing awareness, but that we must be careful not to confuse the burka with the actual underlying oppression. For discussion of the ways media and literature can both use and abuse images of the burka, see Wendy Kozol, *Visual Witnessing and Women’s Human Rights*, 20 PEACE REVIEW 67 (2008); Whitlock, *supra* note 34.

<sup>43</sup> Abu-Lughod, *supra* note 30, at 785.

<sup>44</sup> See Giovanni, *supra* note 5 (recounting a conversation between Giovanni and three teenage Afghan girls wearing burkas: “‘Why are you still wearing them’ [Giovanni asked], trying to make eye contact behind the fabric grille. ‘Take them off! You’re free now!’”).

<sup>45</sup> Abu-Lughod, *supra* note 785.

plays—both in areas where women are forced to wear burkas and areas where they voluntarily choose to wear burkas. As discussed in Part II, burkas may actually help provide Muslim women with access to the public sphere because without burkas some Muslim women may be afraid to go in public for fear of appearing disrespectful or facing unwanted sexual attention.

Taking this into account,

Why would [Muslim women] suddenly throw off the markers of their respectability, markers, whether burqas or other forms of cover, which were supposed to assure their protection in the public sphere from the harassment of strange men by symbolically signaling to all that they were still in the inviolable space of their homes, even though moving in the public realm?<sup>46</sup>

Westerners are often ignorant of the multifaceted origins of Islamic coverings and mistakenly believe that no Muslim woman ever chooses to wear a veil or a burka. Essentially, Westerners assume that no burka-wearing woman has control over her life or her body. Such a “reductive interpretation of veiling as the quintessential sign of women’s unfreedom” denies Muslim women of agency and autonomy in the eyes of Westerners.<sup>47</sup> Rather than acknowledging that some Muslim women may choose to cover themselves or that some women who are forced to wear Islamic coverings maintain their agency and make decisions for themselves, Western media and politicians tend to view any veiled woman as a mere victim.<sup>48</sup> In reality, however, women wearing Islamic veils are not always mere victims.<sup>49</sup> The women of RAWA, for example, actively resisted the Taliban despite being confined to burkas.<sup>50</sup> Ironically, the women of RAWA even used their burkas as tools of their resistance: “the burka provided privacy from surveillance and was used to conceal the activities of RAWA activists smuggling

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See Kozol, *supra* note 42; Whitlock, *supra* note 34.

<sup>49</sup> Abu-Lughod, *supra* note 30, at 786.

<sup>50</sup> Jones, *supra* note 26, at 591.

material into [their] secret schoolrooms.”<sup>51</sup> When the actual lives of burka-wearing women are considered, the burka is not merely a tool of oppression, but a very complex symbol: “a reminder of an oppressive regime, but . . . also an icon of brave and successful resistance.”<sup>52</sup>

Although a complex and meaningful symbol, at the end of the day, the burka, itself, is simply an article of clothing: “In itself it is not violent or abusive. It is the meaning that is attached to the burka that is important and the power of those who impose that meaning.”<sup>53</sup> The burka, itself, does not oppress women; only when the burka is forced upon women does it become a manifestation of underlying oppression and gender-based abuse. Focusing on the burka as the ultimate symbol of oppression can cause Westerners to ignore underlying oppressions and mistakenly assume that the liberation of Muslim women requires only the removal of the burka. If politicians and governments are truly concerned about the position of Muslim women in society, they need to address underlying abuses and oppressions:

If the life choices of Muslim women are a concern, it is the background—social, economic, cultural, legal and political conditions—in which they live that need to be addressed, rather than the ban of the Islamic dress or the compulsory wearing of a such a dress, so as to create favourable conditions in which autonomous and meaningful choices can be made.<sup>54</sup>

When the economic, cultural, legal, and political conditions do not oppress women, women do not need to be “freed” from their burkas. Conversely, even if Muslim women are not wearing burkas, they, like all women, may still face oppressive economic, cultural, legal, and political conditions (e.g., lack of access to education, the work force or political institutions).

Western women, too, may face economic, cultural, legal, and political oppression, but this oppression may be masked by concerns about the oppression of others, namely the oppression of

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<sup>51</sup> *Id.*

<sup>52</sup> Whitlock, *supra* note 34, at 57.

<sup>53</sup> Jones, *supra* note at 592

<sup>54</sup> Ssenyonjo, *supra* note 20, at 710.

Muslim women. When Westerners believe that only veiled women are oppressed, they may ignore signs of female oppression in their own societies.<sup>55</sup> Mistakenly assuming that women who are able dress as they please are automatically immune from oppression, many Westerners fail to recognize signs of gender inequality and oppression in their own lives, such as workplace discrimination, unequal pay, and unequal access to political processes. In France, for example, gender equality is far from ideal and “French women had the lowest rate of participating in government in the European Union (except for Greece).”<sup>56</sup> Moreover, Western women are often blind to the fact that their “choice” of clothing is actually dictated by societal norms imposed on them by a powerful industry: “[i]n the west women are supposed to be empowered, possessed of opportunities and choices unimaginable a generation ago, yet these same women are hobbled by clothing and shoes, maimed by surgery in ways that the feminist generation of the 1970s could not have imagined.”<sup>57</sup> Western beauty practices, perpetuated by magazines, Hollywood, and the advertising campaigns of powerful companies, impose notions of beauty and fashion upon Western women, causing women to engage in harmful practices, such as wearing high heeled shoes. When issues of discrimination against women are viewed without a Western-centric bias that focuses only on the oppression of women in the developing world, many Western beauty practices—especially the ever-pervasive high heeled shoe—could be viewed as vehicles of oppression.

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<sup>55</sup> Powell, *supra* note 40, at 334.

<sup>56</sup> Choudhury, *supra* note 15, at 247.

<sup>57</sup> SHEILA JEFFREYS, *BEAUTY AND MISOGYNY: HARMFUL CULTURAL PRACTICES IN THE WEST* 173 (Routledge 2005).

#### IV. Banning Manolo Blahniks—Not Islamic Burkas

If the French government is truly interested in eliminating cultural practices that are harmful to women<sup>58</sup> and reducing male oppression of women in France, the French government should focus on eliminating Western manifestations of female oppression that affect nearly all of French society rather than Islamic manifestations of female oppression that affect only a small segment of French society. This is especially true because a burka ban, which would essentially force Muslim women to adopt more Western styles of dress and adhere to Western beauty practices, could actually impose harmful Western cultural practices on these women.

French women (as well as many other women in the Western world) often wear painful high heeled shoes that are treacherous to walk in, limit mobility, cause lower back pain, and can even cause foot deformities, but never fail to garner male attention.<sup>59</sup> High heels damage the

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<sup>58</sup> The Convention on the Elimination of Discrimination against Women (CEDAW), in fact, requires all state parties to take all appropriate measures:

- (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

CEDAW, *supra* note 7, at Art 5 (a). France signed CEDAW on July 17, 1980, and France's instrument of ratification was received on December 14, 1983. U.N. CEDAW: STATE PARTIES, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited April 9, 2010). As with notions of female oppression in general, the Western world tends to view the Convention on the Elimination of Women (CEDAW) with a Western bias. CEDAW, which as its name implies is a treaty aimed at eliminating discrimination against women, is often characterized as a tool for assisting women in non-Western countries only, rather than as a tool for assisting women across the globe. Westerners often view their countries and their cultural practices as immune from the CEDAW's imperatives. An example of this position is seen in the words of Pulitzer Prize winner, Nicholas Kristoff:

[F]rankly, the treaty [CEDAW] has nothing to do with American women, who already enjoy the rights the treaty supports—opportunities to run for political office, to receive an education to choose one's own spouse, to hold jobs. Instead it has everything to do with the half of the globe where to be female is to be persecuted until, often, death. . . . Twenty years of experience with the treaty in the great majority of countries shows that it simply helps third-world women gain their barest human rights.

Nicholas D. Kristoff, Editorial, *Women's Rights: Why Not?*, NY TIMES, June 19, 2002, at A23. Although Kristoff's comments were in response to concerns by some U.S. congressmen that CEDAW would undermine U.S. constitutionalism and sovereignty, they could just as easily reflect many Westerners' opinions on CEDAW, including the French government's view that burka-wearing Muslim women need the French government to "liberate" them.

<sup>59</sup> High heeled shoes are so widely-worn in France that First Lady Carla Bruni-Sarkozy's wearing of flat (or, more commonly, modest, one to two inch, heels) has sparked media attention. See, e.g., *Britain Swoons for Fashionable French First Lady Carla Burni-Sarkozy*, Mar. 28, 2008,

health of women for the benefit of men, creating and maintaining stereotyped gender roles in Western nations, where the wearing of high heels is justified as a tradition or harmless beauty or fashion practice.<sup>60</sup> As William A. Rossi aptly explains in *The Sex Life of the Foot and Shoe*,

The high heel makes no practical sense whatever. It has no functional or utilitarian value. It's an unnatural fixture on a shoe. It makes standing and walking precarious and tiring. It's a safety hazard. It's blamed for a host of pedic and bodily ills.<sup>61</sup>

Medical science in the Western world has long warned of the damaging effects of high heeled shoes. Prominent surgeons in both the U.S. and France during World War II noted the destructive capacity heels had on women's feet and backs: "Even the leading post-World War II foot surgeon of the world's fashion hub, France, warned his fellow 'femme éléganté' that each step she takes in high heels causes her lumbar column to become hollowed out, resulting in hyperlordosis."<sup>62</sup> Bunions, nerve pain, and back problems are just a few of the physical ills high heels inflict on women.<sup>63</sup>

Women, of course, don't need medical science to tell them that their fashionable high heeled shoes are damaging their bodies. Many women will admit that they can't wait to get

<http://www.foxnews.com/story/0,2933,342670,00.html?sPage=fnc/entertainment/lifestyles>. Unlike the average French woman, Bruni-Sarkozy is a former model—she doesn't need to wear high heeled shoes because her inherent beauty already wins the sought-after male attention that most women use high heels (and other beauty accouterments) to win. See Jan Goodwin, *Hell on High Heels*, SELF, Oct. 2009, at 176 (discussing the way models who wear—and sometimes trip in!—heels on the runway rarely wear heels off the runway).

<sup>60</sup> The U.N.'s Fact Sheet on *Harmful Traditional Practices Affecting the Health of Women and Children* explains that Article 5 mandates the elimination of any cultural practice that 1) damages the health of women and girls, 2) is for the benefit of men, 3) creates stereotyped gender roles, and 4) is justified by tradition. U.N. FACT SHEET NO. 23, at 2. According to the Fact Sheet, practices that states should eliminate include "female genital mutilation (FGM); forced feeding of women; early marriage; the various taboos or practices which prevent women from controlling their own fertility; nutritional taboos and traditional birth practices; son preference and its implications for the status of the girl child; female infanticide; early pregnancy; and dowry price." *Id.* at 1. Notably, this list does not include burkas as examples of harmful practices despite wide-spread knowledge on the practice of wearing burkas. More notably, the list does not include any cultural practices that occur predominately in developed Western states. This list, however, is not exclusive and allows for the possibility that more harmful practices could be identified.

<sup>61</sup> WILLIAM A. ROSSI, *THE SEX LIFE OF THE FOOT AND SHOE* 119 (Kreiger 1993).

<sup>62</sup> Marc Linder, *Smart Women, Stupid Shoes, and Cynical Employers: The Unlawfulness and Adverse Health Consequences of Sexually Discriminatory Workplace Footwear Requirements for Female Employees*, 22 J. Corp. L. 295, 296 (1997).

<sup>63</sup> Goodwin, *supra* note 59, at 178.

home and rest their feet at the end of the day.<sup>64</sup> In fact, a 2009 study revealed that 90% of women experienced painful footwear at some time in the past year.<sup>65</sup> Despite the admonitions of the medical community and despite their own experiences of pain, women not only continue to wear high heels, but some women actually undergo surgery to make their feet fit into high heels better.<sup>66</sup>

Although women may claim that they wear high heels, and suffer through the physical ailments associated with them, because of their fashion appeal, the real appeal of high heel shoes is the sexual benefit they provide men: “the motive [for wearing high heels] is sometimes naively referred to as ‘fashion appeal’ which is simply a patronizing term for sex appeal. The shoe is the erotic foot’s pimp and procurer.”<sup>67</sup> High heels are sexually stimulating for men for a variety of reasons:

[The high heeled shoe] gives more shapely contours to the ankle and leg, a sexier, leggier look.

It makes the foot look smaller, the arch and instep more femininely curved.

It causes postural changes that accentuate voluptuousness in the shape and movement of the lower limbs, the pelvis and buttocks, the abdomen and bosom, the curve of the back, the carriage.

It feminizes the gait by causing a shortening of the stride and a mincing step that suggest a degree of helpless bondage. This appeals to the chivalrous or machismo nature of many men.<sup>68</sup>

Put simply, men enjoy looking at women in high heels. The appeal is partially because heels make a woman’s legs look longer and her breasts and behind curvier. The appeal is also partially because the heels make the woman walk more slowly and delicately, creating the assumption that she needs a man’s assistance.

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<sup>64</sup> JEFFREYS, *supra* note 57, at 139.

<sup>65</sup> Goodwin, *supra* note 59, at 178.

<sup>66</sup> *Id.*

<sup>67</sup> Rossi, *supra* note 61, at 1.

<sup>68</sup> *Id.* at 121.

High heels help create and maintain stereotypes about the roles of men and women in Western society by making women dependent on men for getting in and out of cars, using steps, and walking down the street in general.<sup>69</sup> Men, on the other hand, look strong and sturdy in their practical shoes.<sup>70</sup> Their strong, sturdy masculinity is enhanced as they assist women. High heels force women to be “damsels in distress” waiting for strong men to come rescue them.<sup>71</sup> Women may make nearly as much money and compete with men in the workforce, but, at the end of the day, those women still need a man to help them step out of the tax. Thus, high heels make men feel a little bit more secure with their masculinity and a little less threatened by women’s liberation.<sup>72</sup>

Despite the pain high heels cause and the gender stereotypes they reinforce, most Western women will tell you that high heel shoes are not a harmful cultural practice because these women claim that they “choose” to wear high heels and are not forced to wear them. Some feminists even argue that Western beauty practices, such as high heels and make-up, are

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<sup>69</sup> JEFFREYS, *supra* note 57, at 128.

<sup>70</sup> *Id.*

<sup>71</sup> Although both men and women wore high heeled shoes throughout the eighteenth century, only women continue to wear them. Linder, *supra* note 62, at 300-01. Originally, high heels demarcated division between the wealthy aristocracy and the common people—aristocrats, who did not have to worry about practical shoes allowing them to move about and perform work, wore high heels as a sign of their class and prestige while the common people wore flat, practical shoes that allowed them mobility. *Id.* at 302-03. The French Revolution momentarily eliminated the high heel shoe and its bourgeois implications, but high heels for women (but not men) reemerged in the nineteenth century. *Id.* No longer only a symbol of class distinction, the new wave of high heels were, and continue to be, a symbol of gender distinction among the upper-class:

[Nineteenth century] industrialization created a sharp opposition between the active, financially independent and thus more powerful husband, and the domestically dependent wife. Men’s and women’s fashion thus began for the first time in history to develop completely away from each other. In contrast to the employed bourgeois men who needed practical clothing, the wives of the bourgeoisie, remitted to the private and family sphere, remained true to the ideal of visible idleness for which the erotic-unpractical high-heel shoe attained representative status.

*Id.* (internal quotations and citations omitted).

<sup>72</sup> See JEFFREYS, *supra* note 57 (discussing men’s difficulty accepting women’s equality and the resurgence of harmful beauty practices it causes); NAOMI WOLF, *THE BEAUTY MYTH* 10 (Anchor 1992) (“The more legal and material hindrances women have broken through, the more strictly and heavily and cruelly images of female beauty have come to weigh upon us.”)

liberating for women and a form of self-expression.<sup>73</sup> Many women claim that they feel empowered when wearing high heels because the shoes add height to their stature allowing them to stand eye-to-eye with men.

The illusory nature of this “choice” is revealed, however, as only one in three women report actually enjoying wearing high heels, while those who did not enjoy them admitted that they wore them because of work or because they felt otherwise compelled to.<sup>74</sup> Some women may even describe their “choice” to wear high heels as being motivated by their desire to “feel like a woman,”<sup>75</sup> further bolstering the argument that high heels reify cultural stereotypes about the role of women in society. Essentially, women are brainwashed to believe high heels are a normal part of life and that they’re defective if they can’t wear them. They get caught up in what looks pretty and forget about the biomechanical complications that can follow.”<sup>76</sup> As one woman explains, “I’m addicted to high heels . . . Overall, you look sexier. But it’s a bit like having your feet bound the way they used to in China.”<sup>77</sup> [pause and laughter] Until the next time I wear them.”<sup>78</sup>

Women certainly could wear comfortable shoes with no heels, but these shoes often bring negative social consequences. Our society refers to these types of shoes derogatively, as

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<sup>73</sup> JEFFREYS, *supra* note 57, at 1-2.

<sup>74</sup> *Id.* at 143.

<sup>75</sup> Linder, *supra* note 62, at 298.

<sup>76</sup> Goodwin, *supra* note 59, at 179.

<sup>77</sup> Footbinding was practiced for thousands of years in China. JEFFREYS, *supra* note 57, at 130. Upper-class women would bind the feet of their six or seven year daughters: “Strips of cloth were used to bind all toes except the big toe back on the sole and to bend the arch of the foot down at such a sharp angle that the ball of the foot and the heel were pushed together . . .” causing extreme pain and sometimes causing one or more toes to fall off. *Id.* Bound feet were aesthetically and sexually appealing to men and kept women weak and submissive to their husbands. *Id.* at 131. For a comparison of high heels to Chinese footbinding, *see id.* at 130-36.

<sup>78</sup> Goodwin, *supra* note 59, at 179.

“lesbian” shoes or “old person” shoes.<sup>79</sup> When women do wear these shoes, they know what others are thinking:

Who wears sexless shoes? Mostly sexually turned-off women: the elderly or infirm; women of certain religious callings or members of service organizations such as Salvation Army lassies, Mennonites and Amish, etc.; or women with serious foot ills. Then there are those women with psychosexual inhibitions or neurotic problems, who use their desexed shoes as a pedic chastity belt. Or butch-type lesbians who deliberately masculinize their appearance.<sup>80</sup>

Women find themselves apologizing for their sensible shoes, acknowledging their fashion *faux pas* and assuring others that the wearer really needed to wear comfortable shoes that day.<sup>81</sup>

Technically, the comfortable shoe is an option, but it’s not a very attractive option, making the “choice” of footwear for women even more illusory. Women can choose between socially acceptable high heels that place them in physical danger and sexually excite men or they can wear socially scorned “lesbian” shoes. Quite the choice.

While non-Western harmful cultural practices are often forcefully imposed by tangible actors (e.g., families, communities, and church leaders), harmful cultural practices in the West are imposed by less easily identifiable actors.<sup>82</sup> Powerful beauty and fashion industries impose beauty norms, including high heels, on Western women. Although these industries do not exert force in a traditional manner, their power and pervasiveness in the lives of women should not be overlooked:

The profitability of these [harmful beauty] practices to the cosmetics, sex, fashion, advertising and medical industries creates a major obstacle to women’s ability to resist and eliminate them. There is so much money in these industries based on commercializing harmful cultural practices that they constitute a massive political force that requires the continuance of women’s pain.<sup>83</sup>

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<sup>79</sup> See Rossi, *supra* note 61, at 93.

<sup>80</sup> *Id.* at 94.

<sup>81</sup> *Id.* at 96.

<sup>82</sup> JEFFREYS, *supra* note 57, at 172.

<sup>83</sup> *Id.*

Feminist Naomi Wolf describes the underlying factors that feed the beauty and fashion industries as the “beauty myth.”<sup>84</sup> The beauty myth helps keep male dominance intact as Western women gain greater formal equality in the public sphere.<sup>85</sup> The beauty myth tells women that “beauty” is the most desirable quality they can achieve, that “women must want to embody it and men must want to possess women who embody it.”<sup>86</sup> Women may feel increasingly liberated in the public sphere but are increasingly trapped by the beauty myth. Wolf’s research revealed that “inside the majority of the West’s controlled, attractive, successful working women, there is a secret ‘underlife’ poisoning our freedom; infused with notions of beauty, it is a dark vein of self-hatred, physical obsessions, terror of aging, and dread of lost control.”<sup>87</sup> Women do not need research to tell them this—nearly every woman has looked longingly at the bodies of the women she sees in magazines, has spent too much money on products that promise beauty, has heard an underweight friend complain about “getting fat,” and has watched her mother struggle to “age gracefully.” This myth is our “tradition” and it is this tradition that drives the powerful beauty and fashion industries, keeping men in their position of power and women teetering in their high heels.<sup>88</sup>

The pervasiveness of the beauty myth—and the powerful industries promoting it—is illustrated by an issue of SELF magazine running a story about the harmful effects of high heeled shoes also featuring the advice of a medical expert: “Gain height without hobbling by wearing platforms that have a modest incline. They put less pressure on the balls of your feet.”<sup>89</sup> The promoted shoes place *less* pressure on the ball of the foot, but do not completely eliminate harm

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<sup>84</sup> WOLF, *supra* note 72.

<sup>85</sup> *Id.* at 12.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 10.

<sup>88</sup> See JEFFREYS, *supra* note 57, at 172 (describing Western beauty practices as a “tradition”).

<sup>89</sup> *Shoe We Crave*, SELF, Oct. 2009, at 8 (advice of Carolyn McAloon, D.P.M.).

to the wearer. In fact, “even a ‘low’  $\frac{3}{4}$ ” heel increases the peak pressure in the forefoot by 22%.”<sup>90</sup> The magazine knew that not even a well-researched article about the physical damage high heels inflict on women could convince Western women to abandon their high heels and commercially exploited women’s desire to be in less pain by promoting only slightly less damaging products.

Western women are not going to reject high heeled shoes on their own accord. They have plenty of reasons to reject high heels, yet find themselves compelled to wear them. Legislation may be the only way to protect women from the physical harms and psychological degradation caused by high heeled shoes. Banning high heeled shoes may sound paternalistic, as though the government were trying to protect women from themselves, but a ban on high heels would not be protecting women “from themselves,” it would be protecting women from a harmful cultural practice that plagues their daily lives.

## **V. Conclusion**

What women wear and do not wear can reveal much—both good and bad—about a culture. Although certain articles of clothing may be symbolic of a culture that degrades women, sexually or otherwise, these articles of clothing are not the root cause of female oppression. Legislating a female dress code that either outlaws clothing that a government views as harmful to women or imposes clothing that a government views as necessary to protect women will do little to address the root causes of female oppression that are manifested in clothing, but can do much to further degrade and oppress women. Just as focusing on the Islamic burka as the ultimate symbol of female oppression is problematic, focusing on high heeled shoes in the Western world as the ultimate symbol of female oppression is problematic. Both burkas and high heels can degrade women, but both can also empower women when women make a true voluntary choice to wear

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<sup>90</sup> Linder, *supra* note 62, at 308.

them. This paper is not arguing that high heeled shoes should be banned or that women should be compelled to wear burkas. Instead, this paper is imploring Western citizens, politicians, and governments to view women's human rights in a more balanced way. Focusing on female oppression elsewhere can mask domestic female oppression and focusing on an article of clothing can mask underlying systematic oppression. Westerners should not be too quick to judge women wearing hijabs, niqabs, chadors, or burkas as victims of oppression because those women could just as quickly judge the Western women in their low-cut shirts, high hemlines, and high heels as victims of oppression of another kind.

When Western women, who "choose" to wear painful high heeled shoes that reduce them to the status of mere sex objects, express outrage over Muslim women being "forced" to wear burkas, you can't help but wonder if these Western women are afraid to look in their own mirrors. While identifiable outside forces (e.g., the Taliban) can be blamed for women in burkas, Western women may feel as though they only have themselves to blame for their harmful footwear. Fearful of admitting that they are choosing something harmful and misogynistic for themselves, these women instead compare their "freedom" to the "oppression" of Muslim women. Yet, many Muslim women claim to wear the burka out of their own volition and find the burka liberating. If Western women make that same claim about their high heeled shoes, why won't they accept the same claim from Muslim women? Despite evidence that high heels are a harmful cultural practice, most men and women in the Western world would continue to argue that governmental interference in women's dress is impermissible. Yet these same men and women may support a ban on the burka, a piece of clothing which they know very little about.

Before imposing legislation regulating burkas, France and other Western countries need to consider the harmful beauty practices their own cultures impress upon women and consider the underlying oppression behind these practices. Legislation regulating what women can and cannot wear can rob women of their free agency and freedom of thought and ignore underlying economic, legal, and social oppression that women face. Moreover, regulating the clothing of only a minority population demonstrates an imperialist refusal to examine a nation's own cultural practices and does a disservice to women of all ethnicities and religions.