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Open Thematized Session

The Limits of Rights: Muslim Women and the European Court of Human Rights

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Abstract. Conflicts over culture and women's rights, such as the debate over Muslim women's dress in Europe, have led scholars to ask which of these two rights liberal democracies should prioritize: culture or women's rights? I argue that instead scholars need to investigate how and why conflicts between culture and women's rights emerge and their effects on minority women and human rights. In this paper I apply constructivist grounded theory and Critical Frame Analysis to a court case at the European Court of Human Rights that challenged the French "burqa ban." My analysis of *S.A.S. v. France* reveals that a variety of relationships between culture and women's rights are possible, and that political elites deliberately construct a conflict between culture and women's rights to advance their strategic goals. I also find that the debate over the burqa ban legitimized minority women's political domination while hindering the emancipatory potential of rights.

Keywords: culture, women's rights, Muslim women, European Court of Human Rights, intersectionality, France

Introduction

In recent decades liberal democracies have endorsed new rights, including cultural rights and women's rights, to advance the freedom of all citizens. Yet conflicts regarding these rights abound, generating widespread debate, protests, and even violence. Consider the French government's 2010 "burqa ban." The government justified the ban, which barred Muslim women from wearing the face veil in public, as essential for public order, gender equality, and social interaction. Once passed the ban led to violence as riots erupted in Muslim neighborhoods over erratic police enforcement and vigilante harassment. This suggests that when liberal democracies prioritize women's rights, minority groups object to external intervention in their communities. Yet, when liberal democracies favor minority rights, advocates of women's rights often accuse

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governments of reinforcing male domination. Policymakers, scholars and pundits have thus asked: which of these rights should liberal democracies prioritize?¹

I suggest that it is time to ask a different question. Assuming that culture and women's rights are in conflict is a mistake. It is a mistake because it ignores the fact that the relationship between these two sets of rights varies. For example, culture and women's rights overlap both in theory and in practice. They overlap in theory through a shared commitment to freedom, liberty and equality for members of minority groups and for all women. They overlap in practice through the lives of minority women, or women who are members of a minority group. This overlap means that we should expect cultural rights and women's rights to advance justice for minority women and expand the reach of human rights. Indeed, minority women around the world—from Zapatista rebels to Islamic feminists—have endorsed both sets of rights. Before rushing to resolve these rights conflicts policymakers therefore need to know, and scholars need to investigate, how and why conflicts between culture and women's rights emerge, their effects on the minority women at their center and on human rights generally.

Despite intense public and scholarly focus on conflicts between culture and women's rights no one has investigated these questions.² This lack of interest is odd given that international rights treaties proclaim the indivisibility of human rights, the conflicts are about minority women, and all liberal democracies are invested in human rights. In neglecting these questions we have narrowed our questions and policy options

¹ For an array of views on this now extensive scholarly literature see Benhabib 2004, Parekh 2000, Phillips 2007, Rawls 1999 and Shachar 2001.

² Conflicts over culture and women's rights came to the fore in the academy when political theorists like Kymlicka (1996) argued that culture is the foundation of individual meaning, and therefore liberals must respect cultural difference. This argument drew fire from across the political spectrum, including feminists (e.g., Okin 1999). It also generated a series of ongoing debates among feminists, including disagreements about the meaning of minority women's compliance with cultural practices (e.g., Duits and Van Zoonen 2007, Gill 2007, Mahmood 2005, Parvez 2011).

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to resolving rights conflicts while neglecting a host of important questions about culture and women's rights.

In this paper, which is part of a larger book project, I draw on empirical evidence from my previous research and a court case heard by the European Court of Human Rights (ECHR) to build an explanation for how and why conflicts between culture and women's rights get constructed, their effects on minority women and on the potential of human rights.³ I argue that elite politicians competing for political power construct conflicts over culture and women's rights to advance their strategic goals. They do this by using a nationalist rights discourse that selectively attends to some inequalities while ignoring others. Elite politicians then link one set of these rights to the nation and frame the relationship between culture and women's rights as dichotomous. This nationalist discourse, regardless of which set of rights elite politicians prioritize, presents minority women as dependents or deviants who lack political agency; it reserves political agency for elite politicians.⁴ Further, almost all of the rights discourses political actors use in policy debates over culture and women's rights stigmatize minority women while reserving political agency for themselves. Although the rights discourses evident in these policy debates vary considerably only one expands the conventional meaning of rights; all others either stymie or reduce the potential of human rights to redress injustice.⁵

³ Following Schmidt (2008) this theory focuses on discourse and treats it as a "dynamic construct" operating in a context shaped by institutions that influence what political actors do, while acknowledging that these actors can alter or reproduce those institutions through their discourse, and that the goals that these actors pursue are "subjective responses to material conditions" (320, 318).

⁴ Schneider and Ingram (2005, 17) identify four types of policy target groups: deserving (advantaged), contenders (unworthy because too greedy), dependents (helpless and in need of discipline), and deviants (dangerous and of no value).

⁵ Lombardo, Meier and Verloo (2009, 4-5) label discursive alterations like these as fixing (confines meaning of the concept to one area or interpretation), shrinking (reduces and simplifies the meaning of the concept) and bending (shapes the meaning of the concept at the expense of the goal it usually endorses). As this paper documents, the conventional view of human rights is highly contested. It nonetheless

This paper takes up three tasks related to this argument. First, I draw upon the existing literature to build a foundation for shifting the debate about culture and women's rights away from how to resolve conflicts and toward an analysis of how and why these conflicts are constructed and their effects. Second, I hone in on the central political activity that underpins my argument: how political actors construct the rights relationship, refer to minority women, and envision the purpose of human rights. I do this through a case study of *S.A.S. v. France*, which the ECHR adjudicated in 2014. The majority of the paper analyzes the rights discourses in the case. I find that in *S.A.S. v. France* political actors used three different types of rights discourses, constructed a variety of relationships between culture and women's rights, and that all of the actors involved stigmatized minority women. They also contained the promise of human rights to redress injustice.

Intersectionality, Political Competition and Perverse Effects

This paper aims to expand the scholarly debate over culture and women's rights by asking new questions about the origins of these rights conflicts and their effects. I draw on three insights from the existing literature to build the foundation for this expansion: 1) minority women face multiple sources of inequality, including political domination from the minority community and the liberal democratic state; they often challenge both simultaneously; 2) competition among political elites shapes rights outcomes; and 3) rights have can have perverse effects.⁶ The first insight warns us to

exists. Donnelly (2013) is a scholarly exemplar of this view; the Universal Declaration of Human Rights is its real world counterpart.

⁶ "Community" and "group" in this paper do not refer to an essentialized or bounded set of people but merely signal those who self-identify and are identified by others as being a member of a group.

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widen our sights when assessing the inequalities that shape minority women's lives and to critically evaluate minority groups as well as liberal states contribute to inequality. The second reminds us that political actors are strategic actors operating in a competitive political context that affects what they say and do when it comes to rights. The third insight prompts us to recall that while rights can be useful tools for advancing justice they also may bring unexpected and unintended costs.

The first insight signals that this project is rooted in intersectionality theory. Intersectionality contributes toward an expansion of the scholarly literature on culture and women's rights, first, by shifting the focus away from competing rights claims and by placing the focus on those at the center of the debate, minority women; second, by simultaneously attending to multiple rather than select sites of inequality; and third, by focusing on minority women's political agency. Minority women are by definition located at the intersection of cultural rights and women's rights, which means that debates over issues like the burqa ban are about them. This intersectional location underscores the reality that neither cultural rights nor women's rights suffice to redress the injustices minority women experience. Instead, an intersectional approach that analyzes inequalities within and between groups is required (e.g., Collins 1990; Crenshaw 1989).⁷ This means that when political actors target inequalities between the minority group and the majority group, *or* among women and men within the minority group, *or* between women and men in the broader society, that any one of these attacks is

⁷ Intersectionality research is just beginning to investigate how inequalities are relevant to political discourse and strategies, or what Crenshaw calls "political intersectionality" (1991, 1245). This paper contributes to this growing literature, which includes analyses of how to apply intersectionality theory to public policy (e.g., Hankivsky and Cormier 2011, Reingold and Smith 2012) and evaluations of policies that claim to incorporate an intersectional approach (e.g., Kantola and Nousiainen 2009; Lombardo, Meier and Verloo 2009).

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insufficient as each overlooks other contributing to the oppression, domination and exploitation minority women experience in their daily lives.

This lived experience informs minority women's political agency because it shapes their political consciousness, shared priorities and political action. This is not to suggest that minority women are in agreement on issues like the burqa ban. Instead, it means that their social location constitutes the category "minority women" and that political agency is required to articulate, formulate and express rights claims addressing the inequalities that shape their lives.

Some feminist scholars who have studied culture and women's rights have argued that minority women face marginalization in minority group politics and in liberal democracies (e.g., Deveaux 2006; Song 2007); they have found that minority women often challenge this dual marginalization simultaneously (e.g., Deveaux 2003; Richards 2005). For example, Zapatista rebels in Mexico not only demanded autonomy from the Mexican government but also political power for indigenous women to reshape their cultural traditions (Castillo 2002, 394-395). In this case the male leaders of the rebellion endorsed the goals of these Zapatista rebels.

Liberal democracies, however, rarely respond to the demands of minority women. How often, to what extent, and in which democracies is not precisely clear as this is an underdeveloped area of empirical scholarly research. Most likely because few scholars expect minority women to have much influence on public policy: minority women have limited financial resources and few allies, so scholars no doubt expect them to have difficulty accessing state institutions (e.g., Brady, Verba, and Scholzman 1995; Hacker and Pierson 2014; Sabatier and Jenkins-Smith 1993; Skocpol 1992). Deep social

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inequality and discrimination, as many have noted, are significant obstacles to those seeking to influence public policy (see Weldon 2011 for a brief overview). The limited empirical research on Muslim women in Europe certainly bears this out. For example, one group of feminist scholars has documented the lack of responsiveness by politicians in the Netherlands to Muslim women during debates over the headscarf (Severs, Celis and Meier 2013). Research on representation by US organizations in civil society confirms that this lack of responsiveness is not limited to elected representatives (e.g., Strolovitch 2007). The existing literature thus suggests that minority women are at the center of conflicts over culture and women's rights, that they can and do organize, and that liberal democracies present substantial hurdles to having their voices heard.

Conflicts over culture and women's rights are unlikely to occur if a country is not committed to both sets of rights. What is required for states to support either or both? The literature offers a number of explanations, but the lesson that is relevant here is that political competition among powerful strategic actors shapes rights outcomes in liberal democracies. For example, scholars of politics and gender have found that the passage of women's rights legislation varies according to the relationship that religious or tribal leaders have with political elites, and that women's rights advocates often play a minor role. Indeed, when conservative religious and tribal leaders in Latin America and Poland allied with political elites, few advances in women's rights were realized. Alternatively, when political elites aimed to undermine the power of these conservative leaders they promoted women's rights (e.g., Htun 2003; Walsh 2010). Commitments to culture and women's rights thus occur within a broader context of political competition dominated by

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elite politicians, with religious and tribal leaders playing a secondary but critical role as advocates of women's rights struggle to organize and seize opportunities when they arise.

Not all cultural and religious leaders are conservatives of course, and not all gender issues challenge cultural and religious traditions (on the latter see Htun and Weldon 2010, 209). In fact, the historical record suggests the relationship between culture and women's rights varies and that competition among political actors plays a key role in shaping these rights conflicts. In France during the 1990s, for example, politicians did not argue that polygamy among immigrant families was a conflict between culture and women's rights; they did not even argue about whether polygamy was a cultural or women's issue. Instead, French politicians debated whether polygamy was too onerous a fiscal burden for French taxpayers or whether it was an appropriate cost to bear given the government's priority of unifying immigrant families. A decade later politicians framed polygamy as a conflict over culture and women's rights. Morgan (2014) argues that this shift occurred in response to the stunning electoral gains of populist Jean Le Pen in the 2002 presidential election and to the growing strength of the women's movement. This example suggests not only that competition among political elites shapes whether conflicts between culture and women's rights emerge, but also that no issue is inherently a rights conflict.

Given this competitive political terrain that favors the powerful it is not surprising that scholars have found that rights sometimes have perverse effects. This has led some researchers to question the emancipatory potential of rights (e.g., Brown and Halley 2002; Peterson and Parisi 1998), including cultural rights (e.g., Dhamoon 2006; Jung 2008) and women's rights (e.g., Cornwall and Molyneux 2006; Fraser 2013). Analyzing

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the disappointments of rights in the U.S., critical law and theory scholars, for example, have shown how once implemented, equality policies like Affirmative Action rigidly define social groups and enable the state to increase its regulatory power over African-Americans and women (e.g., Halley and Brown 2002). Or consider the critiques by advocates of participatory democracy, who have argued that pursuing rights through institutionalized issue-based organizations defuses grassroots organizing by shifting political agency away from citizens and toward a professional class (e.g., Acker 1995; Putnam 2000; but see Weldon 2011). Those who are systematically disadvantaged nonetheless continue to use “rights-talk” in an effort to expand the meaning of rights and advance justice.

If, as Wendy Brown (2002) implies, scholars need to be attentive to the multiple, contradictory effects of rights and examine how political actors use rights rather than assume that rights are either essential for emancipation or hopelessly compromised, then we need to know the effects of conflicts between culture and women’s rights. This paper builds on these three key lessons from the existing literature to expand the scholarly conversation about culture and women’s rights. How and why do conflicts over culture and women’s rights get constructed? What are the effects of these conflicts for minority women and for the meaning of human rights?

Methods, Cases and Background

To build a theory about how rights relationships are constructed and the effects of conflicts over culture and women’s rights, I use constructivist grounded theory (GT) (e.g., Charmaz 2014). GT involves tools like sorting, constant comparison and

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diagramming and focuses on the activities of political entities as well as the processes they participate in making. To make the data in this paper I used Critical Frame Analysis, which is a type of discourse analysis (e.g., Dombos et al 2012; Verloo 2005; 2007). CFA focuses on who has voice and how those who have voice shape meaning. It deconstructs these meanings by analyzing how political actors frame the policy issue. CFA is particularly useful for “grasping the nuances of a policy frame,” as it provides a systematic process and unique set of conceptual tools for identifying and analyzing the subtext in policy documents (Verloo and Lombardo 2007). Following Verloo and Lombardo (2007) I developed a series of sensitizing questions to identify the rights discourses political actors use in policy debates over culture and women’s rights. Those questions investigate the inequalities these political actors identify, how they frame the rights relationship and minority women, who gains political agency as a result of this framing, and the effects this framing has for the meaning of rights (Appendix A).

I used three types of sources to make the data for this paper and larger project of which it is a part, which includes two additional rights conflicts. To identify rights discourses I used primary documents, interview materials, and the secondary literature. Primary documents included newspaper articles, public statements by politicians, bureaucrats, lawyers, and organizations representing minority groups, majority women, and minority women. All the documents were produced during the relevant time period, addressed the policy issue, had popular significance, and came from institutional authorities (Hansen 2006). I also analyzed quotes by politicians and other political actors made during public speeches and other events as reported and cited in the secondary literature.

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For the case study in this paper I will conduct interviews in Strasbourg, France at the European Council and European Court of Human Rights, as well as interviews with the lawyers of the plaintiff and Muslim women's organizations in France in July 2015. The interviews will establish deep contextual knowledge and familiarity with contemporary views, provide direct feedback by political actors involved in these debates, and enable triangulation for contested facts. Informants have been selected through purposeful sampling and saturation, and include politicians, bureaucrats, lawyers, judges, and activists from across the political spectrum.

The two rights conflicts in the larger study are policymaking on polygamy in South Africa and the implementation of indigenous women's return to the reservation in Canada. All of three of the cases involve public policy debates in liberal democracies over culture and women's rights. The three cases have little else in common. A comparison of the three cases thus means any shared features among them will contribute to a theory that is likely to be generalizable across a wide range of policy debates on culture and women's rights.

The factors that the cross-regional comparison varies include the type of minority women involved in the policy process (rural women living under customary law, native women expelled from reservations, Muslim women wearing the headscarf or face veil), the type of cultural right being debated (indigenous culture, peoplehood, multiculturalism) as well as the type of women's rights issue being claimed (equality in marriage, equality to inherit, equality to choose what to wear). The branches of government also vary (legislature, bureaucracy, judiciary), as so does geographic region (sub-Saharan Africa, North America, Europe), the time period (1990s in South Africa,

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1980s in Canada, 2000s in Europe), and level of political analysis (national, local-tribe and national, and supra-national).

My research to date on the policy debates in South Africa and Canada indicates that political actors used at least six different rights discourses as they competed with one another to advance their goals.⁸ Political elites used a nationalist discourse that linked either culture or women's rights to the nation; they then pitted these two rights against one another if they believed it would enhance their electoral appeal. If not, they used a diversity and distribution discourse that acknowledged inequality among women and men, and inequality between the majority and the minority. This discourse does not address these two sets of rights simultaneously. Instead, it treats them as parallel: separate and independent. In contrast, minority group leaders (usually male) used a group rights discourse that legitimized greater power for their group. This discourse locates women's rights (or dignity) as nesting within group rights rather than being opposed to the rights of the group or parallel to them.

Feminists from the majority group used two types of rights discourses when debating policy issues involving culture and women's rights. Nationalist feminists linked women's rights to the nation in their quest to popularize women's rights; they treated the relationship between culture and women's rights as dichotomous. Liberal feminists also prioritized women's rights, but they did not link them to the nation, instead they retained a critical distance to pressure governments to do more on gender equality. Minority women used many of these rights discourses, but their most democratically representative organizations used a dignity and equality discourse akin to responsive communitarianism.

⁸ The overview here is schematic given space restrictions, so it overstates the unity within each group of actors. See Appendix C for a table comparing these six rights discourses.

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This discourse highlights intersections between culture and women's rights in an aim to redress the multiple injustices facing minority women.

Note that only nationalists and feminist nationalists constructed a conflict between culture and women's rights. Further, everyone except minority women used discourses that stigmatized minority women as unworthy or unable to act on their own behalf. Only minority women who used a dignity and equality discourse avoided this language and called upon minority women as empowered citizens. They were also the only ones who expanded the meaning of rights by applying them to multiple injustices that others selectively ignored.

Do similar patterns emerge if we shift the analysis from policymaking over polygamy in South Africa and implementation of native women's return to the reservation to the adjudication of Muslim women's dress? Will the pattern be sustained if we shift the level of analysis from the national to the international sphere, where the conventional meaning of rights dominates? To answer these questions I turn to the world's premier human rights court, the European Court of Human Rights, and the policy debate over Muslim women's right to wear the face veil in France.

The European Court of Human Rights, established in 1950 under the European Convention of Human Rights (hereafter the Convention), is tasked with monitoring human rights in 47 countries member countries of the Council of Europe (COE). The COE represents over 800 million Europeans. Its Parliamentary Assembly elects one judge from among three nominees by each country; judges are independent from their countries and sit on the Court for nine years. Dubbed "Europe's Conscience," scholars celebrate the ECHR for its remarkable success in holding nation-states accountable for individual

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rights violations (e.g., Moravcisk 2000). The Court receives tens of thousands of claims each year; it decides relatively few cases related to culture or women's rights (Scharffs 2010-2011).

The ECHR heard five cases involving Muslim women's dress between 2000 and 2014, and in all five cases the Court upheld national legislation curtailing Muslim women's dress. In most of these cases the Court found European legislation interfered with the manifestation of religious belief, thought or conscience. The Court nevertheless deemed the legislation permissible given that the Convention permits some limits on individual rights; for example if they compromise public safety, public order, health, morals, or the protection of rights and freedoms of others necessary in a democratic society (see Appendix B for Articles 8 and 9 of the Convention).

S.A.S. v. France was not the only case the ECHR heard on Muslim women's dress during this period, but it is especially relevant for this study as gender equality was central in the policy debate over the face veil; more so than in previous debates over the headscarf. As the face veil raised questions not only about culture but also about women's rights, *S.A.S. v. France* offers an opportunity to assess how those involved in the case framed the relationship between these two rights, what that relationship was, and if it varied. Second, unlike other recent cases involving Muslim women's dress, *S.A.S. v. France* addressed minority women (the Court made a significant decision in a case involving Turkey, where Muslims are a majority), and unlike a previous headscarf case heard against Switzerland, the Court deemed *S.A. S. v. France* admissible.

S.A.S. v. France, moreover, was a significant case as it had the potential to affect national legislation not only in France but also in Belgium, local legislation in several

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other countries, and ongoing policy debates across much of Western Europe. The Court recognized this significance: a Grand Chamber, comprised of 17 justices rather than the usual seven, heard the case and issued a judgment that was unique for its length and depth. *S.A.S. v. France* thus not only is the best case among recent Court decisions on Muslim women's dress for investigating the relationship between culture and women's rights, it also is an important case in its own right.

The paper nonetheless retains at least one notable limitation. Deviating from common practice, the President of the ECHR ruled the submission by S.A.S. and the French government confidential, presumably to protect the anonymity of the applicant.⁹ In this paper my analysis of the applicant's file and that of the French government is thus limited to the summation of their submissions as reported by the Grand Chamber.¹⁰

Before turning to a discussion of the rights discourses political actors used in *S.A.S. v. France* I first sketch a brief overview of the law that led to this challenge and the rights in the Convention that were at stake. The French burqa ban, or law of October 2011 (hereafter, the French law) prohibits the concealment of the face in all public places other than those of public worship, unless necessary for health or work reasons, or worn for sporting, artistic or traditional events and celebrations. Concealing the face is punishable by a fine and could also require attendance at a civics course. The law followed similar legislation passed by the Belgian government in June of 2009.

Multiple government institutions participated in formulating the French law, including the National Advisory Commission on Human Rights, the Council of State, the

⁹ S.A.S. are the initials of the anonymous applicant. Counsel for the French government reportedly used the name of the applicant during court proceedings.

¹⁰I received the applicant's file on May 28, 2015 and the French submissions on June 1, 2015. The Court's judgment includes an extensive review of the French submission comprised almost entirely of direct quotes. The Court's summation of other public submissions is accurate both in content and emphasis.

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National Assembly's Delegation on the Rights of Women and Equal Opportunities, and the Constitutional Council. The legislation for all intents and purposes passed unanimously. Politicians acknowledged that the motivation for the law was to prevent Muslim women from wearing the face veil, but the French Constitution, European Union law and the Convention prohibited a ban solely targeting the face veil. The French ban thus prohibits concealment of the face in public, which legislators justified on the grounds of securing public order, equality and fraternity (social interaction).

The legal team for S.A.S., a French citizen of Pakistani descent and a devout Muslim, submitted her application to the ECHR the day the French law went into effect. S.A.S. reported that when spiritually moved she chooses to wear the burqa and niqab as a manifestation of her religious faith and cultural identity. She noted that she willingly complies with identity checks. Her application alleged that the French law violated four of her rights as guaranteed by the Convention: the right to private life (Art. 8), the right to freedom of thought, conscience, and religion (Art. 9), the right to non-discrimination (Art. 14 in conjunction with Articles 8 and 9) and the right to freedom of expression.

The Court considered arguments on the first three claims. The individual right to manifest one's culture—personal identity via the right to private life and one's religious beliefs via the right to religion—is not absolute according to the Convention, but limited by what is necessary in a democratic society (see Appendix B). Discrimination is prohibited on multiple grounds, including sex, religion, national origin or association with a national minority, but is only relevant when the Court rules that violations of other Convention provisions occurred. Following protocol the Court accepted third party submissions from Belgium and a handful of international human rights organizations. As

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the outcome of the case could potentially affect Belgian law, its representatives were present during Court proceedings. None of the INGOs attended. Neither was the applicant present, as the Court denied her request for safe passage; the Court is located in Strasbourg, France, which means that the applicant risked a criminal charge if she wished to retain her anonymity and wear her face veil.

Rights Discourses in *S.A.S. v. France*

The parties to the case use either a nationalist or international rights discourse to advance their cause.¹¹ Their goals clearly shape the development of the rights discourses that they use. Indeed, French policymakers expressed concern when formulating the ban that it not only conform to national rights principles but also to the Convention. Those concerns informed the logic and rhetoric the government subsequently developed in defense of the law. The strategic motivations of all the parties to the case are evident in the inequalities that they identify and target. All selectively ignore some inequalities facing Muslim women while highlighting others. The different inequalities that they highlight facilitate two diametrically opposed constructions of the relationship between culture and women's rights: dichotomous and mutually reinforcing. Not coincidentally, all participants stigmatize Muslim women and affirm their own political agency. This is not the only perverse effect evident in the case. Nationalists reorient the meaning of rights away from individual protection toward protecting the nation, while

¹¹ The rights discourse in each submission was a major discourse, meaning that the submission hewed closely to one type of rights discourse only. For all but one discourse, the moderately conservative nationalist position, content was comprehensive, meaning that the submission fully developed the rights discourse across the range of properties of interest for this study. Political actors also framed the rights relationship and minority women consistently within all discourses. See Appendix D for tables comparing these rights discourses by type and sub-type.

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internationalists claim to advance an intersectional analysis that nonetheless only selectively addresses two injustices facing minority women. The former alters the purpose of rights while the latter misses an opportunity to expand their reach.

In contrast to both the nationalist and internationalist discourses evident among the submissions, the majority opinion (15 of the 17 justices) deploys a democracy discourse. This discourse ignores inequality altogether and frames the relationship between culture and women's rights as parallel. The majority justices agree with the claims of internationalists that the French law impinges on Muslim women's right to culture and that Muslim women who wear the face veil do so by choice. This leads them to also agree that Muslim women who wear face veils are victims of the law. The justices nonetheless agree with the nationalists that the face veil hinders the social interaction necessary for democracy and thus rule the law permissible. The perverse effects of this rights discourse are two-fold: it stigmatizes Muslim women as victims who need saving and it also shifts the meaning of rights from protecting individuals to protecting democracy. The majority decision also suggests that the central problem in the policy debate over the face veil is not a conflict over culture and women's rights but a conflict between individual rights and democracy.

Nationalist Rights Discourses

The French and Belgian governments use a nationalist rights discourse in *S.A.S. v. France* and thus share much in common, most obviously their goal to remain in power by responding to populist concerns about the increasing visibility of Muslims in Europe. Nationalists target gender inequality among Muslims and the pernicious effects that they

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believe Muslim women's face veils have over the majority to justify their ban on the face veil. They also frame the relationship between culture and women's rights as dichotomous and Muslim women as deviants or dependents. By using rights to construct a conflict, nationalists delegitimize the political agency of Muslim women while enhancing their own political appeal. This logic alters the conventional meaning of human rights and legitimizes government action over minority women.

Three distinct sub-types of the nationalist rights discourse are evident in the case file: ultra-conservative, conservative, and moderately conservative. The dominant French position is ultra-conservative. The French government aggressively asserts the values of the Republic—liberty, equality, fraternity—against radical Islam. According to ultra-nationalists, the face veil symbolizes sex inequality among Muslims and thus clashes with the French value of gender equality. In targeting this inequality the government frames culture and women's rights as dichotomous and then links women's rights to the nation. The government also argues that Muslim women who wear the face veil threaten public security (through their anonymity), deny their own dignity (by preventing their individual personality from being recognized in public), and obstruct social interaction among citizens (as they are unseen by others). The face veil thus undermines the conditions necessary for sustaining democracy. In the French submission Muslim women who wear the face veil are deviants: rebels on the move exercising destructive social power.

The ultra-conservatives reason that to secure their diverse democratic society the government must ban the face veil and fine anyone who wears it. Putting this logic into practice the National Assembly passed a Resolution “on attachment to respect for

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Republic values at a time when they are being undermined by the development of radical practices” and the government publicized the new law with the tag line “Facing up to Life in France” (Grand Chamber 2014, 7 and 14). Ultra-nationalists defend this action as a legitimate response to Muslim women’s attack on the nation. The rights discourse that they use not only justifies governmental disciplining of Muslim women, however, it also alters the conventional understanding of rights: in the hands of French political elites rights become the handmaidens of the state.

The submission by the Belgian government, which is also strongly nationalistic, offers a less apocalyptic vision that is also less strident in tone but nevertheless follows a similar logic with similar results.¹² Rather than relying on legal documentation or lawyerly prose, the Belgians make their case as if they were reasoning among friends. The effect is disarming, the message conservative as they argue that the ban is necessary to defend the nation. The Belgians argue that the government must protect the nation’s democratic values, including gender equality and national security, against a visible minority practice that is not religiously mandated but optional.

Like the French ultra-conservatives, Belgian political elites target gender inequality among Muslims and frame the relationship between culture and women’s rights as dichotomous. While they acknowledge that wearing a face veil “may very well not be submission to men on the part of the woman who wears it,” they emphasize that the face veil prevents a woman from being able to “realize all parts of her humanity” (Belgian State 2011, 6). Women who don the veil “virtually disappear;” they disrespect themselves (6). It does not matter whether or not a woman chooses to veil as the veil itself dehumanizes women and therefore is at odds with women’s rights.

¹² Translations by the author.

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Following this logic, Muslim women who wear the face veil not only oppress themselves by denying their humanity, they also have visual power in public space that threatens the rights and freedoms of others by challenging democracy and public safety. Democratic society, the Belgians note, has “commonly accepted rules for promoting harmonious and respectful living together” (7, 6) that Muslim women flout with disregard: they “ostentatiously display” difference and defy “our social codes of interaction” that are the “proper framework for living together” (6). In this passage the Belgians juxtapose “our social codes” against a recalcitrant Muslim “other,” firmly placing Muslim women outside the nation. This intensifies the security risk of the face veil, as it protects those beyond the nation from being identified. Following this logic, Muslim women who wear the face veil are political provocateurs and must be stopped.

The solution the conservatives offer is a national ban on the face veil. Muslim women must relinquish their threats over society and regain their humanity by integrating into Belgian society. Only a ban can ensure the free movement of persons in public space that maintains public order, gender equality, and the social interaction necessary for democracy. Much like French ultra-conservatives, the Belgian nationalists alter the conventional meaning of rights and at the same time place political agency in government hands: instead of protecting the individual from a powerful state, conservative nationalists use individual rights to justify government regulation over a deviant minority.

The third nationalist sub-type, a moderately conservative position, diverges slightly from the previous two. The French National Advisory Commission on Human Rights (CNCDH) is an exemplar of this position.¹³ The CNCDH presumes that Muslim

¹³ As the moderately conservative position articulated by the CNCDH comprises only a brief section of the Grand Chamber’s judgment, its comprehensiveness is moderate, meaning that the content in the submission

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women experience extreme forms of gender inequality within their community; they thus frame the relationship between culture and women's rights as dichotomous. They also believe that the face-veil threatens majority values. In reviewing the merits of an early version of the French law, the CNCDH agrees that the government must support women "subjected to any kind of violence" and that it also must maintain national priorities such as neutrality in public space and French secularism (Grand Chamber 2014, 5). Unlike ultra-conservatives and conservatives, however, the CNCDH is more nuanced in its response to popular fears over Muslims in France. It worries that a ban could be "stigmatizing" and "detrimental to women," especially women "who were made to wear the veil" (Grand Chamber 2014, 5). Although the CNCDH believes that the face veil challenges democracy, and that as a result it challenges the rights and freedoms of the majority, it does not believe that Muslim women deploy this challenge deliberately. The CNCDH does not frame Muslim women who wear face veils as rebels or political provocateurs but as dependents in need of government education.

Rather than punishing Muslim women and inflaming Islamophobia, moderate conservatives recommend that the government tutor Muslim women so that they might relinquish their face veils and become loyal citizens. The CNCDH suggests "civic education courses—including training in human rights courses" to rehabilitate these women (Grand Chamber 2014, 6). Although the CNCDH has reservations about the ban, like other nationalists they focus on sex inequality within the minority group and express concern about the disruptive power of Muslim women's face veils on majority values. Like other nationalists, moderate conservatives also use rights-talk to perverse effect:

did not provide answers to all of the properties of interest of this study. Content on each property identified was consistent throughout.

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they strip Muslim women of political agency by framing them as minors needing government guidance. By selectively identifying only one type of inequality facing minority women and inflating the power of the face veil to threaten national values, all nationalists construct a conflict between culture and women's rights and frame Muslim women as either deviants or dependents. This framing justifies the regulation or indoctrination of Muslim women by a powerful state.

Internationalist Rights Discourses

The goal of internationalists is to uphold international human rights standards. In contrast to nationalists, all internationalists worry about state power. In *S.A.S. v. France* internationalists highlight and attack the power of the French government by focusing on the inequalities between the majority and the minority. Attending to this inequality enables them to frame the relationship between culture and women's rights as mutually reinforcing as all individuals have the right to choose how to manifest their beliefs and only Muslim women, not men, wear face veils. Given this interference with Muslim women's rights, internationalists reason that Muslim women are victims of the ban, that they need saving, and internationalists present themselves as their defenders.¹⁴ At the same time, internationalists ignore many social, economic, and political injustices that shape Muslim women's lives, missing the opportunity to develop an intersectional approach to rights that might expand their emancipatory potential.

¹⁴ Muslim women's victim status had a two-fold meaning in this case. The first derives from the need for an applicant to demonstrate interference of a right. S.A.S. claimed "potential victim" status, as opposed to victim status, as the police had never stopped or fined her for wearing the face veil. The second meaning of victim status is the one that this paper analyzes: internationalist framing of Muslim women as helpless victims in need of saving.

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Three sub-types of internationalist discourse are evident in *S.A.S. v. France*: universal, multicultural, and multicultural feminist. Together they reveal the common elements outlined above. Universalists, like the INGOs Amnesty International and ARTICLE 19, as well as the applicant and dissenting justices, fixate on state abuses of power against Muslim women. In their view, the French law interferes with individual human rights by preventing Muslim women from manifesting their right to freedom of thought, conscience and belief. Universalists defend this view by referring to international human rights standards like those found, for example, in the U.N. Committee on Economic, Social and Cultural Rights and the Convention on the Elimination and Discrimination Against Women (CEDAW).

Universalists reason that according to these standards the French law is a form of “intersecting discrimination,” meaning that it creates inequalities rooted in “gender- and religion-based stereotypes” (e.g., Amnesty International 2013, 6 and 7). Following this logic, the common gender- and religion-based stereotype in the French and Belgian submission—that Muslim women are coerced to wear the face veil—is discriminatory, as it “strips” a Muslim woman of “autonomy with regard to her religious expression” (7). The relationship between culture and women’s rights from this point of view is mutually reinforcing as both sets of rights point to the same problem: discrimination. The French law thus constitutes a “double” violation (6). Despite this reference to intersectionality, however, universalists only attend to inequality between the majority and the minority group; they ignore other types of sexism and other forms of discrimination that shape Muslim women’s lives and choices about what to wear.

The double discrimination identified by universalists confirms the victim status of Muslim women who wear the face veil. Universalists argue that the French law makes these women vulnerable to “physical violence and verbal attacks” (ARTICLE 19 2013, 6). The dissenting justices underscore this point by arguing that the ban will not “have the desired effect of liberating women presumed to be oppressed, but will further exclude them from society” (Grand Chamber 2014, 66). Instead, these women should be “free to challenge religious and cultural practices or not” (Amnesty 2013, 9). Only when women are coerced to wear the veil should the state take action.

The solution, then, is for the Court to overturn the French law and for INGOs to ensure that national governments uphold cultural rights and women’s rights. According to the dissenting justices it is the Court’s duty to “protect small minorities against disproportionate interferences” by governments, particularly when governments justify those interferences by “abstract principles” like living together, which “seems far-fetched and vague” (65). Universalists also insist that national governments respect all human rights; if governments are truly concerned about gender inequality within the minority group, then they should be guided by “the preferences of the women themselves” instead of forcing them to be free (Amnesty 2012, 9). By honing in on inequality between the majority and minority, universalists frame the relationship between culture and women’s rights as mutually reinforcing. Universalists also present themselves as defenders of Muslim women and as overseers of national governments. This contains Muslim women’s agency by limiting it to the right to choose what to wear. By overlooking the multiple inequalities shaping minority women’s lived experiences and choices,

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universalists fail to seize the opportunity to expand human rights claims beyond individual autonomy.

The second internationalist sub-type, multiculturalism, shares much in common with the universalist position, as it hews closely to liberalism. Both universal and multicultural internationalists are staunch advocates of international rights standards, frame culture and women's rights as mutually reinforcing and minority women as victims. The key distinction is that multiculturalists accentuate the inequalities between the majority and minority group to a much greater extent. Indeed, the INGO Liberty relentlessly compares the situation of Muslims in Europe to the Jews during World War II and Bosnian Muslims during the 1990s. They insist that crimes against humanity are looming on Europe's horizon and warn that the "scourge of Islamophobia" is inflaming racism (Liberty 2012, 12).

For Liberty, the mutually reinforcing relationship between religion and women's rights is obvious, as the Convention guarantees rights and freedoms to all human beings, irrespective of sex or religion. This means that Muslim women have the right "to express their gender and commitment to their faith" (9). Multiculturalists, much like universalists, tightly link this mutually reinforcing rights relationship to the victimization of Muslim women. Europe, from their point of view, is on the slippery slope of xenophobia and the French law is paving that path by victimizing Muslim women who wear the face veil. Liberty rings the warning bells by attacking the ban for excluding Muslim women who veil from public, and argues that it stigmatizes them and encourages "insults and abuse" in an already incendiary environment (9-10).

To stop Islamophobia in its tracks multiculturalists argue that European governments must stop penalizing Muslim women and respect their right to manifest their religious commitments in public. Liberty thus approaches the rights of minorities as *sine qua non* standards that are the minimal floor for preserving European civilization. In defending the rights of Muslim women to manifest their faith, multiculturalists construct a mutually reinforcing relationship between culture and women's rights. Yet, even as Liberty upholds Muslim women's right to choose what to wear, it reserves for itself the political role of beating back the tide of racism and saving these women from genocide. Liberty also ignores how an intersectional analysis of Muslim women's lives might expand the conventional meaning of human rights.

The third internationalist sub-type is a multicultural feminist position that emphasizes Muslim women's choices and lived experience. Although all internationalists value individual autonomy and argue that most Muslim women who wear the face veil do so by choice, multicultural feminists like the Human Rights Centre (HRC) at Ghent University and the Open Society for Justice make women's personal choice the core reason for refuting the ban. However, even though multicultural feminists are attentive to the lived reality of Muslim women, they remain silent on other forms of inequality shaping their lives, such as sexism among the majority and within the minority.

Multicultural feminists point to culture and gender discrimination as the central reasons why the Court should overturn the French law. They explain that women who wear the face veil "feel harmed both as believers and as women" and that the "treatment they experience cannot be reduced to either religion or gender" (HRC 2012, 7). They thus frame these two rights as mutually reinforcing. Multicultural feminists also refer to a

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research report included with their submissions to substantiate this framing. As one Muslim woman who wears the face veil explains in the report, “I had a feeling that the headscarf and the jilbab [long coat covering the body but not the face] were not enough...And spiritually I yearned for something stronger in fact. But I didn’t consider it an obligation. For me it was something extra, it was good” (as qtd. in Open Society 2012, 9). The implication is that sexism is not located in the Muslim community but instead comes from the majority who mistakenly assume that Muslim women cannot make autonomous choices about what to wear or about their faith.¹⁵ Indeed, the research report is filled with quotes by Muslim women refuting assumptions that they are coerced into wearing the face veil or that they are submissive to men. In constructing a mutually reinforcing relationship between culture and women’s rights, multicultural feminists underscore the inequality between the majority and minority group and demonstrate that sexism is not driving Muslim women’s donning of the face veil.

The research report also provides evidence for the multicultural feminist argument that the French law has had dire consequences for these women. Muslim women quoted in the report frame the ban as an inhuman weapon that imprisons them: “I feel I’m being held hostage because I am locked in my home” (as qtd. In Open Society 2013, 12). The report also underscores how the ban undermines the goal of gender equality by hindering Muslim women’s ability to be good mothers as they become more dependent upon men for daily tasks like shopping and picking children up from school. Rather than emancipating Muslim women, the law leads to the “deterioration of their social life, their interactions with society at large, and their mobility,” and increased harassment and

¹⁵ Like universalists, multicultural feminists refer to this as intersecting discrimination and thus shrink this concept.

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violence against them (HRC 2012, 5-6, Open Society 2013, 13-15). Multicultural feminists add that Muslim women who have continued wearing the face veil have extraordinary perseverance. This suggests that the law is turning determined, independent-minded women into victims.

From this point of view the source of Muslim women's oppression is a liberal state that passes "anti-emancipatory" bans against the face veil (HRC 2012, 6). That legislation generates "marginalization approaching persecution" that makes a "battlefield...of the bodies, dress and behaviour of women" (6). As a result, the law undermines the goals that its proponents claim to pursue: gender equality, social interaction, freedom of movement in public space, and public order. Building on this victim scenario the HRC argues that the solution is for the Court to declare Muslim women a "vulnerable minority" deserving of "special protection" akin to the Roma, mentally disabled or those living with HIV/AIDS (6-7, 8). The HRC explains that Muslim women who wear the face veil comprise "a minority within the Muslim minority," that they are "grotesquely misrepresented by the majority and the broader Muslim minority is not able or willing to protect them" (8). Following this logic, Muslim women who wear face veils are a "vulnerable group" in need of special recognition to secure their rights.

This designation of "vulnerability," however, contrasts sharply with the image multiculturalists drew of Muslim women as autonomous agents freely choosing face veils. Absent any explanation of this juxtaposition, and in the context of a report that interviews individual Muslim women but ignores Muslim women's organizations, says nothing about sexism in the majority and dismisses sexism within the minority,

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multicultural feminists appear to be reifying individual Muslim women's autonomy and their status as victims. In the end, Muslim women do speak about what they wear and why, but they only gain the right to do so as a gift from multicultural feminists who insist that the Court formalize their severe victim status.

What is the meaning of this gift? According to the research report and multicultural feminists, culture and women's rights secure the autonomy of minority women to choose a gendered religious custom that manifests piety while fulfilling their role as mothers. The latter may conform to both majority and minority gender norms, but these assertions are profoundly conservative in comparison to international women's rights treaties. The shift occurs because all internationalist rights discourses target inequality between the majority and the minority, emphasize individual autonomy, and fail to deploy intersectional theory across multiple domains of inequality. This leads multicultural feminists to conflate women's rights with choice, a position that is more libertarian than conventionally liberal. As a result the meaning of women's rights shrinks.

A Democracy Rights Discourse

A third rights discourse is evident in the case decision, and it is likely to be unique to the European Court of Human Rights. The majority justices used this democracy rights discourse to explain their decision against S.A.S and for the French government. This discourse turns a blind eye to all forms of inequality. The problem, according to the justices, is not sexism among Muslims as they are convinced by the research report and applicant's file that Muslim women choose to wear the face veil. The justices rule that the French government therefore cannot justify the ban on grounds of sexism among

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Muslims. As the justices concisely explain: “a State Party cannot invoke gender equality in order to ban a practice that is defended by women” using the rights recognized in the Convention (48). Nor is the problem that discrimination exists between the majority and the minority, as the justices rule that Muslim women’s minority status is irrelevant. The justices thus do not frame the relationship between culture and women’s rights as dichotomous or as mutually reinforcing. Instead they frame the relationship as parallel.

The majority justices address culture and women’s rights as separate, equal, and independent of one another. They agree that the Convention affords individuals the right to manifest their beliefs (49-50), that gender equality is a “major goal” of member states of the Council of Europe (48), and that each of these rights is valuable and deserving of protection by the Court. Majority justices also agree that the French law interferes with Muslim women’s manifestation of their religious beliefs, as the face veil is an “expression of a cultural identity” (49). Following this logic, the justices insist that Muslim women who wear the face veil are not deviants deliberately expressing “contempt” or intending “to offend” others but instead are victims of the ban (49). They note, for example, that the French law “may have the effect of isolating them and restricting their autonomy” and that it may be perceived “as a threat to their identity” (56). By acknowledging the punitive effects of the ban the majority justices underscore their belief that Muslim women who wear the face veil are victims of a law that violates the right to a private life (their freely chosen personal identity) and the right to manifest their beliefs. The problem, according to the majority justices, is not a conflict between culture and women’s rights but that the ban violates Muslim women’s cultural rights.

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Yet the justices rule in favor of the French law. Why? They defer to French national authorities who claim that the face veil obstructs the social interaction necessary for democracy in France. As the Court in the past has acknowledged that “the role of the domestic policy-maker should be given special weight” because legislators have “direct democratic legitimation,” in contrast to the ECHR (51 and 52), the majority justices reason that the question of whether wearing a face veil violates the conditions necessary for democracy “constitutes a choice of society” (57). This reasoning, unlike that of the nationalists, does not aim to preserve core national values. Instead, the Court justifies the ban on one count only: to preserve democracy. The democracy rights discourse that the majority justices use thus legitimizes Muslim women’s victimization and also delegitimizes any objections they might have to the ban: if they object they are only underscoring their challenge to democracy. This democracy discourse also places political agency squarely in the hands of national political elites as it is they who ultimately have the right to determine who can exercise individual human rights.

Conclusion

S.A.S. v. France suggests that the discourse that political actors use is shaped by the goals that they aim to achieve. All political actors in the case avoid an intersectional analysis that would complicate their claim and instead selectively target the inequality that best serves S.A.S. or the French government. This is hardly surprising. However, the case file also suggests that in developing these discourses political actors constructed a variety of relationships between culture and women’s rights. Despite common assumptions that the face veil is a conflict between culture and women’s rights the

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discourses in the case file indicate that this was not the dominant view among those arguing for the applicant or among the justices. This suggests that political elites in national governments are the most likely set of political actors to construct a conflict between culture and women's rights. Recall that both the French and Belgian governments presented arguments that called upon their citizens to rally round the flag; they also constructed a rights conflict that empowered them as defenders of the nation.

Despite the varied range of discourses evident in the case, all parties to the case framed Muslim women who wear face veils in distinctive but nonetheless disadvantageous ways. This framing stigmatized Muslim women as they became political suspects, minors, or helpless innocents. The parties to the case also consistently empowered themselves to act, whether as disciplinarians, tutors or saviors. This is a perverse effect, as all of these actors claimed to be upholding human rights yet made discursive moves that increased their own power vis-à-vis Muslim women. It was not the only perverse effect. Participants also used rights as tools, either to build the nation atop individual rights or to dull the ability of these tools to dismantle multiple injustices.

S.A.S. v. France thus conforms to the pattern I am finding in South Africa and Canada: political elites construct conflicts between culture and women's rights, which is only one relationship among several. *S.A.S. v. France* also buttresses my previous observations that when political actors compete to advance their goals in policy debates over culture and women's rights they use rights in ways that generate perverse effects not only for minority women but also for the meaning of human rights. This suggests that it is time for scholars to stop debating how to resolve conflicts over culture and women's rights and to learn more instead about how they might be avoided altogether.

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Appendix A Supertext Templates

I. Supertext Template for single document*

NUMBER/TITLE

- Full Title:
- Date
- Type/status of document
- Author(s) and gender/ethnicity of author(s) if applicable

- Audience
- Event/reason/occasion of appearance
- Parts of text eliminated

Voice

SUMMARY

- Voice(s) speaking
- Perspective on the rights issue
- References: words/concepts (and where they come from)
- References: actors
- References: texts

Diagnosis

SUMMARY

- The rights problem that is identified.
- The reasons that it is identified as a problem.
- The location of inequality when discussing the problem.
- The relationship between rights when discussing the problem (especially culture and women's rights).
- Causality (what is seen as a cause of what).
- What human rights are, given the problem (e.g. inalienable universal entitlements belonging to all human beings; personal and political ethics encompassing duty, dignity, morality, and well-being as defined by particular cultural traditions; essential scaffolding of democracy and the market; foundation of the liberal democratic nation-state)
- What human rights do, given the problem (e.g., protect individuals from the market and state; protect groups from injustice; protect democracy and/or the market; protect nations from discord, unrest, and instability)
- What/who rights are for, given the problem (e.g., individuals, groups, democracy and/or the market, nations)
- Which rights are (not) relevant to the problem and why
- Mechanisms identified as producing/reproducing the problem (e.g., racism & historical legacy/sexist cultural norms or their interpretations/lack of resources/legal norms & their interpretations/the threat, use or legitimization of violence).
- Rhetoric about the nature of the problem:
 - Type of sentence structure used (exclamative, interrogative, imperative, declarative). Use of categorical assertions, nominalizations, overwording/rewording. Words used as if they were synonymous/incompatible/hyponyms. Words that signal normative preferences. Sentences primarily written in negative/affirmative. Use of euphemisms and logical connectors. Complex sentences characterized by coordination/subordination. Use of passive/active voice, markedly formal/informal words. Use of pronouns "we"/"you" "they." Semantic domains of the metaphors. Frequency distribution of the metaphors.

- Where these rhetorical techniques are concentrated in the document.
- Assumptions/values these techniques convey.
- Speaker asserts authority/agency/power through these techniques or defers to authority.**
- Location of the problem (e.g., sexual division of labor in the home/intimacy/citizenship related to issues such as immigration & legacy of colonialism).

Attribution of roles in diagnosis

SUMMARY

- Causality (who/what is seen to have made the problem).
- Responsibility (who/what is seen as responsible for the problem).
- Problem group (whose problem it is seen to be).
- Norm group is (if there is a problem group).
- Who/what the role is of the problem group (e.g., deserving/contenders/dependents or victims/deviants & perpetrators). How this role(s) affect the legitimacy of the problem group's human rights claim (e.g., full claimant, indirect claimant, illegitimate claimant, threat).
- Legitimization of non-problem(s) (reasons given for why some thing(s) is/are not problem[s]).

Prognosis

SUMMARY

- Action to be taken.
- Hierarchy/priority in goals.
- The way to achieve the goal(s) (strategy/means/instruments).
- Location of inequality when discussing the solution.
- Relationship between rights when discussing the solution.
- What human rights are in the solution (e.g. inalienable universal entitlements belonging to all human beings; personal and political ethics encompassing duty, dignity, morality, and well-being as defined by particular cultural traditions; essential scaffolding of democracy and the market; foundation of the liberal democratic nation-state).
- What human rights do in this solution (e.g., protect individuals from the market and state; protect groups from injustice; protect democracy and/or the market; protect nations from discord, unrest, and instability).
- What/who rights are for in this solution (e.g., individuals, groups, democracy and/or the market, nations).
- Which rights are (not) relevant to the solution and why.
- Mechanisms identified for solving the problem (e.g., ending racism & redressing historical legacy/ending sexist cultural norms or changing their interpretations/providing resources/altering legal norms & their interpretations/ending the threat, use or legitimization of violence).
- Rhetoric about the nature of the problem:

- Type of sentence structure used (exclamative, interrogative, imperative, declarative). Use of categorical assertions, nominalizations, overwording/rewording. Words used as if they were synonymous/incompatible/hyponyms. Words that signal normative preferences. Sentences primarily written in negative/affirmative. Use of euphemisms and logical connectors. Complex sentences characterized by coordination/subordination. Use of passive/active voice, markedly formal/informal words. Use of pronouns “we”/“you” “they.” Semantic domains of the metaphors. Frequency distribution of the metaphors.
 - Where these rhetorical techniques are concentrated in the document.
 - Assumptions/values these techniques convey.
 - Speaker asserts authority/agency/power through these techniques or defers to authority.**
- Location of solution (e.g., address sexual division of labor in the home/intimacy/citizenship related to issues such as immigration & legacy of colonialism).

Attribution of roles in prognosis

SUMMARY

- Call for action and non-action (who should [not] do what).
- Those who have voice in suggesting suitable course of action.
- Those acted upon (target groups).
- Boundaries set to action.
- Legitimization of (non)action (reasons given for action or non-action).

Normativity

SUMMARY

- What is seen as good.
- What is seen as bad.
- Location of norms in the text (diagnosis/prognosis/elsewhere).

Balance

SUMMARY

- Emphasis on different features/items in the document.
- Frictions or contradictions within features/items and what this indicates about the meaning of human rights.

Comments

*Adopted from Lombardo and Verloo 2007

II. Supertext Template for Comparing Documents

NUMBERS:

- Dates
- Type/status of documents
- Author(s) and gender/ethnicity of author(s) if applicable for comparison
- Audience
- Event/reason/occasion of appearance
- Parts of text eliminated in comparison

Summary

- Type of rights discourses used
- How often each discourse occurs across documents (Major/Moderate/Minor/Fragmented)
- Comprehensiveness of rights discourse (not necessarily consistency but extent to which the full range of properties are evident)
- Dimensions for each rights discourse
- Type of rights relationship(s) across documents
- Target group frame(s) across documents
- How often target frame(s) occur across documents (Major/Moderate/Minor/Fragmented)

Comments

*It is not the number of documents espousing a particular position that is relevant (documents vary in importance, length etc.) but the strength and comprehensiveness of a particular position.

Appendix B European Convention on Human Rights

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 Freedom of thought, conscience and religion

1. 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 worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitation as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Appendix C Rights Discourses in South Africa and Canada

I. Types of Rights Discourses

Table 1. Culture & Women's Rights Discourses

PROPERTIES*						
	Nationalist	Nationalist Feminist	Group Rights	Dignity & Equality	Diversity & Distribution	Liberal Feminist
Location of inequality	Within 1 of the 2 groups	Within the minority group, between women and men	Between minority group and majority group	Within minority group, among women, between minority and majority	Between minority and majority, between women and men	Between men and women
Relationship between culture and women's rights	Dichotomous	Dichotomous Women's rights trump	Nesting Minority group's culture protects women's dignity	Intersecting	Parallel Separate, equal and independent	Dichotomous Women's rights trump
Problem	Either culture or women's rights challenge nation-building project	Demands for culture undermine the nation and women's rights	Majority power over minority	Majority power, male power within the minority group, power of majority women	Majority power & power of men over women	Power of men over women in the minority group
Framing of Problem	Nation threatened	Women's equality in the nation threatened	Colonialism	Colonialism, violation of women's rights, white bourgeois feminism	Misrecognition Maldistribution	Violation of women's rights
Framing of Minority Women	Dependents Deviants	Dependents Victims	Dependents Deviants	Empowered Citizens	NA	Dependents Victims
Solution	Rights linked to the nation trump	Women's rights for the good of the nation	Group Rights	Group rights, women's rights in the group, equality among women	Minority rights Women's rights	Women's rights

Framing of Solution	Rally around the flag	Women's rights are national values	Autonomy for our people	Autonomy for our people, autonomy for women in the group, autonomy for minority women among women	Tolerance Welfare state	Women's rights are human rights
Who should do what	Political elites secure rights linked to the nation	Feminists promote women's rights for the nation	Minority group leaders promote group rights	Minority women claim all of their rights	State/society promote diversity, promote women's rights	Feminists promote women's rights
Values	Nation good/ threats to the nation bad	Women's rights, nation good/threats to women's rights, nation bad	Group power good/majority power bad	Group power, minority women power good/majority power, minority men power, majority women's power bad	Individual human rights good/threats to those rights bad	Women's rights good/threats to women's rights bad
Meaning of Rights	Bends	Bends	Bends	Expands	Fixed	Shrinks

*Adopted from Lombardo and Verloo 2007

Appendix D Rights Discourses in *S.A.S. v. France*

Table 2. Nationalist Rights Discourses in *S.A.S. v. France*

PROPERTIES*			
	Ultra Conservative	Conservative (Belgium)	Moderately Conservative
Speaker/Point of View	France: the nation asserts its values	Belgium: the nation protects its values	French CNCDH: disseminate the nations values
Problem	Nation's way of life under attack	Incursions against national values need to stop	Secularism and neutrality being weakened
Location of inequality	Majority being overtaken by minority; between Muslim men and women	Majority needs to prevent being overtaken by minority; Muslim men and women	Majority needs to maintain national values; between Muslim men and women
Relationship b/w culture & women's	Dichotomous, in opposition, zero-	Dichotomous: often at odds,	Dichotomous: in tension, minor

rights	sum game	compromises rarely possible	compromises possible on the margins
Framing of the Problem	Full-face veil rejects Republican values, including dignity and equality of women	Concealing the face threatens the values of the nation, including dignity and equality of women	Muslims don't understand the importance of secularism, neutrality and women's equality
Framing of Muslim women	Deviants & Rebels	Deviants	Deviants/Victims
Solution	Reassert nation's values	Diversity with reciprocity and respect	Educate citizens about nation's values through dialogue, civic ed. courses
Framing of the Solution	Face up to life in France	Living together	Neutrality and secularism
Who Should do What	Nation rejects cultural relativism and multiculturalism	Nation ensures that Muslim women assimilate	Nation helps Muslim women integrate w/o stigmatizing them
Values	Republic's values good/public expression of beliefs that deviate from national values bad	Nation good/Muslim women whose customs threaten national values bad	Nation good when it integrates minorities respectfully/violations of secularism, neutrality bad
Meaning of Rights	Bending rights to serve the nation	Bending rights to serve the nation	Bending rights to serve the nation

*Adopted from Lombardo and Verloo 2007

Table 3. Internationalist Rights Discourses in *S.A.S. v. France*

PROPERTIES*			
	Universal	Multicultural	Multicultural Feminist
Point of View	Individual rights for all, including minorities and women	Individual rights safeguard minorities	Individual rights safeguard minority women's choices
Problem	Muslim women's right to freedom of expression is being curtailed	Islamophobia is a form of racism that often becomes violent	Stigmatizing a minority within a minority
Location of inequality	Between minority group and majority	Between minority group and majority	Between minority group and majority; ban

			generating inequality within Muslim family
Relationship b/w culture and women's rights	Mutually reinforcing	Mutually reinforcing	Mutually reinforcing
Framing of the Problem	Discriminatory stereotyping undermines individual rights	Islamophobia threatens Europe	Culture wars on women's bodies
Framing of Muslim women	Victims	Victims	Victims who speak
Solution	Protect everyone's right to manifest religious expression	Respect for minority religions	Special rights for Muslim women
Framing of the Solution	Right to non-discrimination	Right to religion	Special protection for Muslim women's rights
Who Should do What	INGOs prevent discrimination against Muslim women	INGOs protect European civilization from ethnic cleansing	INGOs secure special rights for vulnerable minority
Values	Individual rights good/limits to those rights bad	Right to minority religious expression good/misrecognition evil	Muslim women's choices good/limits to those choices bad
Meaning of Rights	Contained	Contained	Narrows: minority women freely choose motherhood & piety

*Adopted from Lombardo and Verloo 2007

Table 4. Internationalist Rights Discourses by Political Actor in *S.A.S. v. France*

	Universal	Multicultural	Multicultural Feminist
Political Actor	Applicant, Amnesty International, ARTICLE 19, Dissenting Justices	Liberty	Human Rights of Ghent, Open Society

Table 5. Political Actors' Consistency in Use of Discourse

	Major	Moderate	Minor	Fragmented
Occurrence	Use this	Use a	Rarely use this	Use pieces of

	discourse all the time or nearly all the time	nationalist discourse along with other rights discourses	discourse	this discourse
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Table 6. Comparing Rights Discourses in *S.A.S. v. France*

PROPERTIES*	Nationalist	Internationalist	Democracy
Speaker/Point of View	France and Belgium/National values come first	INGOs & Dissenting Justices/individual rights come first	Majority justices/democracy required for individual rights
Problem	Face veil clashes with national values	National values clash with individual rights	Face veil undermines democracy
Location of inequality	Minorities gaining too much power; between Muslim women and men	Between Muslim minority & majority; majority treats Muslim women differently than Muslim men	Not relevant to the case
Relationship b/w culture & women's rights	Dichotomous	Mutually Reinforcing	Parallel
Framing of Problem	Violation of national values	Intersectional discrimination	Democracy first
Framing of Minority Women	Dependents/Deviants	Victims	Victims of a necessary ban
Solution	Ban face veils	Equal rights for all individuals	Uphold ban
Framing of Solution	National values trump	Individual rights	Democracy trumps
Who should do what	Politicians put the nation first	INGOs protect minority and women's rights	Court defers to democratically elected government
Values	The nation good/rights that undermine it bad	Individual human rights good/violations bad	Democracy good/rights good, democ first
Meaning of Rights	Shrink	Contained	Shrink

*Adopted from Lombardo and Verloo 2007

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