

THE DILEMMA OF “REASONABLE ACCOMMODATION” IN CANADA’S MULTICULTURALISM: STATE’S DECISION TO BAN THE NIQUAB AT CITIZENSHIP OATH CEREMONY

SHOLA AGBOOLA

UNIVERSITY OF MANITOBA, WINNIPEG, CANADA

Abstract: Canada is internationally admired for its commitment to diversity and multiculturalism. However, the recent ban on the wearing of the niqab at Canadian citizenship ceremonies has challenged Canada’s identity as an accommodating multicultural state. The issue is being framed as a dilemma of immigrants’ religious and cultural practices versus the protection of women’s rights. This paper presents three positions on the issue – first, I contend that allowing the niqab at citizenship ceremony does not compromise gender equality; in fact, it may even represent a symbol of empowerment and identity for Muslim women. Second, I draw on the conceptual framework of reasonable accommodation to make a normative argument for accommodating the niqab. Third, I argue that the elitist process by which the state made its decision is democratically illegitimate. In response, I suggest that, regardless of the decision reached, a deliberative democratic process would have met the standards of democratic legitimacy and multiculturalism for which Canadian society is so widely admired and respected.

Keywords: Niquab, multiculturalism, Muslim women, minority group rights, reasonable accommodation.

INTRODUCTION

Canada has a long history of finding ways to accommodate seemingly intractable differences of language, culture and religion, such as those between English and French Canadians, or Catholics and Protestants. However, as Canada becomes more religiously and culturally diverse resulting in an increase in its Muslim population, Canada’s openness to cultural and religious differences and accommodation has shifted. This paper examines the recent ban on the wearing of the niqab by Muslim women at Canadian citizenship ceremonies as a case study to explore the growing tension between gender equality and minority group rights to freedom of religion. Generally speaking, the problem of accommodation of Muslim women’s niqab, hijab or headscarf has often been framed in the language of equality in many Western democracies. Sometimes, it is also framed as

an issue around state security particularly after the tragic events of September 11, 2011 that exacerbated suspicion of Muslims. Although in the Canadian context, the niqab issue does not, on its own signify a failure of multiculturalism, the government's decision to ban it still has serious implications for a liberal democratic society. Announcing the ban, the Minister of Citizenship, Immigration and Multiculturalism – Hon. Jason Kenny as quoted by the CBC News Network,¹ stated that:

Wearing the niqab or burqa is a cultural tradition, which I think reflects a certain view about women that we don't accept in Canada. We want women to be full and equal members of Canadian society and certainly when they're taking the citizenship oath, that's the right place to start. (Payton, 2011)

Based on this statement, there is a suspicion that the state believes that the wearing of the niqab challenges Canada's institutionalized principle of gender equality, which is a fundamental Canadian value. Hence, the niqab should not be allowed at citizenship ceremonies.

The new policy was announced on December 21, 2011 indicating that Muslim women will no longer be allowed to wear the niqab when swearing the oath of citizenship. Although, one cannot derive from this singular case the conclusion that Canada is generally opposed to minority's religious rights. It is however safe to conclude that the state's decision on the niqab made without consultation with the Muslim women further promotes the exclusion of these women from public sphere. From this standpoint, this paper argues that the elitist process by which the state made its decision with little or no public deliberation demonstrates a lack of commitment to engaging in dialogue with citizens on issues that affect them. My argument is grounded in the theory of deliberative democracy that calls for the inclusion of minority citizens in political deliberation. My primary contention in this paper is not only to question the process by which the state arrives at its decision, but to also demonstrate that allowing the niqab at citizenship ceremony does not compromise gender equality, it may even represent a symbol of empowerment and identity for Muslim women. Allowing the niqab can also be seen as a sign of respect for religious and cultural pluralism.

Given the complexity of accommodating minority group claims in a pluralistic society, multiculturalism has become one of the most contentious social and political issues in Canada. For the same reason, the niqab issue has also become a subject of public contention that exacerbates the tension between state's goal of gender equality and

¹ CBC News Network (formally CBC News world) is a Canadian English cable television specialty news channel owned and operated by the Canadian Broadcasting Corporation.

minority group’s demands for greater accommodation for religious rights. While the state affirms its commitment to principle of gender equality by requiring Muslim women to remove their niqab before taking the oath of citizenship, the Muslim women in response, claims that their right to freedom of religion is being violated if forced to remove the niqab. This raises the question of what should be done when claims of minority culture or religion contradicts the norms of gender equality. This paper attempts to provide answers to this contentious question by prescribing how a pluralistic society such as Canada that is tolerant of diversity should respond to minority’s cultural and religious practices that conflict with mainstream values or beliefs. This is an unavoidable question in a multicultural society where there are obvious tensions between majority and minority values.

In the first part of the paper, I will provide a brief theoretical conceptualization of multiculturalism to set the stage for our understanding of the concept. I will also discuss the evolution of the *Canadian Multiculturalism Act* as an official policy and how it has been used to accommodate minority group rights. My aim here is to demonstrate that, despite Canada’s history of accommodating minority rights, it has opted not to accommodate the niqab in this particular case. Part two of this paper addresses the niqab debate to illustrate the popular Western notion that portrays the niqab as a symbol of Muslim women’s oppression. I also contend that not until the negative connotation of niqab was gauged against the liberal value of equality that the state decides to ban the niqab. This is because it is the first time in Canadian history that immigrant women will be denied access to Canadian citizenship because of how they dress.

In contrast to this negative connotation, based on the work of Tabassum Ruby, I argue in part three of this paper that the wearing of the niqab does not necessarily signify gender oppression. I defended this argument by analysing the significant roles that niqab plays in the lives of Muslim women. In order to make a case for niqab’s accommodation at citizenship ceremony, I draw on the concept of reasonable accommodation in part four of the essay to provide a normative argument to allow Muslim women to wear niqab when taking the oath of citizenship. In the final part, I proposed democratic deliberations as an effective approach to mediating contested values in multicultural society in order to respect the views and opinions of minority and oppressed groups.

CONCEPTUALIZING MULTICULTURALISM IN CANADA

Multiculturalism is notoriously difficult to define and as such, has varying meanings across jurisdictions and societies. It is widely regarded as a politically acceptable framework for engaging diversity, it also provides a sense of hope for individuals to affiliate with cultural tradition of their choice without having to lose their right to full and equal participation in

society (Fleras and Elliot, 2002; Kymlicka, 1998). The basic value of multiculturalism is the formal recognition of differences of minority cultural groups, which is why it has been argued that a multicultural policy that endorses the accommodation of cultural differences can overcome the legacy of racism and discrimination against disadvantaged groups (Kymlicka, 1995; Taylor, 1994). Such policy guarantees minority group rights that go beyond the common civil and political rights of individual citizenship because these rights are already protected by all liberal democracies (Kymlicka, 1998). With multiculturalism, minority rights are advanced with the intention of recognizing and accommodating the distinctive identities and needs of ethnocultural groups (Kymlicka and Norman, 2000). This concept brings the language of cultural diversity and accommodation of minority group rights in a multicultural society to public debates. It is within this context that the debate surrounding the accommodation of niqab will be explored.

Historically, Canada was always diverse in terms of ethnic origins, religions, and political views and also in terms of economic and regional priorities. As such, Canada is a culturally and ethnically diverse nation and this diversity can be trace back to the time of Confederation, indicating that Canada has always been multicultural in empirical fact if not in normative principle. Changes made to the *Canadian Immigration Act* in 1962 and 1967 resulted in Canada becoming more receptive to immigrants from non-European countries such as Asia and the West Indies.² This further deepens the already diverse Canadian society and government's response to this diversity was ushered in the 1970s through the introduction of the official multiculturalism policy. Multiculturalism in Canada is embedded in law in the form of the *Canadian Multiculturalism Act*. It is a part of a larger legislative framework that includes the *Canadian Charter of Rights and Freedom*, the *Canadian Human Rights Act*, the *Citizenship Act*, the *Employment Equity Act*, the *Official Languages Act* and the *Immigration and Refugee Protection Act*. (CIC, 2012: 11).

Canada's adoption of multiculturalism as an official policy is in recognition of the diversity and pluralism that exists in Canada and it has come to be seen as a part of the Canadian identity being the first country in the world to legislate this policy (Fleras, 2002). But recently, Canada's claims of multiculturalism has been challenged when contentious debates in Britain and France over the wearing of the niqab and face veils in public crossed over to Canada resulting in the Canadian government banning the Niquab at citizenship ceremonies. Meanwhile, Canada's history of public debates on issues of cultural and religious accommodation for minority groups indicates that, the Canadian state has generally been disposed to providing accommodations to minority rights that

² This happened after the passage of the Canadian Bill of Rights that prohibited discrimination by federal agencies on the ground of race, origin, colour, religion or sex. Retrieved from www.gov.mb.ca/chc/multi_sec/history.html, (accessed on 06.03.2012).

does not infringe on the rights of others. The question that arises is why the state chose not to accommodate the niqab in this particular case? This question raises the issue of minority religious rights that encompasses the broader question of the integration of the members of this minority group into the mainstream Canadian society.

Evidence of such cultural and religious accommodation in Canada’s history involves the 1990 Barltej’s case. According to CBC News (2012), Barltej Singh is a Sikh man who won a turban case that forced the federal government to remove a ban that prevented Sikhs in the RCMP³ from wearing the turbans. Singh was faced with a choice between serving his country as a Sikh RCMP officer wearing his turban or to abandon his religious identity to be accepted into the RCMP. He chose to fight for his religious rights arguing that, it violates his rights of religious freedom to be forced to remove his turban before he can serve in the RCMP. The case challenged Canada’s limit on cultural and religious tolerance and established a precedent of great symbolic power when the court ruled in his favour and Singh became the first turbaned RCMP officer in Canada (CBC News, 2012). In Quebec, Sikh students were allowed to carry ceremonial dagger (or Kirpan) as markers of religious identity to public schools in a controversial case that challenges the competing conceptions of secularism in Canadian society (Stoker, 2007). Also in 2005, the Islamic Institute of Civil Justice demanded the right to use Islamic sharia services in Ontario courts which led to a debate that questions the place of Islam in Western states (Korteweg and Selby, 2012). Another example is the turban-wearing Sikhs in Ontario who asked the provincial government to exempt them from wearing the mandatory helmet for Sikhs who ride motorcycles because of their religion (Nolan, 2011). Again, in 2008, the Supreme Court of Canada heard arguments in the case of a woman who sought to testify in court wearing her niqab as a victim of a sexual assault case despite being ordered to remove it by the court (Tyler, 2010).

These cases highlight three important points – first, they show that Canada has not met or overcome the challenges posed by multiculturalism and ethnocultural diversity. Canada continues to struggle with serious controversies over whether and how its public institutions should recognize or accommodate cultural and religious differences. Second, these cases demonstrate the tension between government policies and immigrant’s religious symbols in the public sphere. The turban-wearing Sikhs in Ontario argues that being forced to wear a helmet violates their rights of freedom and obedience to their faith (Nolan, 2011). The niqab-wearing woman also argues that being forced to remove her niqab pits her freedom of religion against her right to a fair trial. In the woman’s case, the Court of Appeal subsequently overturned the Supreme Court’s order, setting up a legal

³ RCMP means the Royal Canadian Mounted Police, which is both a federal and a national police force of Canada.

test to determine if the woman can wear her niqab and sent the case back to the preliminary hearing judge (Tyler, 2010; CBC News, 2011).

The third point highlighted by these examples is that, despite the contentious nature of the cases, they all show that Canada is capable of making adjustments to protect minority rights against flaws in the existing and emerging laws of the majority as we have seen in the case of the turban. As also been argued by Bouchard and Taylor (2008), the visible display of religious symbols in the public or in the institutions of the state that does not in any way impede the exercise of anyone else's rights should be accommodated. The concept of reasonable accommodation upon which this paper relies to make the argument for the accommodation of niqab rests on the premises that, nothing prevents the majority from participating fully as citizens while at the same time respecting the participation of minority groups. In this vein, it could be argued that the concept of multiculturalism as a model of living together with differences will be defeated if minority groups are forced to abandon their difference and embrace the majority norms. This is because the objective of multiculturalism is to eliminate discrimination, not through removing the differences between majority and minority groups but through accepting, reinforcing and protecting these differences (Pereira, 2008).

THE NIQUAB DEBATE

The Muslim niqab issue illuminates one of the many unique problems that immigrants and visible minorities face in Canada. Many of these problems result in social, economic and political exclusion of immigrants from state institutions. For immigrant women, this institutional exclusion is sometimes based on the assumption that non-Western women are situated within cultural contexts that requires their subordination (Volpp, 2001). Al-Saji (2010) also attributes the exclusion of Muslim women in the Western world to the representation of those who wear the niqab as synonymous to victimhood, voicelessness or powerlessness. These perceptions play a role in prohibiting niqab/veil in public places and makes Muslim women vulnerable for exclusion from various domains of public life (*ibidem*). Associated with this perception is the media representation of Islam that creates a common notion that Muslim women need to be liberated from the grips of veil/niqab (Byng, 2010). Most Western states' policies that affect Muslim women contribute to this exclusion based on their assumption that describes Islam as a static, monolithic and backward doctrine that contradicts the principles of liberalism (Bullock, 2003).

Despite the negative Western representation of niqab, Muslim women who seek accommodation for equal treatment often do so with an interest to keep their cultural and religious identity. More often than not, this creates debates that have significant impacts on public opinion. One example is the case under study that highlights the dilemma of

promoting religious recognition for minority groups and the need to protect women’s right without infringing on the rights of minority women. The main argument articulated by the government hinges on the protection of women’s rights, which suggests that allowing the niqab at citizenship ceremony may permit the exposure of Muslim women to violation of their individual rights or promotes the control of men over women. This notion of seeing the niqab solely as a symbol of oppression without paying close attention to its roles for Muslim women has been well documented in many studies (Volpp, 2001; Bullock, 2003; Ruby, 2004; Byng, 2010). As analysed earlier, the statement from the Immigration Minister enables one to understand the thinking behind the government’s decision – it reveals the government’s interpretation of the niqab, purposely defined in a language of equality.

Muslim’s negative perception also becomes more intensified after the events of 9/11 with the emergence of aggressive anti-terrorism policies enacted in many Western nations such as France, Britain, Ireland and Turkey. Such policies involve debates over the symbolic representation of Islam in public due to the general perception that Islamic cultures are less willingly accepted in Western states (Bullock, 2003). Okin (1999) also make the argument that when cultural or religious groups claim special rights, attention should be paid to the status of women within that group and if such culture or religion is patriarchal, the state should not grant such rights. Again, from the Minister’s official statement, one could suspect a correlation with Okin’s position – an underlying assumption that regards the niqab as a way of oppressing women in Islam. As Okin argues, the government believes that such perceived patriarchal religious practices should not be tolerated in a liberal democracy. The root of all these negative perceptions about minority women can be traced to the history of colonialism, depictions of feminism, and the limits of liberalism (Volpp, 2001).

With the above description of the Western construction of niqab mainly as a tool of gender oppression, my aim in the next section is to draw on selected literatures to deconstruct this notion. This is done by re-emphasizing the significance of niqab and reconstructing it as a tool of power as oppose to being misrepresented as a symbol of oppression and powerlessness. This conceptual deconstruction is important because it is only when the meaning of niqab, hijab or headscarf become inextricably tied to gender oppression that the passage of law to disallow them is possible (Al-Saji, 2010). Al-Saji further states that the Muslim veils/niquab are perceived in a way that provide the negative mirror in which Western construction of identity and gender be positively reflected. Since the discrimination against Muslims takes its root from stereotypes by creating negative images of members of the Muslim community (Bouchard and Taylor, 2008), my objective in deconstructing this notion is to counter these negative stereotypes.

It will also demonstrate why the niqab does not compromise gender equality, which is a non-negotiable principle of all liberal democracies.

THE ROLES OF NIQUAB FOR MUSLIM WOMEN

Portraying the niqab as a symbol of Muslim women's oppression and as incompatible or contrary to the principle of equality is an interpretation that has been widely contested by Muslim women in Canada. In one study, for example, contrary to claims of gender oppression attached to the meaning of niqab, Ruby (2004) argues that niqab plays a more significant role in affirming Muslim women's identity. As oppose to the notion that equate niqab to voicelessness, victimhood or powerlessness, in the interview conducted with Muslim women in Saskatoon, Ruby concludes that niqab actually empowers Muslim women by providing them an opportunity to take control of their lives, and offers them the status of a respectable person. Other studies have come to similar conclusions about the role of niqab as a tool to confer power and status for Muslim women, not only within their community but also in mainstream Western society (Ruby, 2004; Bullock, 2003; BBC News, 2005). Since our identity plays a fundamental role in our lives, in the same way that societal cultures play a fundamental role in the lives of members of minority groups (Kymlicka, 1995), minority women's identity needs to be protected. Also, as long as the niqab is essential to Muslim women's identity, the state should promote its recognition and help to protect it.

Although due the apparent inscription of gender oppression as an essential feature of Islamic religion by Western states, constructing, protecting and reaffirming Muslim women's identity in a liberal society is a difficult task. In Canada for example, public reaction to immigrants and visible minorities' appearance, religion and cultural differences contributes to this problem of identity (Fleras and Elliot, 2002). Because these immigrants may not share Canada's culture of tolerance and equality, people fear that the rights of women could be at risk, or those of homosexuals within ethnic and religious minorities (Ibbitson, 2007: 50). This makes the construction of identity difficult for Muslim women as they are forced to accept how the Western society perceives them – as oppressed, voiceless, powerless or as those who are utterly subjugated by men (Al-Saji, 2010). My argument is that this undoubtedly affects their identity because our identity is not only restricted to the ways we present ourselves but also how others perceive us. As Taylor (1994) argues, people can suffer real damage if the society around them mirrors back to them a confining or demeaning picture of them. According to Taylor, due recognition is not just a courtesy we owe people; it is a vital human need. Since recognition for religious identity is central to the Muslim women's case and the niqab is fundamental to the

construction of this identity, denying the niqab at citizenship ceremony is a denial of vital human need.

The above analysis shows that allowing the niqab at citizenship ceremony does not necessarily signify gender oppression or powerlessness but has the potential to empower women and not relegate them to the private sphere. It could also represent a sign of respect for multicultural diversity, when religious rights are given equal recognition to coexist. This is because under a multicultural framework, tolerance and recognition are extended to those cultural or religious practices that do not break the law, interfere with individual rights, or violate fundamental Canadian values such as gender equality (Fleras and Elliot, 2002). One more reason why the niqab cannot be simply regarded as oppositional to gender equality is because the decisions over what constitutes as gender equality are revisable through political struggle and deliberation. The assumption that the niqab is oppressive to women is based on Western understanding of equality and liberty that preclude other ways of thinking about equality and liberty, which offer a positive meaning to the wearing of niqab (Bullock, 2003). Hence, it is unfair to legislate against the niqab without better understanding to of the cultural and religious context within which it exist.

Canada is normatively against the oppression of women as a liberal society, but to use the niqab as a symbolic means of demonstrating its commitment to gender equality is lamentable and lacks respect for Muslim groups that regards the niqab as one of the key principles of their religion (Ruby, 2004). Furthermore, liberal values, such as gender equality do not provide us with unique answers about what counts and what does not count as gender equality, so the meaning of the niqab should be balanced with the multiplicity of the roles it plays in the lives of Muslim women, rather than the Western ways of solely associating it with gender equality. Even when there is a suspicion of compromise to gender equality with minority practices, the solution should not be limited to the abolishment of such culture or religion rather, opportunity should be provided for dialogue and possible reform. This is because, as Gutmann (1995) argues, oppressed women typically want their rights as individuals to be secured within their own culture, not at the expense of exile from their culture. If this is put into consideration and the state’s multicultural policy is viewed via the lens of reasonable accommodation, one can make a convincing argument for the acceptance of niqab in citizenship ceremony.

THE ARGUMENT FOR REASONABLE ACCOMMODATION

The concept of reasonable accommodation came to light in 2008, when Gerald Bouchard and Charles Taylor released an important report as Co-Chairs of the Consultation Commission on Accommodation Practices Related to Cultural Differences. The Quebec

Premier - Jean Charest established the Commission in 2007 in response to public discontent concerning reasonable accommodation. One of the main contributions of the Bouchard-Taylor report to the normative and conceptual debates concerning cultural and religious accommodation lies in its argument for reasonable accommodation to manage cultural diversity. This paper draws on the principles employed in the report to make a case for the accommodation of niqab at citizenship ceremony. There are three justifications for my conviction to use the “reasonable accommodation” argument for the niqab – first, the concept demands that cultural and religious differences do not have to be confined to the private domain, that, they can be freely displayed in the public sphere. Second, it rejects the idea of marginalization, which Bouchard and Taylor (2008) argues can lead to fragmentation that could prevent us from benefiting fully from cultural and religious diversity. The third justification stems from its recognition for pluralism and cultural harmonization to ensure that government’s policy respects the basic principle of equality and fairness in order to facilitate intercultural relations.

Generally speaking, reasonable accommodation is described as “a legal notion that stem from jurisprudence in the realm of labour and indicates a form of relaxation aimed at combating discrimination caused by the strict application of a norm, which, in certain of its effects, infringe on citizen’s right to equality” (Bouchard and Taylor, 2008: 24). This conception according to the report is based on the fact that as Western societies become more culturally diverse, democratic states begin to display greater respect for diversity and adopts new methods of managing coexistence based on the idea of intercultural harmonization (Bouchard and Taylor, 2008). Against this backdrop, it means that a government policy that respect intercultural harmonization must take into account the necessary changes to accommodate and respect people’s right to cultural and religious freedom. This is why the report recommends that Quebec government should accommodate cultural and religious difference by combating discrimination but without creating either exclusion or division (*ibidem*). Since Muslim women experiences negative stereotypes, discrimination and exclusion in Western societies (Enright, 2011; Byng, 2010; Bullock, 2003), combatting this discrimination and at the same time promoting their inclusion in the Canadian society calls for the use of reasonable accommodation to support their claims for religious identity.

Another argument for reasonable accommodation is that accommodation does not require that a state regulation or statute be abrogated. It could be based on what Bouchard and Taylor describes as making provision for an exception to the new or existing rule in order to mitigate its discriminatory effect. Hence, accommodation for the niqab does not affect state’s commitment to gender equality but affirms its willingness to prohibit discrimination that Muslim women may experience by being denied access to

citizenship on the basis of their religion. In order to ensure that each individual has the same moral value as citizen and each person is treated with equal respect, the state of a pluralist and culturally diverse society must remain neutral or impartial between competing religious and cultural values of its citizens. But this is not always the case, which is why accommodation has to be made for Muslims and Jews to obtain leave to celebrate their religious holidays, a permission that without exception according to Bouchard and Taylor, the state has always granted the Catholics to be absent from work on Sundays, Christmas Day and at Easter. So, for the rule of equality or fairness to uphold Bouchard and Taylor argues that what is legitimate for one religion is legitimate for the others.

The difficulty of state to remain neutral among competing values of its citizens is what Kymlicka (1999) refers to as “the illusion of state neutrality”. Kymlicka argues that institutional neutrality is an illusion in the sense that institutions often make decisions that can be advantageous for one group and cause disadvantage for particular groups. In order to remedy this, Kymlicka proposed a new liberal framework through group-differentiated rights to create an accommodating diverse society. Taylor (1994) also argues that because the neutrality of procedural liberalism is not able to accommodate people of different cultural backgrounds, it must make way for politics of difference. The shortcomings of institutional neutrality is grounded in the fact that, “states always make decisions that implicitly tilted towards the needs, interests and identities of the majority group which creates a range of burdens, barriers, stigmatizations, and exclusions for members of minority groups” (Kymlicka and Norman, 2000: 4). It is therefore important, according to the Kymlicka and Norman to give political relevance to claims coming from minority groups because it helps to remedy the disadvantages that minorities suffer within difference-blind institutions in order to promote fairness (Kymlicka and Norman, 2000). On the basis of this, and considering the significance of niqab for Muslim women, a request for accommodation of the niqab at citizenship ceremony must be politically relevant to be worthy of positive deliberation and consideration.

One significant feature of reasonable accommodation is that it takes the debates around cultural and religious accommodation beyond the dominant positions of traditional liberalism that tend to frame state’s policies and regulations in the language of fairness and equality. As Bouchard and Taylor argues, state regulations are not always synonymous with fairness and as such, intercultural-relations within a liberal democracy demands that the law must recognize that the rule of equality sometimes demand differential treatment. With this new concept, the notion of multiculturalism becomes broadened with the intent to prevent individuals from being put at a disadvantage or excluded when they seek demands for equal treatment.

Multiculturalism now encompasses a process that aims at modifying Canadian laws, institutions, thinking, and other aspects of mainstream society to make them more accommodating of cultural and religious differences. As Bouchard and Taylor illustrate, a diabetic student that brings syringe into the classroom even though the school rules prohibit syringe in classrooms is permitted on the ground of reasonable accommodation because, what will be considered is the harm that the refusal of syringe might cause for a diabetic student including threat to his life. For the niqab, the harm of denying the Muslim women their religious identity is a factor that should be considered. Another feature of reasonable accommodation in its principle of equality and fairness is that it pays closer attention to differences. This separates its conception of equality from the traditional conception that is based on the principle of uniform treatment that lack respect for all (Bouchard and Taylor, 2008).

Despite my hope and aspiration on reasonable accommodation, there is a limit to what is admissible within its framework. For a minority's request to be admissible for accommodation, it must satisfy two conditions:

1. Discrimination as conceived by the *Canadian Charter of Rights and Freedom* must first be established (Bouchard and Taylor, 2008). The *Canadian Charter* prohibits several forms of discrimination based on sex, ethnic and religion. Under section 2(a) of the *Charter*, everyone is guaranteed the rights and freedoms of conscience and religion⁴, this means that religious groups have the freedom to publicly display their beliefs. One implication of the new policy is that, Muslim women now faces a situation that forces a choice between embracing the Canadian value of openness and equality by removing their niqab or choosing to remain permanent residents and forfeit their citizenship. The discrimination inherent in this policy is that, it denies members of a minority group the access to Canadian citizenship based on their religious identity. Therefore, on the basis of this, one may say that there is an establishment of discrimination in the state policy on the niqab.
2. Request for accommodation must not lead to undue hardship. Undue hardship may be unreasonable cost, upsetting an organization's operation, infringing the rights of others or prejudicing the maintenance of security and public order (Bouchard and Taylor, 2008). Niqab does not cause any disproportionate cost to the state to accommodate and it does not upset the state operations neither does it infringe on the rights of other citizens. Therefore, the wearing of niqab at a citizenship ceremony could not be said to fail any of these restrictive guidelines that would lead to rejection of its accommodation or justify its denial.

⁴ *Canadian Charter of Rights and Freedoms*, s 2, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

From on the above analysis, it could be argued that the niqab satisfy both conditions and qualifies to be allowed at citizenship ceremony under the reasonable accommodation context.

Similarly, the Bouchard-Taylor report also concludes that cases such as the wearing of Islamic headscarf, a kippan, or a turban in classrooms or the wearing of headscarf in sport competitions should be accommodated, if it does not compromise the individual’s safety. The report further argues that these accommodations promote integration into our society. Using the same logic, this paper also argues that, since the niqab does not compromise either women’s safety or equality but promotes their integration into the larger Canadian society, it should be authorized at citizenship ceremony. Denying such accommodation will only intensify the marginalization and racialization that this group are already unjustly subjected to (Bouchard and Taylor, 2008). What reasonable accommodation demands is a respect for cultural diversity that promotes integration through pluralism, equality and reciprocity and this is what was absent from the state’s approach. If the approach was open to deliberation, citizens could learn how to manage their differences and disagreement in a manner that respects minority’s rights but this was the route that was never explored.

DELIBERATIVE PROCESS – THE ALTERNATIVE ROUTE IGNORED

Modern Western liberalism provides ways to deal with conflicts of fundamental values such as gender equality and minority group rights through deliberation and debates in order to foster unity between ethnocultural groups and the state. Deliberative democracy thus offers avenues to address difficult controversies in democratic process by allowing diverse groups separated by class, race religion and gender to reason together (Gutmann and Thompson, 1996). Because deliberation provides ways to settle conflicts by bargaining, negotiation, and compromise, it could be argued to be an essential tool for cultural integration. A state’s commitment to democratic deliberation is a commitment to finding ways to address concerns, resolve disagreements, and overcome conflicts by offering argument supported by reasons (Sanders, 1997). Unfortunately, with the niqab case, there was no avenue or space provided for citizens including those affected to engage in deliberation, dialogue or to exchange ideas about the niqab. Instead, the state banned its use at citizenship ceremony without deliberation.

It could be argued that mainstream’s hostility towards accommodation of minority religious practices, in this case, “the niqab” could partially be attributed to lack of knowledge about such practices. There is a great possibility that the permissibility of minority cultural and religious practices may be different if the state engages in deliberative approach to dealing with the conflicts that arises between minority practices

and mainstream values. Perhaps, if the public is more aware of the role of minority's religious practices, accommodating such practices might be easier and this could be achieved via deliberation. After all, the most democratically legitimate and just means of mediating tensions around contested cultural and religious practices is through deliberation that involves those affected (Deveaux, 2003). As this paper suggests, deliberation could improve our understanding of the religious dressing code and raises our awareness with the potential of shaping people's views about Muslim women in the larger society. Through deliberative approach, contrary to the Western perception of niqab as a symbol of women's submission and inferiority to men, the niqab be understood as a symbol of modesty, privacy and morality (Wiles, 2007; Bullock, 2003).

The National President of the Canadian Islamic Congress Mr. Whida Valiante expressed frustrations over the government's approach when he claims that the government did not consult with his community before making the announcement to ban the niqab. According to Valiante his community which includes the Shia and the Suni is the largest group of Muslims in Canada with lots of scholars including women who could understand, explain and draw negotiations around the issue if consulted (Raj, 2011). When liberal states fail to include cultural group members in deliberations about the future status and possible reforms of their community's customs and arrangement, they ignore the demands of democratic legitimacy (Deveaux, 2003: 782). Against this background, it could be argued that because the Muslim community were not included in the discussions regarding their religious practice's place in the official state policy, the government's decision on the niqab contradicts the principle of deliberative democracy and the process is therefore, democratically illegitimate. Inclusion of the Muslim community in the decision-making process would have satisfied the demands of democratic legitimacy and demonstrates respect for cultural and religious pluralism.

This lack of deliberation may somehow be attributed to the Canadian practice of elite politics. Dating back to the time of Confederation, excluding people from major public policy decisions that affect their lives is an historical institutional practice that has a deep root in Canadian history. Peter Russell (2004) argues that the formulation of the Constitution Act of 1867 was explicitly done through elite accommodation without direct involvement of Canadian people. McRoberts (2003) also claims that in particular, the Aboriginal people were totally ignored in the Confederation arrangement and deliberation and allowed no role to participate⁵. The entrenchment of the Constitution Act, 1982 was

⁵ The reference to the Aboriginal people here has no intent to assume that the experiences of the Aboriginal people or the Quebecois and the minority groups within the Canadian state are the same. The correlation made here is explicitly regarding the elitist decision-making process of the Canadian government and the lack of consultation with the people affected by those decisions.

also done without Quebec’s consent despite the social and political implications it has on Quebec’s claim of “distinctive society” (Gagnon and Laforest, 1993).

These examples demonstrate historically how public policies have been mostly dominated by the political elites in Canada. It could also be argued that the niqab case was another example of elite domination, since the decision to ban it was based on the state crafted definition and interpretation of niqab. The Muslim community particularly women who understands what the niqab means to them were excluded in the decision-making process. Also, considering the social, economic and political impacts that the ban may have on immigrant women such as decline of Canadian citizenship, inability to vote or run for political office, restriction on federal jobs etc., the decision to ban the niqab calls for justification. The justification for policies that involves cultural minorities in liberal democracies should therefore, pass the test of democratic legitimacy in order to avoid marginalizing and alienating minority groups in public sphere (Deveaux, 2003). When deliberation is well conducted, it has the potential to promote the values of negotiation, reciprocity, and exchanges of ideas; it can also allow citizens to engage in dialogue and self-criticism to mend their ways when necessary (Bouchard and Taylor, 2008). Public deliberation also leads to better policies, superior public education, increased public trust, and reduced conflicts (Sanders, 1997).

In spite of the benefits that deliberation may offer, I am cautious not to over-determine the substantive results of deliberation. This paper recognizes the distinction between the outcome of a decision-making process and the procedures by which the decision takes place. As such, I am aware that there is no guarantee that the procedure will produce the desired result but my emphasis is on the respect for the process. For example, purely procedural constraints such as problem definition, agenda setting, and collaboration may be insufficient to prevent the coercing from of the majority (*ibidem*). There is also no guarantee of equality of participation due to different social or economic power among citizens.

Despite these limitations, a democratic justification for a decision on a contentious issue like the niqab requires that we listen to the group affected by it. As argued earlier, it may provide opportunity to analyse the issue through exposure to a variety of perspectives to reach a peaceful resolution that may include accommodation on special grounds. The process could also allow citizens to consider relevant facts about the niqab from multiple points of views, converse with one another and reflect on the benefits of allowing and the harms of disallowing the niqab. This may have the potential to shape, shift and enlarge people’s perspectives, opinions and understanding about the meaning of niqab. Even when there are irreconcilable views after exploiting the option of deliberation, accepting the differences could also be beneficial as it enriches our diversity.

As Arneil and MacDonald (2010) suggests, these differences should not be seen as a negative, because the key issue in multicultural pluralism is not to reduce diversity or divisiveness, but to figure out the principles and procedures by which such differences are to be renegotiated in the name of justice. Regardless of the result of deliberation, the decision reached from such deliberation would carry a greater degree of democratic legitimacy because the process of reaching that decision involves the active participation of the minority group concerned.

CONCLUSION

This paper has contributed to the dialogue of multiculturalism in the context of tolerance, accommodation and efforts to grow cultural and religious diversity in Canadian pluralistic society. The paper questions the process by which the state arrived at its decision to ban the niqab at citizenship ceremonies. I use the concept of a liberal deliberative democratic approach to argue that the process by which the state made the decision is democratically illegitimate. The concept of democratic legitimacy, which underlies my argument, should involve deliberation with the group affected by that decision. In this vein, deliberation should occur in relation to a minority's religious practices such as the wearing of the niqab that is so fundamental to the construction of Muslim women's identity. The paper has also endeavoured to make a case for the accommodation of niqab at citizenship ceremony using the concept of reasonable accommodation that demands government's policy to respect the basic principle of equality and fairness in order to facilitate intercultural relations.

Because discussions about group rights for minority women are deeply interwoven with gender issues, the paper observes that the lens through which Western states views niqab as a symbol of oppression in which Muslim women require saving, plays a role in Canada's decision to ban the niqab. In contrast to this Western perception, I argued in this essay that allowing the wearing of niqab at citizenship ceremonies does not signify gender oppression and can even represent symbol of empowerment and identity for Muslim women, a position I argued can promote their integration into the mainstream Canadian society.

Although there is an obvious tension between state's commitment to gender equality and accommodation of the niqab, what was ignored in the government's approach towards the niqab issue was a lack of respect of deliberation with cultural and religious groups. This may damage women's equality and rights because there is a reduction in freedom of choice to wear clothing not as a personal choice but as a choice that is for state regulation. This paper concludes that regardless of the decision reached by the state, a public deliberation that involves an active participation of the Muslim minority

groups would have met the standards of democratic legitimacy and multiculturalism for which Canadian society is so widely admired and respected.

SHOLA AGBOOLA

Shola Agboola is doing his Master’s program in Public Administration at the University of Manitoba, Canada. He works with the Department of Justice for the Government of Manitoba and he is currently the president of the Nigerian Association for Young Adults of Canada and the director for Youth Mobilization for the African Canadian Heritage Council. Contact: adesolaaa@yahoo.com

REFERENCES

- Al-Saji, Alia (2010), “The Racialization of Muslim Veils: A Philosophical Analysis,” *Philosophy and Social Criticism*, 36(8), 875-902.
- Arneil, Barbara; MacDonald, Fiona (2010), “Multiculturalism and Social Sphere,” in Duncan Ivison (ed.), *The Ashgate Research Companion to Multiculturalism*. Australia: University of Sydney, 95-118.
- BBC News (2005), “Women Hit Back over Hijab Ruling”. Accessed on 18.09.2012, at http://www.news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/4742869.
- Bouchard, Gerard; Taylor, Charles (2008), “Building the Future: A Time for Reconciliation,” Consultation Commission on Accommodation Practices Related to Cultural Differences. Accessed on 05.03.2013, at <http://www.ukrainianstudies.uottawa.ca/pdf/Bouchard-Taylor-en.pdf>.
- Bullock, Katherine (2003), *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotype*. The International Institute of Islamic Thought: Herndon, VA.
- Byng, Michelle (2010), “Symbolically Muslim: Media, Hijab, and the West,” *Critical Sociology*, 36(1), 109-129.
- CBC News (2011), “Niquab Goes to Canada’s Top Court”. Accessed on 24.04.2012, at <http://www.cbc.ca/news/politics/story/2011/12/08/niquab-supreme-court.html>
- CBC News (2012), “1990: Sikh Mounties Permitted to Wear Turbans”. Accessed on 06.03.2012, at <http://www.cbc.ca/archives/categories/society/crime-justice/mounties-on-duty-a-history-of-the-rcmp/sikh-mounties-permitted-to-wear-turbans.html>.
- CIC - Citizenship and Immigration Canada (2012), “2010-2011 Annual Report on the Operation of the Canadian Multicultural Act”. Accessed on 07.03.2012, at <http://www.cic.gc.ca>.
- Choudhury, Nafay (2012), “Niquab vs. Quebec: Negotiating Minority Rights within Quebec Identity,” *Western Journal of Legal Studies*, 1(1), 1-30.
- Deveaux, Monique (2003), “A Deliberative Approach to Conflict of Culture,” *Political Theory*, 31(6), 780-807.

- Enright, Mairead (2011), "Girl Interrupted: Citizenship and the Irish Hijab Debate," *Social and Legal Studies*, 20(4), 463-480.
- Fleras, Augie (2002), *Engaging Diversity: Multiculturalism in Canada*. Nelson Thompson Learning.
- Fleras, Augie; Elliot, Jean (2002), *Engaging Diversity: Multiculturalism in Canada*. Nelson Thompson Learning. [2nd ed.]
- Gagnon, Alain; Laforest, Guy (1993), "Future of Federalism: Lessons from Canada and Quebec," *The International Journal*, 48(3), 470-491.
- Gutmann, Amy (1995), "Civic Education and Social Diversity," *Ethics*, 105(3), 557-579.
- Gutmann, Amy; Thompson, Dennis (1996), *Democracy and Disagreement*. Cambridge: Harvard University Press.
- Ibbitson, John (2007), "Let Sleeping Dog Lie," in Janice Stein (ed.), *Uneasy Partners: Multiculturalism and Rights in Canada*. Ontario: Wilfred Laurier University Press, 49-69.
- Korteweg, Anna; Selby, Jennifer (2012), *Debating Sharia: Islamic, Gender Politics, and Family Law Arbitration*. Toronto: University of Toronto Press.
- Kymlicka, Will (1995), *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.
- Kymlicka, Will (1998), *Finding Our Way: Rethinking Ethnocultural Relations in Canada*. Oxford: Oxford University Press.
- Kymlicka, Will (1999), "Liberal Complacencies," in Joshua Cohen; Matthew Howard; Martha Nussbaum (eds.), *Is Multiculturalism Bad for Women? Susan Moller Okin with respondents*. Princeton: Princeton University Press, 31-34.
- Kymlicka, Will; Norman, Wayne (2000), *Citizenship in Culturally Diverse Societies*. Oxford: Oxford University Press.
- McRoberts, Kenneth (2003), "Conceiving Diversity: Dualism, Multiculturalism, and Multinationalism," in Francois Rocher; Miriam Smith (eds.), *New Trends in Canadian Federalism*, Peterborough: Broadview Press, 85-109. [2nd ed.]
- Nolan, Daniel (2011), "Sikh Seeking Exception from Motorcycle-helmet Law". Accessed on 19.03.2012, at <http://www.guelphmercury.com/news/canada/article/578013-sikhs-seeking-exception-from-motorcycle-helmet-law>.
- Okin, Susan (1999), "Is Multiculturalism Bad for Women?," in Joshua Cohen; Matthew Howard; Martha Nussbaum (eds.), *Is Multiculturalism Bad for Women?* Princeton: Princeton University Press, 7-27.
- Payton, Laura (2011), "Face veils banned for citizenship oath," *CBC News*, December 12, 2011. Accessed on 28.03.2012, at <http://www.cbc.ca/news/canada/story/2011/12/12/pol-kenney-citizenshp-rules.html>.
- Pereira, Alexius (2008), "Does Multiculturalism Recognise or 'Minoritise' Minorities?," *Studies in Ethnicity and Nationalism*, 8(2), 349-356.
- Raj, Althia (2011), "New Canada Niquab Rules Ban Muslim Face Covering During Citizenship Ceremonies". Accessed on 12.04.2012, at http://www.huffingtonpost.ca/2011/12/12/new-niqab-rules-ban-citizenship-ceremonies_n_1143101.html.

- Ruby, Tabassum (2004), *Immigrant Muslim Women and the Hijab: Sites of Struggle in Crafting and Negotiating Identities in Canada*. Community-University Institute for Social Research, Saskatchewan: University of Saskatchewan Press.
- Russell, Peter (2004), *The Constitutional Odyssey: Can Canadians Become a Sovereign People*. Toronto: University of Toronto Press.
- Sanders, Lynn (1997), "Against Deliberation," *Political Theory*, 25(3), 337-347.
- Stoker, Valerie (2007), "Zero Tolerance? Sikh Swords, School Safety, and Secularism in Quebec," *Journal of the American Academy of Religion*. 75(4), 814-839.
- Taylor, Charles (1994), "The Politics of Recognition," in Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*. New Jersey: Princeton University Press, 25-73.
- Tyler, Tracey (2010), "The Court Gives Woman Second Chance for Niquab at Trial". Accessed on 24.04.2012, at http://www.thestar.com/news/gta/2010/10/13/court_gives_woman_second_chance_for_niquab_at_trial.html.
- Volpp, Leti (2001), "Feminism versus Multiculturalism," *Columbia Law Review Association*, 101(5), 1181-1218.
- Wiles, Ellen (2007), "Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality," *Law and Society Review*, 41(3), 699-736.