Article

Living Together v. Living Well Together: A Normative Examination of the *SAS* Case

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Abstract

The European Court of Human Rights decision in *SAS* from France illustrates how a policy and national mantra that ostensibly aims to enhance inclusiveness, 'living together', is legally deployed in a manner that may have the opposite effect. In essence, despite acknowledging the sincerity of SAS's religious practice of wearing the niqab, and her agency in making the decision to do so, the Court focuses on radicalism and women's oppression amongst Muslims. Taking the notion of living together as the beginning point, the paper explores the normative assumptions underlying this notion as illustrated in the judgment of the Court. An alternative approach, drawing on the work of Derrida for the notion of 'living well together' will be proposed and its implications for social inclusion explicated. The paper's aim is to move beyond the specific example of *SAS* and France to argue that the *SAS* pattern of identifying particular values as 'national values', the deployment of those values through law, policy and public discourse, and their exclusionary effects is playing out in a number of Western democracies, including Canada, the country with which the author is most familiar. Because of this widespread dissemination of values and their framing as representative of who 'we' are, there is a pressing need to consider the potentially alienating effects of a specific manifestation of 'living together' and an alternative model of 'living well together'.

Issue

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1. Introduction

The *SAS v France*[1] decision by the European Court of Human Rights is one of many high profile cases involving Muslim women and their dress.[2] To describe the preoccupation with Muslim women's dress as 'Western' would unduly simplify a complex issue: the 'veil' has been a site of contention in Canada, France, Turkey, Tunisia, Algeria, Egypt and Malaysia (among others) and it has been the object of extensive academic analysis.[3] I admit to being both weary and wary of hijab/niqab conversations, but the *SAS* case raises a key issue in the conceptualization of religion by law, which is shared in some measure by social science: there is a deep divide between religion as it is imagined and religion as it is practiced. Moreover, both realms are con-

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[1] *SAS v France*, [2014] ECHR 695.
[2] See Chaib and Brems (2013) for a discussion of procedural justice, European face veil bans, and the *SAS v France* case. See also Martínez-Torrón (2014) for a thorough discussion of religious pluralism and the European Court of Human Rights.

[3] See, for example, Abu-Odeh (1993), Alvi, Hoodfar, & McDonough (2003), Bakht (2012), Beaman (2013), Bracke and Fadil (2012), Dot-Pouillard (2007), Fadil (2011), Fournier and Amiraux (2013), Hoodfar (1997), Jouili (2011), and Lewis (2011).

cerned, at some level, with the idea that we must 'live together' in shared space and that there must be rules for doing so. Living together, though, has become a code through which religious minorities are expected to comply with 'our values'. Narrowly conceptualized, there is little room for negotiation or flexibility, but rather, a rigid portrayal of who 'we' are and what 'our' values include. Though social scientific research suggests that there is widespread sharing of values across a broad spectrum of differences (see Woodhead, 2009), including religious difference, living together, or, *vivre ensemble*, is often used in a manner that excludes religious minorities. In *SAS*, the government argued, and the Court eventually agreed, that the legislation banning face covering "was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of 'living together'" (para. 57).

I begin by describing three broad themes or contexts within which this analysis of *SAS* is situated. The first is the body of literature broadly focused on the theme of lived religion. Americans Robert Orsi (2005) and Meredith McGuire (2008) have both worked extensively on this theme, attempting to map varieties of religious practice that take place within or related to organized religion as well as those that are outside of it. McGuire's work is especially important because she has taken up the gendered nature of scholarly definitions of religion and what counts as religion. In particular, she has responded to Bellah, Madsen, Sullivan, Swidler and Tipton's (1985) valourization of a particular kind of religion over what they famously described as "Sheilaism" in *Habits of the Heart*, challenging the gendered assumptions Bellah et al. make and noting that "Because Bellah's team focused their interviews on respondents' beliefs and commitments, expressed in response to very narrowly focused interview prompts, they did not learn much more about the nature of Sheila's religious experiences or her actual spiritual practices (if any)" (McGuire, 2008, p. 152).

The focus on lived religion has more recently turned to religion in everyday life, or the everyday practice of religion. This body of research captures the nuance and ebb and flow of religion in day-to-day life. It reveals a wide range of practices, but also the inextricable links between multiple vectors of influence (community, life events, institutional pressures) and bases of decision-making around religious practice and belief. Dessing, Jeldtoft, Nielsen and Woodhead's (2013) *Everyday Lived Islam in Europe* shifts attention from integration and the normative intricacies of 'accommodation' to the ways that Muslims live everyday life at home, school, in relation to health care needs, and so on.

In their study of café culture and Muslim leisure in Beirut, Lebanon, Lara Deeb and Mona Harb (2013) outline three rubrics of morality amongst participants: re-

ligious, social, and political-sectarian. These rubrics do not always align perfectly, they argue, and there is a constant navigation of them through leisure choices. They found that participants understood that the rules of the moral systems in which they live are flexible and open to interpretation (2013, p. 18).[4] In describing their research in a particularly religiously conservative area of the city (Dahiya), Deeb and Harb describe the café scene:

"Partly because cafés are pickup sites, youths treat them as catwalks, taking the opportunity to display their taste, piety, status, politics, and bodies…in typical Lebanese style, nearly all women wore heels and makeup, with variations in how heavily the cosmetics were applied. In other words, with the exception of a greater proportion of young women wearing headscarves, youths in cafés in Dahiya dress like Lebanese youths elsewhere in the city. Most of them dress to be noticed, itself a violation of the religious rubric, which forbids publicly attracting attention from the opposite sex." (2013, p. 170)

Deeb and Harb's research mirrors the findings of a study, "Religion in the Everyday: Negotiating Islam in St. John's, Newfoundland and Labrador," in which I have been involved in St. John's Newfoundland with Jennifer Selby.[5] We have also found a wide range of practices which are best described as flexible according to circumstance, life course, and context. For example, one of our participants describes her decision to wear the hijab after a tragic event in her life in which her mother was killed, her family home destroyed, and her mother's body was missing for a period of time. During the frantic search for her mother's body, Nour tried to think of something she could offer God for her mother's body and it was wearing the hijab. But, as she describes it: "My hijab is not like the perfect hijab. I think people who wear hijab think I'm not doing it the right way. I just cover my head you know sometimes a little bit is showing and so I'm not quite…I don't do it quite the same way as people who wear the hijab do." A replication of this study in Montreal by Amélie Barras has had similar results, revealing flexibility of practice that is made so by the complicated circumstances of every-

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[4] The one exception was alcohol, which was somewhat less negotiable.

[5] This study includes 55 face to face interviews with Muslims in St. John's. Our participants represent a range of ages, life stages and degrees of religious practice, ranging from barely cultural Muslims to orthodox Muslims. Jennifer Selby is the principal investigator on that project, I am co-investigator. Jennifer's primary area of interest is the exploration of Muslim identity in contemporary social life and it is her expertise that has led the conceptualization and implementation of this research.

day life.[6]

The reader will perhaps have noticed that the three 'everyday' studies mentioned above each focuses on Muslims and Islam. The current scholarly preoccupation, indeed obsession, with Islam exhibits an exclusivity that is unfortunate. Here it is useful to turn to the broader literature from sociology of religion, which offers insight on the second theme of women and religion. Looking across research on various religious groups, including orthodox Jews, the Amish, Latter-day Saints, and Charismatic Catholics[7], there is much that can be learned by drawing these pieces of research into conversation with each other, especially in relation to women and the conceptualization of women's agency. One pattern that becomes visible by engaging in such a broad read is the tendency to view religious women as being without agency. Religious women are almost always seen as somehow being under the influence of both false consciousness and of men. There is no doubt that organized religion has patriarchal tendencies; however, to then dismiss religious women as being incapable of making decisions, or of being both religious and as having agentic capacity is reductionist. Moreover, the realm of the religious is not the only patriarchal game in town: so-called secular institutions are also patriarchal. As I have written elsewhere, secularism and religion operate "in partnership as organizing discourses that often, but not always, occlude the ongoing and systematic oppression of women across cultures and societies in both the Occident and the Orient, West and East, globally and internationally (Beaman, 2014b, p. 238). However, in public discourse and in law, religion is often presented as having the market cornered on perpetuating women's inequality, and secular society and institutions as the only hope for saving them. The emphasis on the equality of men and women in current policy, legal, and public debates is one manifestation of the way this belief circulates and is integrated in the regulation of religion.[8] These notions of agency are pervasive in the *SAS* case, (and we will return to them shortly) and others like it, in which the nuance of religion in everyday life is flattened and broader patterns between religions are rendered invisible. Although an admittedly problematic category, there is something about 'religion' that is worthy of investigation.

This leads to the third theme: there is a renewed energy to think more fully about religion and to create a more supple understanding of it. Rather than eliminating it as a category of analysis, a more supple understanding insists on critical analysis or querying of the stability of religion as a category and the concurrent drawing in of some of the insights from lived religion scholarship. Thus, this approach asks about the power and political dynamics of naming something as religious (or not) simultaneously with a move away from institutional and textual understandings of religion. Some of the people engaged in this project include Knott, Taira and Poole (2013) with their notion of the secular sacred, Linda Woodhead (with Ole Riis, 2012; 2016) and her focus on everyday religion, Courtney Bender (2003), and Helge Årsheim (2015), following Dressler and Mandair (2011), with the notion of religion-making. Winnifred F. Sullivan (2005) and Elizabeth S. Hurd (2015) have each contributed to this re-crafting of the concept of religion by adding critical cautionary tales about its stability. *SAS* in many ways epitomizes this new scholarly religious imaginary.

The *SAS* case contains traces of various currents of the way the religious person, especially the religious woman, is imagined. Some of these currents run in opposition to each other, some create back eddies of reverse currents that create space to think differently about religion. Rather than focusing on the 'decision' as a concrete yes or no to SAS (and other niqab-wearing women), my comments will consider the binaries that are invoked in the case, holding that it is an interesting study of the sorts of arguments that are playing out in public discourse more broadly. Thus, for example, the 'equality of men and women' is a major component of public discourse about the limits on publically acceptable religious practices, and is integral to the idea of living together.

2. The Facts

With these preliminary considerations in mind, let us turn to the *SAS* case. As with any legal decision, the case begins with a brief description of the 'facts'[9]. Most of this analysis relates to the statement of facts, rather than the lengthy substance of the decision. In brief, the case is about a niqab-wearing woman who challenges France's face-covering ban. The facts as stated by the Court in this case are remarkable for a number of reasons. The Court begins with the statement: "The applicant is a French national who was born in 1990 and lives in France" (para. 10). From the outset, then, the Court establishes that this Muslim woman belongs, at least nominally, to France. This may seem a trivial matter, but the broader context is such that Muslims are, in France and elsewhere, often conceptualized as outsiders who bring an 'other' religion as immigrants.

As the Court continues, though, the articulation of the facts seems to respond to undercurrents of popular

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[6] For a critique of the idea of the everyday see Fadil and Fernando (2015a); for responses to this critique, see Deeb (2015) and Schielke (2015). For a reply to these responses, see Fadil and Fernando (2015b).

[7] See, for example, Beaman (2001), Campbell (2008, 2009), Kaufman (1991), Neitz (1987), and Olshan and Schmidtt (1994).

[8] See McRobbie (2009) and Hemmings (2011).

[9] See Foucault (1973); Smith (1978); Donzelot (1984, 1988).

myths, mobilizing truths, and beliefs about Muslims: Muslims are 'from away' and are poorly integrated (in fact, the beginning assurance that the applicant is a French national addresses this); Muslim women are oppressed and are controlled by their male relatives ("The applicant emphasized that neither her husband nor any other member of her family put pressure on her to dress in this manner" [para. 11]); Muslim women wear head and face coverings to annoy or to make a political statement, not because of genuine 'faith' ("Her aim was not to annoy others but to feel at inner peace with herself" [para. 12]); and niqab-wearing women are a threat to security ("The applicant did not claim that she should be able to keep the niqab on when undergoing a security check, at the bank or in airports" [para. 13]). This statement of facts sets up the decision that eventually follows. Though the Court takes (lengthy) pains to work through a wide range of positions about face-coverings and women (so much so that the Court's decision to uphold the criminal punishment of the wearing of face-coverings almost comes as a surprise), in the end the notion of living together, interpreted so as to inevitably mean that one must show one's face, prevails.

Valérie Amiraux argues that the flow of information, or 'authoritative declarations', about head and face coverings "is reminiscent of the social function of gossip, the ways in which it betrays secrets and perpetuates rumours." Gossip, argues Amiraux, creates a "sort of authority, regardless of the initial source" (Amiraux, 2014, 2016). Despite, for example, a large body of research that finds minimal evidence for the notion that women are forced to wear head coverings, and indeed in many cases their husbands/fathers ask and in some cases beg them not to,[10] the notion that Muslim women are forced by their male relatives to cover their heads and faces persists in public discourse.[11] This gossip, to use Amiraux' idea, permeates the social fabric of the courts, becoming support for a framework that requires a statement of facts such as that in *SAS*.

In a sort of reverse reinforcement, the statement of facts mobilizes these myths, or gossip, by addressing or partly refuting them. I say partly refuting because other

[10] For example, during the interview with Nour her son, in his late teens, came home and she shouted out to him "you don't like it when I wear hijab, do you?" See also Alvi et al. (2003), Clarke (2013), and Mossière (2013).

[11] In the interviews conducted by Barras in Montreal one of the interviewees reports an incident on a ski lift in which the (non-Muslim) man seated beside her heard her answer her cell phone in Arabic proceeded to interrogate her about her religion and expressed astonishment that she had been permitted to go skiing without a male family member, thus replicating the very patriarchy he imagined himself to be criticizing, and also demonstrating the power of 'gossip' and the narrative of the imperilled Muslim woman.

than the beginning "the applicant *is*" (emphasis mine) the Court is careful to preface the 'facts' with "in the applicant's submission," "according to her explanation," "the applicant emphasized," and so on. These subtle qualifiers construct the statement of facts as facts according to the applicant rather than by the Court, lending them a tenuous quality that opens the possibility of doubt and positions the facts themselves as questionable. Moreover, the framing of the facts works up the story in a particular manner, whilst creating the impression that this is the only possible rendition, or the only facts that matter.[12]

One statement in the facts was particularly intriguing, as it characterized SAS as deciding to wear her niqab 'when the mood strikes'. The Court noted the following:

> "The applicant added that she wore the niqab in public and in private, but not systematically: she might not wear it, for example, when she visited the doctor, when meeting friends in a public place, or when she wanted to socialise in public. She was thus content not to wear the niqab in public places at all times but wished to be able to wear it when she chose to do so, depending in particular *on her spiritual feelings*." (para. 12, emphasis mine)

3. Tensions and Bifurcations

3.1. Fuzzy Religion in the Everyday

My tongue in cheek description of SAS' decision-making process regarding her wearing of the niqab as 'when the mood strikes' is intended to gesture to a disjuncture between religion as it is lived and practiced and religion as it is often imagined. Not only law, but social science and other scholarship generally have had difficulty moving out of a conceptualization of religion that relies on identity rigidity, rather than on a fuzzier[13] and more fluid understanding of how people 'do' religion. Most challenging is recognizing the flexibility of religion that is brought about by life course, circumstance, and context without then doubting the commitment or seriousness with which the practitioner takes her religion. Acknowledgement of flexibility often comes at a cost to the practitioner when her practices come up against rules, laws, or customs that run counter to them, particularly when she positions herself in relation to a specific religious tradition: 'but that isn't *really* religious' or 'that is custom, not religion'. Similarly, variability in practice can cast doubt on the necessi-

[12] For critical legal scholarship on case law and the 'facts', see Amsterdam and Bruner (2002), Belleau and Johnson (2008), and Johnson (2002).

[13] On the topic of fuzzy religion, see Voas (2009) and Voas & Day (2010).

ty of it. As an aside, it is not only those 'outside' of these practices that engage in such doubt: counter-currents within religion pose similar challenges, questioning whether particular practices are 'cultural' or 'religious'.

The introduction of flexibility in practice renders commitment suspect: in this approach, religion can only be essentialized (the five pillars) and 'pure'—one either wears the niqab, or one does not. Although there is space in *SAS* for an alternative conceptualization of religion, the potential vagaries of her 'mood' casts doubt on SAS' sincerity, even as it is her own sincerity and conviction that is the measure of her commitment. This becomes especially true when a moody choice is juxtaposed against the 'values of the nation', which is linked to living together. The use of a citizenship course as a sentence for violating criminal code provisions related to the facial covering ban implies that the offending woman is outside of citizenship, or does not know how to be a good citizen because of her religion or her wearing of a religious symbol. The Court notes that "the purpose of the course is to remind the convicted persons of the Republican values of tolerance and respect for the dignity of the human being and to make them aware of their criminal and civil liability, together with the duties that stem from life in society" (para. 28). Religious values, however identified, and the values of the nation are positioned against each other, rather than being in possible harmony, continuous, or indistinguishable. In the end, the Court acknowledges that niqab-wearing women may be disproportionately impacted by the ban, but that it is justifiable in order to achieve the social ends of living together.

3.2. Religious Women and Agency

Religious women are consistently assumed to be deficient in their capacity to make decisions about their own lives.[14] Paradoxically, religious women who are assessed as having agency either choose not to be religious or to be religious in ways that fit with secular ideals. Only the correct decision is judged to engage agency. The religious is imagined as an ideological constraint that impedes women's abilities to choose. The secular is imagined as ideologically free space, in which women's agency is unconstrained. Mayanthi L. Fernando (2010) argues that secular assumptions about freedom, authority, choice, and obligation preclude public intelligibility of particular kinds of religiosity.

Nadia Fadil (2011) examines the extent to which not veiling can be understood as a technique of the production of self that is functional to shaping a liberal

Muslim subject.[15] She highlights the complex agency of the non-veiled Muslim, but makes an important observation that has implications beyond Muslim women: "The secular regulatory ideal is not gender neutral, but draws on a particular perspective on the (female) body, which views the disclosure of certain bodily parts (such as the hair and face, the figure) as essential for achieving 'womanhood'" (2011, p. 96). Jacobsen (2011), Jouili (2011), Mahmood (2005, 2009) and Pham (2011) each consider the complex ways in which piety, agency, and the human subject are layered and situated, and most importantly, are not captured by the "binary model of subordination and resistance" (Jacobsen, 2011, p. 74).

The Court in *SAS* reviews various reports and opinions of a number of commissions and groups who in almost every instance comment on the equality of men and women. One of these is the report of the parliamentary commission established by the Presidents of the National Assembly in 2009. That report takes the view that the veil is an infringement of the principle of liberty and is a "symbol of a form of subservience and, by its very existence, negated both the principle of gender equality and that of the equal dignity of human beings" (para. 17; it also positions the wearing of the niqab as being motivated by radicalism of individuals and not religion). In its judgment of December 2012, the Constitutional Court addressed the issue of women's choice:

> "Even where the wearing of the full-face veil is the result of a deliberate choice on the part of the women, the principle of gender equality, which the legislature has rightly regarded as a fundamental value of democratic society, justifies the opposition by the State, in the public sphere, to the manifestation of a religious conviction by conduct that cannot be reconciled with this principle of gender equality." (para. 42, B.23)

Religious women, then, are subject to an agency override when the state knows best.[16] Throughout the decision, the theme of women's oppression, the denial of women's agency, women's coercion, the breach of women's dignity, and violence against women appears in numerous contexts, each time related to Muslim women in particular.

What are the broader questions about agency that are raised by the literature on religious women and the *SAS* case?[17] How is agency used to legitimate particular

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[14] See Beaman (1999, 2008, 2012), Davidman (1991), Gallagher (2003), Olshan and Schmidt (1994), Mahmood (2005, 2009), Kaufman (1991), Neitz (1987), and Palmer (1994).

[15] See also Jouili (2011) for a similar argument.
[16] It is not, of course, only and always religious women who are subject to such an override. The increasingly restricted access to abortion in many Western democracies employs a similarly patriarchal stance.
[17] See Sarah Bracke and Nadia Fadil (2012, p. 52), who remind us that "a piece of clothing cannot itself be oppressive or emancipatory."

practices and to exclude or denigrate others? When is the subject visible, so to speak, and when does she disappear?[18] What are the conditions under which women are constructed as being 'free' and under what circumstances are they held to be forced or not exercising free will? Who makes those decisions and when?[19] To what end?

3.3. Evidence v. Gossip

The extensive social scientific research documenting the range of motivations for wearing the niqab and hijab has not deflected the notion that women who wear them are oppressed or the idea that the niqab itself is inherently oppressive. There is a curious wilful blindness to the evidence in favour of a narrative of oppression that has come to constitute truth in relation to Muslim women. The 'authority' (to draw again on Amiraux's analysis) of the notion that Muslim women are oppressed circulates in the submissions by the various agencies, groups, and arguments considered by the Court in *SAS*.

For example, although France's National Advisory Commission on Human Rights issued an opinion opposing the banning of the face covering, it too remains focused on the Muslim woman as imperilled, noting the detriment the law could pose to women, "because those who were made to wear the full-face veil would additionally be deprived of access to public areas" (para. 18). The Commission also emphasized the need to support women who were subject to violence.

The truth of the 'gossip' of Muslim women's oppression is necessarily accompanied by a second narra-tive—the myth of the equality of women. An underlying binary shapes the discussion of the equality of men and women in that the religious is equated with women's oppression and the secular with women's freedom, dignity, and agency.[20] Equality, which is always situated in the secular, is part of this story. Angela McRobbie has done some especially insightful work on the ways in which the myth of women's equality circulates to shut down critical analysis of women's inequality. She argues that through the "tropes of freedom and choice" feminism has been rendered redundant, and that "post-feminism positively draws on and invokes feminism as that which can be taken into account, to suggest that equality is achieved, in order to install a whole repertoire of new meanings which emphasize that it is no longer needed, it is a spent force" (McRobbie, 2009, p. 12). The myth of women's equality glosses history[21], ensuring that "there is no trace whatsoever of the battles fought, of the power struggles embarked upon, or of the enduring inequities which still mark out the relations between men and women" (McRobbie, 2009, p. 19).

A second piece of 'gossip' circulates through the submissions considered by the Court: the danger of the niqab as a political statement/action. As mentioned above, the Court notes in the statement of facts that SAS does not engage in the wearing of the niqab to annoy people. Throughout the case, mention is made of the political use of Islam in both those submissions in favour of the ban and those opposed to it. For example, the Commissioner for Human Rights of the Council of Europe stated in his 'Viewpoint' that "the wearing of full cover dress has increasingly become a means of protesting against intolerance in our societies. An insensitive discussion about banning certain attire seems merely to have provoked a backlash and a polarisation in attitudes" (para. 37). To be sure, there is social scientific data to support the idea that some women wear face and head coverings in part as a statement of solidarity or protest. But this ignores the intertwining of the religious with the political and sets up 'real' religion as being outside of politics, rather than immersed and active in political life. At its best (though I show my bias

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[18] See Kennedy (2009) for a discussion of cosmetic genital surgery and female genital mutilation in the context of choice. See Pham (2011) for a comparison of the way agency is invoked for 'women of cover' v. the construction of consumerism as choice. Nguyen (2011) explores the use of particular indices of 'correct living' in the context of the Kabul Beauty School, arguing that they echo earlier histories of imperial statecraft. Khandelwal (2009) argues that most people in the US overestimate their own agency and underestimate that of women elsewhere.

[19] Talal Asad, Wendy Brown, Judith Butler and Saba Mahmood challenge the Western "conceit of the self-owning individual presumed free from all forms of coercion, including those potentially entailed in religion, commerce, love, belief and comportement" (2009, pp. 13-14; see also Mahmood, 2001). In their introduction to *Gender, Agency, and Coercion*, Sumi Madhok, Anne Phillips and Kalpana Wilson are cautious about judgements that condemn women's choices: "But judgementalism is not the same as judgement, and it should be possible to avoid the kind of moralising that tells others what they ought to think and do without thereby losing the capacity to challenge structures of domination and power" (2013, p. 12). The roles of collectivities, both as frameworks for action and as generators of agency, as well as the reshaping of the coercion-agency binary, are key themes in the volume.

[20] As Deepa Kumar points out, the West does not have a monopoly on either women's equality or women's oppression. Indeed, using the example of Egypt, he notes that liberal Western traditions have made significant contributions to women's inequality (2012, pp. 44-48).

[21] As Clare Hemmings argues, we need "to examine the ways in which Western feminist stories about the recent past coincide unnervingly with those that place Western feminism firmly in the past in order to 'neutralize' gender equality in its global circuits" (2011, p. 11). Furthermore, she says "Agency is thus mobilized discursively as *the opposite of inequality* rather than as part of the negotiation of power relations in constrained circumstances" (Hemmings, 2011, p. 209, emphasis hers). See also Douglas (2010).

here) religion has been a force for social justice, and it is undeniably linked to politics. Boldly stated, it is Islam and politics that is the specific concern in the current social landscape.

4. Conclusion: An Alternative to Living Together

The specifics of SAS and her implied spiritual whimsy[22] mark a stark contrast with the oppressed Muslim woman who must be rescued by society and the state and who poses a threat to social cohesion. She does not understand, so goes the rhetoric, the whole concept of living together and the obligation to expose herself (like other 'emancipated' women do). I do not use the phrase 'spiritual whimsy' disrespectfully. The research in which I and others have been engaged reveals a flexible and situated approach to religion that stands in contrast to a more rigid and institutional imagining of religion. I am not so sure that this insight is new, but that in focusing on one way of conceptualizing religion the contours of context in relation to religion have been largely ignored.

One of the key motifs in the case, as well as in public discourse in France and beyond, has become the notion of 'living together' or '*vivre ensemble*'. Though it sounds well-intentioned and like a code for inclusivity, it is often translated as a mechanism for disciplining those who 'don't really understand' how to live in harmony with others. It has become a rather heavy and inflexible concept rather than a point for negotiation and discussion about what it means to live together with difference. Thus, for example, citizenship courses are required of those who violate the ban on face covering, drawing to our attention the link between *vivre ensemble* and a failure of discipline regarding citizenship behaviour. Questioning the status quo results in a characterization of the challenger as not really understanding the 'values' of the nation. Re-training, disciplinary action, and corrective socialization are the solutions to this failure.

France is not the only nation in which this idea of living together has currency, and in which the apparel of Muslim woman is linked to citizenship. Zunera Ishaq is a 29-year-old niqab-wearing Muslim woman who, on October 9, 2015 finally took the oath of citizenship and became a Canadian citizen. She fought the federal government, most recently in the Federal Court of Appeal[23], for the right to wear her niqab while taking her oath of citizenship. The Federal Court of Appeal upheld her right to wear the niqab and stated that "there is no evidence of broad effects upon Muslim women generally or the larger Muslim community" (para. 36). It also dismissed the motion of the then minister of citizen-

ship to stay the matter pending appeal to the Supreme Court of Canada.[24]

As in *SAS*, though Ishaq herself is articulate, determined, and devoted to her nation, these qualities do not prevent the equation of niqab with women's oppression and barbarianism. The then Conservative Prime Minister made a number of statements regarding the case, saying "it is offensive that someone would hide their identity at the very moment where they are committing to join the Canadian family" (Whittington & Keung, 2015). The Conservative Party's website dedicated a webpage to the niqab saying covering one's face while being sworn in is "not the way we do things here" (Conservative Party of Canada, 2015). He also called the niqab a "product of a culture that is anti-woman" (Chase, 2015). In addition, he made a statement in which he divided 'new' and 'old stock' Canadians (CBC News, 2015). In September of 2015 during the federal election campaign, he promised to create a 'Barbaric Cultural Practices' hotline if he was elected, which he was not (Powers, 2015).

In thinking about this idea of living together, which as previously mentioned has a rhetorical appeal that is difficult to displace, Jacques Derrida develops it as an expansive notion that folds in the notion of living *well* together. Rather than rejecting living together as a lost cause, he redraws its boundaries, articulating a different vision which draws from the real of the everyday, and which models a version of what I have called elsewhere 'deep equality' (see Beaman, 2014a):

> "If 'living together' then means 'living *well* together,' this signifies understanding one another in trust, in good faith, in faith, comprehending one another, in a word, being in *accord* with one another. Why then speak of accord? Why this language of the heart [*coeur*], of accord and concord, even of 'mercy [*miséricorde*],' and of the compassion that must bring us closer and a bit more quickly to the question of 'forgiveness,' with or without *teshuvah*? The language of the heart reminds us that this peace of 'living together,' even if it is a peace of justice and equity, is not necessarily under the law of the law, at least in the sense of legality, of law [*droit*] (national or international) or of the political contract; and here, as I often do, I will distinguish, but without opposing them, justice and law [*la justice et le droit*]." (Derrida, 2012, pp. 25-26)

Moreover, Derrida is cautious about what he calls the 'new legalism', or what others have described as the juridification of social life.[25] Though they have very dif-

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[22] This is, I would argue, the overall effect of the presentation of her agency in the case and certainly not my read.

[23] *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 151.

[24] *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212.

[25] For an elaboration of the concept of juridification, see Fokas (2015), Koenig (2015), and Sandberg (2014) and Richardson, (2015), who uses judicialization.

ferent endings, both the *SAS* and *Ishaq* cases can be understood as part of the technology of law:

> "this new legalism, sustained by technological resources of investigation, communication, ubiquity, and unprecedented speed, runs the risk of reconstituting, under the pretext of transparency, a new inquisitorial obsession that transforms anybody into a subject or a defendant summoned to 'live together' according to the ensemble, while renouncing not only what one names with the old name of 'private life,' the invisible practice of faith, and so on; but also, and quite simply, while renouncing this possibility of the secret, of separation, of solitude, of silence, and of singularity, of this interruption that remains, we have seen, the inalienable condition of 'living together,' of responsibility and of decision." (Derrida, 2012, p. 34)

The French legislation assumes that displaying one's face is an integral part of living together: "[The legislature] was entitled to take the view that the creation of human relationships, being necessary for living together, was rendered impossible by the presence in the public sphere…of persons who concealed this fundamental element of their individuality" (*SAS*, para. 42, B.21), thus licencing the 'inquisitorial obsession' identified by Derrida, and putting the niqab squarely in opposition to the 'good citizen'. We thus return to the idea that a more supple understanding of religion and consequently religious identity is required, both in its lived dimensions, and also in its ability to be coupled with multiple identities such as citizen, feminist, mother, employee and so on. Part of the suppleness is a move away from identity rigidity and oppositional positioning.

Both SAS and Zunera Ishaq defy such opposition, seeking to re-frame themselves as both covered women and good citizens. Ishaq expresses no hesitation in showing her face for the purposes of identification before the citizenship ceremony, but wishes to swear her allegiance to Canada being all that she is, including, among other things, a Muslim woman. In her twenties, SAS combines devout religiosity with a complex approach to religion that is not easily captured by traditional social scientific imaginings of religion or by the unwieldy machinery of law. Based on her spiritual feelings, she is sincere in her religious observation, but being Muslim is, as is the case for Ishaq, not all of who she is. Essentializing her identity to 'Muslim' misses how she is a political, economic, and social participant in the world around her. It eludes her commitment to being 'French' and the ways that she constructs her own citizenship as a sometime niqab-wearing woman who wears her religiously-inspired covering when the mood strikes.

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Conflict of Interests

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