IN THE INTEREST OF JUSTICE: THE COEXISTENCE OF RELIGION AND CITIZENSHIP

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Abstract

In recent years, several Western democracies, including France, Austria, and the Netherlands, have enacted bans on Muslim women wearing the niqab in public spaces. These bans are framed as measures to uphold Western democratic values of inclusion, gender equality, and social cohesion within pluralist societies. Amidst increasing migration from conflict-ridden and religiously diverse regions, national calls for similar restrictions have grown, suggesting that diversity requires regulation to sustain a unified national identity.

This thesis focuses on the Canadian government's face-covering ban during the oath of citizenship from 2011 to 2015. The requirement for women to remove face coverings during the citizenship oath was first established in Citizenship and Immigration Canada's (CIC) Operational Bulletin 359, followed by its inclusion in CIC's policy manual. This study critically examines the federal government's attempt to regulate religion, and efforts to dictate how religious identity should be visibly embodied as a form of statecraft. The central argument presented here is that the Conservative government's public statements, policies, and legal strategies to deny one woman's right to Canadian citizenship—and her right to embody her religious identity—do not fully account for the complexities of this moment in Canadian history. Exploring the ways in which niqab-wearing women enter, assert, and negotiate their identities in legal cases is essential to understanding this issue. This thesis makes an original contribution to scholarly knowledge by offering a discursive analysis rooted in the concept of deep equality and its intersection with the law in the case of *Zunera Ishaq v. The Minister of Citizenship and Immigration* (2015 FC 156), its subsequent appeal *Canada (Minister of Citizenship and Immigration) v. Ishaq*, 2015 FCA 194, and the Motion for Stay (2015 FCA 212) in *The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario*. At its most transformative, the law—as a significant institutional site—holds the potential to reimagine national identity in ways that foster a more equitable society, promoting the social, political, and economic well-being of all citizens. This transformative potential is exemplified in the *Zunera Ishaq* case, where the courts upheld Ms. Ishaq's right to wear her niqab while reciting the oath of citizenship, citing it as a principle 'in the interest of justice.'

Keywords

Zunera Ishaq, deep equality, law, citizenship, national values, gender and sociology of religion.

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In the words of Zunera Ishaq wearing her niqab after she recited the Oath of Canadian citizenship and officially became a Canadian citizen:

> "It's very important to stand up for your right. If you will not stand up for your right, you will not get it." (Hopper, 2015).

Table of Contents

CHAPTER ONE: A SIGN OF THE TIMES CITIZENSHIP OR RELIGION

On Friday October 9, 2015, former English high school teacher from Pakistan, Zunera Ishaq wore her second choice (white and pink flower print) niqab to recite her Oath of Citizenship at her Canadian citizenship ceremony. Ms. Ishaq had originally planned to wear a niqab printed with celebratory red and white colours to symbolize the Canadian flag and her commitment to the Canadian family. She envisioned a family celebration, both her sons would wear their red shirts, and she would be surrounded by her husband Muhammad, her parents, and her friends. It would be a day of joy and happiness to commemorate her victorious path to Canadian citizenship. But the political controversy, ominous warnings and threats surrounding her legal right to wear her niqab during the recitation of the oath of citizenship scared her. Instead, Ms. Ishaq wore her second choice niqab with a simple white jacket and pink skirt. She was accompanied by her lawyers and husband. In a quiet but deeply heartfelt ceremony, Zunera Ishaq took her Oath of Citizenship (McKeon, 2016). Indeed, Ishaq's citizenship ceremony should have been a cause for celebration, since in the words of former Immigration and Multiculturalism Minister Jason Kenney, "new Canadians even decades later, […they] still remember the day they became citizens" (Kenney, 2011). For many Canadians (old and new), the story of Zunera Ishaq's path to citizenship would be one that they too may remember for decades to come, since her path would come symbolize the 2015 Canadian Federal Election and the end to the Prime Minister Stephen Harper and the federal Conservative government's nearly decade long rule.

1.1 Introduction

This thesis analyses the Canadian government's face covering ban during the oath of allegiance at citizenship ceremonies between the period of 2011-2015. The fulcrum of this thesis hinges on the ideological disposition of the construction, perception, and representation of religion and citizenship in Canadian public life during the "niqab ban." My argument is that the Federal Conservative government's conjoining of citizenship with religion enabled and ratified a discriminatory definition and construction of religion and national identity creating an alliance between both. The Federal government's Operational Bulletin 359 incorporated into Policy Manual C-15 (the Policy) and legal actions worked to frame the standards by which the

regulation of religion and withholding the right to citizenship structured an implicit and tacit understanding of national identity as an exercise in sovereign power. I critically analyze the Federal government's attempt to legally regulate religion, which is rooted in the state's perceived authoritative rights to dictate how religion should be embodied and determine the acceptable boundaries of religious difference for Canadians. The central countenance of this thesis is that the Conservative government's public statements, policy, and legal maneuverings to prevent one woman's access to Canadian citizenship and the right to embody her religion does not define nor tell the story of the country during this moment in Canadian history. I argue that it is crucial to examine how women enter, claim, and position their identities to challenge power relations in legal cases. At its most transformative, the power of law, as an important institutional site can re-imagine new national understandings that sustain a more equitable society that promotes, and encourages the social, political, and economic well-being of *all* its citizens. Nowhere is this more clearly seen than in the case of, *Zunera Ishaq v. The Minister of Citizenship and Immigration* 2015, *Federal Court (2015 FC 156), The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario the Court of Appeal (2015 FCA 194)* and the *Motion for Stay (2015 FCA 212) The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario.*

The Court of Appeal upheld Ms. Ishaq and niqab-wearing women's right to wear their niqab while reciting the oath of allegiance at their citizenship ceremony as a principle the Court adjudicated as, "in the interest of justice" (*Minister*, at para. 5).

1.2 Citizenship and Religion

The relationship between, and the conjoining of citizenship and the regulation of religion is not merely a matter of both being contested concepts. The history of defining what counts as

religion or ‘real’ religion is long and bloody (McGuire, 2008). The right to citizenship has been equally violent and contentious. Access to citizenship and denial of citizenship have frequently justified the coercive power of the included over the excluded (Ignatieff, 1987, p. 402). Struggles over access to citizenship rights are struggles over the very meaning and claims of what it means to belong, to participate, and to be a member in the nation. In Canada, the history of and access to citizenship has been fraught by exclusion and violence. Canadian citizenship emerged from the colonial dispossession and cultural genocide of Indigenous peoples and is inextricably linked to the country’s legacies of colonialism, exclusion, and assimilation (Adamoski, 2002, p. 23). The ancestral ghosts of this tumultuous history, colonial and imperial legacies continue to haunt and construct the boundaries between current day struggles over citizenship and religious freedom rights. Former Prime Minister Stephen Harper (2006-2015) invoked this divisive history by distinguishing between “old-stock Canadians” and Indigenous populations, immigrants, refugees, and others.

This dissertation does not attempt to recapitulate the history of the regulation of religion and citizenship rights in Canada. Instead, it situates state policy on face covering within a specific moment in Canadian history that draws into its social, legal, and political orbit seemingly disparate discourses, narratives, and regulatory patterns. This case study challenges and highlights the multiplicity and complexity of discursive productions of religion and citizenship as lived experiences. It emphasizes how these experiences shape citizens sense of self and subjectivities that are inseparable from their lived experiences of religion (Page & Pilcher, 2020, p. 1) and conceptions of lived citizenship.

1.3 Symbolic Border Guards[1]

Regulating women's bodies and corporeal practices is central to both nation building and religion making. At the national level, when religion and citizenship are examined together, the sharp boundaries between them disappear to produce new categories that have functioned as a highly gendered interlocking system of a symbolic form of structural power. The adjudicative turn to regulate and ban women from wearing the niqab or hijab should not be construed as a problem only about Muslim women, but a deeper more complex and pervasive social construct of state-patriarchy, majoritarian religion, and the visuality of gendered national identity. Abu-Laban (2008) has argued that the nation-state is variously encoded by gendered assumptions that in turn produce gendered outcomes (p. 3). These specific configurations of power and discipline over the body should be understood as "bearing the stamp of state power" (Göle, 2013, p. 13). In the current political climate gendered and racialized forms of radicalized nationalism and religious discourse highlight the dichotomy between the public and private spheres. These dynamics underscore the legal struggles to challenge the racial, social, and sexual rights that state policies often undermine as they seek to regulate and sponsor singularly conceived national and religious identities.

Citizenship is a deeply gendered concept, and debates over the public visibility of religion particularly the sartorial practices of Muslim women who wear the niqab and hijab intersects with civil, political, and social citizenship rights. The right of Muslim women to cover their face with a *niqab* or cover their hair with a *hijab* has become a legal, social, economic, and

[1] In *Gender and Nation* (1997) Yuval-Davis argues that "gendered bodies and sexuality play pivotal roles as territories, markers and reproducers of the narratives of nations and other collectivities" (p. 39). She draws from Armstrong (1982), who contends that 'symbolic border guards' serve to "identify people as members or non-members of a specific collectivity and are closely linked to specific cultural codes of style of dress" (p. 23).

political issue in many countries.[2] This issue is not only symbolic but also profoundly gendered.[3] A closer examination of the Conservative government's 2011-2015 ban on full or partial face coverings during the oath of citizenship illustrates these dynamics clearly.

1.4 The Policy: Operational Bulletin 359 (Op 359)

On December 12, 2011, the then Minister of Immigration, Citizenship and Multiculturalism Minister, Jason Kenney (2011) announced that the Conservative government would impose a ban on full and partial face-coverings during the recitation of the oath of allegiance at Canadian citizenship ceremonies. The new regulation was implemented immediately as a ministerial directive known as Operational Bulletin 359. The government's rationale was that an oath of citizenship is a public act of devotion and loyalty to Canada in front of one's fellow citizens, and as such cannot be taken while hiding one's face (Kenney, 2011). Kenney's (2011) speaking notes emphasized that the ban on face-coverings "goes to the heart of our identity and our values of openness and equality" (Kenney, 2011). As will be elaborated in the subsequent chapters, the connection between notions of majoritarian religion, visuality, and access to citizenship reflects the imprints and scars of past exclusions in Canadian history based on race, gender, national origin, religion, and Indigenous status (Shachar, 2016, p.55). Seemingly disparate discourses are interconnected as they intertwine, link, build upon, and engage with one another. These discourses are not isolated but interwoven, engaging with and reinforcing one another. While they cannot be reduced to or substituted for each other, they illuminate the systems, frameworks, and mechanisms of power that sustain them as 'signs of the times.' The

[2] There are 16 states in both non-Muslim and Muslim majority countries that have banned the burqa and niqab including the Canadian province of Québec where the niqab is banned in all publicly funded services.
[3] A fact further highlighted by global face-covering mandates (including countries that have banned the wearing of the niqab and burqa in public spaces) during the global COVID-19 pandemic.

intertwining of national identity, religion, and Orientalism promoted by the Federal government is central to this thesis.

1.5 The Debate

Debates over covering, and uncovering Muslim women are complex and fraught with contradictions. These tensions have existed since the early Muslim communities and have persisted through eras of colonization, imperialism, de-colonization, and Muslim state formation.[4] The symbol of "the veil" as "oppressive," and "backward" is an enduring orientalist legacy that frames Islam as a purported inherently violent, medieval, and patriarchal religion that oppresses women. Ahmed's (1992) *Women and Gender in Islam: Historical Roots of a Modern Debate* demonstrates how colonial and imperial powers represented the veil as a symbol of purported Islamic backwardness and cultural inferiority (faith and culture monolith). Contemporary views often reproduce this homogeneous colonial narrative positioning the hijab and niqab as symbols of subjugation, a perspective seamlessly embedded in narratives replicated in political debates, legal arguments and social discourses. This is particularly evident in statements that frame visible religious practices as a transgression against national identity and values. For instance, then Prime Minister Stephen Harper (2015) asserted in the Canadian House of Commons:

> It is very clear to understand why we do not allow people to cover their faces during citizenship ceremonies. Why would Canadians, contrary to our own values, embrace a practice at that time that is not transparent, that is not open, and frankly is rooted in a culture that is anti-women? (House of Commons Debate, 2015).

[4] Situated within this historical and discursive context, scholars such as Winter (2008), Hoodfar (2003), and Hajjaji-Jarrah (2003) argue that the *Qur'an* does not provide a religious command or divine recommendation for Muslim women to veil. Hajjaji-Jarrah (2003) traces the development of "veiling ideology" to the social realities of urban Islamic society from the 9th to 13th centuries and the assumptions of the male scholars within that society. She contends that the verses of the *Qur'an* that are often cited by Muslim women and men as religious justification for veiling reflect the biases of male religious scholars, who projected their own societal prejudices onto the text. In contrast, Bullock (2011), Hassan (2011), and Hannan (2011) challenge this interpretation, offering alternative readings of these verses, which they argue provide divine injunctions supporting the practice of veiling.

The Conservative government thus established that access to Canadian citizenship was contingent on adherence to a specific set of values rooted in a particular notion of who qualifies as a "real" Canadian and how she should embody her religious practice. Visibly *seeing* a prospective citizens lips move during the oath of citizenship became a pre-condition for Canadian citizenship itself (Canadian Citizenship Manual, CP 15: *Guide to Canadian Citizenship Ceremonies,* 2011). The withholding of citizenship rights under the guise of defending Canadian values often obscures the broader histories of exclusion and marginalization. These histories normalize the laws, policies, and regulations that form the basis of, "niqab bans" enacted in various countries. The Zunera Ishaq case, as discussed here, reveals how policies reinforce exclusionary boundaries that continue to define who is seen as a legitimate member of the Canadian family and who is considered an outsider.

Indeed, citizenship is conceptually temperamental and a capricious instrument that plays into historical discourses and speak to a broader issue that has been reactivated globally since the attacks on the World Trade Center in New York and the Pentagon in Washington D.C on September 11, 2001.[5] The surveillance and control of citizens who identified as Muslim or *appeared visually* Muslim became justified under the guise of national security and the stiffening of national narratives. In Canada, immigration policies and citizenship became intrinsically linked to national security measures which re-defined national values accordingly. The aftermath of September 11, 2001, ushered in new anxieties that masked old orientalist discourses with the issue of Muslim women's veiling/covering coming under renewed scrutiny and debates by governments and the public (Sharify-Funk, 2011).

[5] This is not to claim that the events of September 11, 2001, produced these issues but more so reactivated and renewed historical discourses into contemporary time embedded with assumptions that these are new problems that require national strategic governance, regulations and immigration control.

1.6 Contribution

At the outset, let me emphasize that this thesis neither foregrounds nor implies that the identities of Muslim women who wear the niqab or hijab are based solely on their religion, religious identities, or sartorial practices. Defining identities in such rigid terms along with a singular focus on difference can have serious political, cultural, and social consequences. In the present context, the danger of focusing too narrowly or emphasizing only one part of an individual's identity obscures structural issues of power, coercion, and regulatory patterns of inequality and injustice. This thesis is not concerned with all the reasons and beliefs about why some Muslim women wear the niqab and why some do not.[6] Rather, I focus on the role and significance of the niqab *for* Zunera Ishaq. This is not to suggest that the beliefs and motivations of niqab-wearing women lack importance. My concern lies with the Canadian government's representation of the niqab, which resurrects colonial frameworks that align with contemporary regulatory structures. These frameworks systematically sought to prevent Zunera Ishaq from Canadian citizenship and marginalized niqab-wearing Muslim women in Canada as "offensive," and could not belong to the Canadian family (House of Commons, 2015).

This thesis does not aim to use the niqab or hijab as a theoretical lens to contribute to the fetishization, homogenization, or essentializing discourses of Muslim women's sartorial and corporeal practices. There is a long and pervasive history of academic and social scholarship that

[6] In previous scholarship, I have critically examined the argument that the wearing of the niqab, hijab, or similar religious coverings is optional for some Muslim women. While this perspective may be presented in good faith to counter narratives of forced veiling or, in the case of the Canadian government, to dismiss such practices as cultural remnants of tribal societies it inadvertently sets up another problematic discourse. By framing the veil or niqab as optional, the implication arises that women can simply remove it at will. For example, to recite the oath of citizenship (in Canada), refrain from wearing it in public (in France), receive government services (in Quebec), or attend university (in Egypt). Katherine Bullock cautions against the use of the term "optional," as it oversimplifies complex religious and cultural practices. This approach emphasizes the need to comprehend religious practices within their broader social, cultural, and political contexts rather than reducing them to choices that can be easily altered to fit majoritarian notions of religious practice, secular or state demands.

has been complicit in producing and promoting orientalist and paternalist discourses. Discourses of 'saving Muslim women' from their (it is assumed) 'backward' religion, culture, their tribal societies, "where women are treated like property" (Kenney, 2011) and of course from Muslim men are riven by colonial and imperial history invading the present (Lister, 2003). Since the eighteenth century, discourses and representations of the 'veil' have often been reduced to floating signifiers (Ayotte & Husain, 2005, p. 113) which become stand ins or placeholders for what I sardonically identify as an '*insert here*' discourse. These most often begin with the veil (niqab, hijab) *is* (insert here): oppressive, misogynistic, threatens gender equality, *laïcité*, secularism, prevents integration, hinders communication, segregates Muslim women and so on and so on.[7] Particularly problematic is that the insert here discourse visual and/or linguistic synecdoche that evokes 'the veil,' obscures the epistemic violence that functions as a form of ventriloquism of Muslim women where dominant discourses speak for, about, and in place of them (Ayotte & Husain, 2005, pp. 115-116). In her opinion piece for the Toronto Star, Zunera Ishaq accused Prime Minister Harper of politically trafficking in these very same stereotypes and discourses. Ms. Ishaq politely wrote that she was "not looking for him to speak on my behalf and "save" me from oppression, without even ever having bothered to reach out and *speak* (emphasis mine) with me" (Ishaq, 2015).

Simplistic signifiers and persistent tropes that uncritically link the insert here discourse of veiling and/or re-veiling with patriarchy, subjugation, oppression, and backwardness and un-veiling to modernity, freedom, autonomy, agency, gender equality, loyalty and most importantly Canadian values do more than perpetuate false dichotomies. They also reinforce patriarchal,

[7] Markha G. Valenta (2006, p. 474) has insightfully coined this discourse *then and now*. Nilüfer Göle speaks of the either/ or discourse: Muslim women who cover (hair, face, body) are placed into the subject position to claim, "I am either… or…" Göle refers to notion that Muslim women identities are always binary options between a religious and secular identity. Göle argues the notion that "they" are either… or… makes no sense. See chapter five.

orientalist, and racist discourses that enable permissive legal and social inequalities in the public and private spheres. These issues are neither accidental nor are they simply the ancillary effects of a 'sign of the times.' The history, discourse, and systems underlying control of women's bodies to regulate their choice to embody their lived religion and lived citizenship re-establish and entrench various systems of power and subjection. These dynamics are central to the alliance between state authority and certain religious organizations' arguments over the regulation of the niqab or hijab in public spaces. This process effectively naturalizes majoritarian national and religious identities. What has been characterized as "invisible majoritarian Christianity" (Barras, Selby, & Beaman, 2016) or "coerced religion"[8] (Beaman, Steele, & Pringnitz, 2018) that lies at the core of the Conservative government's linking of dominant religious and national identities. This connection was emphasized through exclusion when Prime Minister Harper (2015), speaking in the House of Commons, differentiated between the "majority of Canadians" and "the majority of Muslims" (House of Commons, 2015). As I discuss in chapter four this approach to identity formation privileges settler history by excluding, differentiating, and creating symbolic boundaries. It constructs and narrates an image of an exalted subject while positioning those who do not fit this ideal as outsiders, unworthy of belonging within the boundaries of Canada (Thobani, 2007). This is the way majoritarian thinking functions, imperceptibly by *naturalizing* the pervasive hegemony of old stock Canadianism. Thobani (2007) argues that exaltation of a singular national identity conceals inequities of class, gender, social, and political locations of

[8] I explicitly draw on Beaman, Steele, and Pringnitz's (2018) concept of 'coerced religion.' Beaman et al. challenge the notion that the will to religion is a naturalized, essential norm of the human condition—namely, the assumption that everyone is inherently religious or spiritual. They critique the presumption that any ethical or value-based orientation must derive from religion to be recognized as a 'tenable worldview' (p. 50). Their analysis emphasizes the *regulation by religion* rather than the *regulation of religion* (pp. 44–45). While Beaman et al. focus on how religion imposes regulatory frameworks on individuals and communities, my analysis in chapter five extends this to explore the *regulation by religion of religion*, examining how religious norms are employed to shape, constrain, and redefine other religious expressions.

citizens within a nation (p. 4). When national identity is shaped to reinforce divisive power relations and historical inequalities state mechanisms then organize citizens' rights based on an inherent essence or religious practice and crucially determine who is excluded (Thobani, 2007, p. 4). Therefore, the inherent qualities 'shared' by nationals become embedded into state practices excluding the genuine differences in the polity. This valorization of a particular citizen identity assumes a shared national history (such as being old stock Canadian) and an essence embedded within a carefully shaped discourse (Canadian values). This discourse exalts and legitimises those who are considered heirs to the rights and entitlements offered by the state (2007, p. 4) and as I will discuss in chapter three, highlights who is excluded.

1.7 Note on Terms

The signifier 'the veil' has represented for colonial, imperial, and present-day powers an evolving archive of symbols and notions about Islam and Muslim women that transcends centuries and contexts uninterrupted (Karim, 2000). The resilient image of the oppressed, imperilled, and voiceless 'veiled' Muslim woman is a recycled orientalist production that depend on these binaries to justify permissive vortexes of discrimination between the state, groups, institutions, and individuals. Beaman (2017) warns that these vortexes of discrimination sustain injustice, persecution, and inequality *tout court* because these binaries promote a singular normative identity that exalts a particular conception of citizen and citizen making. Bullock (1999) identifies that, '[p]art of the whole problem of the West's focus on the veil … is precisely the simplification that the phrase "the veil" entails: as if there is only one kind of veil that Muslim women have ever worn (p. 28).' At the same time, I caution against overextending these notions since they are not simply reducible to 'outside' or 'Western' discourses. The proviso of course is addressed briefly here and more in depth in chapter five. It is essential to recognize that

for Muslim majority societies, groups, and organizations the symbolism of the veil has had its own distinct history and discourse. The role and function of the niqab and hijab have varying religious, social, cultural, and political significances that are enormously complex and nuanced (Hoodfar, 1997). Scholars, critics, religious, and political leaders have specific arguments, ideas, and notions about what the niqab *symbolizes.* The meaning of which as Asad (2006) points out, *shifts* depending on who is speaking and their motives (p. 97). Mahmood (2005) argues "analysts [who] often explain the motivations of veiled women in terms of standard models of sociological causality (such as social protest, economic necessity, anomie, or utilitarian strategy), while [dismissing] terms like morality, divinity, and virtue [as] … phantom imaginings of the hegemonized" (p.16). This approach foregrounds religion as the sole lens through which all Muslims identities are understood is problematic. It fails to capture the complex reality of over 1 billion people who identify as 'Muslim.' Muslims and those who identify as such can be considered to belong to communities of interpretation marked by intra-communal plurality and intra-communal difference (Hirji, 2010, p. 137). The practice and embodiment of covering in Islam reflects this diversity. This thesis does not seek to determine whether wearing the niqab or burqa is a religious obligation or a cultural practice. Instead, it acknowledges the multiplicity and plurality of views on covering in Islam which are shaped by varying representations and interpretations of foundational texts, religious authority, laws, regional and national histories, practices, and individual and communal expressions of form and content. Muslim women who cover do so for a variety of reasons including as a tool of empowerment or modesty, or a public expression of religious, ethnic, and cultural identity. For some, veiling is a religious obligation; these women interpret specific verses in the *Qur'an* (24:30-31; 33:59) as divine commands to cover as an embodiment of modesty and an integral step on their road to piety. These verses have

been interpreted, debated, and argued amongst varying communities both inside and outside of Islam. Scholars, historians, and communities differ over this historically complex issue.

1.8 Thesis Structure

This thesis consists of eight chapters including this introduction. In the chapters that follow, I integrate the discourses that collectively shape citizenship, gender, religion, and religious identity. I examine how these discourses interact and reinforce each other to construct the social, cultural, and political landscape that Zunera Ishaq navigates, legally challenges, and ultimately transgresses. The insights and work of various scholars and theorists underpin the analysis, framing the scope and direction of this thesis. These perspectives are interwoven throughout the chapters to illustrate the social scientific approach to religion and citizenship that guides my analysis. I engage with the interdisciplinary work of scholars such as Talal Asad, Lori Beaman, Edward Said, Saba Mahmood, Nilüfer Göle, and Natasha Bakht, among others. Each chapter employs various discursive and theoretical frameworks to analyze the dominant narratives and representations that create and sustain permissible inequalities, illustrating how these narratives are deeply embedded in the social world. By examining the relationship between discourse, representation, and language, I aim to reveal how power operates both overtly and subtly to construct specific, authoritative definitions of "religion," "citizenship," "national identity," and "gender." My objective is to critically interrogate these constructs, challenging views that frame the public presence of religion as both a strategy of governance and a precondition for citizenship. These understandings shape "new" identities deemed acceptable in the public sphere, reinforces the role of religion as both a technique of governance and a marker of national identity.

The analytical framework of this dissertation is constructed through critical engagement with post-colonial, post-structural, socio-legal, and feminist theories, employing a multidisciplinary approach to legal discourse. This framework is influenced by what Foucault refers to as "history in the present." Dreyfus and Rabinow note that this approach "explicitly and self-consciously begins with a diagnosis of the current situation. There is an unequivocal and unabashed contemporary orientation" (1982, p. 119). Foucault himself explains, "I set out from a problem expressed in the terms current today and I try to work out its genealogy (p. 119). "Genealogy means that I begin my analysis from a question posed in the present" (cited in Kritzman, 1988, p. 262). This approach to history in the present echoes what Ruth Lister (2003) describes as colonial history invading the present. Chapter two outlines the theoretical framework, literature review, method, and methodology of this dissertation. Chapter three introduces the Canadian Conservative government's 2011-2015 policy, Operational Bulletin 359 (the Bulletin), along with sections 6.5.1 to 6.5.5 of the Policy incorporated into the Canadian Citizenship Manual, CP 15: Guide to Canadian Citizenship Ceremonies (the Manual) and traces the policy's legal trajectory. Chapter four utilizes Foucault's concept of "history of the present" to analyze citizenship. The lead-up to the 42nd general election serves as an entry point for discussing the niqab ban and what was termed at the time an electoral "wedge issue," (Wherry, 2015). Zunera Ishaq would describe the wedge issue as Canadians transforming it into a "soft heart issue" (Ishaq, 2015). In this chapter, I critically examine the historical, national, and religious dimensions that formed the basis for issuing Bulletin 359. This bulletin serves as a public act that provides a key site for examining how the Federal government appropriates nationalist ideologies and religious discourses to target niqab-wearing women (*Ishaq*, at para. 22). This action reshapes what it means to be a Canadian citizen and a religious believer by

valorizing a particular identity, thus constraining the space for diversity and difference within the nation. The intertwining of citizenship and religion is presented as a "technology of government," illustrating how state power is reinforced by regulating minority religious beliefs and practices (Martin, 2017, p. 39). Chapter five begins with an overview of arguments by Beckford (2003) and Asad (1993) who critique and caution against universal definitions of religion. Their critiques form the basis for analyzing how 'religion' is presented by the Conservative government and adjudicated in the legal cases under examination. These critiques also trace and deconstruct the concept of religion to discuss the problematic religious ideologies embedded within Canadian institutions and practices, ideologies that are often considered "taken for granted" but are more visible and problematic than they appear. The over-reliance on the visible religiosity among Muslim women to distinguish acceptable from unacceptable religious practices shapes narratives of conditional inclusion (Hassan, 2021) within citizenship debates. As demonstrated through the Conservative government's Policy, citizenship rights were made contingent upon the visible appearance of prospective citizens. Specifically, the government argued for the visibility of lips moving during the citizenship oath as a prerequisite for Canadian citizenship and acceptable religious practice. The relationship between these discourses is as perilous and damaging today as it was in the past. Chapters four and five provide a brief overview of colonial and imperial efforts that have historically manipulated meanings of the veil to regulate the bodies of Muslim women. In contemporary Canada, these colonial and imperial histories intersect with the Conservative government's ban on face coverings during the citizenship oath and their broader ambition to regulate the wearing of the niqab in the public sector.[9] Chapter five discusses the way that the transformation of religion to culture was

[99] During an interview on the Canadian Broadcasting Corporation (CBC) with Rosemarie Barton Prime Minister Harper alluded to a ban on niqabs in the civil service (National Post, 2015).

mobilized through the Conservative government's niqab ban, which served as the basis for denying citizenship and religious freedom rights to niqab-wearing Muslim women. The Conservative government strategically highlighted positions and aligned itself with organizations it designated as "moderate Muslim" groups, such as the Muslim Canadian Congress (MCC), the Coalition of Progressive Canadian Muslim Organizations (CPCMO), and Muslims Facing Tomorrow (MFT). These endorsements were used to legitimize the government's policy by framing it as consistent with certain Islamic perspectives, while simultaneously distancing the practice of face covering from being recognized as a religious obligation.

In chapter six, I critically examine the tension between sociological understandings of religion and lived religious practices, and the state's definitions of "religion," "religious freedom," and what constitutes acceptable versus unacceptable religious identities and practices. I analyze three legal cases to explore the judicialization of religious freedom (Richardson, 2015), particularly how it impacts the legal claims of niqab-wearing Muslim women, their access to citizenship rights, and their visibility in public spaces. This analysis also unsettles traditional notions of agency and blurs the lines between lived religion and religious practice. I conclude by discussing how the category of religion was conceptualized, constructed, and mobilized by the Conservative government through the niqab ban, ultimately to deny citizenship to niqab-wearing Muslim women.

Nilüfer Göle (1996) has argued that one of the most critical aspects of regulating and banning certain Muslim women's religious practices is the presumption that these women are part of the discussion, the discourse, or the debate. It is precisely because of this absence that, as a scholar of sociology and religion, I argue for the importance of examining legal cases where women themselves enter, claim, and position their identities to challenge power relations. In

Chapter seven, I draw on the socio-legal work of Lori Beaman to explore *Ishaq v. Canada (Minister of Citizenship and Immigration)* (2015 FC 156) and *Canada (Minister of Citizenship and Immigration) v. Ishaq* (2015 FCA 194), and *The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario*, (2015 FCA 212). I use case law as a central axis for socio-legal analysis and discussion. While some might argue that "one cannot generalize on the basis of a single case" (Flyvbjerg, 2006, p. 219), this dissertation's original contribution to knowledge rests precisely on the in-depth exploration of a single case and the exploration of the alliance between the law and the concept of deep equality. *Zunera Ishaq v. The Minister of Citizenship and Immigration* (2015 FC 156) remains one of the few legal cases where the rights of niqab-wearing women were upheld across three separate legal proceedings. A socio-legal exploration of this case viewed through the lens of deep equality, offers critical insights into our understanding of justice and human rights. Chapter eight offers a concluding discussion on counter-narratives, examining how space itself can become an act of citizenship. By tracing these acts of resistance and reimagining, this thesis underscores how counter-narratives and spaces of agency challenge exclusionary discourses. In doing so, it reaffirms the potential for marginalized individuals to redefine citizenship and belonging, even within structures that seek to constrain them. This chapter synthesizes the themes and analyses presented in the preceding chapters, offering a cohesive conclusion to the dissertation.

Rather than providing an exhaustive account of the 2011–2015 "niqab ban," this thesis explores the discursive production of citizenship, belonging, and religion through the case study of Zunera Ishaq. It analyzes how the Conservative government sought to create spaces of exclusion, using policy and rhetoric to impede Zunera Ishaq and niqab-wearing women's access

to citizenship. However, the narrative that emerges does more than highlight exclusion; it reveals transformative moments where inequality is contested and reshaped into deep equality.

CHAPTER TWO: THEORIES, LITERATURE REVIEW, METHODS

When Zunera Ishaq was a young English high-school teacher in Pakistan she read about an exclusive Canadian delicacy called the McIntosh apple. Apples are one of the oldest foods known to humankind and are not native to Canadian soil (McKeon, 2016). Historians believe that the apple tree dates back thousands of years ago to Central Asia and the Silk Road. Several recent genetic studies and archaeological discoveries unearthed ancient, preserved apple seeds from across Europe and West Asia. Historical records, paleontological data, and recently published genetic data have discovered that the apple fruit and nut trees were among the commodities that travelled on some of the very early trade routes of the Silk Road. The apple is deeply connected to the Silk Road since much of the genetic material for the modern apple originated at the heart of the ancient trade routes in the Tien Shan Mountains of Kazakhstan (Spengler, 2019) and Central Asia.

*Apples were not grown in Canada until the early 1600's when French colonizers began sowing apple orchards. In 1796, a young lovesick American boy, John McIntosh the son of Scottish immigrants, immigrated from Mohawk Valley in Upper State New York to Upper Canada. McIntosh was following his love, Dolly Irwin and her American loyalist parents. When John McIntosh arrived in Upper Canada, he discovered that his love had passed away. McIntosh remarried Hannah Doran and they settled on a farm in Dundela Upper Canada (Ontario). On this farm, McIntosh discovered some apple seedlings and transplanted them to the garden closer to his home where one particular tree produced a crisp, delicious fruit that would come to be known as the McIntosh red (*Malus domestica *"McIntosh"). In 1995 the Royal Canadian Mint of Canada commemorated the 200th anniversary of the discoverer of Canada's national apple, John McIntosh by commissioning Canadian artist Roger Hill who designed the image of three McIntosh apples and a McIntosh blossom which adorn one side with a ribbon naming the variety. In 2001 the Historic Sites and Monuments Board of Canada proclaimed the McIntosh apple's discovery and development an "event of national importance (von Baeyer, 2019).*

In 2008 Zunera Ishaq immigrated to Canada from Pakistan, where she finally got the opportunity to taste the elusive Canadian delicacy, the McIntosh apple. Taking her first bite, Ishaq described the taste as a complex blend of sour and sweet (McKeon, 2016)). Zunera Ishaq would not know then, but her path to Canadian citizenship would equally be a complex blend of sour and sweet and like the commemoration surrounding the McIntosh apple Ms. Ishaq's citizenship ceremony would become an "event of national importance."

2.1 Theories That Travel

During the debates surrounding the Zunera Ishaq case, various theories such as those related to religion, security, citizenship, and gender shifted and interwove within networks involving the Canadian government and certain Muslim organizations like the Muslim Canadian Congress, Muslims Facing Tomorrow, and the Coalition of Progressive Canadian Muslim Organizations. These shifts were driven by narratives around culture, post-9/11 security concerns, national values, and the state's regulation of religion through public policy (Sharify-Funk, 2011). Said (2000) argues that theories, like people, travel through different contexts, gaining authority over time and potentially becoming rigid cultural dogmas within various groups (p. 226).

Said (2000) traces the life cycle of a theory, starting from its birthplace, where it is most potent because it is organically linked to the specific historical circumstances that gave rise to it (p. 437). As a theory travels beyond its original context, it matures, gaining new significance shaped by the pressures and experiences of its new environments. In this process, a theory may be accepted, resisted, or adapted to different historical, political, and social contexts. Theories that take root in new contexts often become localized or regionalized, acquiring a form of power that acts as "cultural dogmas" which can deeply impact the social fabric of society (Said, 2000, p. 247).

These cultural dogmas may obscure historical distinctions and reinforce stereotypes, such as those that portray the niqab and burqa as symbols of oppression and backwardness. Anne Stoler argues that such conceptual frameworks not only blur the boundaries between academic theory and political interests but also obscure the historical and cultural assumptions that allow these theories to travel and overlap with ideological agendas (2016, p. 8). As theories move

across different periods and contexts, they may evolve, weaken, or transform, reflecting changes in societal conditions and cultural environments. It is here that I locate two prominent traveling theories: orientalism (1978) and the clash of civilizations (1996), which serve as master narratives shaping contemporary discourse. These theories have traversed various contexts and have been repurposed to frame debates on identity, religion, and national belonging. Orientalism, as articulated by Edward Said, sheds light on how the West constructs an "Other"—the East—through a lens of cultural superiority, shaping perceptions of Muslim identities as oppositional to and incompatible with Western values. Similarly, Samuel Huntington's Clash of Civilizations theory has been appropriated to highlight an alleged fundamental and inevitable conflict between Islamic and Western civilizations, reinforcing binary oppositions (Us and Them) and essentialist notions of cultural difference.

2.1.2 Traveling Theory One: Orientalism

Said's (1978) seminal study *Orientalism* was written and first published over forty years ago. Orientalism, Said argues, is an ideology that governs, structures, produces and organizes multiple systems and techniques of 'knowledge' production based on *representation* and *perception*. It is precisely at this juncture—the kinship between representation and perception—that renders Edward Said's study *Orientalism* crucial for contemporary time. Representations and meanings produced by orientalism are neither based nor reflective of a true anterior reality but grossly imaginative to serve irredeemable civilizational inferiority and difference that ultimately, became a political vision of reality (Said, 1978, p. 43) and I would add, a central countenance of contemporary politics. Orientalism, according to Said, is 'the corporate institution for dealing with the Orient – dealing with it by making statements about it, authorising views of it, describing it, by teaching it, settling it, ruling over it: in short, Orientalism as a

Western style for dominating, restructuring, and having authority over the Orient. The orientalist representation encodes specific understandings of the world that depends on the maintenance of rigid boundaries between one part of the world "us" and another part, "them." It is here where Said (1978) situates the common denominator among several aspects of Orientalism—the human production of "imaginative geography" a created boundary that separates the "Orient" from the "Occident" (p. 199). This is not to say, as Said argues, that this line is "simply fictional" but rather, imaginative, human made psychic boundaries under the guise of "us" versus "them." Orientalism is not, nor has it ever been, an abstract theory, it is a discourse of knowledge produced in a triangulated web of interdependent, interlocking, and meaning-making systems. According to Said, orientalist discourse spanned over the course of two centuries and over time, this accumulated "knowledge" accrued two resilient values, "truth" and "knowing." It is these values that Said is most concerned with since "truth" and "knowing" the "East" and "its peoples" are not simply creations in text (or art) but that they underpin how knowledge produced in text is brought into the world to govern, structure, produce and organize multiple systems and techniques of governmentality that influence international and national policy making that are based on *representation* and *perception*. In this same vein, Said (1978) distinguishes the difference between "knowing" and "truth" while both demonstrate how power, domination and representation operate in knowledge to construct and bring "the Orient" into the world so to speak; it is "knowing" as a process by which the West 'knows' the Orient that has historically and contemporarily been a way of exerting power over it (Said, 1978, pp. 122-3). This alliance between the "truth" and "knowing" leads Said (1978) to situate both as constructs that collude with power "knowledge or truth, in whatever form, belongs to that group which has power to impress *its* version of knowledge on others" (p. 58). As Said (1978) continually emphasized,

orientalism represents a worldview of ideas and definitions of humanity and human nature that are corrosive because it is inseparable from the act of domination. More importantly, the act of domination is delineated by a Western vision of "reality" and human existence that re-inscribes "flexible positional superiority" (Said, 1978, p. 15). Orientalism depends on this supple and sinewy strategy that "puts the Westerner in a whole series of possible relationships with the Orient without ever losing him the relative upper hand" (Said, 1978, p.15). The workings and effects of orientalism become a contrasting and comparative framework of universalizing or *worlding* dominant cultural norms (Said, 1994) as *the* norm. And this, Said argues, makes the reproduction and continuity of orientalist discourses still "so possible and so sustainable" (Said, 2000 p. 229). On the basis of the previous discussion, it is important to keep orientalism in mind since it leaves its imprints on state policies, legal scripts, and public discourses that prevent niqab-wearing Muslim women from full access to citizenship and public space.

2.1.3 Traveling Theory Two: Clashes and Master Narratives

Samuel Huntington (1996) argues that a *new* phase in world politics will be the advent of "cultural conflicts" along the lines of civilizational difference, what Huntington (1996) refers to as "the clash of civilizations" between seven or eight major civilizations. According to Huntington (1996), this new phase draws new battle lines and fault lines between civilizations. Particularly troubling, Huntington (1996) concludes with a warning that the "clash" will be between *primarily* Islam and the West (p. 31). Huntington's (1996) thesis (as it came to be known) was written in 1996 and only gained traction and legitimacy in a post 9/11 context because it bears the marks and meanings of orientalist discourses making it dangerously simple to grasp (Esposito, 2003) and easy to believe. Indeed, Mahmood Mamdani (2004) points to the post 9/11political rhetoric that emphasizes in large part on a *us* versus *them* binary frame that has

become increasingly prevalent in Western discussions in relation to Muslim majority countries. Mamdani (2004) suggests that this dichotomy has reinvigorated and renewed a fresh round of culture talk. There is a certain circularity with orientalism and culture talk. Culture talk expunges international, national and regional contexts, diversities, identities and histories by representing political issues, situations and conflicts as having simply "occurred" (Mamdani, 2004) by virtue of differences. Critiquing Huntington's simplistic theory, Said (2001) countered that the danger does not lie in clashes between civilizations but by "clashes of ignorance" between civilizations. What emerges from such "facile ideologies" as Said (2001) points out, is the assumption that civilizations and identities are "shut-down, sealed-off entities" that have been purged of their "internal dynamics and plurality" and "the myriad currents and countercurrents that animate human history" (Said, 2001, p. 12). For Said (2001) the clash lies in ignorance of the "less visible history" between "Islam" and "the West," one of "exchange, cross-fertilization and sharing" (p. 12). To narrow the focus of history to conflicts is to ignore a history of religious and cultural co-operation, co-existence past and present (Esposito, 2003). The rejection of the "clash of civilizations" and in favour of the "clash of ignorance" is echoed by the Aga Khan IV (2002, 2006) who has further argued that the fault line between Islam and the West is not characterized by fortified boundaries or civilizational enmity but by gaps of knowledge from both sides that neglect the long history of respect, friendship, and cooperation between both civilizations.

Drawing from this framework, I turn to Karim H. Karim and Mahmood Eid's (2014) theoretical intervention and critical ontology, the "clash of ignorance thesis." The clash of ignorance thesis (2014) was developed in opposition to the dominant frameworks imposed by the clash of civilizations theory, which imagines civilizations as hermetically sealed monolithic entities, culturally sealed off from one another except during battles and crusades. The clash of

civilizations presents a vison and worldview that however contested by academics, religious leaders and some politicians, remains central and pervasive among ideologues and the primary framework of foreign policy formulations (Eid and Karim, 2014, p. 22).[10] It is, along with the clash of ignorance critique argued by Edward Said (2001) and the Aga Khan IV (2002) that Eid and Karim (2014) emphasize that the clash of civilizations thesis distorts and oversimplifies complex histories.

The crucial point for Said (2000) then, is that by the shear mobility of travel, theories are not necessarily infused with fixed political meanings. On this basis, Said (2000) argues that it is important for theories to remain fluid to "always move beyond their confinements, to emigrate, to remain in a sense "in exile" to retain their intellectual potential (p. 247). His point is rather cautionary because as I discuss in this thesis, theories about Islam and Muslim women are porous to processes of representation, institutionalization, and perception.

It is here where my choice of method and methodology, critical discourse and genealogy analysis intersect with traveling theories since they constitute "the whole package" that integrates theory and method (Jorgensen & Philips, 2002) that underpins a critical stance towards "taken-for-granted knowledge, historical and cultural specificity, knowledge as sustained by social processes" (Burr, 2003, pp. 2-5). On these premises the clearest method for writing an effective "history of the present" and the entry point of this thesis comes from Foucault that one should not think historically about the past *per se* but to use historical materials to engage with the

[10] Eid and Karim argue that the danger lies with the use of geopolitical terms like "the West" and "Islam" in ways that construct static identities. These terms, they argue, lock the imagination into narrow ways of thinking about complex realities and serves to erase the diversity and pluralism that exists within them. Specifically, they critique the persistent use of the term "Islam" as a singular civilization and political entity which erases the vast geographic, cultural, linguistic, ethnic, and racial diversity within Muslim communities. This framing also disregards the plurality of interpretations, practices and expressions of belief within Muslim communities (Kazemipur, 2014, p. 23). By focusing on these critiques, the clash of ignorance thesis calls for a deeper understanding of cultural and religious history challenging the reductive narratives that perpetuate divisions and misrepresentations.

power dynamics active in the present. Thus, I seek to construct an analysis in the present of the present.

2.2.1 Deep Theories

Nancy (2007) critiques theories rooted in the idea of clashes, describing them as manifestations of "globality," which he defines as a *representational* logic that constructs "a totality grasped as a whole" (p. 20). According to Nancy (2007), this totalizing system and structure fosters a system of continuous injustice (p. 34) and leads to the "vanishing of the possibilities of forms of life and/or of common ground" (p. 95). Nancy (2007) argues that we must shift away from this rigid dogma of globality, and instead embrace a space of commonality, meaning and possibility. Nancy (2007) calls for thinking from a place of possibilities which he terms *Mondiality*, understood as "the place of the possible taking place" that allows for coexistence (Raffoul & Pettigrew, 2007, pp. 9–10). The place of the possible and the space of possibility becomes the centre of human relations as a process of negotiation and the readiness to accept the complexities of human diversity[11] (Aga Khan IV, 2002) and where Beaman (2011, 2014, 2017) locates deep equality. Deep equality is found between the sameness and difference in the mutual recognition of similarities and "the ability to imagine oneself in relation to others and what one has in common with others is key to navigating difference" (Beaman, 2014, p. 100).

Almost any discussion surrounding the multicultural project in Western democracies often focus on the idea that diversity and living with religious plurality are challenges needing management, regulation a legal intervention. The common equation of diversity ⇔ problem =

[11] His Highness the Aga Khan IV (2008) calls this a cosmopolitan ethic "which not only accepts difference but actively seeks to understand it and to learn from it. In this perspective, diversity is not a burden to be endured but an opportunity to be welcomed."

solution ⇔ tolerance and accommodation equation most often produce several blind spots that conceal majoritarian power regimes. While this approach appears to promote inclusion, a closer analysis reveals that it frequently leads to exclusion. Framing diversity within a problem = solution ⇔ tolerance and accommodation equation brings together a whole set of disparate discourses and ideologies including conflict and competition narratives, fear of the *Other* and a distinctly Canadian inflected orientalism. This issue will be explored further in chapter five.

Stewart (2017) argues that horizontal inequalities (HIs) among groups of people are multidimensional and are seen across various economic, social, political, class and cultural dimensions and racial, ethnic, religious, and gender identities (p. 2). Large HIs in nations can create justice gaps between citizens and are "clear drivers of exclusion" that includes "a lack of respect for other cultures" (Stewart, 2017, p. 5). Most often, HIs are place-based meaning that they are shaped by the specific political, social, and cultural history of societies and produce specific sets of national narratives, identities, ideologies and practices. Yet, as Stewart (2017) argues, some horizontal inequalities based on categories of identity utilize socially constructed markers of difference such as religion and make visible the close linkage between horizontal inequalities and colonial history. Stewart (2017) cautions that while it becomes crucial to reduce HIs for social stability and justice in pluralist societies it is insufficient by itself and requires a combination of approaches (p. 5).

Dogmatic theories like orientalism and the clash of civilizations require deeper and more nuanced approaches, such as the concept of deep equality. While these traditional theories continue to exert influence, they often fail to account for the complexities and lived experiences of people. Deep equality shifts the focus away from hierarchical models of tolerance and accommodation and towards an understanding of human relationships that emphasize mutual

recognition, respect, and equality at the core. It challenges the superficial recognition of difference and moves towards a more profound acknowledgment of shared human dignity, offering a framework that transcends the divisions perpetuated by master narratives such as orientalism and the clash of civilizations.

With these perspectives in mind, Beaman (2017) argues for moving away from "master narratives" of clashes and conflicts of differences between citizens and shifting towards approaches of negotiation, generosity, agonistic respect, similarity and narratives of equality, in other words, *deep equality* among citizens. Beaman (2017) argues towards the process of 'agonistic' respect, cooperation, generosity, negotiation, forgiveness, contaminated diversity, immanence, similarity, humor, discomfort, neighborliness, and love that underpins deep equality (p. 13) Within the process of deep equality differences are not swept to the edges where they can, as discussed above, freeze into dogmatic narratives that animate majoritarian power dynamics. Before turning to the discussion of deep equality and the Zunera Ishaq case, it is important to be clear about what is meant by majoritarian power dynamics that are embedded in the diversity ⇔ problem = solution ⇔ tolerance and accommodation equation since the Canadian government's legal argument makes good use of this equation.

In their seminal article, *The Duty to Accommodate*, Shelagh Day and Gwen Brodsky (1996) contend that the concept of accommodation that has emerged from religious discrimination jurisprudence may not "sufficiently address religious discrimination and appears not to address other forms of discrimination" (p. 471). Day and Brodsky (1996) highlight the inherent conceptual weaknesses of the accommodation paradigm identifying two main issues:

> Accommodation does not go to the heart of the equality question, to the goal of transformation, to an examination of the way institutions and relations must be changed in order to make them available, accessible, meaningful and rewarding for the many diverse groups of which our society is composed. Accommodation seems to mean that we do not

> change procedures or services, we simply 'accommodate' those who do not quite fit. We make some concessions to those who are 'different,' rather than abandoning the idea of 'normal' and working for genuine inclusiveness (Day & Brodsky, 1996, p. 462).

Building on this critique Beaman (2017) argues that diversity has politically, socially, academically, and economically become framed and analyzed as a *problem* to be *solved.* This analytical positioning has significant implications. The danger of this simplistic equation: diversity ⇔ problem = solution ⇔ tolerance and accommodation are especially acute and has in fact *created* more problems, divisions and serious inequities that have had damaging effects on the lived realities of people and communities. Beaman (2017) further contends that these top-down approaches often ignore the voices and needs of diverse groups they aim to include. Moreover, the solutions may not address the actual problems or may create issues that *did not exist* in the first place, or the contours of which were completely different than imagined (Beaman, 2017).

Beaman's (2017) argument is threefold:

1. Tolerance and accommodation are inappropriate frameworks to facilitate human thriving in a diverse context.
2. A reconstituted notion of equality can subvert binaries that are kept alive by tolerance and accommodation.
3. Positive narratives offer a map toward a renewed conceptualization of equality, and a recognition of day-to-day human activity in its constitution.

Drawing on and from disciplines such as neuroscience, philosophy, sociology, political theory, and law Beaman (2017) attempts to make sense of why the proliferation of top-down political and social philosophies, policies, academic research, studies, and projects have in very few instances produced transformative possibilities for peace, justice, and well-being. Beaman (2017) reorients the focus towards a reconstituted, engaged and *empowered* equality that she calls deep equality:

> Deep equality is a vision of equality that transcends law, politics, and social policy, and that relocates equality as a process rather than a definition, and as lived rather than prescribed. It recognizes equality as an achievement of day-to-day interaction, and it is traceable through agonistic respect, recognition of similarity, and a concomitant acceptance of difference, creation of community, and neighborliness.[12] It circulates through micro-processes of individual action and inaction and through group demonstrations of caring (2017, p. 13).
>
> Deep equality centers on the collection of empirical evidence that explores, understands and maps micro-level "everyday" instances where difference is negotiated within the values of caring, neighbourliness, and shared humanity to make way for similarities between people (p. 3).
>
> Deep equality is not about "differences" and the plurality of identities receding in the background but rather, a reconstituted and engaged equality (p. 19).

Within the foundational principles of deep equality such as agonistic respect, similarity, and the notion of the non-event can provide the space and the opportunity for the law to focus on the everyday, material contours that prevent women's social, political, and material flourishing. Engaging with Connolly's (2005) philosophical oeuvre, deep multidimensional pluralism, Beaman (2017) most notably draws upon agonistic respect to lay the foundation for the principles of deep equality. Agonistic respect requires the abandonment of rightness and the conviction that one is imbued with the truth (Beaman, 2017, p. 93) to make way for similarity. The recognition of similarity can become an engine of transformation in law when combined with the micro-processes that make up the everyday negotiation of difference. What Beaman (2017) is directing our attention to is that the rush to solve the problem of diversity has in fact created several blind spots that have become some of the top-down conceits of the tolerance and accommodation curative discourse. What if, as Beaman (2017) hopes we draw as a conclusion, diversity is not a problem to solve but an opportunity to talk, engage, to trust, to laugh *with* one

[12] See chapter seven.

another[13] and to get to know each *other.* By engaging with deep equality, we can interrogate how power operates not only in overt political decisions but also in the subtle, everyday interactions that shape social cohesion. A deep equality approach flattens the hierarchies of divisive theories, encourages a revaluation of religious freedom, citizenship, and identity in ways that affirm the agency and belonging of groups often marginalized by dominant narratives. Deep equality opens the space to reimagine a society where difference is not merely tolerated but genuinely integrated into the fabric of shared social life. This approach is essential to counter exclusionary logic that old theories perpetuate and to foster a more inclusive and equitable understanding of difference.

2.3.1 Literature

> "Islam" as it is used today seems to mean one simple thing but in fact is part fiction, part ideological label, part minimal designation of a religion called Islam. In no really significant way is there a direct correspondence between the "Islam" in common Western usage and the enormously varied life that goes on within the world of Islam […] (Said, 1981, p. x)

In this review, I examine foundational literature and historical background that informs my doctoral research. This literature spans three central themes: (1) religion and lived religion, (2) citizenship, and (3) the intersections of nation and gender. These domains are particularly relevant to understanding how citizenship, though framed by political theory as universal, has historically limited the full citizenship rights of marginalized groups, especially for Muslim women. I begin with the social construction of religion.

[13] *With* another is critical to emphasize since when a community feels under attack, or the subject of derisive and harmful jokes and cartoons feelings of hurt can undermine a sense of belonging. See Saba Mahmood's critique of the Danish cartoon controversy in Religious Reason and Secular Affect: An Incommensurable Divide? In *Is Critique Secular*?

2.3.2 This Thing Called the Social Construction of Religion

Asad (1993, 2011) and Beckford (2003) critically engage with the problematic of defining religion as a fixed, unitary phenomenon. Both scholars challenge essentialist and universal definitions, highlighting the risks of treating religion as an autonomous, transhistorical essence. For Beckford (2003), the aim is not to engage with religious truth claims, but to explore the roles of religious objects, beliefs, and experiences without assuming a singular, supernatural reality (p. 3). His approach, however, does not preclude the possibility of divine existence; rather, it distances the study of religion from truth claims, which he suggests is essential to the social scientific method. Asad similarly problematizes universal definitions of religion. He argues that such definitions limit the scope of inquiry, diverting attention from questions of inclusion, exclusion, and the social processes that demarcate what is considered "religion" versus "custom" or "culture." As Asad emphasizes, defining religion is inherently an act of boundary-making, determining which times, spaces, beliefs, and practices are deemed essential to religion, and which are considered ancillary.

Beckford (2003) advances a social constructionist perspective, positing that religion is "constructed, negotiated, and contested" (p. 7). For Beckford (2003), the challenge for social scientists lies in distinguishing between first-order understandings of religion, those held by individuals in everyday life, and second-order constructs for analytical purposes. Beckford (2003), advocates for an "agnostic methodology" that sets aside the question of supernatural reality, contending that without concrete evidence, scholars should instead focus on the uses and meanings that people ascribe to religion (p. 29). This agnostic stance leaves open the possibility of supernatural influence but limits analysis to human expressions of religion within social and cultural forms. In alignment with Asad's views on boundary-making, Beckford's (2003) concept

of the “boundary zone” illustrates the complexities of categorizing “religion” and “non-religion” (p. 4). This boundary is not fixed but is continuously defined, defended, or contested. Beckford (2003) stresses the need to examine how religion as a category is socially constructed and regulated across diverse contexts, underscoring that what counts as “legitimate” or “acceptable” religion often impacts access to public spaces and social legitimacy (p. 13).

2.3.3 The Secular is not Secularism

Asad (2006) and Knott (2013) offer a critical distinction between “the secular” as an epistemic category and “secularism” as a political doctrine. According to Asad, the secular is not merely the absence of religion or its successor but is instead an independent set of practices, behaviors, and knowledge structures integral to modern life. Mahmood (2017) elaborates on this, arguing that secular life does not emerge from religion but forms a distinct habit of thought and social practice. Dressler and Mandair (2011) notes that the division between “religion” and “the secular” institutionalizes certain social formations as either religious or secular. This distinction, often assumed to be stable, reinforces specific ideas about what counts as appropriate public and private behavior, thereby influencing how religion is perceived and regulated.

The concept of secularism, particularly as it emerged in Europe, serves as a framework for managing religion in public life. Scholars like Jacques Berlinerblau (2012) and William Connolly (2005) describe secularism as a political construct, developed as a solution to religious conflicts. Berlinerblau (2012) argues that secularism’s initial purpose was to establish social order by delineating a clear separation between religious and political authority. However, Connolly (2005) critiques this notion of neutrality, asserting that the liberal secular model often falls short in multicultural societies, as it disregards religious practices and reduces religious plurality to the private sphere. Asad extends this critique, arguing that secularism imposes a

Euro-American Protestant-based framework that reinforces a specific division between private faith and public reason. This framework, according to Agrama (2012), positions religion as an object for continual regulation and intervention, rather than as a separate sphere. Goldenberg (2009) cautions that concepts such as "religion" and "the secular" are historically contingent and constructed, shaped by shifting political and social agendas.

Beckford and Asad's analyses of religion and secularism as socially constructed categories highlight the fluid and contested boundaries that define what counts as religion. Their critique reveals the limitations of treating religion as a fixed, homogeneous object, arguing instead for a framework that acknowledges the historical, political, and social contexts that shape its meaning. Their perspectives underscore the need to re-evaluate secularism, not as a neutral framework, but as a historically specific political construct that influences how religious practices and beliefs are accommodated within public life. Bramadat and Seljak (2008) point out that since the 1970's Canada's shift towards a secular society has been increasingly defined by religious diversity. This secularism, however, is deeply rooted in a historical foundation shaped by Christianity, which continues to privilege the beliefs, values, and practices of the historical, cultural, and religious majority. They argue that the former notion, "to be Canadian is to be Christian," has evolved into a subtler message: to be a "good Canadian" (democratic, rational, and multicultural) one must be secular or a believer whose religiosity remains in the private sphere. Bramadat (2005) suggests that the near exclusion of religion from public discourse has led to a "religious illiteracy" among Canadians, resulting in widespread ignorance about world religions, including Christianity (p. 5). Although Canadians widely believe in the separation of church and state, this separation is more cultural than constitutional. The preamble of the *Canadian Charter of Rights and Freedoms* (*Charter*), which asserts Canada's foundation on

principles acknowledging “the supremacy of God,” exemplifies this ambiguity. Radin (2016) describes this form of secularism as “haunted by the religious ghosts of the state” (p. 108), remnants of Canada’s Christian past that inform its legal and cultural framework. Beaman (2017) contends that these legacy forms a Protestant and Catholic (Christian) hegemony that subordinate’s “religion” within a specific knowledge framework. This framework is derived from a social, cultural, political, and historical standpoint unique to Protestant and Catholic traditions, casting these as a twin “shadow establishment” that still influences Canada’s public and institutional spaces (Martin, 2000, p. 23). Beaman (2017) argues that this paradigm largely dictates which forms of religion are acceptable in public spaces, privileging Christian conceptions of religion while often positioning minority religious practices as excessive.

The limitations of this framework are emphasized by Beckford (2003) and Asad (2003), who point out the lack of universal agreement on what defines “religion” (Beckford 2003, p. 7). Balagangadhara (1994) argues that these Western-derived definitions impose a Christian-centric framework on other religions, which, as Beaman and Stacey (2021) assert, enshrines majority norms as universal and superior. This normative approach shapes public definitions of acceptable religious expression and carries significant implications, as Foucault reminds us, since the power to define is a form of sovereign power mediated through a desired norm. Beaman and Stacey (2021) cautions that the “ancestral ghosts of majoritarian religion” continue to influence current boundaries of religious freedom, determining which religions are most worthy of public accommodation (Beaman & Stacey, 2021, p. 27).

Beaman and Stacey (2021) further argue how Canadian secularism has privatized mainstream Christian symbols and beliefs, rendering them invisible in public spaces, while at the same time heightening the visibility of Islam. This contrast, noted by Barras, Selby, and Beaman

(2018), supports an implicit hierarchy of religious visibility, reinforcing an "old stock" Canadian identity that subtly excludes minority religions and further marginalizes visible expressions of Islam. This process of defining national identity, which Thobani (2007) calls "the exaltation of a national subject," invisibly excludes others, rendering the boundaries of religious freedom distinctly uneven (p. 9). In the Canadian context, statements that frame practices like face-covering as "cultural rather than religious" reflect a state-crafted transformation, or religion-to-culture discourse. This classification, particularly in relation to women's bodies, casts religious symbols and practices as merely cultural, thus sidelining their religious significance. Beaman's (2021) concept of the "transubstantiation of symbols and practices" (p. 205) illustrates how this categorization both preserves religious hegemony and excludes minority religious practices. Such normative framing underscores the invisibility of Christianity's influence on statecraft while amplifying the perceived "excess" of minority religious practices, leading to what Barras, Selby, and others term a "hypervisibility" of Islam (Barras, Selby, & Beaman, 2016).

2.4.1 Lived Religion

The study of lived religion necessitates a re-evaluation of fundamental questions about religion: what it is, where it is located, how it is practiced, and what it means to be religious (Hall, 1997). McGuire (2008) emphasizes that focusing on religion-as-lived reveals that religion is both "made" and "unmade," continually shaped and reshaped within the "secular" landscape of everyday life. Nancy Ammerman (2007) similarly argues that beginning with the everyday foregrounds the experiences of non-experts, giving a fuller picture of religious practice. Mary Jo Neitz (2008) furthers this by illustrating that examining how people sanctify their daily lives offers a more accurate understanding of religion as a lived experience, one that is spatially and temporally situated on secular terrain. This focus on lived religion does not imply a total

separation from institutional religious structures but instead challenges the notion that religion operates solely within these boundaries (Asad, 2011).

Using Asad's framework, this thesis approaches lived religion as a complex, dynamic phenomenon that is integrated within both secular and institutional contexts. To deepen this exploration, I turn to Ammerman's (2020) rethinking of lived religion as a practice that encompasses more than personal belief and extends into broader societal structures.

2.4.2 Lived Religion in Practice

Ammerman (2020) advocates for a practice-based study of religion, which sheds light on the ways practitioners express their religious identity, especially when the term "religion" itself is complicated by cultural, legal, or state boundaries. For example, Zunera Ishaq's legal argument was not that her religious practice conflicted with Canadian values; rather, she argued that her religious and Canadian identities were constrained by government policy. A practice-oriented approach thus reveals how religious identities intersect with new civic identities and how practitioners negotiate these intersections. Ammerman points out that three decades of scholarship on lived religion often define it by what it excludes, focusing on personal agency and distancing from formal beliefs, doctrines, institutions, and interpretations (Ammerman, 2020, p. 10). This emphasis on individual agency, as Edgell (2012) notes, underscores how individuals actively shape religious ideas and practices. However, Ammerman cautions that an individualist lens can downplay the roles of traditions and institutions, creating false dichotomies between "authentic" lived religion and "inauthentic" organized religion. This approach may exclude forms of religious practice prevalent in other cultural, national, and social contexts (Ammerman, 2020, p. 11).

Ammerman's work seeks not to critique the study of lived religion per se but to expand it, encouraging a broader field that is inclusive of diverse geographic, institutional, and traditional contexts. She advocates for layering additional analytical dimensions that build upon two decades of lived religion scholarship, emphasizing the interconnectedness of personal religious practices and the broader communities they inhabit. This perspective asks critical questions about how religion is understood and practiced within contemporary society and how these understandings shape legal, ideological, and political landscapes that influence and seek to regulate religious identities. Ammerman (2016, p. 89) argues that lived religion cannot be artificially separated from organized religion, as doing so may lead to reductive narratives that mischaracterize religious practices as purely cultural innovations. Such reductions, as Richardson (2015) warns, may limit understandings of religious freedom and constrain protections offered to those who practice religion outside the dominant framework.

2.4.3 Judicialization of Religious Freedom[14]

The concept of judicialization of politics reflects the growing trend in which courts and the judiciary increasingly arbitrate deep moral and political dilemmas and shape public policy, often taking decision-making authority from legislatures, cabinets, or civil services (Vallinder, 1994, p. 91). Hirschl (2011) contends that this judicialization can be particularly problematic when it influences processes of collective identity formation, nation-building, and the fundamental definitions of the polity (p. 257). Law's expanding reach into social relationships and its appropriation of social conflicts intensifies this effect, embedding these issues within judicial frameworks (Hirschl, 2011; Teubner, 1987; Habermas, 1988).

[14] A portion of this review is reproduced with permission and originally appeared in Alibhai, Z. P. (2021). Regulating sincerity: Religion, law, public policy, and the ambivalence of religious freedom in pluralist societies. In published in O. Breskaya, R. Finke, & G. Giordan (Eds.), *Annual review of the sociology of religion Vol.12: Religious freedom: Social-scientific approaches* (pp. 105-122). Brill.

Hirschl (2011) argues that judicializing such foundational matters relies on three critical conditions: a constitutional structure that supports the judicialization of politics; an autonomous judiciary willing to engage in politically charged issues; and a conducive political environment (p. 258). This judicial expansion imprints itself upon the judicialization of religious freedom, a process that, as Asad observes, is a hallmark of modern liberal governance. Such governance operates less by overt compulsion or negotiation than by enacting "self-discipline," "participation," and enforcing "law" as mechanisms of statecraft (Asad, 2003). This strategy encompasses the legal regulation of the sincerity of belief and practice.

In his article, *Managing Religion and the Judicialization of Religious Freedom*, James T. Richardson (2015) applies the concept of judicialization of politics to argue that, in many societies, the judiciary, rather than legislative or executive branches, now resolves major political issues. In some cases, courts have even assumed the role of "ultimate decider," with the authority to overrule executive decisions and legislation (p. 4). Richardson (2015) introduces the term "judicialization of religious freedom" to describe how courts increasingly serve as arbiters in matters of religious practice. Richardson (2015) argues that courts in several Western nations play a principal role in defining and expanding the scope of religious freedom, thereby shaping its social construction (p. 13). He asserts that "religious freedom is being interpreted in new and different ways," allowing smaller or less widely accepted faiths greater protections under the law (Richardson, 2015, pp. 4-10).

A significant feature of judicialization in this context is the presence of an autonomous judiciary that upholds values of tolerance and religious freedom (Richardson, 2006). The independence of courts helps safeguard minority religions against the impulses of majoritarian politics (Richardson, 2006; Finke & Martin, 2014). Finke and Martin warn, however, that when

judicial independence is compromised by religious or political influence, courts' ability to protect promised freedoms weakens, even when such freedoms are constitutionally enshrined. In Canada, an independent judiciary, in theory, enforces the freedoms guaranteed by the *Charter*, holding the state accountable (Finke & Martin, 2014 p. 701).

Richardson (2015) argues that an independent judicial system is critical for safeguarding minority religious practitioners from two recurrent dangers. First, newer and smaller religious groups usually have lower "status and prestige" than majority groups. Second, key decision makers may be unfamiliar with new and minority faiths and in the process share negative or ill-informed views of the groups and/or their practices. In turn those views can become influential and "hegemonic through negative media coverage" public statements and actions from influential figures and in our case, government officials including the former Canadian Prime Minister. As I discuss in chapter five the Canadian Conservative government defended their ban against Muslim women from wearing the niqab and burqa during the oath of allegiance at Canadian citizenship ceremonies with arguments articulated by three Canadian Muslim organizations: The Muslim Canadian Congress (MCC) and the Coalition of Progressive Canadian Muslim Organizations (CPMO) and Muslims Facing Tomorrow (MFT). All three social organizations claimed to represent "moderate Muslims" and maintained positions that perceive the niqab and burqa as cultural products and not a religious obligation nor a religious freedom right. The implications, as discussed, obscure the historical, religious and cultural assumptions that undergird the way that the "decision makers" such as the government officials collude with dominant religious groups and spokespeople to advance normative intervention.

2.4.4 Religion in Moderation

The conceptual model of the "moderate Muslim "progressive Muslim" emerges in part from a growing body of increasingly fashionable scholarship that appends qualifiers to the term *Islam*, such as "liberal Islam" (Kurzman, 1998), "progressive Islam" (Safi,2003), "moderate Islam" (Ramadan, 2005, 2009). These labels dovetail with and simultaneously give rise to corresponding identities, "liberal Muslims," "progressive Muslims," and "moderate Muslims." At the same time these descriptors serve to create shorthand oppositions, producing counter-identities such as "traditional (conservative) Islam" and "traditional (conservative) Muslim," as well as "fundamentalist," "extremist," or "political Islam" and Muslims." Put more simply, "good Islam" is equated with the "Moderate Muslim," while "bad Islam" is associated with the "Fundamentalist/Extremist Muslim" (Mamdani, 2014). Said (1997) argues that,

> … the slippery concept of "*fundamentalism*," a word that has come to be associated almost automatically with Islam, although it has a flourishing, usually elided, relationship with Christianity, Judaism, Hinduism. They deliberately created associations between Islam and fundamentalism ensure that the average reader comes to see Islam and fundamentalism as essentially the same thing. Given the tendency to reduce Islam to a handful of rules, stereotypes, and generalizations about the faith, its founder, and all its peoples, then the reinforcements of every negative, fact associated with Islam- its violence, primitiveness, atavism, threatening qualities- is perpetuated. And all this without any serious effort at defining the term "fundamentalism," or giving precise meaning either… (Said, 1997, p. xvi)

Several scholars locate the development of the Good Moderate Muslim and the Bad Muslim" identity package within a longer colonial and imperial history (Karim 2014; Kundnani 2014; Ramadan 2011; Selby et al., 2018). Kundnani (2014) argues that in British political discourse the dichotomous categories of "moderate" and "extremist" Muslims can be traced to colonial India in the early twentieth century. Kundnani (2014) cites colonial era police reports that distinguished between extremists as "militants who favoured full independence" from colonial rule and the moderates, were those who favored administrative reform under colonial rule (pp.

68-69). Ramadan (2011) simplifies the historical character of the good/moderate Muslim as those who either collaborated with the colonial enterprise or accepted the values and customs of the dominant power. The rest the "bad" Muslims, were those who resisted, religiously, culturally, or politically and became in the act of resistance systematically denigrated and dismissed as the "other" and represented as dangerous. Drawing from this history Cader (2013) simplifies the contemporary complexity of the Good and Bad Muslim construct as follows: "Bad Muslims – i.e. "extremists" or "fundamentalists" – are those with proclivities towards terrorism and misogyny, sartorially demonstrable through veils and beards (Cader, 2013, p. 72) Good Muslims – i.e. "moderate" and "progressive" and "integrated" are hyper-secularist in their understanding of gender equality and are uncritically patriotic" (Cader, 2013, p. 72). According to Filali-Ansary (2003), this framing establishes new distinctions between "good Islam" and "bad Islam," fostering divisions and partisan attitudes. These divisions perpetuate the notion of a singular, monolithic Islam, which fails to reflect the diverse realities of over one billion Muslims worldwide (Filali-Ansary, 2003, p. 20).

2.5.1 Citizenship

The institution of Canadian citizenship is deeply rooted in a history of dispossession, violence, and racial and religious superiority. This history redefined insiders (Indigenous peoples) as outsiders and transformed outsiders (colonizers and settlers) into insiders (Thobani, 2007) or "old stock Canadians." Thobani (2007) critiques this transformation through her analysis of the Canadian national myth, which she argues ties Christianity to Canadian national identity as part of a hierarchical, master narrative. This narrative fabricates the "exalted national subject," a figure that embodies the nation's ideal characteristics while concealing the colonial violence foundational to its creation:

> The figure of the national subject is a much venerated one, exalted above all others as the embodiment of the quintessential characteristics of the nation and the personification of its values, ethics, and civilizational mores. In the trope of the citizen, this subject is universally deemed the legitimate heir to the rights and entitlements proffered by the state... in its nationality, this subject positively commands respect as the locus of state power (Thobani, 2007, pp. 3-4).

According to Thobani (2007) this master narrative fosters identity politics rooted in sameness, whereby difference especially religious difference is rendered problematic. This dynamic aligns with Arjun Appadurai's argument that such identity politics represent an attempt by a "threatened majority" to monopolize the nation's identity, aiming to preserve the "purity of the national whole" (Appadurai, 2006, p. 53). For over a century after Confederation, and until reforms in the 1960s and 1970s, Canadian citizenship was explicitly tied to white racial identity and Christianity.[15] Access to citizenship was structured as a triangulated system: first, settlers and future nationals were those considered racially and culturally suitable, second, Indigenous Peoples included only upon relinquishment of their cultural identity and status, and third the non-preferred races were immigrants marked as perpetual outsiders or strangers (Thobani, 2007, p. 195). Indeed, Winter (2013) highlights that one of the key goals of the *Canadian Citizenship Act of 1947* was to place "Canadians by birth" and "Canadians by choice" on equal legal footing. This meant that natural-born and naturalized citizens would hold equal status, with identical rights and responsibilities (Winter, 2013, p. 97). Winter (2013) traces four phases of Canadian citizenship, noting that the current *Citizenship Act* (R.S.C. 1985, c.C-29) modernized the 1947 Act to reflect demographic shifts and align with evolving national identity strategies. Winter identifies two significant objectives of the 1977 reforms:

> Improved Access and Equal Treatment: Citizenship became a right for all qualified applicants, rather than a privilege, removing ethnic biases in access to citizenship.

[15] Bramadat and Seljak (2008) argue that during this time, Christianity referred to majoritarian Christianity: mainline Protestant churches such as Anglican, Presbyterian and United and to a limited extent the Roman Catholic Church.

> Legal Equality: The Act reinforced the identical rights and responsibilities of natural-born and naturalized citizens, eliminated preferential treatment for British nationals, and emphasized gender equality (Winter, 2013, p. 112).

This legislation marked an effort to redefine Canadian identity and integrate naturalized citizens as full members of the national community. The current *Citizenship Act* (R.S.C. 1985, c.C-29) modernized its 1947 predecessor, reflecting a shift in Canada's demographic realities while also advancing a more strategic vision of national identity. Winter describes the 1977 *Citizenship Act* as a "crown jewel" among policies that helped build Canada's international reputation as a progressive nation (2013, p. 100). A key milestone she identifies is the Multiculturalism Policy (1971). Prime Minister Pierre Elliot Trudeau (1968-1979; 1980-1984) declared "multiculturalism within a bilingual framework" as official state policy, positioning it as the essence of Canadian identity (Winter, 2013, p. 101). Canada became the first country to implement multiculturalism as an official policy, further distinguishing its national identity. Despite these advancements, scholars critique how subsequent legislative and policy changes have re-inscribed exclusionary practices. Razack (2008) similarly argues that these narratives intertwine nationalism with race fiction, legitimizing the power of the state to define who belongs to the national kin group and who does not. The distinction between "old-stock Canadians" and others, as articulated by former Prime Minister Stephen Harper, exemplifies how visual markers became a litmus test for belonging. The Conservative governments' invocation of the Canadian family as an ideological construct must be understood in this context. This trope draws on oppressive histories to reinforce boundaries of inclusion and exclusion, while perpetuating a vision of citizenship rooted in racialized and religious hierarchies. For example, the renationalization of Canadian citizenship under the Conservative government began in 2008,

with amendments to the 1977 *Citizenship Act*. These amendments, including the first-generation limitation clause, redefined the markers of citizenship privileging descent and territory. Harder (2022) underscores how the discourse around "lost Canadians" invested citizenship with notions of ancestral inheritance and family business, further entrenching ideas of whiteness and Christianity as cornerstones of Canadian identity.

2.5.2 Citizenship is Gendered: Zunera's Dilemma

Historically, the public and private spheres have been deeply gendered constructs. The public sphere, associated with men, was imagined as a domain of rational, reasoned, and civilized thought, instrumental in the formation of organized society. In contrast, the private sphere, associated with women, was framed as natural, particular and devoid of reason. The ideal of universal citizenship, premised on the equality of citizens in the public sphere, mirrors this divide. It creates a homogeneous citizenry defined by the normative values of the dominant group, presenting these values as general and universal. This process forces marginalized groups to conform to the dominant group's normative standards, effectively erasing their distinct identities. The construction of the private sphere as a realm of difference and particularity, ostensibly free from state interference, has been both historically and contemporarily a gendered fiction. The private sphere has never truly been "private" for women and has always been shaped by hierarchical social relations (Davis,1997, p. 6). This public-private divide has historically restricted women's access to full citizenship and continues to impede certain groups today. The state continues to perpetuate gendered notions of public and private spheres that historically denied women full citizenship rights. The unmediated notion of equality as sameness, subsumed in universalist language, serves as an exclusionary mechanism, obstructing any meaningful discourse on diverse modes of "being" a Canadian citizen. In practice, the Canadian government

influences public perceptions of women who wear the niqab or burqa, shaping how they are treated within the nation. For instance, the government's ban on face coverings during the recitation of the oath of allegiance at Canadian citizenship ceremonies frames niqab or burqa-wearing women as transgressing the norms of particularity and difference. Within this framework, the state assumes the role of a civilizing force, casting itself as a benevolent patron transforming these women from their so-called backward, tribal practices into the rational ideal of the public sphere's reasoned subject. The public, political sphere has historically been distinguished from the private sphere through theoretical constructs that privilege the former as the arena of rationality and universalism.

Pateman (1988) critiques the division of the public and private spheres, arguing that citizenship itself is a patriarchal category shaped by masculine norms. While women in liberal democracies now hold formal citizenship, their inclusion occurred within structures of patriarchal power that continue to devalue women's contributions and economic parity. Pateman (1988) notes that the historical frameworks defining citizenship have left women with two choices: assimilate into male norms and become full citizens or remain relegated to undervalued domestic roles.

Mary Wollstonecraft's *Vindication of the Rights of Woman* (1792) laid the early groundwork for addressing these tensions. Wollstonecraft (1792) argued that women's differences from men must be recognized by law rather than subsumed under a male-defined notion of equality. Carole Pateman (1988) identifies this as the "Wollstonecraft dilemma": women must either conform to male norms to achieve citizenship or demand recognition of their distinct capacities, thereby challenging the universality of patriarchal citizenship. Pateman (1988) contends that resolving this dilemma requires a complete reimagining of citizenship itself,

rejecting gender neutrality as insufficient and acknowledging the distinct social and political significance of women's bodies. Pateman (1988) has argued convincingly that the modern social contract, foundational to nation-states, is underpinned by an implicit "sexual contract." According to Pateman (1988), the emergence of modern democracy necessitated the total political erasure of women. She challenges the assumption within political theory that the public sphere operates independently of the private sphere, asserting instead that "the meanings of 'private' and 'public' are mutually interdependent; the 'public' cannot be comprehended in isolation" (Pateman, 1988, p. 3). This interdependence is often ignored, leading to the assumption that the public sphere and the categories that comprise it are sexually neutral and universal. For Pateman (1988), this ignorance creates a paradox for women. To demand equality is to accept the patriarchal conception of citizenship, requiring women to become like men. Conversely, to insist that women's distinctive attributes and activities be valued within citizenship is to demand the impossible, as patriarchal citizenship fundamentally excludes these differences. As a solution, Pateman (1988) proposes a "sexually differentiated" conception of citizenship that recognizes women as women, acknowledging their specificities rather than subsuming them under male norms.

Building on this perspective, Narayan (1997) critiques the universality implicit in such frameworks. She argues that "exclusion" and "inclusion" are not pure opposites. Narayan (1997) points out that feminist analyses which fail to address their applicability to "women on the margins" (p. 12) often consider themselves universally relevant, creating a problematic form of inclusion through exclusion. This observation is particularly salient for women of color or those situated within "Third World women" discourses, where differences in class, race, ethnicity, and religion are often flattened in favor of generalized categories like "Western women" or "Third

World women" (p. 84). Mouffe (1999, pp. 539-542) advances these discussions by challenging the binary of equality versus difference. She emphasizes that categories like "woman," are constructs and that the central question must focus on how such categories are produced within various discourses. Mouffe (1999) interrogates how sexual difference becomes a significant distinction in social relations and how subordination is constructed through these distinctions. Rejecting the reification of "woman" and "man" as homogeneous entities, Mouffe advocates for addressing the multiplicity of social relations in which sexual difference is constructed. This perspective renders the equality-versus-difference debate meaningless, and she calls for a focus on specific and differential forms of resistance to subordination.

Narayan (1997) and Mohanty (1988) extend this critique, noting that the tension between equality and difference, inclusion and exclusion, becomes even more pronounced in the context of marginalized women of color. Writing from the Indian context, Narayan (1997) highlights how failure to account for contextual variations within Third World communities produces stark contrasts between representations of Western and Third World women. Narayan (1997) cautions against generalizing categories like "American women" "European women" without acknowledging internal heterogeneities such as class, race, ethnicity, sexual orientation, and religion. Yet, she argues that this caution is often overlooked when representing "Third World women," reinforcing essentialist and reductive narratives. The Canadian government's over-reliance on the visible religiosity of niqab-wearing Muslim women as a marker of inclusion or exclusion reflects this patriarchal and essentialist logic. In her submission to the Federal Court and her opinion piece in *The Toronto Star*, Zunera Ishaq powerfully addressed these dynamics. Ishaq critiqued the divisive rhetoric used by the Canadian government under Prime Minister Stephen Harper, which sought to position women like her as fundamentally incompatible with

Canadian citizenship. She rejected the government's framing of her identity and choices as outside the realm of Canadian values, asserting instead that Canadian citizenship is a lived, daily experience. Through her words, Ishaq demonstrated an acute awareness of how state policies and rhetoric attempt to exclude women like her from the full range of citizenship rights and practices. She resisted the state's construction of her identity and citizenship as passive, making clear that her understanding of citizenship was rooted in active participation and engagement.

2.5.4 Lived Citizenship

The conceptual model of 'lived citizenship,' maps out citizenships on the ground and the ways that citizens actually live out their day to day lives (Desforges et al., 2005, p. 447). In a similar way, lived citizenship draws from lived religion by beginning with what people do, experience, practice, and engage with in the everyday. Contemporary scholarship on lived citizenship conceptualizes, reframes, and focuses on the lived experience that the meaning and construction of citizenship has in peoples' lives (Hall & Williamson, 1999, p. 2). While, lived citizenship conceptually distances itself momentarily from conceptualizing citizenship solely as status, the significance of which is acknowledged as shaping the political, economic, and moral resources and conditions of citizens (Staeheli, 2011). Lived citizenship on the other hand is about people's daily, mundane lives that draws attention to moments when, regardless of status and substance, subjects constitute themselves as citizens through their feelings, acts and practices of citizenship. Lived citizenship addresses the often overlooked emotional and sensory aspects related to being a citizen. Feelings associated with belonging or not belonging are inextricably linked to the experience of both being and feeling a citizen (Kallio, 2020). This approach, therefore, recognizes the deeply storied and embodied experience of being a citizen in all her subjecthood, positionalities and identities. Lived citizenship, in this understanding, is determined

"as acts that can occur, either individually or collectively, that are intrinsically concerned with shaping the society that we want to live in" (Vromen, 2003, pp. 82-83).

2.6.1 Muslim Women

At the outset of this thesis, I noted that debates and discussions over "veiling" and "unveiling" Muslim women are fraught with complexities, tensions, and contradictions. These tensions have spanned early Muslim communities, colonial and imperial periods, movements of decolonization, and contemporary Muslim state formations. It is crucial to understand that the symbol of "the veil" as "oppressive" and "backward" is an enduring orientalist construct. This perception frames Islam as a monolithic, medieval, and regressive religion that subjugates women. Contemporary views often reproduce this colonial narrative portraying the burqa and niqab as symbols of oppression embedded in political debates, legal arguments, and public discourse. When knowledge is shaped within a matrix of power relations, its contemporary manifestations retain those same imprints. Recalling Edward Said's *travelling theories* and Ruth Lister's (2003) argument that colonial history can invade the present, the rhetoric informing the Conservative government's ban can be situated within the same discourses that sustain colonial logic, as this thesis identifies. These discursive patterns have significant implications for contemporary definitions of religion and its role in Canadian public life.

Leila Ahmed (1992), in *Women and Gender in Islam: Historical Roots of a Modern Debate,* explores how colonial powers represented the veil as emblematic of the backwardness and inferiority of Islam. This narrative, Ahmed (1992) argues, was internalized by colonial elites and some segments of the colonized population. Ahmed (1992) highlights how women's bodies became central to the construction of national and religious identities. Gendered nationalist discourses persisted in both colonial and postcolonial contexts and shaped debates about veiling

and unveiling. Muslim feminist Nabawiya Musa (1886–1951) resisted these narratives, critiquing both British colonial powers and local elites for dictating women's attire. She argued that men advocating either for veiling or unveiling were united in their despotism by imposing liberation or oppression upon women without their consent (Ahmed, 2011). Ahmed's (2011) concept of "orientalist cargo of meanings" highlights how colonial constructions of Islam as oppressive, barbaric, and regressive were projected onto the bodies of Muslim women. The perception of face-covering as oppressive emerged from a colonial impulse to dominate (Bullock, 2002). During the colonial and imperial age, Western powers encountered what they termed "the veil," constructing it as a symbol of backwardness, oppression, and Islamic inferiority. This symbol became central to colonial rhetoric, presenting veiling as a practice that degraded women and impeded progress. British Consul-General Lord Cromer in nineteenth-century Egypt, for example, argued that veiling hindered Muslim women's moral and intellectual development. Cromer's calls for emancipation, however, were hypocritical; as president of Britain's Men's League for Opposing Woman Suffrage, he vehemently opposed women's rights at home. His rhetoric demonstrates how colonialist discourses about veiling were less about liberating women and more about justifying Western superiority and control (Valenta, 2006).

This legacy persists today in policies regulating or banning face coverings, such as the niqab and burqa, particularly in Western nations (p. 129). These debates echo colonial narratives but are now inflected with contemporary anxieties over integration, secularism, and national identity (Sharify-Funk, 2011). The regulation and control of niqab-wearing women reflects broader societal fears about religion and difference, recasting old colonial ideas in modern political contexts (Bakht, 2021). The Conservative government's delegitimization of the niqab as a religious practice illustrates the enduring power of these colonial narratives. By framing the

niqab as a symbol of oppression and cultural backwardness, the government reinforced exclusionary notions of Canadian identity. This framing not only marginalized niqab-wearing women but also perpetuated an orientalist lens that ignores the diversity and agency of Muslim women. It is essential to disentangle these debates from colonial frameworks and recognize the niqab as a site of complex and nuanced meanings. Rather than reproducing reductive binaries of liberation versus oppression, the discourse must engage with the multifaceted realities of Muslim women's lives, identities, and choices both within Canada and globally. This thesis, while focused on Canadian discourses, remains mindful of the broader historical, social, and political contexts that shape debates about veiling and unveiling in Muslim-majority countries.

In *The Politics of Piety: The Islamic Revival and The Feminist Subject*, anthropologist Mahmood (2005) explores some of the conceptual challenges that women's involvement in the Islamist Mosque movement poses to the normative and ideological underpinnings of feminist theory and to secular-liberal thought. Mahmood (2005) argues that feminist and liberal conceptions of freedom and agency are both political and prescriptive projects. Her main argument is that if the desire for freedom from, or subversion of, norms is not an innate desire that always motivates all human beings but is profoundly mediated by cultural and historical conditions (Mahmood, 2005, p.14). She argues that agency is a discursive practice is neither universal nor innate and can become productive in a diversity of ways that do not always follow the binary logic of resistance and subversion. In some ways, agency can be less about social change and more about self-refashioning and making possible particular kinds of subjects (p. 188).

Given this, Mahmood argues that we must start to look at different ways that operations of power construct different kinds of bodies, knowledge and subjectivities whose trajectories do

not rely on normative assumptions of libratory politics. At the outset, *The Politics of Piety* provides an extensive critique of the liberal feminist approach to studying and defining concepts of agency and freedom. Mahmood (2005) argues that liberal feminists theorize agency and freedom in terms of resistance to social and patriarchal norms. In this framework, agency is only conceived in terms of subversion or re-signification of social norms. Similarly, agential ability is located only within those operations that resist the dominating and subjectivating modes of power (Mahmood, 2005, p. 10). Therefore, agency and freedom conceived in any other way, shape or form is not real agency or even agency. In this way, individuals who accept or seemingly 'act' within these social practices or norms become viewed as having been socialized by the patriarchal and oppressive societies they inhabit. They are in effect socialized into their own oppression. Mahmood (2005) is critical of Western liberal feminists for failing to contest the universality of desire that is central to liberal and progressive thought—and presupposed by the concept of resistance it authorizes—to be free from relations of subordination and, for women, from the structures of male domination. She challenges the concepts of freedom and agency as fixed notions that are presumed as active forces only when enacted by the agent against or in resistance from male power and authority. From this standpoint, she argues that, if the ability to effect change in the world is both historically and culturally specific then the meaning of agency cannot be fixed in advance. Rather, it must emerge through an analysis of particular concepts that enables specific modes of being (Mahmood, 2005, p. 112). Mahmood uses her ethnographic account of an urban women's mosque movement to critique the liberal feminist conception of agency as those actions that resist society and instead argues that we must conceive agency not as a synonym for resistance to relations of domination but as a capacity for action that historically specific relations of subordination enable and create (Mahmood, 2005,

p.112) The urban women's mosque movement is part of a larger Islamic Revival in Cairo, Egypt. For two years (1995-1997), Mahmood (2005) conducted fieldwork with the movement, in which Muslim women from a variety of socio-economic backgrounds study and teach each other Islamic scriptures, social practices, and forms of bodily comportment considered central towards the "cultivation of the ideal virtuous self" (p. 2). For example, Asad critiques anthropologists and scholars who define religion and rituals as "symbolic activities unrelated to the instrumental behavior of everyday life." Rather, for the women Mahmood interacted with, rituals become the means towards the training and realization of piety in the totality of one's life. From this perspective, the women define *ibadat* as an endeavor towards manifesting Islamic virtues in one's complete life, whereas ritual as a *practice* is merely Islamic in form and style but does not serve the higher purpose towards the cultivation and realization of the virtuous self.

As such, outwardly bodily gestures and acts (such as the veil) are indispensable aspects of the pious self in that the self can obtain its particular form only through the performance of the precise bodily enactments and the sense that the prescribed bodily forms are necessary attributes of self. In order to cultivate the necessary attributes of self the Islamic virtue of modesty must become a lived and embodied virtue in order to be realized. Many women of the mosque movement believe that donning the veil expresses "true modesty" and is the means through which modesty as a virtue is attained. For them, modesty is the norm that they seek to cultivate, and the veil is the bodily form of that norm. Therefore, the veiled body becomes the essential means from which the virtue of modesty is both created and expressed (Mahmood, 2005, p.23).

2.7.1 Method and Methodology

In the twenty-first century, nowhere do colonial and imperial history, orientalist notions and governmentality, intersect more fully than discourses that represent Muslim women who veil

(hair or face) as oppressed, subjugated and as threats to western conceptions of gender equality, freedom, agency, secularism, and national values (amongst others). These discourses encompass, organize and structure a complex of social, political, and cultural norms, and knowledges that shape contemporary international politics and policies from immigration, security measures to peaceful co-existence and integration debates in pluralist societies. The interpellation of language and discourse brushes or chafes with ideas, representations and constructions from the past that become engaged in a continuum of renewal in the present. The methodological approach of this dissertation integrates genealogical analysis, critical discourse analysis, and Edward Said's concept of travelling theory. Genealogical analysis enables a tracing of the historical contingencies that are resurrected or produce contemporary discourses. Critical discourse analysis, as framed by Burr (2003) emphasizes the destabilization of taken-for-granted knowledge, the cultural and historical specificity of discourses, and the understanding of knowledge as socially sustained. Drawing from this, Edward Said's "travelling theory" allows for the examination of how historical narratives, particularly colonial and orientalist constructs are transported century after century, adapted and reconstituted across time and space (Karim, 2000). This integrated framework informs both the selection and analysis of materials. Specifically, I chose legal cases, legislation, parliamentary debates, government statements, and contributions from religious organizations because they represent critical sites where discourses of citizenship, religion, and national identity are constructed, contested, and normalized. The genealogical method situates these materials within a broader historical and cultural context, while CDA provides the tools to deconstruct the ways these discourses frame norms and deviance, belonging and exclusion.

In this dissertation, I used a composite methodological framework that combines genealogical analysis, critical discourse analysis, and traveling theories. This intersection allows me to examine how discourses are historically produced, how they function to sustain normative meanings, and how ideologies migrate and reconfigure over time and across cultural contexts. Genealogy traces the historical roots of current discourses; CDA, guided by Burr's (2003) work, helps reveal the constructed nature of knowledge and the role of social power in sustaining it; and traveling theories, via Said, track how colonial and orientalist ideas are adapted into new national narratives. Together, these approaches shaped both what materials I selected such as court rulings, legislation, public discourse, and community responses and how I analyzed them. I focused on identifying discursive patterns and silences that construct niqab-wearing women as symbols of oppression. This framework ultimately enables a deeper analysis of how law and political discourse construct citizenship, identity, and religious legitimacy in Canada.

The aim of this study is to examine the representation, management, and regulation of religion in the Canadian Conservative government's 2011-2015 face-covering ban during the oath of citizenship. My research situates this policy as neither entirely divorced from historical precedents nor completely shaped by them. To achieve this, I draw on a Foucauldian understanding of discourse, which Stuart Hall (1997) defines as "a group of statements which provide a language for talking about a way of representing the knowledge about a particular topic at a particular moment" (Hall, 1997, p. 44).

2.7.2 DISCOURSE(S)

Discourse is an analytical concept that acknowledges the active role of language in the production of knowledge and power through text and talk, genre and representation. To that extent, discourses are "systems of knowledge" (Fairclough, 2001, p. 235) "that systematically

form the objects of which they speak" (Foucault, 1969, p. 84). However, although this is a central thread—that discourse is productive—producing the objects of which they speak—it is not the only one. It is, also, *constitutive* constructing a version of the truth as real. Discourse, "causes a narrowing of one's field of vision, to exclude a wide range of phenomena from being considered as real, worthy of attention, or as *even* (emphasis mine) existing." (Mills, 1997, p. 51). In a parallel fashion, Burr's (2003) definition of discourse illustrates the complexity and nuances of a discursive understanding of power: "discourse refers to a set of meanings, metaphors, representations, images, stories, statements and so on that in some way together produce a particular version of events. It refers to a particular picture that is painted of an event, person or class of persons, a particular way of representing it in a certain light" (2003, p. 64).

From Burr's (2003) definition of discourse, one can fully understand the profound significance of Foucault's conception of discourse and how I understand discourse to operate in this thesis. That said, this equation between discourse and power cannot be overstated since both are generative, productive, and both can be resisted and transcended. Implicitly, therefore, power is constituted through discourses—in the construction of knowledge and what counts as knowledge. Jean Carabine points out that discourses can define and establish what is the 'truth.' The effects of which can cohere in some way to produce, transmit and implant both meaning and effects in the real world (Carabine, 2001, p. 268) which influence the conditions that provide "common sense" making. What Carabine calls discourses that 'hook' into normative ideas and common-sense notions that produce shortcuts into ideas that convey messages about objects they define. The crucial point is that discourses contain messages and the rules of conduct, what Foucault refers to as the "conduct of conduct" (Carabine, 2001, p. 277) tacit rules that lay the framework for the structures of normalization. Moreover, "discourses convey messages about

what *is* [emphasis mine] the norm and what *is* not [emphasis mine]. In effect—they establish the norm" (Carabine, 2001, p. 277).

For example, during the 2015 Canadian Federal election campaign, the Prime Minister linked national values to religion, positioning this association as a marker of authenticity for so-called 'old stock Canadians.' This approach served as a technique of governance, subtly enforcing specific religious practices and ways of being Canadian. The implications of this are significant, as the power to define identities, is mediated through a 'desired norm' (1978). When normative status is assigned to individuals or groups, normalization establishes the standard by which all are judged, measured, and compared, defining who is deemed to conform or deviate. However, normalization not only produces homogeneity but also sets the rules of conduct' that are shaped and upheld by the dominant discourse. The profundity of Foucault's conception of discourse as productive, constitutive, and generative points to the "interconnected triad" or cross pollination between discourse, knowledge and power. Foucault's conception of discourse as productive, constitutive, and generative highlights an 'interconnected triad' between discourse, knowledge, and power. This triad forms the foundation of my research approach and guides my interpretation of data. To conduct this study, I employ two methodological approaches: genealogical discourse analysis and critical discourse analysis.

2.8.1 Genealogy Discourse Analysis

At the outset, I must note that Foucault did not provide specific 'rules' on how to do a genealogy nor a "step by step" guide (Carrabine, 2001 p. 268). According to Carrabine, Foucault provides researchers with "a lens through which to undertake discourse analysis and with which we can read discourse (p. 268). The prescient power of this lens reads discourse as Foucault argues through a lens imbued with power and knowledge. It is here where my choice of theory,

method and methodology intersect. The prescient power of orientalism is the capacity to define the very object, thing, person, community or civilization it speaks for and in turn, as Foucault argues that knowledge is produced as a form of power. Therefore, discourses cannot be analyzed only in the present, because the power components and the historical components create such a tangled knot of shifting meanings, definitions and interested parties over periods of time (Powers, 2001).

Unfortunately, modern debates surrounding the burqa and niqab continue to be shaped by the gendered colonial discourse on the veil. Contemporary views often reproduce colonial rhetoric that perceives the burqa and niqab as symbols of oppression and subordination. Yet at the same time, genealogy discourse analysis is about writing of the past using the concepts and concerns of the present per se but to use historical materials to engage with the power dynamics active in the present. Avoiding the pitfalls of repeating or becoming frozen by the narratives of the past begins, with documenting the historical conditions of the existence of the discourse. It is in such a manner, then, that I turn to the function of genealogical discourse analysis in this thesis as developed by Michel Foucault in his landmark study on sexuality and the discourse which produces its historical meaning. Following this, this thesis then, interrelates Foucault's main arguments from Discipline and Punish and The History of Sexuality. The *dispositif,* a complex, heterogeneous cooperative of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions that collaborate as a grid or system of relations that can be established between these elements (Foucault, 1980, p. 194). What emerges here is the pivotal role that genealogical analysis as a framework of the way "history of the present" becomes visible and that discourse, in the example from Foucault's study on sexuality, the object is "spoken about." As a corollary,

Foucault argues, that the "object" then, becomes *represented*; it is this representation that mediates and influences the way society treats the "object" in question. What follows from this as Foucault points out, is to analyze the patterns and effects of power that generate or engender specific power relations by what was said. This thesis follows Foucault, that the aim of discourse analysis is not the disclosure of an ultimate "truth," but the exposure that every discourse is historically, socially and culturally produced and interpreted. Examination of context establishes to be "spoken about" as part of larger historical narratives of social, cultural and gender discourses that this thesis traces and analyzes as a malleable tool for producing particular (legitimate) forms of religion and identities as acceptable for public space and the "privilege of Canadian citizenship" (Kenney, 2011). The distinctive aim of genealogy discourse analysis is to explore how meanings and practices have operated in the past, "genealogy is about tracing the history of the development of knowledges and their power effects so as to reveal something about the nature of power/knowledge in modern society" (Carabine, 2001, p. 276). In other words, performing a genealogy interprets the historical influences of power that can produce totalizing narratives.

Traynor (1997) cautions that there is a danger in exchanging one discursive identity for another because it can create new oppressions. Totalizing narratives have, in Traynor's words, "an inhibiting effect." To countermand this effect, one must seek the conditions or the "descent" (Foucault, 1991, p. 82) that made possible the discursive processes practiced in a specific discourse (Kusch, 1991); the "origin" story that provides the fertile ground for the basis of identifying the historical conditions of which contemporary power relations depend on and bring into being. As a means of "effective history," genealogy disturbs what was previously thought immobile; it fragments what was thought unified (p. 82) and troubles associations and lineages

that we contemporarily take for granted to "re-establish the various systems of subjection: not the anticipatory power of meaning but the hazardous play of dominations" (Foucault, 1991, p. 91). To that extent, it becomes necessary to turn towards the process of the "power analytic" that analyzes the effects of power related to the functioning of discourse, in other words, tracing the effects of the residue of the discourse in contemporary time.

The elements of conducting a power analytic that are relevant to this thesis involves a careful reading with a discerning eye towards documenting discursive patterns of meaning, contradictions and inconsistencies that illuminate the opaque contours of power relations. This is done through detailed analysis that identifies language processes and social practices that people use to constitute their subjective existences and to construct their understanding of social life (Weedon, 1987, p. 467). This is important since the focus on the semantic criteria accentuates how subjectivity can be formed, depended, facilitated through, and impeded by power relations. Above all, power analytics lays bare the social production of identities and institutional orders that most often are assumed to be natural indeed a power analytic shows how social power is constructed, circulated, and played out (Seidel, 1993, p. 175). It is here where the power analytic is integral to a genealogical discourse analysis since the history embedded in organizing social practices uncovers the social processes that are concealed by hegemonic essentialist discourses which implicate these discourses in this formative social process (Seidman, 1992, p. 70).

Rawlinson (1987) outlines that a genealogy is "an analysis of the historical emergence of a system of notions and rules for the construction of meaningful statements, justifications, and the concrete material realities and procedures for determining truth and falsity in discourse." During the 2015 Canadian Federal election campaign the Prime Minister asserted that Canadians including prospective Muslim women who wear the niqab held values that "conflict with

Canadian values," and could not belong to "the Canadian family." However, Zunera Ishaq's legal argument was not that her religious convictions conflicted or competed with Canadian values. Rather, she contended that her religion and her Canadian values were being prevented from coexisting within a diverse society due to the government's guideline, which infringed upon her rights as guaranteed under section 2(a) of the *Canadian Charter of Rights and Freedoms*, affirming the fundamental freedom of conscience and religion.

Discourses do not simply "disappear" over the course of space and time but remain resilient as patterns of historically variable modes of specifying socially constructed knowledges and truths in a group of ideas, patterns and ways of thinking (Carabine, 2001, p. 317). Tracing these threads of inter-related Canadian history provides my analysis with the capacity to "step outside" the data (Carabine, 2001, p. 307) and identify larger historical discourses that I use to form the basis from which distinctions unify identities instead of divide.

To put it more succinctly, genealogy discourse analysis operates in this thesis serves to destabilize the assumed "truth of things" that underline totalizing narratives and historical discourses challenging the conditions through which such discourse produce "sense making." The caveat, however, is that like travelling theories discourses are fluid and porous capable of absorbing elements of existing social and political rhetoric. Thus, "spoken about" reflects a convergence of historical discourses that uncritically slip into contemporary governance making substantive claims. The central task of discourse analysis, therefore, is to destabilize dominant structures and expose their power effects and ideologies; ideologies that are otherwise obscured, naturalized, and rendered stable in the production of meaning.

2.8.2 Critical Discourse Analysis

Critical discourse analysis focuses on the mutation and reshaping of language around new meanings and in new contexts that includes an explicit focus on the construction and maintenance of ideology and power relations (Granholm, 2013, p. 49). The nature of this then, can be brought into clearer focus by seeing the various strands and themes that are made visible through critical discourse analysis and genealogical discourse analysis. In so doing, both methodologies position me as a researcher with the best methods to excavate historical discourses that reveal themselves as more than simply narratives of history but as structures of power that use language as a medium of domination and social force that legitimize relations of organized power (Habermas, 1977, p. 259). This thesis presupposes that narratives and representations are historically and socially located. Underpinning this thesis is the examination of legitimations of power relations through language and ideology that connect to other elements in the social world.

Fairclough (2001) argues that critical discourse analysis reveals how discourses and texts reflect social elements. From this perspective, Fairclough (2001) furthers that, "what is going on socially is, in part, what is going on interdiscursively in the text (p. 240). Critical discourse analysis involves closely examining language *in* action to shed light on the connections that are often concealed between language and other elements in the social world. As I will demonstrate, the Prime Minister and his Ministers use of specific signifiers such as the niqab belonging to "those tribal societies," and part of an "anti-woman culture" underlines what Foucault frames as the "truth of the matter." Foucault argues that the "truth of the matter" refers to the truth as the ensemble of rules that distinguish the truth from the false attaching specific effects of power to what is perceived as true. More precisely, what is declared "true" becomes infused with *doxic*

beliefs as Bourdieu argues are those that operate below the level of consciousness and makes them implicit with the spirit of the language without the actual use of the words, they are self-evident taken for granted beliefs and travel unchallenged as "common sense." The "common sense ideology" conceals traces of past discourses (re-produced, re-affirmed, and re-enacted) that create an intuitive sense of naturalness and intelligibility. This intelligibility frames one nation as civilized against another as uncivilized by representing the world as governed through natural essences suggesting that nations, genders, people, religions, social systems and institutions as stable, unchanging and familiar (Richter-Montpetit, 2007).

The realm of familiarity represents situations as if they occur in a world filled with familiar objects and threats with their historical contexts concealed by the nation, presented in familiar frames that act as modes of belief. These constructed beliefs define who is considered civilized and who is uncivilized (Richter-Montpetit, 2007, p. 46). This 'mode of belief' has its history in colonial and imperial missions shaped by an orientalist imagination. It further fuels Canadian anxieties about Muslims within the nation, while also marginalizing and excluding women. Critical discourse analysis plays a crucial role by bringing into existence the interworld of language providing a clearer view of the social world "out there" (Fairclough, 2001). From this vantage point, critical discourse analysis provides the best method for me to examine competing discourses in the themes of religion, citizenship, national values and gender within law and legal texts, public statements from political actors, debates in the House of Commons of Canada, media, and polling data.

The key to critical discourse analysis is the tensional character or moments of strife within texts which serve "sites of struggle." These struggles, often concealed at first read emerge through careful analysis that reveals echoes of history, divergent discourses and competing

ideologies vying for dominance. What emerges here is the key focus of critical discourse analysis which is, the pivotal role that power plays as a central condition in social life and its nebulous role as a discursive force that produces knowledge and shapes truth within and through text (Said, 1978). A paradoxical feature of Foucault's conceptualization of power and his genealogical approach to history is the necessity to rethink the widespread tendency to equate power solely with negativity and oppression. Foucault argues that "we must cease once and for all to describe the effects of power in negative terms: it 'excludes,' it 'represses,' it 'censors,' it 'abstracts,' it 'masks,' it 'conceals.'" Instead, Foucault emphasizes that power is inherently productive "power produces; it produces reality; it produces domains of objects and rituals of truth" (Foucault, 1977, p. 194). It bears repeating that Göle argues that a fundamental aspect of regulating and banning certain religious practices among Muslim women is the presumption that they are included in the discussion or the debate. Foucault suggests that within power relations, there is a space for resistance and freedom from domination where individuals and groups can pursue their interests by surpassing and transforming existing power relations. As previously mentioned, claiming and making space for the possible (Aga Khan, 2002; Beaman, 2017; Nancy, 2007) is essential.

Given these insights, Foucault lays bare the normalizing power or regulatory ensemble of what he terms the "*dipositif*," a complex, heterogeneous cooperative of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions that collaborate as a grid or system of relations that can be established between these elements (Foucault, 1980, p. 194). The methodology and theoretical framework I employ does not focus on searching for the origins of the discourse to connect it to the present day. But rather, I trace the circulation of historical

narratives as discourses for the exercise of power and knowledge—an imperative that manifests in specific and strategic forms within political, public, and legal discourse which become networked in a particular way to constitute an "order of discourse" (Fairclough, 2001, p. 235).

2.8.3 The Order of Discourse

The "order of discourse," Fairclough (2001) states, is a "social structuring of semiotic difference- a social ordering of relationships amongst different ways of making meaning" (p. 235). This implies that there are some ways of making meaning that become "dominant" or "mainstream" in a discourse and others that become "marginal," "oppositional" or "alternative." Fairclough sketches the political concept of "hegemony" into the order of discourse as a form of social structuring of semiotic difference that can become hegemonic and therefore, legitimate the dominant discourse. Hall (1996) argues that the widespread acceptance of dominant ideologies transforms into hegemony, moreover, "ideologies are not really produced by individual consciousness but rather individuals formulate their beliefs, within positions already fixed by ideology, as if they were their true producers" (p.49). In this thesis discourses, theories, and narratives are analyzed not simply from the perspective of who says what but in terms of the social, political and cultural conditions from which the statements emerge and assume "a definite truth value and hence are capable of being uttered" (Hacking, 1986, p. 32). This thesis applies history and historical narratives as a method for critical engagement *with* the present, a way of using historical narratives and tracing traveling theories to engender a "revaluing of values" in the *now*.

The order of discourse is the clearest method for writing an effective history of the present. The entry point of this thesis comes from Foucault that to begin with an analysis formed in the present is to diagnosis the current situation or in Foucault's words "a problem expressed in

the terms current today and I try to work out its genealogy" (Kritzman, 1988, p. 262). Regarding the meaning of "truth," Foucault states, "Truth, is to be understood as a system of ordered procedures for the production, regulation, distribution and operation of statements" (Foucault, 1978). What Foucault is describing here is the interconnectedness of "truth" with systems of power which "produce both meanings and effects in the real world, i.e. the idea of discourse as having force, as being productive" (Carabine, 2001, p. 268) and the possibility for specific narratives to emerge from the margins of hegemonic discourses and for others to become further marginalized. The deployment of historical narrative emerges in this thesis as critical justifications used by the Conservative government to shape the political and public discourse surrounding the 2011-2015 "niqab ban." My analysis hinges on the ideological resiliency of representation of the niqab and the ways that these powerful representations seem 'true' and forms the basis of policy despite their stereotypical and even caricatured arguments.

Contemporary narratives are accompanied by parallel historical formulations of Islam and Muslims that contextualize the ideas, beliefs, values, and practices that emerged from the public discourse surrounding the ban. This is particularly important since Foucault's genealogies conceptualize the "body" with a materiality—an inscribed surface of events that retain the residue of power. In sum then, "genealogy, is thus situated within the articulation of the body and history. Its task is to expose a body totally imprinted by history'' (Foucault, 1991, p. 83). Similarly, this raises further questions: What are the "noisy silences" that these concepts mobilize? How do they delineate the boundaries of privileged spaces, such as sacralized secular spaces, in contrast to the profane private sphere? Importantly, how can we understand that the "un-covered face" has no intrinsic connection to loyalty, sincerity, citizenship, or constructs of authentic religion? The importance of the data underlying this inquiry cannot be overstated. To

substantiate my analysis, I have deliberately chosen to reproduce specific passages from the *Citizenship Act* rather than paraphrasing. This decision is crucial in establishing that claims about niqab-wearing women concealing their identities lack any legal basis within Canadian law, particularly the *Citizenship Act*. In the following section, I turn to the sources of data that frame this thesis, laying the groundwork for a critical exploration of how law, policy, and public discourse converge to shape and contest notions of visibility, loyalty, and citizenship in Canada.

2.9.1 Sources of Data

On December 12, 2011, the then Minister of Canadian Immigration, Citizenship and Multiculturalism Minister, Jason Kenney, announced that the Conservative government was placing a ban on full and partial face- coverings during the recitation of the oath of allegiance at Canadian citizenship ceremonies. The government's rationale was that an oath of citizenship is a public act of devotion and loyalty to Canada in front of one's fellow citizens, and as such cannot be taken while hiding one's face. The former Minister's speaking notes reveal that the sudden implementation of the ban 'goes to the heart of our identity and our values of openness and equality.' The Conservative government implemented the new regulation as an immediate directive under Operation Bulletin 359, which expedited the ban and extracted it from the legislative process and Parliamentary debates.

Burr (2003) contends that historical discourses when left uncritically unexamined can dictate the "present" or become "artifacts of culture" (p. 4). She suggests four approaches to critical discourse analysis that aim to destabilise these taken for granted meanings. For my analysis I have chosen to use three of her four approaches: (1) adopting a critical stance towards taken-for-granted knowledge, (2) emphasizing historical and cultural specificity and, (3) understanding knowledge as sustained by social processes.

I include five data sources as the basis of my analysis. They are as follows:

1. Ishaq v. Canada (Minister of Citizenship and Immigration), 2015 FC 156, (hereafter *Ishaq*), The Minister of Citizenship and Immigration v. Ishaq, 2015 FCA 194, (hereafter *Minister*), and The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario, 2015 FCA 212)
2. *The Citizenship Act* (R.S.C., 1985, c. C-29).
3. House of Commons Debates, *Official Report* (*HANSARD*), Volume 147, Number 183 2nd Session, 41st Parliament, Tuesday, March 10, 2015.
4. Public statements in support of the 'Policy,' government officials including former Prime Minister Stephen Harper, and the then Minister for Citizenship and Immigration, Jason Kenney.
5. Contributions from the following religious organizations: Muslim Canadian Congress (MCC), Council for Canadian Muslim Women (CCMW), National Council of Canadian Muslims (NCCM), Progressive Canadian Muslim Organization (PCMO), and Muslims Facing Tomorrow (MFT).

I selected these data sources because the state's arguments supporting the face-covering ban reveal majoritarian assumptions about religion and citizenship that conflict with Canadian legal statutes (citizenship and religious freedom). The Zunera Ishaq case is distinct in this regard which is why in chapter six I briefly examine two French legal cases (*Mme. M* (Faiza Silmi) case and *S.A.S. v. France* that illustrate the intersection of anti-niqab rhetoric, citizenship, and orientalist discourse. Similar discursive patterns can be observed in Canadian law, as evidenced by the *R. v. N.S.* case, which I also discuss in chapter six. To gain a comprehensive understanding of the government's objectives, I used a variety of sources to explore how legal arguments and discourses of citizenship intersect with religious identities to considering the role of law as a potential ally for deep equality. This approach allows for a more nuanced examination of how legal frameworks and discourses of citizenship intersect with religious identities and the broader socio-political landscape.

2.9.2 Data Analysis

There is an extensive body of literature addressing global bans on wearing the niqab in public spaces (Cesari, 2013; Brownwyn, 2008; Selby, 2014). However, these studies

predominantly focus on countries that have implemented such bans, rather than examining approaches that engage with and accommodate religious difference. My research investigates the "niqab ban" and the Zunera Ishaq legal cases, as well as the debates, challenges, and opportunities they generated to offer insights into a framework of deep equality in law. The fulcrum of my research method builds on the interdisciplinary and intersectional analysis developed in my master's research (MRE), *The 'Other' Woman of the Canadian Family: Colonial and Gender History and the Ban on Face Coverings during the Canadian Citizenship Ceremony*.

As discussed in the previous section, the methodological approach of this dissertation integrates genealogical analysis, critical discourse analysis (CDA), and the concept of traveling theories, forming "the whole package" that integrates theory and method. Genealogical analysis enables a tracing of the historical contingencies that produce contemporary discourses. Critical discourse analysis, as framed by Burr (2003), emphasizes the destabilization of taken-for-granted knowledge, the cultural and historical specificity of discourses, and the understanding of knowledge as socially sustained. Drawing from traveling theories, allows for the examination of how historical narratives particularly colonial and orientalist constructs are transported, adapted, and reconstituted across temporal and spatial contexts. This integrated framework informs both the selection and analysis of materials. Specifically, I chose legal cases, legislation, parliamentary debates, government statements, and contributions from religious organizations because they represent critical sites where discourses of citizenship, religion, and national identity are constructed, contested, and normalized. The genealogical method situates these materials within a broader historical and cultural context, while CDA provides the tools to deconstruct the ways these discourses frame constructs of national identity, belonging,

citizenship, religion, and exclusion. These theoretical insights allow for an exploration of how past ideologies, particularly colonial and orientalist constructs, shape and sustain present-day understandings of religion, gender, and belonging.

By situating citizenship within this historical and ideological framework, my literature review highlighted the intersection between national identity, religion, and statecraft. It examined how these elements have historically intersected to create exclusionary narratives and policies, and how they continue to operate in contemporary governance. This theoretical and methodological foundation is essential for analyzing the ongoing negotiation of identity, inclusion, and exclusion within Canadian society. It underscores the need to critically engage with the orientalist cargo in shaping contemporary legal and political contexts. Specifically, this study investigates how legal and political discourses surrounding niqab-wearing women reflect and reinforce these historical dynamics, shaping the boundaries of belonging in Canada.

To analyse the texts, I first identified the primary sources of data. Following this, I conducted an initial reading to outline the commonalities and linkages, which enabled me to identify overt and covert patterns of discourse that, "systematically form the objects of which they speak" (Foucault, 1969, p. 49). Next, I performed a close reading of the documents to uncover how discursive formations align with ideologies that serve as markers of national identity, delineating the boundaries between those prospective citizens deemed deserving of Canadian citizenship and those considered underserving. After two preliminary readings I began making a list of key words and concepts. After mapping and identifying the relationships and intersections of religion, nation, and citizenship, I began the coding process to explore how these themes were conceptualized and integrated into the Canadian public sphere. This coding process involved using various coloured highlighters and manually transferring relevant data into a

separate document for further analysis. Additionally, I carefully noted gaps, such as noisy silences and silent assumptions (Thiesmeyer, 2003) and examined how these elements reinforce coercive majoritarian notions of religion. This systematic approach enabled me to examine the interplay between discourses of religion and citizenship.

2.10.1 Case Law: Chapter Six and Seven

On December 30, 2013, Ms. Ishaq's citizenship application was approved by a citizenship judge, with her oath ceremony scheduled for January 14, 2014. As a devout Sunni Muslim, Ms. Ishaq's religious beliefs compelled her to wear the niqab in public. However, section 6.5 of the Citizenship and Immigration Policy Manual [Manual] mandated that candidates must remove face coverings during the oath-taking portion of the ceremony. While Ms. Ishaq agreed with the content of the oath, she objected to this requirement, as it forced her to temporarily abandon her religious beliefs (*Ishaq*, at para. 22). In response, Ms. Ishaq filed for judicial review, arguing that the policy infringed upon her religious freedom, as protected by section 2(a) of the *Canadian Charter of Rights and Freedoms*, which guarantees freedom of conscience and religion. The Zunera Ishaq case raises fundamental questions about the intersection of religion, state policy, and citizenship.

To substantiate my analysis in chapters six and seven, I employ a sociology of religion lens and a socio-legal approach to examine the landmark Zunera Ishaq case. This case is significant. Ms. Ishaq successfully challenged the Canadian Conservative government's face-covering ban, affirming her right to wear the niqab during the Oath of Citizenship. To contextualize the Zunera Ishaq's legal journey, I use critical discourse analysis and draw comparisons with two international cases (*Mme. M* (Faiza Silmi) case and *S.A.S. v. France*) and the Canadian case *R. v. N.S., 2012 SCC 72*, to highlight the unique aspects of the *Ishaq* case. My

argument in chapter six is that niqab-wearing Muslim women are often imagined, defined, and understood through a particular legal, orientalist, and cultural framework before they even step into the courtroom. This pre-existing framing shapes how their identities, rights, and beliefs are assessed within legal contexts. The analysis highlights the dual role of the law: as a protector of rights in the Zunera Ishaq case and as a potential instrument of power dynamics that reinforce exclusions based on religious identity, citizenship, and gender. By focusing on the judicial interpretations and the implications of these rulings, the chapter examines how legal frameworks can simultaneously challenge and uphold systemic inequities. This approach underscores the complexities of legal adjudication in cases where individual religious freedoms intersect with state narratives of national identity and belonging. It also situates the judiciary as a pivotal site for negotiating the boundaries of inclusion and exclusion within Canadian society.[16]

In chapter seven, my analysis of the Ishaq case reveals that the Court approaches niqab-wearing women from the perspective of deep equality and challenges conventional frameworks that often marginalize or stereotype their identities. Drawing on Beaman's (2011) early framework of deep equality and the law, my findings show that the Court's approach fosters a nuanced understanding of niqab-wearing women's lived experiences and religious identities. This approach moves beyond the tolerance framework, aiming instead to acknowledge and respect these identities within the broader social and legal landscape (Beaman, 2011). I extend

[16] Although the wearing of religious symbols has been the subject of intense debate in Quebec, I have chosen not to engage directly with this issue in the present analysis for several reasons. First, much of the controversy surrounding religious symbols in Quebec has unfolded primarily in the political sphere, rather than through the courts. In June 2019, the National Assembly of Quebec passed Bill 21, *An Act Respecting the Laicity of the State,* which prohibits a range of front-line public sector employees including public school teachers, police officers, and judges from wearing visible religious symbols while preforming their duties. Given the scope and time limitations of this thesis, a detailed examination of the distinct historical, political, social, and cultural factors that shaped the emergence and passage of Bill 21 falls beyond the purview of this study. This thesis centers on is the allyship between the law and deep equality in the Zunera Ishaq legal case.

my analysis using the conceptual framework of deep equality, examining the legal journey from its initial entry point at the Federal Court as *Ishaq v. Canada* then at the Federal Court of Appeal *The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario*. My analysis of these legal documents is inspired and guided by Beaman's socio-legal critique from her article "It was all slightly unreal:" What's Wrong with Tolerance and Accommodation in the Adjudication of Religious Freedom? (2011) and her book *Defining Harm: Religious Freedom and the Limits of the Law* (2008). The primary focus of this thesis is the achievement of deep equality in this case, using Lori Beaman's (2011) four conditions for deep equality outlined in her article, *It Was All Slightly Unreal: What's Wrong with Tolerance and Accommodation in the Adjudication of Religious Freedom*. Beaman developed these four conditions specifically in relation to the *N.S.* case (discussed in chapter six), which, like *Ishaq*, involved the issue of compelling a Muslim woman to remove her niqab. Beaman (2011) argues that achieving substantive or deep equality requires a context-sensitive approach. Although Beaman later explores deep equality as extending beyond the legal domain, here she articulates a more robust approach to substantive equality, equating it with deep equality (Beaman, 2017). Through multiple readings, key themes, and insights were coded and categorized to illuminate the nuanced interplay between legal reasoning and broader socio-political discourses. Drawing on her arguments, I support my claim that in the *Ishaq* case, the court adopts a deeper engagement with equality as a principle in the interest of justice.

2.10.2 The Whole Package: Theory and Method Summary

This chapter outlined the theories, literature, methods, and data to demonstrate how this thesis employs historical narratives as a critical lens to interrogate contemporary discourses surrounding citizenship, national identity, and governance. My theoretical framework indeed

draws from multiple bodies of literature including Orientalism, gender and nationalism, and religion and citizenship—and uses traveling theories as a conceptual bridge to trace the circulation, adaptation, and localization of ideas across time and space. Building on Edward Said's concept of travelling theories allows for the examination of how historical narratives particularly colonial and orientalist constructs are transported, adapted, and reconstituted across temporal and spatial contexts. Following Edward Said's (2000) concept of traveling theory, I examine how Orientalism (1978) and the clash of civilizations thesis (Huntington, 1996) have moved across contexts—maturing, adapting, and at times becoming "cultural dogmas" (Said, 2000, p. 247) embedded in public discourse and state policy. These theories, while originating in specific geopolitical moments, gain new power and meaning as they circulate transnationally and enter local policy debates. Said's critique of the clash of civilizations what he terms a "clash of ignorance" (2001) and the Aga Khan's interventions are therefore crucial: both challenge essentialist, binary constructions of Islam and the West and draw attention to histories of intellectual and cultural exchange often erased by orientalised and securitized policy narratives.

By framing Orientalism and the clash of civilizations as "traveling theories," I argue that their enduring influence lies not only in their content but in their ability to be reshaped and redeployed to justify contemporary exclusions—particularly of Muslim women. For example, representations of the niqab as culturally incompatible with Canadian values are not fixed truths, but products of discourses that draw legitimacy from these traveling frameworks. Stoler (2016) further cautions that such frameworks blur academic theory and political interests, producing powerful conceptual tools that can obscure rather than clarify.

This theoretical architecture informs my methodological choice. Through a critical discourse and genealogical lens, I interrogate how these theories' structure discursive practices

what Foucault terms the "conduct of conduct" (Carabine, 2001, p. 277) and how their circulation enables certain "truths" to be institutionalized in law, media, and policy. As Jørgensen and Phillips (2002) and Burr (2003) suggest, this integration of theory and method allows for a historically and culturally specific analysis that de-naturalizes taken-for-granted knowledge. This approach is central to understanding how discourses around the niqab, gender, Islam, and citizenship were mobilized during the Zunera Ishaq case, particularly by state institutions and Muslim organizations like the Muslim Canadian Congress and Muslims Facing Tomorrow.

The methodological approach of this dissertation integrates genealogical analysis, critical discourse analysis (CDA), and the concept of traveling theories, forming "the whole package" (Burr, 2003) that integrates theory and method. Genealogical analysis enables a tracing of the historical contingencies that produce contemporary discourses. Critical discourse analysis, as framed by Burr (2003), emphasizes the destabilization of taken-for-granted knowledge, the cultural and historical specificity of discourses, and the understanding of knowledge as socially sustained. This integrated framework of theory and method informed both the selection and analysis of materials. I outlined my deliberate choice of legal cases, legislation, parliamentary debates, government statements, and contributions from religious organizations because they represent critical sites where discourses of citizenship, religion, and national identity are constructed, contested, and normalized. The genealogical method situates these materials within a broader historical and cultural context, while CDA provides the tools to deconstruct the ways these discourses frame norms and deviance, belonging and exclusion. The crucial point is that discourses not only contain messages but also tacit rules of conduct that shape structures of normalization. For example, during the 2015 Canadian Federal election campaign, the Prime Minister linked national values to religion, positioning this association as a marker of

authenticity for "old stock Canadians." This constitutes what I argue as a technique of governance, subtly enforcing specific (majoritarian) religious practices and ways of being Canadian.

To substantiate my analysis, I deliberately chose to reproduce specific passages from the *Citizenship Act* rather than paraphrasing. This methodological choice is crucial to demonstrating that claims about niqab-wearing women concealing their identities have no legal foundation within Canadian law, thus revealing the discursive construction of exclusion. Following Burr's (2003) framework, I employ three of her four suggested approaches: (1) adopting a critical stance towards taken-for-granted knowledge, (2) emphasizing historical and cultural specificity, and (3) understanding knowledge as socially sustained. These principles guided the interpretation of five key sources: legal rulings (Ishaq), the *Citizenship Act*, House of Commons-Hansard debates, official statements, and public contributions from Canadian Muslim organizations. These materials were selected because they capture moments where national identity, citizenship, and religious belonging are discursively constructed and legally contested.

The Zunera Ishaq case is central to this thesis and is supported by comparative analysis of three legal cases Mme. M, *S.A.S.* v. France, and R. v. *N.S.*, all three reveal similar patterns of orientalist framing that travel across legal contexts. The analysis involved initial readings to identify patterns, followed by manual coding of discursive formations. I tracked intersections of religion, nation, and citizenship, including "noisy silences" and "silent assumptions" (Thiesmeyer, 2003), which reinforce dominant norms. I outlined my methodological approach to chapter seven, I apply a socio-legal lens guided by Beaman's (2011, 2017) deep equality framework. This chapter employs a systematic exploration of primary legal documents. My findings demonstrate that through an analysis of deep equality the Court fosters a more inclusive

understanding of religious identities that moves beyond tolerance and accommodation discourse by acknowledging lived religious identities in a more inclusive and equitable way.

2.11 Chapter Summary

This chapter has outlined the theoretical, methodological, and data-based framework to demonstrate how this thesis employs historical narratives as a critical lens to interrogate contemporary discourses surrounding citizenship, national identity, and governance. Drawing on Edward Said's concept of *traveling theories*, it traces how historical narratives are transported and transformed across time and space. These theoretical insights allow for an exploration of how past ideologies, particularly colonial and orientalist constructs, shape and sustain present-day understandings of religion, gender, and belonging. By situating citizenship within this historical and ideological framework, this literature review highlighted the intersection between national identity, religion, and statecraft. It examines how these elements have historically intersected to create exclusionary narratives and policies, and how they continue to operate in contemporary governance. Specifically, this study investigates how legal and political discourses surrounding niqab-wearing women reflect and reinforce these historical dynamics, shaping the boundaries of belonging in Canada. This theoretical and methodological foundation is essential for analyzing the ongoing negotiation of identity, inclusion, and exclusion within Canadian society. It underscores the need to critically engage with the orientalist cargo in shaping contemporary legal and political contexts.

CHAPTER THREE: CONTEXT AND CONTROVERSY: A SOLUTION IN SEARCH OF A PROBLEM[17]

October 2008 Lester B. Pearson International Airport (Toronto Pearson Airport)

When Zunera Ishaq an English teacher from Lahore, Pakistan stepped off the plane and walked into Pearson Airport she was relieved—it had been a long flight from Pakistan to Canada. She and her husband Muhammad had recently been married, and they had applied and received permanent residency status in Canada. They walked through the arrival gates and made their way towards the international passenger security check area. They spoke with the Canadian customs officer and after the preliminary screening, the male officer turned to Zunera and politely asked if she would prefer that he step away and that his female colleague perform the final step in the identification process. Zunera was speechless. She "did not have enough words to thank him" (Ishaq, 2016, p. 168). In front of the female Canadian customs security officer, Zunera removed her niqab from her face to confirm her identity. Leaving Pearson Airport Zunera and Muhammad Ishaq knew then that Allah had chosen Canada for them—to live in freedom and with respect.[18]

3.1 Introduction

This chapter focuses on the basic administrative and legal steps required that prospective citizens must follow, such as security procedures, identification measures, citizenship language tests, and other requirements before they can recite the oath of citizenship. This chapter proceeds in four sections, I begin by listing key regulations, requirements, and precedents already established in Canadian law specifically referencing the *Citizenship Act* (R.S.C., 1985, c. C-29). Following this, I outline relevant portions of Operational Bulletin 359 [the Bulletin] which was incorporated into section 6.5 of the Canadian Citizenship Manual. I provide a brief overview of

[17] Globe and Mail (2007).
[18] I have condensed elements of Zunera Ishaq's personal narrative from her essay "My Journey with the Niqab" in *The Muslimah who fell to earth: personal stories by Canadian Muslim women* (Hussain, 2016).

the government's framing of the 'facially neutral' requirement which was implemented by then Minister of Immigration, Citizenship and Multiculturalism, Jason Kenney. Finally, I briefly trace the real-world application of the face covering ban by outlining Zunera Ishaq's journey towards obtaining Canadian citizenship. This overview provides a snapshot of how the ban directly affected Zunera Ishaq by highlighting how these regulations impacted her and the legal landscape surrounding citizenship. The importance of this chapter cannot be overstated. It is essential to outline the standards, regulations, requirements, and precedents already embedded in Canadian law, particularly in the *Citizenship Act*. These legal frameworks (verbatim) reveal that claims about niqab-wearing women concealing their identities lack legal basis. By reproducing specific passages from the *Citizenship Act* rather than paraphrasing, I aim to establish that the government's assertions are neither factually nor legally supported. This chapter establishes that the government's claims were less about security and more on the public regulation of religion.

3.2.1 Standards of Law and Precedent

It is imperative to outline several key facts about the process to becoming a Canadian citizen and the oath taking portion of the Canadian citizenship ceremony which is the last procedural step in becoming a legal Canadian citizen. The following facts are quoted directly from citizenship Canada:[19]

- Canadian citizenship can be obtained by birth or by naturalization.[20]
- Naturalization is the process through which immigrants acquire Canadian citizenship.
- Landed immigrants who have met certain criteria are eligible for Canadian citizenship by naturalization.
- To be eligible to apply for Canadian citizenship, immigrants must have a permanent resident status, must have legally resided, and have been physically present in the country for three of the previous five years. They must be at least 18 years of age, display an adequate ability in English or French (new documentation/testing is required since

[19] Canada.ca
[20] Citizenship refers to the legal status of the person.

November 2012), and have no criminal convictions in the past three years. Undergoing a formal citizenship test, they must understand the rights and responsibilities of citizenship and demonstrate some knowledge of Canadian history, values and institutions. They are also required to take a citizenship oath.

- For many immigrants, becoming a Canadian citizen is the final step of the immigration process. Immigrants affirm their allegiance to Canada, the country in which they have settled.
- The citizenship ceremony oath of citizenship includes the signed oath of allegiance and public recitation.

3.2.2 Steps to Becoming a Canadian Citizen

Below I outline relevant aspects of the eligibility process, security procedures, and Canadian law as stipulated in the *Citizenship Act*, R.S.C., 1985, c. C-29.

(1) The process to becoming a Canadian citizen and meet all the eligibility requirements can span several years:

(a) To be eligible to apply for Canadian citizenship, immigrants must have a permanent resident status, must have legally resided, and have been physically present in the country for three of the previous five years.
(b) They must be at least 18 years of age, display an adequate ability in English or French (new documentation/testing is required since November 2012), and have no criminal convictions in the past three years.
(c) Undergoing a formal citizenship test, they must understand the rights and responsibilities of citizenship and demonstrate some knowledge of Canadian history, values and institutions. They are also required to take a citizenship oath.
(d) For many immigrants, becoming a Canadian citizen is the final step of the immigration process. Immigrants affirm their allegiance to Canada, the country in which they have settled.
(e) The citizenship ceremony oath of citizenship includes the signed oath of allegiance and public recitation.

(2) Security measures:

(a) The Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence System (CSIS) conduct security checks on all applicants to verify that there are no criminal or security reasons to deny citizenship.
(b) In some cases, applicants are requested to provide fingerprints and/or court documentation.

(3) The regulations set out in Canadian law: the *Citizenship Act*, R.S.C., 1985, c. C-29:

(a) Pursuant to subsection 19(1) of the *Citizenship Act*, R.S.C., 1985, c. C-29 subject to subsection 5(3) of the Act and section 22 of the Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the oath of citizenship by swearing or solemnly affirming it before a citizenship judge.
(b) Section **21.** Subject to section 22, a person who takes the oath of citizenship pursuant to subsection 19(1) or 20(1) shall, **at the time the person takes it, sign a certificate in prescribed form certifying that the person has taken the oath,** and the certificate shall be countersigned by the citizenship officer or foreign service officer who administered the oath and forwarded to the Registrar.[21]

As outlined above, verifying a prospective citizen's identity is a standard practice in Canadian law and procedure. The existing legal standards, precedents and eligibility requirements for obtaining Canadian citizenship do not support the Minister's claims that wearing face covering equates to "hiding one's identity." Operational Bulletin 359 was not introduced to address a genuine or pressing issue. Instead, as I discuss in the next section, it was strategically framed around what was presented as the "deeper principle" underlying the ban.

3.3.1 A Solution in Search of a Problem[22]

On any given day in most cities across Canada and in various spaces and locations (e.g., government buildings, schools, cultural centers, museums) about 1, 700 prospective citizens recite their oath of allegiance at Canadian citizenship ceremonies. Under paragraph 3(1) (c) of the Canadian *Citizenship Act*, RSC 1985, c C-29 a prospective citizen must take the oath of

[21] Four years later Federal Court Judge Keith Boswell would draw from Section 21 of the *Regulation* already stipulated in Canadian law to ensure that candidates are "actually taking the oath," *Citizenship Act*, RSC 1985, c C-29 (short title the *Citizenship Act*) of the *Regulations*. Boswell adjudicated that the requirement imposed by the Policy that the candidate for citizenship be *seen* (emphasis mine) taking the oath does appear to be superfluous. See chapter 4 this thesis.

[22] The Globe and Mail (2007) coined the Conservative government's 2007 proposed voter identification regulations, specifically targeting niqab-wearing women's identity as a "solution in search of a problem." George Grinnell (2013) argued that the ban against wearing the niqab during the recitation of the oath of citizenship was not "meant to solve a problem [but rather,] to create and enflame one" (pp. 241-265).

citizenship in order to be considered a Canadian citizen. After attending one such ceremony in 2011, former Conservative Member of Parliament for Mississauga Cooksville-East, Wladyslaw Lizon called the then Canadian Immigration, Citizenship, and Multiculturalism Minister, Jason Kenney to complain that he had just witnessed four women taking the Oath of Citizenship with their faces veiled wearing full burqas (Globe and Mail). Shortly thereafter, Minister Kenney announced that the Federal Conservative government was placing a ban on all face-coverings during the Oath of citizenship.

3.3.2 Facially Neutral Regulation: The Deeper Principle behind Operational Bulletin 359

December12 2011, Montreal, Québec

> *Minister Hon. Jason Kenney told the Canadian press that he 'had never seen a woman covering her face during the more than two dozen citizenship ceremonies he has attended in the past three years.* (ctv.ca)

On December 12, 2011, the former Canadian Immigration, Citizenship and Multiculturalism Minister, Jason Kenney, announced that the Conservative government was placing a ban on full and partial face- coverings during the recitation of the oath of allegiance at Canadian citizenship ceremonies. Minister Kenney outlined the rationale behind the "new rule" in a speech titled *On the Value of Canadian Citizenship*:

> *I just learned recently that some individuals who have taken the oath have not done so openly. All we ask of you is to fulfil the requirements of citizenship and that you swear an oath before your fellow citizens that you will be loyal to our traditions that go back centuries. This common pledge is the bedrock on which Canadian society rests. That is why, starting today, my department will require that all those taking the oath do so openly. Effective today, everyone will be required to show their face when swearing the oath. I have received complaints recently from members of Parliament, from citizenship judges and from participants in citizenship ceremonies themselves that it is hard to ensure that individuals whose faces are covered are actually reciting the oath. Requiring*

> *that all candidates show their face while reciting the oath enables judges—and everyone present—to share in the ceremony and to ensure that all citizenship candidates are in fact reciting the oath as required by law. This is not simply a technical or practical measure—far from it. It is a matter of deep principle that goes to the heart of our identity and our values of openness and equality. The citizenship oath is a quintessentially public act. It is a public declaration that you are joining the Canadian family, and it must be taken freely and openly—not with faces hidden.*
>
> *To segregate one group of Canadians or allow them to hide their faces, to hide their identity from us precisely when they are joining our community is contrary to Canada's commitment to openness and to social cohesion. All I ask of new Canadians is that when you take the oath, you stand before your fellow citizens openly and on an equal footing.*
>
> *I ask that all new Canadians participate in this ceremony in the same way that you made the solemn commitment to participate actively in our Canadian community. If Canada is to be true to our history and to our highest ideals, we cannot tolerate two classes of citizens. We cannot have two classes of citizenship ceremonies.*
>
> *Canadian citizenship is not simply about the right to carry a passport or to vote. It defines who we are as Canadians, including our mutual responsibilities to one another and a shared commitment to values that are rooted in our history. At its best, a citizenship ceremony captures the profound nature of this shared commitment, and we believe that this new rule is the best way to honour it (Kenney, 2011).*

On the same day that Minister Kenney announced that "everyone will be required to show their face when swearing the oath," the Conservative government implemented the new guideline as an immediate ministerial directive under Operational Bulletin (OB) 359[23] expediting the ban and bypassing the legislative process and Parliamentary debates. The Conservative government's rationale was that the oath of citizenship is a public act of devotion and loyalty to Canada in front of one's fellow citizens, and as such cannot be taken while hiding one's face. The former Minister's speaking notes reveal that the sudden implementation of the ban "goes to the heart of our identity and our values of openness and equality" (Kenney, 2011).

[23] Immigration, Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency employees consult operational bulletins (OBs) and manuals for guidance in the exercise of their functions and in applying the Immigration and Refugee Protection Act, the *Citizenship Act* and their *Regulations*.

While the purported facially neutral regulation applied to all impediments that cover the face, the Minister's speaking notes and political rhetoric that introduced and accompanied the new regulation made clear who the main targets were. The same day that the ban on full and partial face-coverings was introduced, the former Minister promoted the ban on various media outlets including on the Canadian Broadcasting Corporation's (CBC) Power and Politics with Evan Solomon (2011) that I now explore.

Minister Kenney argued that the rationale behind the 'ban' was two-fold. First, when reciting the oath, "you must have a fully uncovered face" so that citizenship judges and staff could verify that prospective citizens were meeting the statutory requirement of "actually taking the oath." Second, the "deeper principle" the oath is a "public act of loyalty to Canada" recited in front of your fellow citizens; the Minister argued that when you recite the oath, you're witnessing your devotion to Canada and its democratic values (Kenney, 2011).

The Minister's "rationale" for the policy was framed as follows: "We cannot allow them to hide their faces, to hide their identity from us precisely when they are joining our community," emphasizing that "you must have a fully uncovered face" during the oath so that citizenship judges and staff could verify that prospective citizens were meeting the statutory requirement of "actually taking the oath" (Kenney, 2011). This rationale serves two distinct purposes. First, the subtext of the Minister's carefully chosen words are clear: a covered face is portrayed as duplicitous, suspicious, and disloyal, whereas a fully uncovered face is equated with honesty, loyalty, and authentic Canadian identity. This framing reinforces a binary view of who qualifies as a legitimate citizen based on visual conformity to national norms (Alibhai, 2023).

Second, the Minister's rhetoric deliberately misleads the Canadian public into believing that, prior to this Policy, there were no legal mechanisms in place to verify an individual's

identity during the citizenship process, suggesting that niqab-wearing women were exploiting a perceived legal loophole. As reproduced (verbatim) above, Canadian citizenship procedures already included strict measures to ensure identity verification. By omitting this context, the Minister creates the illusion of strengthening Canadian citizenship, symbolically reinforcing national values while unjustifiably marginalizing niqab-wearing women. This strategy reflects a method previously employed to otherize niqab-wearing women (see chapter seven).

The Minister stated in the interview that he found it "bizarre" that women had been allowed to cover their faces while swearing their allegiance to Canada. He reiterated that the citizenship oath is a public declaration of one's desire to join the Canadian family, which an individual makes in front of their fellow citizens and representatives of the state (Kenney, 2011). The Minister further commented that the Canadian family is undergirded by liberal democratic values, including respect for the freedom of religion, equality between men and women, as well as equality of all citizens before the law. The Minister argued that covering one's face undermined these basic liberal values and allowing women to continue covering their face while reciting the oath of allegiance would lend the imprimatur of the Canadian state and legitimize "the "tribal practice that comes from societies where women are treated like property rather than human beings" (Kenney, 2011). Minister Kenney continued to reiterate that the citizenship ceremony is an essentially public moment and as such, the oath should be recited publicly and not hidden from the view of their fellow citizens which Kenney admonished as "disrespectful." The Minister's claims directly contradict existing legal standards and precedents. Canadian citizenship procedures, as outlined verbatim above, already include strict legal measures to verify the identity of prospective citizens, invalidating the argument that wearing a face covering equates to "hiding one's identity." Furthermore, the Minister's description of the niqab as

"bizarre" (Kenney, 2011) during the oath-taking ceremony transgresses Canadian law and improperly limits the discretion of citizenship judges, who are legally required to administer the oath of citizenship in a manner that upholds the greatest possible religious freedom.

This false equivalency suggesting that niqab-wearing women are "hiding their identity" fails to address any practical concern and instead reinforces an ideological narrative that links "Canadian values" to uncovered faces. In doing so, it casts niqab-wearing women as outsiders to the national identity and its purported liberal democratic values (Bakht, 2020; 2022, Razack, 2018). This framing undermines Canadian legal principles and precedents while unjustifiably marginalizing niqab-wearing women. Paradoxically, it situates Canadian law and niqab-wearing women on the same side, highlighting their shared commitment to the principles of religious freedom and equality in stark contrast to the exclusionary narrative advanced by Minister Kenney. In the following section, I briefly introduce how the Minister would find a way around Canadian religious freedom law by transforming and reclassifying the practice of covering as a cultural tradition rather than a religious one. The transformation is critically analysed in the chapter that follows.

3.3.3 Infringement on Religious Freedom Rights: It's a Cultural Thing.

When pressed as to whether the ban could be considered an infringement on religious rights, the former Minister responded that 'the notion that [covering] is a religious obligation is something I don't accept' and called the practice of covering, "… 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" (Kenney, 2011).

The Minister sought to circumvent Canadian religious freedom law by reframing the issue. This reclassification allowed the Minister to sidestep legal protections or discussions about religious freedom. The Minister issued an immediate directive under Operational Bulletin 359 ban on full and partial face-coverings which was incorporated into section 6.5 of the Citizenship and Immigration Canada policy manual *CP 15: Guide to Citizenship Ceremonies* (the 'Manual'). Section 6.5 of the Manual requires candidates that wear face-coverings to remove their face-coverings when they recite the oath at the citizenship ceremony:

6.5. Administration of the oath of citizenship

> This is a solemn and significant part of the citizenship ceremony. As per subsection 19(1) of the Regulations, subject to subsection 5(3) of the Act and section 22 of the Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the Oath of Citizenship by swearing, or solemnly affirming before a citizenship judge. Subsection 19(2) of the Regulations indicates that unless the Minister otherwise directs, the Oath of Citizenship shall be taken at a citizenship ceremony. Candidates for citizenship who are 14 years of age and older **must** take the oath of citizenship.

In the following section, I outline Zunera Ishaq's journey toward obtaining Canadian citizenship. This overview offers a clear snapshot of how the language of the face-covering ban (reproduced above) directly impacted Zunera Ishaq, as well as the legal landscape surrounding citizenship. By examining her path, I demonstrate the broader implications of how these regulations and their effects impact the lived experiences of individuals navigating the citizenship process.

3.4.1 Zunera Ishaq: Path to Canadian Citizenship

On December 30, 2013, five years after she first stepped onto Canadian soil Zunera Ishaq's application for Canadian citizenship was approved by a citizenship judge. Ms. Ishaq successfully

completed all the prerequisites outlined in the *Citizenship Regulations* including lawful residency, physical presence in the country, proficiency in one of Canada's official languages (English or French), and passing the citizenship test.[24] She was prepared for the final mandatory requirement: the recitation the oath of Canadian citizenship. Under subsection 5(1) of the *Citizenship Act*, RSC 1985, c C-29, a prospective citizen must take the oath of citizenship to be granted Canadian citizenship. While Ms. Ishaq's citizenship was approved pursuant to subsection 5(1) of the *Act*, she would not officially become a citizen until she took the oath in accordance with paragraph 3(1)(c). Prior to being scheduled for a citizenship ceremony, Ms. Ishaq completed her citizenship test during which she removed her niqab for identification purposes as required under section 13.2 of Citizenship and Immigration Canada (CIC) policies. On January 14, 2014, Zunera Ishaq was due to recite her oath at the office Citizenship and Immigration Canada (CIC) instead on January 9, 2014, she filed an application for judicial review with the Federal Court of Canada. Ms. Ishaq agreed with the content of the oath:

> *I swear (or affirm) that I will be faithful and bear true allegiance to her Majesty Queen Elizabeth the second, queen of Canada, her heirs and successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.*[25]

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[24] The citizenship test is most often a written test. The applicant is tested on two basic requirements for citizenship: 1) knowledge of Canada and the rights and responsibilities of citizenship, and 2) sufficient knowledge of one official language either English or French.

[25] On June 21, 2021, an *Act* to amend the *Citizenship Act* received Royal Assent. This act inserts new language into the Oath of Citizenship that refers to the Aboriginal and treaty rights of First Nations Inuit and Métis people. The Act was amended in 2022 on the ascension of King Charles III. The Oath of Citizenship now reads:
"I swear (or affirm) That I will be faithful.
And bear true allegiance
To His Majesty
King Charles the Third
King of Canada
His Heirs and Successors
And that I will faithfully observe
The laws of Canada
Including the Constitution
Which recognizes and affirms

Her objection was with the Federal Conservative governments' amendment to the Canadian Immigration Citizenship's policy manual, *CP 15: Guide to Citizenship Ceremonies* section: 6.5.1, 6.5.2 and 6.5.3. These amendments are cited in full because they form the basis of the Federal Court's argument against the government defense:

Candidates wearing face coverings are required to remove their face coverings for the oath taking portion of the ceremony:

> **6.5.1. Witnessing the oath**
>
> It is the responsibility of the presiding official and the clerk of the ceremony to ensure that all candidates are seen taking the Oath of Citizenship.
>
> To facilitate the witnessing of the oath taking by CIC officials, all candidates for citizenship are to be seated **together**, as close to the presiding official as possible.
>
> • For larger ceremonies (50 or more candidates), additional CIC officials will be required to assist in the witnessing of the oath. The CIC officials will need to observe the taking of the oath by walking the aisles.
>
> Candidates wearing face coverings are required to remove their face coverings for the oath taking portion of the ceremony.
>
> **6.5.2. Candidates not seen taking the oath**
>
> In some circumstances, it is difficult to ascertain whether candidates are taking the oath (sometimes due to a face covering). When a candidate is not seen taking the oath by a presiding official or CIC official(s), the clerk of the ceremony must be notified **immediately** following the oath taking portion.

The Aboriginal and treaty rights of
First Nations, Inuit and Métis peoples
And fulfil my duties as a Canadian citizen."

- The candidate's certificate is to be removed from the pile.
- The candidate's name is NOT to be called and the certificate is NOT to be presented.

In this case candidates wearing face coverings have the option to attend a second ceremony:

6.5.3. Candidate returns for another ceremony

Should the candidate accept to return to take the oath at a future ceremony, the candidate will:

- be scheduled to attend the next available citizenship ceremony;
- receive another notice to appear;
- need to be seen taking the Oath of Citizenship;
- be reminded that if wearing a face covering, it will need to be removed for the oath taking portion of the ceremony.

When the candidate attends the second ceremony, should that person again NOT be seen taking the oath, or fail to remove a full or partial face covering, the procedures outlined above for refusal are to be followed.

Note: The opportunity to return to take the oath at another citizenship ceremony applies only **once.**

Ishaq believed that the amendments listed above required her to temporarily abandon her religious beliefs (*Ishaq*, at para. 22). As a devout Sunni Muslim who follows the Hanafi school of thought Ms. Ishaq's religious beliefs obligate her to wear a niqab in public and when in the presence of unrelated males (*Ishaq*, at para.1). Ms. Ishaq filed for judicial review. Her argument to the court was that the government's guidelines infringed on section 2(a) of the *Canadian Charter of Rights and Freedoms*, which affirms the fundamental freedom of conscience and religion.

On February 6, 2015, the presiding Federal Court judge, Keith Boswell, upheld Ms. Ishaq's claim and deemed that the government's ban against wearing the niqab during the oath of

allegiance at the Canadian citizenship ceremony was unlawful (*Ishaq*, at para. 68). Judge Boswell ruled that, indeed, there was a conflict between the ministerial directive and with current Citizenship Regulations that directed citizenship judges to administer the oath of citizenship with dignity and solemnity that allows for the greatest possible religious freedom in the affirmation of the oath. The Court's judgement is clear:

> The portions of the Policy and Manual that require candidates to ***remove face coverings*** or ***be observed*** (emphasis mine) taking the oath are unlawful. Specifically, sections 6.5.1 to 6.5.3 of the Policy, as well as the second paragraph of section 13.2 of the Manual and the reference to "those wearing a full or partial face covering that now is the time to remove it" in section 16. 7 of the Manual, are unlawful.

The Crown-in-Council filed a notice of appeal with the Federal Court of Appeal to challenge Judge Boswell's ruling. However, on September 15, 2015, the Federal Court of Appeal unanimously upheld (3-0) Boswell's decision. Delivering their judgment from the bench, the three justices emphasized the swiftness of their half-day decision to dismiss the appeal, citing the issue as "unnecessary" (*Minister*, at para. 5) Their prompt ruling was motivated by a desire to ensure that "it was in the interest of justice" that Ms. Ishaq could complete her citizenship process in time to vote in the upcoming federal election on October 19, 2015. The critical issue for the court at the time was the potential non-compliance with the face-covering removal policy: relegating individuals like Ms. Ishaq to permanent residency status. This status, while allowing individuals to live and work in Canada, does not grant the right to vote. The court's decision underscored the importance of enabling prospective citizens and specifically niqab-wearing women (see chapter seven) to fully participate in the democratic process, including exercising their right to vote.

Lawyers for the Minister of Citizenship and Immigration filed a Notice of Application for Leave to Appeal to the Supreme Court of Canada and sought a stay of the Federal Court of Appeal and Federal Court's judgements. On October 5, 2015, the Federal Court of Appeal dismissed the federal government's request for leave. The government sought leave to appeal to the Supreme Court of Canada (SCC). On October 9, 2015, Zunera Ishaq took her oath of citizenship and became a Canadian citizen. On October 19, 2015, Zunera Ishaq voted for the first time in Canada's 42d Federal Election. On November 19, 2015, in her first act as Minister of Justice and Attorney General of Canada, for the newly elected Liberal government Jody Wilson-Raybould (2015-2019) made a phone call to Zunera Ishaq. She informed Ms. Ishaq that the Liberal government had discontinued the appeal by the former Conservative federal government to the Supreme Court of Canada and had officially ended the 2011-2015 "niqab ban."

3.5 Chapter Summary

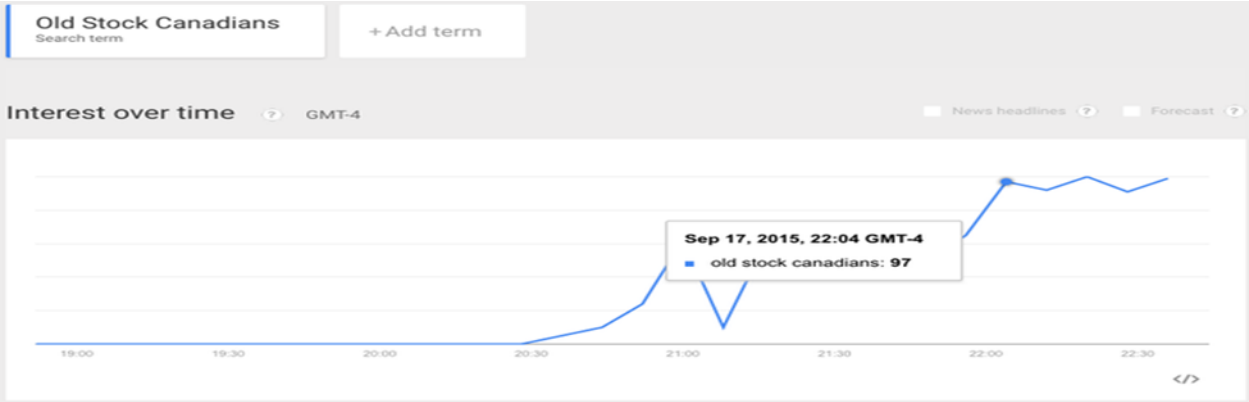
This chapter provided the groundwork for the next two chapters by outlining key regulations, relevant aspects of the eligibility process, security procedures, requirements and precedents already established in Canadian law (*Citizenship Act*, R.S.C., 1985, c. C-29). I presented a timeline of how the ban was conceived originating from a phone call between Conservative Member of Parliament for Mississauga Cooksville-East, Wladyslaw Lizon and Minister of Immigration, Citizenship and Multiculturalism, Jason Kenney. I also detailed relevant portions from Minister Kenney's speech entitled *On the value of Canadian citizenship* which introduced Operational Bulletin 359. This Bulletin was incorporated into section 6.5 of the Canadian Citizenship Manual and set forth the 'facially neutral' requirement implemented on the same day. Additionally, I provided a timeline of the real-world application of the face-covering ban by introducing Zunera Ishaq's path to Canadian citizenship and her legal trajectory. I

concluded this chapter with another phone call, this one made by the newly appointed Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould (2015-2019) to Zunera Ishaq, informing her that the newly elected Liberal government had officially ended the 2011-2015 "niqab ban."

CHAPTER FOUR: HISTORY IN THE PRESENT: OLD STOCK CANADIANS AND THE CANADIAN FAMILY

4.1 INTRODUCTION

On September 17, 2015, exactly one month before the forty-second Canadian general election, the Globe and Mail hosted a debate focused only on a single topic the economy. Featuring the leaders of Canada's three major federal political parties: Stephen Harper, the Prime Minister and leader of the Conservative Party; Justin Trudeau, leader of the Liberal Party; and Thomas Mulcair, leader of the New Democrat Party (NDP).[26] During and after the debate, records for the search engine "Google" noted a surprising number of Canadian web surfers searched a rare term. The flurry of online activity, public discussion, political punditry, and media excitement was prompted by three words that were used by Stephen Harper: "old-stock Canadians."[27]



[26] Leaders' debates play an integral role in Canada's federal elections. These debates provide Canadians with a forum to compare prospective prime ministers, information on various political parties and their policy platforms (Canada.ca).

[27] Google trends graph showing the spike in search interest for the term "Old Stock Canadian" on September 17, 2015. The spike corresponds to the moment when then-Prime Minister Stephen Harper used the phrase during the televised federal leaders debate Google Trends (2015). Search interest for "*Old Stock Canadians*" [Graph]. Retrieved from https://trends.google.com

Harper used the term when he denied that his government had taken away health-care benefits from immigrants and legitimate refugees, arguing that those who had been refused were not real refugee claimants:

> We do not offer them [refugees] a better health care plan than the ordinary Canadian receives, said Harper. "I think that's something that **new and existing and old stock Canadians** agree with.

The following day, amidst the public and political fallout for resurrecting the deeply offensive term, "old-stock Canadians"[28] the Prime Minister was forced to clarify his statement to the press. Harper explained that his comment referred to "Canadians who have been the descendants of immigrants for one or more generations." Despite this clarification he denied allegations that he was engaging in identity politics or intentionally stoking fears to divide the country. Indeed, on this same day, Prime Minister Harper also announced that his government would seek a stay of the Federal Court of Appeal's ruling in the Zunera Ishaq case.[29] When pressed by members of

[28] Stephen Harper was not the first political figure to use the term for instance Liberal MP Stéphane Dion used the term in 2014: "If I'm fishing with a friend on a magnificent lake in the Laurentians ... and I see a small boat in the distance ... usually it's two middle-aged old-stock French-Canadians or English-Canadians." In 2007, then candidate for the Liberal Party of Canada Justin Trudeau (now Prime Minister), used "old stock Canadian" during an interview, dismissing Quebec's claim of being a "nation." He asked: "...whether everyone in Quebec was part of that nation, or just the "old stock" pioneers." In a later speech to the University Club about the distinctiveness of Quebec, he clarified: "In the sociological sense of the term we can talk about the nation of Quebec or Quebec as a nation" CBC News. (2015) *Harper's "old-stock Canadians" line is part deliberate strategy: Pollster*. https://www.cbc.ca/news/politics/canada-election-2015-harper-old-stock-canadians-1.3234575
Yet, Harper remains the only public figure to have inspired the far-right, white supremacist, anti-immigration Facebook page "Old Stock Canadian" with 32,000 users. Operational since 2016 the page was removed by Facebook in 2021 because, according to Facebook, the page violated the company's "community standards" Canadian Anti-Hate Network (2021), *Old Stock: Longstanding far-right Facebook page removed after years of hosting racist conspiratorial content.*
https://www.antihate.ca/old_stock_canadian_longstanding_far_right_facebook_page_removed

[29] Two days before Harper's "old stock Canadian" controversy the Federal Court of Appeal had swiftly and incisively ruled in Ms. Ishaq's favour and instructed the federal government that it was in the interest of justice to cease any further examination of an "unnecessary issue" so that Ms. Ishaq could obtain citizenship in time to vote in the upcoming October 19 federal election.

the media as to why the government could not wait until after the election, Harper (2015) responded:

> Look, when someone joins the Canadian family there are times in our open, tolerant, pluralistic society that as part of our interactions with each other we reveal our identity through revealing our face.

This chapter uses the former Prime Minister's response (cited above) as a foundation to explore the notion of the "old-stock Canadian," framing it as a lens to examine the broader Canadian family ideology. I first provide historical context; tracing how exclusionary ideas have influenced contemporary understandings of national identity and belonging. Analyzing the government's use of the terms "old-stock Canadians" and the "Canadian family," I demonstrate how these concepts, steeped in a complex and often exclusionary history, serve as ideological tools that shape and define Canadian identity. Through this analysis, I demonstrate that the Conservative government's rhetoric reflects deeper historical patterns of exclusion and control. It reveals how national identity, gender, and religion intersect with power dynamics that have historically marginalized various groups in Canada.

4.2.1 Old-Stock Canadians: A Harmless Slip?[30]

The Prime Minister's understanding of "old-stock Canadians" sparked controversy and was viewed by many as a minority position. Some argued that "old-stock Canadian" was simply

[30] Frank Graves president of the Canadian polling firm EKOS Research Associates said at the time that Harper's use of the term "old-stock Canadians" was a deliberate ploy to energize his supporters" and "part of the overall strategy to create a sense of us-versus them." Graves argued that the "dog-whistle approach" is a message that will be ignored by all except its target audience." (Stephen Harper's 'old-stock Canadians': Politics of division or simple slip? | CBC News)

a remnant of a settler past, or a "harmless slip."[31] However, the Canadian media quickly recognized it as a coded term implying white supremacist and religious superiority ideologies. The *National Post*, often leaning conservative, described 'old-stock Canadian' as "white, probably Anglophone Christian." In contrast, Canada's largest circulated daily newspaper the *Toronto Star*[32] directly highlighted the term's racist roots pointing out it's violent history and as a painful signifier for many Canadians.[33] George Elliot Clarke, one of Canada's leading poets, playwright and literary critic felt compelled to offer the Prime Minister a lesson in "real" old-stock Canadian history, stating: "The true 'old-stock' Canadians are the First Nations and Inuit and Metis, followed by the many divergent ethnicities who were also present in colonial Canada, from African slaves in muddy York to 'German' settlers on the South Shore of Nova Scotia, from Chinese merchants present in Nouvelle-France to the Portuguese and Basque fishermen of Newfoundland" (Oved & Otis, 2015).[34]

The Prime Minister 's use of "old-stock Canadian" sparked significant controversy, with many Canadians recognizing the concept as a reference to an exclusionary settler-colonial identity. Although some dismissed the phrase as a "harmless slip," its implications resonated deeply, emphasizing a division between those viewed as part of the Canadian family by virtue of

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[31] The National Citizens Coalition (NCC) is a Canadian conservative lobby group. They claimed that Harper's comment was a "harmless slip without ill intent." (Stephen Harper's 'old-stock Canadians': Politics of division or simple slip? | CBC News)

[32] The Toronto Star is the largest daily newspaper with 2.4 million copies circulated per week (FAQ - News Media Canada (nmc-mic.ca).

[33]Colin Thomson recounts that, "There was also an attempt to develop something called an "Ultimate Canadian Race," and the Black person was not considered a part of the emerging national character of the Canadian family. It was believed that Blacks could not be assimilated but that if they could be, they would leave a "tinge" of coloured blood in the "Ultimate Canadian Race" – "a race which should be bred from the best 'stock' that can be found in the world." Vigorous efforts were therefore made to keep Black people out. C.A. Thomson, *Blacks in deep dnow: Black pioneers in Canada* (Thomson, 1983, p. 21).

[34] Clarke's statement appeared in a Toronto Star article titled "Who are 'old stock Canadians"?

the way they looked and those perceived as outsiders by the way *they* look. The Prime Minister's subsequent defense of the term, combined with his announcement of further legal action to prevent Zunera Ishaq from fully accessing citizenship, made this division starkly visible. These actions underscore what Suneera Thobani describes as the "ideology of exaltation," an idea that legitimizes certain Canadians as authentic embodiments, guardians, and preservers of a 'genuine' national identity while relegating others to the status of "permanent visitors" (2007, p. 87). This perspective suggests a privileged distinction between *us* (the real Canadians) and *them* (the Others). In the following section, I analyze the term "old-stock Canadians," and the nativist undertones it carries that mask exclusionary messages in plain sight. By positioning "old stock" somatic signifier, the phrase delineates the boundaries of who is considered genuinely Canadian ad who is implicitly excluded. This analysis highlights the strategic use of language in defining national belonging and authenticity.

4.2.2 Old-Stock Canadian History

The use of the term "old-stock Canadians" is a nationalistic and nativist assertion that disguises its message in plain sight. The semantic connection captures the somatic signifier of precisely who are old stock Canadians. It invokes an image of Canadians whose ancestry traces back to White, European heritage, Christian, and English speaking (Winter, 2013). This mythological lineage underpins the "old-stock Canadian" ideology which enables generations of Canadians to view themselves as authentic embodiments, guardians, and preservers of a 'genuine' national identity (Thobani, 2007, p. 87). Prime Minister Harper's political and social strategy to distinguish "old stock" real, authentic, and legitimate Canadians from others reveals several interrelated ideological oppressions. Understanding this strategy requires some understanding of Canada's violent colonial history, Canadian women's battle for suffrage, and

the legacy of Canadian racism. In this dissertation, I must acknowledge that it is difficult to provide a respectful and necessarily adequate overview of these histories and discourses that become resurrected in contemporary social and political life. The main argument of this dissertation is precisely this the Conservative government's ban against the wearing of face-coverings during the oath of allegiance actively and strategically conjoined Canadian citizenship to a normative ideal of religion most conducive to the Canadian state. The task of this dissertation is not to recount the full extent of Canadian colonial history but to highlight how current state narratives are both continuations and renewals of myths surrounding national descent, identity and majoritarian notions of religion. For instance, Minister Kenney's (2011) speech which introduced Bulletin 359 (briefly outlined in chapter three) begins with what he refers to as the "Canadian story:"

> Our story is truly remarkable. It's a story that began in 1534, when Jacques Cartier made three voyages across the Atlantic, claiming the land for King Francis I of France. The story continued in 1604, when the first European settlement north of Florida was established by French explorers Pierre de Monts and Samuel de Champlain, first on St. Croix Island, then at Port-Royal. In 1608, Champlain built a fortress at what is now Quebec City. Over the next four centuries, we built a society that is considered a model around the world. Every new Canadian owes a tremendous debt of gratitude to all those Canadians who came before (Kenney, 2011).

By situating the beginning of the Canadian story in 1534, Minister Kenney's narrative effectively erases Canada's colonial and settler past, disregarding the foundational role that majoritarian Christianity played in shaping the country and the violence perpetuated against the Indigenous peoples as the original inhabitants of the land. Kenney's speech resurrects the founding myth of "old stock" Canadian identity and history, which serves to justify the federal government's policy on face coverings. This portrayal does not reflect the diverse and inclusive history of Canada;

instead, it emphasizes a version of history that aligns with "old stock" Canadian ideology. Such a narrative corresponds with what Winter (2013) and Thobani (2007) describe as the myth of descent a constructed narrative that promotes a narrow, exclusionary vision of Canadian identity.

Kenney's retelling of the Canadian story bears the imprints and scars of past exclusions based on race, gender, national origin, religion, and Indigenous status (Shachar, 2016, p. 55). By invoking this selective historical narrative, Kenney's (2011) speech not only reinforces an exclusive understanding of Canadian identity but also seeks to legitimize contemporary policies that marginalize certain groups. In the next section, I turn to the broader historical context that intertwines national identity and religion, old-stock Canadian and the Canadian family and how these narratives continue to shape understandings of citizenship, religion and belonging in Canada today.

4.2.3 Old stock Canadian: History and Religion

Paul Bramadat and David Seljak (2008) argue that understanding past exclusions necessitate a deeper analysis of Canadian history. It is well-documented that the founding of the Canadian nation was not an isolated project of encounter, dispossession, domination, control, and genocide. These actions were part of a broader international affair involving European powers such as Britain and France whose conquests, ad assertions of sovereignty over Indigenous lands spanned centuries and crossed continents including Asia, Africa and the Americas. European entitlement over Indigenous lands was often justified by beliefs and philosophies that were distinguished by, according to Thobani (2007, pp. 40-42) several themes:

a. Indigenous populations were "heathens" and not considered "fully" human,
b. they were not Christian, therefore, un-civilized; they had not evolved

c. they were doomed to extinction by history and progress,
d. they had no recognizable legal systems or concepts of property and therefore, lawless; and they did not cultivate their lands.

In Canada, British and French sovereignty over Indigenous populations and their lands was justified and reinforced by a deeply ingrained sense of religious, racial, and cultural superiority. This worldview legitimized violence against Indigenous peoples as both divinely sanctioned and a moral imperative. One of the most enduring beliefs underpinning the perceived superiority of European civilization was religion, specifically Christianity. Shrubsole (2019) argues that while Indigenous religions were marginalized, the state actively promoted Christianity as the proper religion. A particularly striking example of this is legislation regarding the testimony of non-Christian Indigenous peoples. From 1876 to 1951, a clause in Canadian law described "non-Christian Indians" as "destitute of the knowledge of God and of any fixed and clear belief in religion or in a future state of rewards and punishments." This demonstrates how 'religion' explicitly shaped state legislation, underscoring the close relationship between Christianity and state power. Bramadat and Seljak (2008) describe this dynamic as the "marriage between Christianity and Canadian nationalism" (p. 11).

The collusion between the state and the Church was akin to a kind courtship. The Church supported the state's goals of land appropriation and control, while the state endorsed majoritarian Christian values. This close relationship laid the groundwork for social welfare agencies, the enforcement of Christian morality (sexual behavior and alcohol consumption) state-sponsored Christian missions to 'civilize' Indigenous peoples, the residential school system, and the legal framework of the time. As Bramadat and Seljak (2008) argue, the formation of Canadian national identity has "always occurred under the sign of the cross," reflecting the belief that "the Europeans who first created Canada imagined it always as a Christian project" (p. 6).

Bramadat and Seljak (2008) are quick to point out that the brutal colonial project was malevolent in breadth, and scope they also note that settlers, clergy, soldiers, and political leaders believed they were divinely guided and ordained by a sincere belief, drawing on the religio-legalistic doctrine of terra nullius and terra incognita (Thobani, 2007). In its broadest sense, to conquer the land was to bring it and its inhabitants under the dominion of a Christian monarch and to "Christianize" them (Bramadat & Seljak, 2008, p. 7). This duality underscores the entangled relationship between colonialism and Christianity—colonialism in service to Christianity, or Christianity in service to colonialism (Shrubsole, 2019).

4.2.4 "To be Canadian was to be Christian."

The historical connection between Christianity and Canadian national identity is rooted in the period between 1608 to 1960 which Bramadat and Seljak (2008) term the era of "Christian Canada." During this time the government recognized and supported a limited number of mainstream denominations which comprised of mainline Protestant and Roman Catholic groups that were seen as nation builders. These Christian delegations divided government benefits and resources in accordance with a hierarchy of status and privilege. mainline Protestant churches (Anglican, Presbyterian and United) incurred special privileges that included government recognition, access, and support. The Roman Catholic Church shared in this "special status" (limited extent) while marginalized Christian sects such as Mennonites, Jehovah's Witnesses, Hutterites, Eastern Orthodox and Conservative evangelicals were largely excluded. Bramadat and Seljak (2008) contend that during this period to be Canadian was synonymous with being Christian although "being Christian" wasn't enough since minority Christian groups like the Mennonites and Doukhobors were victims of discrimination and prejudice from majoritarian Christian groups (Wilkins-Laflamme, 2022). The marriage between Christianity and Canadian

nationalism has determined much of the shape of Canadian society. The tangled relationship between church and state during this period was mediated through the processes of colonialism. The churches aided the Canadian state as it expanded its control over the country, and, as part of this hegemonic national project, the churches for example, established mandatory schooling for children under the age of eighteen at church-run, residential schools (Shrubsole, 2019, p. 8). An overview of this history I contend is beyond the scope of this thesis, but a few keys points are necessary to state. In colonial Canada, the conjoining of Canadian national identity and religion was most evident (visible) in legislation. In 1867, the Indian Act which drew from and amalgamated existing legislation concerning the management of Indigenous Peoples and the lands reserved for them. The Canadian state promoted and instituted a form of coercive tutelage aimed to regulate the social, economic, religious, and cultural transformation of Indigenous peoples and their communities. Federal officials imposed bureaucratic systems that sought to regulate almost every aspect of Indians' lives, from child rearing to material resource management alongside the marginalization of religious belief and practice.[35] The Indian Act was essentially a legal commandment for coercive tutelage and nation-building. The state sought to eradicate Indigenous status, and land title, and marginalise Indigenous religious beliefs and practices. The history of dispossession, violence, genocide, and attempted cultural erasure not only marks colonial settler history but also a crucial corollary between Christianity and Canadian national identity (Bramadat and Seljak, 2008). By the 1960s, Christianity caressed every element of Canadian public life and social institutions.

[35] Shrubsole (2019) argues that in addition to enfranchisement, the Indian Act sought to regulate all facets of Indigenous life on reserves, including governance, education, economy, and religion. The most obvious affront to the protection and continuance of Indigenous religions was the ban on religious practices imposed from 1894 to 1951.

However, from the 1970's onwards Bramadat and Seljak (2008) argue Canada became both *more* secular and *more* religiously diverse. This shift has been embedded into structures that first defined by Christianity which later evolved into a Canadian style of secularism that privileges the beliefs, values, and practices of the historical, cultural, and religious majority. According to Bramadat and Seljak (2008) while "to be Canadian is to be Christian" has been replaced, the expectation is that to be a good Canadian (egalitarian, democratic, rational, and multicultural) one must be secular or at least one whose religiosity is confined to private life (p. 6). Clarke and MacDonald add nuance to this shift by identifying that the beginning of the shift in the 1960's is more precisely a *decline* in Christian affiliation, membership, and participation (2017, p. 11). Clarke and MacDonald (2017) argue that this decline that began in the 1960's has morphed into *disaffiliation* among a portion of the country's population (especially youth and increasingly older segments). Clarke and Macdonald (2017) surmise that Canadian society is entering into a new era, a post-Christian era (p. 11).

The history of dispossession, colonial violence, and race-based exclusions is integral to understanding Canadian national identity. As I discuss in the next section, this historical context is essential to the origins of Canadian citizenship and is closely tied to contemporary discourses that define cultural authenticity. These discourses, rooted in historical exclusions, continue to influence current perceptions of who qualifies as a "real" Canadian, revealing how citizenship remains intertwined with religious identity and gender power dynamics.

4.3.1 Authenticity Claims: The Canadian Family

The use of the term "old-stock Canadians" and the privileging of visibility as a prerequisite for full citizenship rights as members of the Canadian family reflect the historical exclusions based on race, gender, national origin, religion, and Indigenous status (Shachar, 2016 p. 55). As

discussed previously, the concept of "old-stock Canadian" functions as a coded boundary, a strategy to distinguish "real" Canadians from others, privileging particular identities. Patricia Hill Collins contends that these categorizations establish a naturalized and normative structure that constructs "otherness." Thobani (2007) points out that this approach recasts Canadian national identity as a master narrative, elevating the myth of Canada's whiteness and ideal Christian identity. This hierarchical framework creates the image of an exalted national subject, which obscures the colonial violence foundational to the nation-state. Thobani (2007) describes this figure as embodying the "quintessential characteristics" of the nation, positioned as the rightful heir to the state's protections and privileges, even as the concept implies the subject is controlled by and serves sovereign power (2007, p. 3). Harder (2022) argues that statements like "old-stock Canadians" reveal an identity steeped in whiteness and masculinity, used rhetorically to differentiate "real" Canadians from the "but where are you really from?" (p. 11). Canadians. Harder (2022) contends that this strategy not only suppresses but also erases history, producing two versions: one that ignores Canada's dispossession of Indigenous peoples, contributing to an "indigenized" white settler narrative and, second, another that divides Canadian settlement stories, distinguishing preferred settlers from those complicated by events like the Atlantic slave trade, Asian exclusion, and immigration policies favouring northern Europeans. Legislative policies advanced by the Conservative government were framed as protections of the "value of Canadian citizenship." However, Harder (2010) argues this "value" relies on the kinship-based structure of the Canadian state and envisions an "authentic Canadian" characterized by masculinity, racialized whiteness, and moral worthiness. Ammerman (2010) suggests that claims to authenticity often emerge from perceived losses of power and privilege. She describes a narrative of decline, loss of authority, dominance, and shared identity. This narrative posits an era

of religious homogeneity that is disrupted by contemporary religious diversity, implying a lost unity now challenged by differences (2010, p. 155). Narratives of loss intertwine nationalism with what Razack (2008) calls "race fiction," grounding national identity in the power to decide who belongs to the kin group and who does not (p. 28). This ideology supports an imagined community of "old-stock Canadians," legitimizing the regulation and exclusion of individuals perceived as unfit to join the Canadian family (p. 28).

4.4.1 Old Stock Canadian Family: A Living Hegemony

In this section, I focus on the Conservative governments' use of the "Canadian family," framing it as an ideologically constructed form of living hegemony. This concept is intertwined with, and shaped by the darker aspects of Canadian history, where exclusionary practices have been normalized and sustained. By exploring this ideological construct, I demonstrate how the Conservative government's discourse reflects deeper historical patterns of exclusion and control, highlighting the intersection of national identity and religion with power dynamics that have marginalized various groups throughout Canadian history. This discussion begins with a quote from Prime Minister Harper which captures the government's position:

> Look, when someone joins the Canadian family, there are times in our open, tolerant, pluralistic society that as part of **our** interactions with each other **we reveal** our identity through **revealing** our face. When **you** join the Canadian family in a public citizenship ceremony it is essential that that is a time when **you reveal** yourselves to Canadians and that is something widely supported by Canadians (Harper, 2015).

Understanding the delineation of "us" and "them" involves tracing the historical roots of Canadian identity politics, where religious and cultural difference has been portrayed as

problematic. Historically, the trope of the nation as family[36] has been tied to ideological constructs of religious and racial superiority. The Canadian national myth privileges "the founding nations" of British and French settlers (Thobani, 2007). This myth exalts, categorises, and ranks citizens through legal and sociocultural status, as Harper reminded the nation by drawing the boundaries between "old-stock Canadians" and the rest (Indigenous populations, immigrants, and refugees). This identity formation privileges settler history and creates symbolic boundaries that casts non-exalted individuals as outsiders who do not belong within Canada's imagined community (Thobani, 2007). This technique of governance represents an attempt by the perceived majority to assert exclusive and total connections to "the identity of the nation and the purity of the national whole" (Appadurai, 2006, p. 53). Williams (1977) frames these identity politics as "living hegemonies" that become renewed, re-created, defended, and modified but also require continual resistance and challenge by pressure not at all its own (p. 112). These living hegemonies function as discursive strategies that maintains the boundary making process of hierarchy, legitimacy and gender. In the following section, I discuss how the government used the concept of the Canadian family as a discursive strategy, that maintains the boundary making process of hierarchy, legitimacy and gender.

4.4.2 Family of Nations and Gender: A Brief *Her*story

Yuval-Davis's (1997) work theorizes that the nation is often imagined through familial and gendered imagery. The nation as a family can be traced by its etymological roots from the Latin word *natio*— "to be born" suggesting that one is born into a nation like one is born into a family. This genealogical dimension is often tied to the European concept, *Volknation* the notion

[36] This was a time when colonial and religious ideology founded and justified western religious, cultural and scientific theories of racial and civilizational superiority.

of shared blood or race legitimising exclusionary visions of the nation and national identity (p. 21). Smart (2013) argues that the family model is a powerful ideological system reflecting idealized constructs of characteristics attributed to contemporary family life (p. 33), which symbolically and materially reproduces structures of power, subordination, and violence. Werbner (1999) argue that these images are rooted in traditional concepts of male honour and shame where the nation is seen as an "extended family" and women are cast as needing protection (p. 231). This reinforces patriarchal structures, which Fanon critiques, pointing out that this familial normativity is a product of social power, projecting domestic hierarchies onto the broader social environment. Smart describes it as a powerful ideological system that idealizes specific characteristics of family life, thus reproducing social structures of power, subordination, and violence (Smart, 2013, p. 33).

Historically, family structures are hierarchical from husband over wife, parents over children. Feminist theorists argue that the concept of family often intertwines with a range of oppressive practices (Smart, 2013, p. 10). McClintock (1995) emphasizes that the trope of the family is an ideological tool that conceals and naturalizes hierarchies within families, reinforcing gendered power dynamics. This use of familial imagery in nationalist discourse embeds patriarchy and exclusion within the nation-state's conception of itself (1995, p. 357). Feminist theorists argue that the danger of positioning nations as "domestic genealogies" with the cleavages of familial and gendered imagery conceals historical violence, abuse, and oppressions by naturalizing the internal hierarchies that dominate families. Yasmeen Abu Laban (2008) has argued that the nation-state is variously encoded by gendered assumptions that in turn produce gendered outcomes (p. 3). Abu-Laban (2008) underscores the central role of gender in dialectical relations between state, nation, and family that depend on the 'natural' reproduction

of gender and women as mothers of the nation (p. 11). Kandiyotti (1998) argues that "women bear the burden of being 'mothers of the nation' (a duty that gets ideologically defined to suit official priorities) as well as those who reproduce the boundaries of ethnic/national groups, who transmit, the culture and who are the privileged signifiers [in terms of dress and behavior] of national difference (p. 1). The family trope is neither a neutral concept nor simply descriptive of what Benedict Anderson might call "imagined communities."[37] The family model functions as a living hegemony that as I explore in the next section are underpinned by patriarchal power dynamics and as Zine (2012) argues are "rooted in racism and sexism" (p. 12).

4.4.3 Statecraft and Patriarchal Stunts

> The role of the state in determining the way Muslim women should dress in order to render themselves docile national subjects who dutifully demonstrate their allegiance to dominant liberal norms through their dress code needs to be challenged for its racism and sexism" (Jasmin Zine, 2012, p. 12).

By framing the ban within the trope of the Canadian family and in terms of conflicting values, the government reinforced orientalist boundaries between "us" and "them." This discourse strategically employed a political tactic that sought to shape citizens through self-discipline, emphasizing the social and legal norms of inclusion and exclusion tied to specific religious practices. Two issues are embedded in the government's use of the family metaphor. First, family structures are hierarchical, imposing roles such as the husband's authority over the wife or parents over children. Second, the metaphor implies a singular, correct way to be Canadian suggesting that wearing the niqab makes one less Canadian or not Canadian at all. Prime

[37] Nations become naturalized as 'imagined communities,' a communal bond that seems natural while for many members may never meet, they nonetheless all maintain an image of their community a cultural representation that people come to imagine a shared experience of identification with an extended community that creates an idea of a mythic unity of a national collective (Anderson, 1983).

Minister Harper reinforced this notion by publicly stating that wearing the niqab was "not how we do things" in Canada (Harper, 2015).

Asad (2003) argues that the state's power to reshape religious life is a hallmark of modern liberal governance, operating not through overt compulsion or negotiation but through "self-discipline," "participation," and "law" as tools of political strategy (p. 3). When the state imposes definitions of religion and national identity, it is an exercise of sovereign power, and a form of statecraft. The language used by the Conservative government acts as a regulatory mechanism, constructing dual identities: what Pugliese (2010) terms the "prosthetic citizen" and the "incipient criminal." He argues that "prosthetic citizenship" operates as a kind of 'social orthopaedics,' where state disciplinary mechanisms reinforce unequal power relations and legitimize violence against those deemed outsiders (Pugliese, 2010, p. 57). These are dangerous dynamics that create a spectrum of precarious citizenship, falling somewhere between full citizenship and non-citizenship (the Harper government continually sought to impose 'temporary resident status' on Ishaq and other niqab-wearing women) not only in a strict legal sense but in a cultural and political one. This notion of "prosthetic citizenship" reveals the state's ability to withhold or retract citizenship according to shifting political priorities or opportunistic re-election strategies that lead to precarious and conditional rights. In this context, the niqab becomes a symbol within a discourse of criminality, linked to "crimes that will have always already been committed in advance of the fact" (Pugliese, 2010, p. 15). Such categorization exposes the symbolic violence enabled by state mechanisms and policies. It underscores how exclusionary laws, like those targeting niqab-wearing women, are grounded in divisive power relations that marginalize and discriminate. These strategies are particularly insidious because they obscure the government's legal efforts to withhold citizenship from Zunera Ishaq and other

niqab-wearing women. By linking an uncovered face to the "oath of allegiance as a public declaration of devotion" and "joining the Canadian family," (Kenney, 2011) the state positions itself as the head of the family, with citizens cast as its members. This family model, with its prescribed hierarchy (father as protector, mother as caretaker, children as future obedient citizens), reflects a normative framework that mirrors the authoritative structure of state policy.

During the French-language leaders' debate, Harper stated, "I will never tell my young daughter that a woman should cover her face because she's a woman. This is Canada… it's unacceptable," (Cullen, 2015). His comment reveals a gendered assumption about women's agency, that women's choices require male approval and reinforces patriarchal and exclusionary discourses that were prevalent in the public rhetoric surrounding the niqab ban. The metaphorical strategy linking an uncovered face to the "oath of allegiance as a public declaration of devotion" and "joining the Canadian family" positions the state as the head of the family, with citizens as its members. This family model, with its predetermined hierarchy (father as guide and protector, mother as caretaker, children as obedient future citizens), reflects a normative framework that mirrors the authoritative structure of state policy. As McClintock (1995) explains, these social and cultural constructions of family reinforce state authority and domination, reflecting patriarchal ideals (p. 360)

The Conservative government's version of the Canadian family thus becomes a technology of governance that conjoins citizenship and religion. Martin (2017) argues that "technologies of government" make political rationalities realizable by enumerating, defining, and ordering non-citizens, establishing certain forms of authority, expertise, and knowledge (Martin, 2017). This framework shows how religious beliefs and practices, like the wearing of

the niqab, become targets of state power. Cavanagh (2008) further asserts that nations rely on 'good citizens,' who are produced through the regulation of sexuality, gender, family, race, and religion (Cavanagh, 2008). In the case of the niqab ban, these regulations demonstrate how the state can shape notions of belonging by resurrecting divisive historical narratives. Through policies like the niqab ban, the government invokes past exclusions to construct a normative idea of citizenship and religion by reinforcing boundaries around who is considered authentically Canadian and marginalizing those who do not conform to this constructed ideal. The metaphor of the "Canadian family" was not used to evoke a sense of inclusion among all citizens but rather to manufacture an idea of a homogeneous Canadian identity. This maneuver links national identity to religion, legitimating certain identities while excluding others. Hall (1985) argues that such strategies combine old and new elements to manipulate and generate moral panics, law-and-order discourses, and fears of social anarchy to achieve hegemonic dominance within a society's social imaginary (Hall, 1985, p. 122). These politics are particularly dangerous because they obscure the government's legal battle to withhold citizenship from Zunera Ishaq and other niqab-wearing women.

4.4.4 "The Majority of Canadians Would Agree..."

In Canada, multiculturalism is both a demographic reality and a constitutional commitment to preserving and enhancing the country's diverse heritage. According to Statistics Canada, 21.9% of Canadians are foreign-born, the highest percentage in almost a century, reflecting the diversity of Canadian society (Government of Canada, 2017). At the level of law, policy, and public sentiment multiculturalism is widely valued and supported. A 2016 Environics survey found that Canadians rate multiculturalism as central to their national identity (Environics 2016). I relied on data from 2016 and 2017 to remain as close as possible to the social, political,

and cultural context surrounding the niqab ban and the Ishaq legal case. The Canadian *Charter of Rights and Freedoms* underscores the importance of this context through Section 27, the world's first constitutional provision to protect multicultural heritage:

> This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Despite this, Harper's (2015) claim that 'most Canadians agree' on certain values reflects an exclusionary vision of citizenship that aligns with the Conservative government's push to ban the niqab during citizenship oaths. The government suggested that women wearing the niqab were not only offensive but that their values conflicted with 'Canadian values,' even though freedom of religion is protected under Section 2(a) of the *Charter*. The government provided two primary justifications to the Canadian public for banning the niqab during the citizenship oath: national security and alleged public support. In March 2015, the Conservative government commissioned a Leger Marketing poll of 3,000 Canadians. It asked whether participants supported a requirement to show faces during citizenship ceremonies, explicitly referencing niqabs and burqas. The poll reported that 82% of respondents supported the face-showing requirement. Among the reasons cited, 29% mentioned security concerns, and 11% mistakenly believed this was already Canadian law. However, several critical points were absent from the survey. First, as outlined in chapter 3, Immigration Canada's policy manual (CP 15) already required identity verification procedures for prospective citizens, including niqab-wearing women like Zunera Ishaq who already comply with identity verification by revealing their faces to a female citizenship official. Second, citizenship candidates sign a legally binding written version of the oath before reciting it. Third, a Federal Court ruling just a month earlier deemed the niqab ban unlawful. Lastly, the survey's positioning within broader questions about Canada's foreign

policy, particularly its opposition to ISIL, introduced a conflation of terrorism, security, and the niqab. These uncritical associations are what Natasha Bakht terms an "uncomplicated nexus" between a niqab-wearing woman, terrorism and ISIL, an internationally condemned terrorist organization. Bakht (2012) argues that this "nexus" draws upon and perpetuates a public imagination in which Muslims are perceived as inherently dangerous and therefore "legitimately seen as security risks" (p. 85). This rhetoric underscores how the ban's framing relied on problematic and uncritical linkages between religious identity, national security, and public perception. Moreover, the government delayed releasing the survey results until September 2015, six months after its completion. The strategic timing coincided with the 42nd Federal election campaign[38] and after three key developments may have shifted some of the 82% of Canadians support for a niqab ban. Harper's (2015) "old-stock Canadian" remark, the government's request for a stay in the Ishaq case, and Zunera Ishaq's public reveal of her identity.

> When you join the Canadian family in a public citizenship ceremony it is essential that that is a time when you reveal yourselves to Canadians and that is something widely supported by Canadians" (Harper, 2015).

In response, many Canadians took to social media platforms like Twitter (**x**) and Tumblr to challenge these gendered and exclusionary narratives. Hashtags like #DressCodePM and platforms such as "Niqabs of/du Canada" became digital spaces for solidarity and an unexpected space for deep equality to flourish. Canadians shared images of themselves wearing hockey masks, surgical masks, and ski masks. These acts questioned whether Harper (2015) would deem

[38] On Sunday, August 2, 2015, Prime Minister Stephen Harper formally requested the Honourable David Johnson, the Governor General of Canada (2010 -2017) to dissolve Parliament. This decision initiated a 78-day election campaign, marking the longest and the most expensive campaign in modern Canadian political history.

them “offensive” or un-Canadian and whether they, too, belonged in the “Canadian family” (Alibhai, 2019)

4.5.1 The Canadian Family Votes

On October 19, 2015, 68.3% of Canadians exercised their guaranteed *Charter* right to vote in Canada’s 42nd Federal Election. This right is one of the few *Charter* provisions explicitly reserved for Canadian citizens. The 2015 election marked a historic moment in several ways. First, it had the highest voter turnout in 22 years,[39] with a notable surge in voter participation across all age groups, especially among 18 to 24-year-olds, marking the largest increase in this age group ever recorded by Elections Canada. Second, the Liberal Party achieved a record-breaking gain of 148 seats, the largest numerical increase by any party in Canadian election history (Elections Canada, 2016). Third, Zunera Ishaq, a Canadian citizen, cast her vote for the first time. Lastly, the election reflected a general consensus among Canadians that the decade-long reign of Prime Minister Stephen Harper and the Conservative government had come to an end which signaled a collective move away from the divisive discourse surrounding the niqab and the ‘old-stock Canadian’ family narrative.

4.6.1 Chapter Summary

In this chapter, I drew on former Prime Minister Stephen Harper’s statements to explore the controversial concept of “old-stock Canadian” and its connection to the broader framework of the Canadian family ideology. I outlined the term’s historical background, tracing how these divisive and exclusionary ideas have shaped and influenced contemporary political

[39] According to Elections Canada the “official turnout for the 42nd general election held on October 19, 2015, was 68.3%, 7.2 percentage points higher than the previous general election (61.1%) and 9.5 points higher than the all-time low of 58.8% registered for the 2008 election. This was the highest rate observed since the 35th general election in 1993, which garnered a turnout of 69.6%” (Elections Canada, 2016).

understandings of national identity and belonging. Following this, I analyzed the discourses at play, focusing specifically on Harper's use of both the term "old-stock Canadians" and the concept of the "Canadian family." Additionally, I included a brief discussion of how some Canadians responded to these narratives, highlighting the public's engagement with and resistance to these exclusionary ideas. This chapter aimed to uncover the deeper implications of these political discourses and their impact on national identity. In the next chapter I build on these implications and draw into the analysis the Conservative government's attempts to transform a religious belief into cultural practice as a form of statecraft.

CHAPTER FIVE: STATECRAFT AND STRATEGY: COERCIVE RELIGION AND CITIZENSHIP

When Zunera Ishaq was fifteen years old, she made two choices that would irrevocably alter her destiny. First, she made the decision to become an English teacher—she adored her grade 11 English teacher. Her teacher drew Ishaq into the world of literature, opinions and possibilities. Zunera was inspired by her. Her teacher wore a niqab. Growing up in Multan, Pakistan Ishaq understood the niqab to be a symbol of a less educated socio-economic class. Yet her English teacher was educated and modern in her thoughts and ideas. Ishaq was intrigued. No one in her Sunni Muslim family or her circle of friends wore a niqab (McKeon, 2016).
Over the course of a year, Zunera Ishaq studied why some Muslim women wear a niqab and why some do not. She poured over religious texts and social commentaries by different scholars and thinkers. She thoughtfully read their specific arguments and beliefs. She consulted with imams. She spoke to niqab-wearing women who expressed such varying reasons that left Zunera confused. She spoke to her parents. They disapproved. But her father impressed upon her that her choice should be based on her wisdom. She decided to wear the niqab and then decided not to. Ishaq kept studying. She persisted on the why, the if and what the niqab would mean to her. Ishaq kept studying (McKeon, 2016). A year later, Zunera Ishaq made a choice; she had discovered this thing called religion and that it belonged to her. Thirteen years later her choice would alter the Conservative government of Canada's political destiny.[40]

October 08, 2015, CBC *The Current:*

Anna Maria Tremonti: There are many respected Muslim scholars and other Muslim men and women who would argue there is no religious requirement to wear the niqab. Why do you *persist* (emphasis mine) in saying it is religious?

Zunera Ishaq: This is a religious practice for me [sic] and I do understand, and I agree that there is a difference of opinion among Muslim scholars on this issue but the opinion I take on this issue according to that opinion it is my [sic] it is part of my faith.

5.1 Introduction

This chapter draws on the incisive critiques by Beckford and Asad, who warn against the dangers of imposing universal definitions of religion. These critiques underpin the chapter's analysis of the Canadian government's social, political, and legal efforts to frame the niqab as a

[40] It is my argument that Zunera Ishaq's choice would influence the end of the Conservative government's ten-year rule and does not reflect the views and opinions of Zunera Ishaq.

cultural tradition and not a 'religious' belief and practice. The transformation of religion to culture was mobilized through the Conservative government's niqab ban, which served as the basis for denying citizenship and religious freedom rights to niqab-wearing Muslim women. The Conservative government strategically highlighted positions and aligned itself with organizations it designated as "moderate Muslim" groups, such as the Muslim Canadian Congress (MCC), the Coalition of Progressive Canadian Muslim Organizations (CPCMO), and Muslims Facing Tomorrow (MFT). These endorsements were used to legitimize the government's policy by framing it as consistent with certain Islamic perspectives, while simultaneously distancing the practice of covering from being recognized as a religious obligation. This chapter proceeds in three parts: first, I begin by examining religion as a mode of statecraft to introduce and critically assess the interwoven elements that transforms the niqab from a religious practice to a cultural tradition. Before beginning this discussion, I will first examine how religion functions as a mode of statecraft. This approach will help introduce and critically assess the intertwined elements that transform the niqab from a religious practice into a cultural tradition, serving as a means of coercive religion and citizenship. The second half of this chapter examines the alliance between the Conservative government and three Muslim organizations that supported the ban: the Muslim Canadian Congress (MCC), the Council for Progressive Muslims (CPMO), and Muslims Facing Tomorrow (MFT). I conclude this chapter with a discussion on conditional inclusion and agency.

5.2.1 Statecraft: Definitions of (Majoritarian) Religion

> The modern state's sovereign power to reorganize substantive features of religious life, stipulating what religion is or ought to be, assigning its proper content, and disseminating concomitant subjectivities, ethical frameworks, and quotidian practices (Asad, cited in Mahmood, 2016, p. 3).

Asad (2003) argues that the state's power to reshape religious life is a distinctive feature

of modern liberal governance, operating not through overt compulsion or negotiation but through "self-discipline," "participation," and "law" as tools of political strategy (p. 3). When the state imposes definitions of religion to regulate religion, Asad contends, it exercises sovereign power, framing such regulations as forms of normative intervention (Asad, 2003) Richardson argues that when the state assigns normative status to specific religions, individuals, or groups, it initiates a process of normalization. This process establishes standards by which all religious expressions are judged, measured, and compared, determining whether they conform to the state's norms. Richardson argues that such normative interventions privilege certain forms of religion over others, creating hierarchal structures among religious groups that function as agents of social control (p. 278). This process embeds the beliefs, values, and practices of the majority religious tradition into a nation's laws setting them as the reference point for defining what constitutes acceptable religion and religious practice. Asad further emphasizes that when the state applies this framework, it adheres to the principle of *cuius regio, eius religio* (the religion of the ruler dictates the religion of the subjects) even though the state claims to be neutral and disavows any religious allegiance (Asad, 2006, p. 94). Barras et al. (2018) build on these ideas by arguing that the issue is not simply about Canadian state neutrality *per se* but more about how the state's visibility gains power and prestige by assuming *invisibility.* The authors explain that mainstream/majoritarian Christianity has been effectively privatised from public view. As a result, Islam becomes *hypervisible* in public spaces (Barras et al., 2018, p. 96), and this has two interlocking effects: the elevation of invisible power: majoritarian religion gains power by remaining unseen and the reduction of minority religion's visibility. Therefore, Islam and other minority religions are rendered *hypervisible* in the public sphere and subjected to scrutiny and regulation.

In the next section, I expand on statements by the former Prime Minister and the Minister of Immigration to examine how the transformation of religion into culture serves as a form of statecraft and normative intervention. I critically assess how this process reframes the niqab from a religious practice into a cultural tradition enabling the state to justify normative intervention of religious practice.

5.2.2 Statecraft: Religion to Culture Normative Intervention

> I note that a huge number of Muslims have reminded me that the face covering is not a religious obligation. This is a cultural tradition of Arab tribes from the pre-medieval period that has been imposed on some women (Kenney, 2011).

State-sanctioned statements such as the assertion that face-covering is "not a religious obligation" but "a cultural tradition" underscores the danger of imposing universal definitions of religion. They also play a pivotal role in how the state reassigns the form and function of the niqab as a mode of statecraft. These statements not only legitimise the transformation of religion into culture but "redistributes power away from the carriers of religious symbols" (Beyer, 2020, p. 4). This shift allows for a form of permissive discrimination that contributes to the exclusion of niqab wearing women and diminishes their human rights claims to religious freedom. The transformation of religion into culture is a clear assertion of power; acknowledging the religious function of the niqab would threaten and disrupt existing power structures (Beyer, 2020). Beaman (2020) critically argues that this "religion to culture" movement is a one-sided, nationalist, and protectionist argument mobilized by political and social actors and in some cases the courts. This argument serves to obscure majoritarian religion by rendering it invisible while amplifying the visibility of minority religions. These are hegemonic and interlocking power moves that, in this case, merge majoritarian ideas of religion with access to citizenship. Prime

Minister Harper demonstrated this connection in the House of Commons by condemning the niqab as a practice contrary to Canadian values:

> It is very easy to understand why we do not allow people to cover their faces during citizenship ceremonies. Why would Canadians, contrary to our own values, embrace a practice at that time that is not transparent, that is not open, and frankly is rooted in a culture that is anti-women? That is unacceptable to Canadians and unacceptable to Canadian women, and that is why this government [sic] (House of Commons, 2015).

Following the Federal Court's ruling that the Conservative government's ban on face coverings during the oath of citizenship was unlawful. Judge Boswell ruled that the ban "fettered the discretion of citizenship judges to administer the oath with the greatest possible religious freedom" (*Ishaq*, at para. 54). Harper reframed the ban not as a matter of religious freedom, but as a defense Canadian identity, arguing that "Muslim women are not obligated, not required to cover their faces in public" and that "most moderate Muslims support the ban" (Chase, 2015). These remarks delivered in the House of Commons should be understood as an exercise of sovereign power.[41] Harper's statement demonstrates how normative intervention can function as both an inclusionary and exclusionary regime that legitimizes representations and beliefs about particular groups. This approach not only restricts religious freedom but empowers "decision makers" to determine acceptable versus unacceptable forms of religion (Richardson, 2006). The state's role in normalizing majoritarian notions of religion carries particular dangers, especially when establishing normative statuses for certain individuals, and groups. This normalization process defines the standards against which minority groups are assessed, and ultimately determines which groups are deemed worthy of legal protections for religious freedom.

[41] Then leader of the NDP Thomas Mulcair framed the Prime Minister's statement as a "decree." Mulcair stated: "When he talks about a culture of 1.8 billion human beings as being anti-women—that's what he decreed yesterday in the House of Commons. They're now trying to backtrack, but he said what he said, and it's very divisive and irresponsible. It's unworthy of a Prime Minister of Canada" (Mulcair, 2015).

Beaman (2021, p. 27) warns that the "ancestral ghosts of majoritarian religion continue to haunt present-day iterations of the boundaries of religious freedom." Beckford argues that it is critical to monitor the state's role in shaping public perception and responses to religious diversity as these actions have broader implications for freedom, equality, and justice (2003, p. 12). In the Ishaq case such structures dictate how Canadian citizens should embody their religious practices, distinguishing acceptable from unacceptable forms. This is how majoritarian, invisible religion operates, as the conjoining of religion and citizenship establishes the normative framework for both. As explored in chapter four, the Conservative government's aligned national values and citizenship with religious identity that functioned as a tool of governance to define and enforce views on religious practices and Canadian identity. This alignment carries significant implications: the power to define, as Foucault argues, is mediated through a desired norm. In this context, the power dynamics that delineate religious identity establish a strategic framework that mirrors acceptable national identity, shaped by orientalist perspectives. This framework defines, delineates, and positions niqab-wearing women, such as Ms. Ishaq, as "prosthetic citizens" (see chapter four) and what I term "prosthetic believers."

The next section examines the alliance between the Conservative government and three Muslim organizations that supported the ban: the Muslim Canadian Congress (MCC), the Coalition of Progressive Muslims (CPMO), and Muslims Facing Tomorrow (MFT). All three social organizations claim to represent "moderate Muslims" and maintain positions that frame the niqab and burqa as cultural products rather than religious obligations, arguing they should not be protected as religious freedom rights. This alliance has significant implications as it obscures the historical, religious, and cultural assumptions informing these positions and advances the state's normative intervention.

5.2.3 Moderate Muslim: Statecraft

Prime Minister Harper's reclassification of the niqab as a cultural, anti-woman practice that "most moderate Muslims" reject established and codified the boundaries of what constitutes 'real' religion and acceptable practice in Canada. The Conservative government's linking of majoritarian religion with national identity reinforced the state's transformation of religion into culture with the construct of the "moderate Muslim."

> These are not the views only of the overwhelming majority of Canadians; they are the views of the overwhelming majority of moderate Muslims.
>
> (HANSARD)

On March 10, 2015, during a House of Commons debate, Prime Minister Harper (2015) responded to Liberal Party leader Justin Trudeau's criticism that the Conservative government's rhetoric on preventing women from wearing the niqab during the oath of citizenship was divisive. Harper countered that it was Mr. Trudeau who failed to understand that the Conservative position opposing face coverings during the oath of citizenship was supported by "almost all Canadians" and "moderate Muslims." Prime Minister Harper stated:

> Mr. Speaker, let me quote what the organization Muslims Facing Tomorrow says:
>
> The requirement of Citizenship and Immigration Canada to remove full face coverings during citizenship ceremonies is not onerous and is consistent with the customs and conventions of an open liberal democratic society such as ours."
> Let me quote what the Coalition of Progressive Canadian Muslim Organizations says, "Most Canadians believe that it is offensive that someone would hide their identity at the very moment where they are committing to join the Canadian family".
> These are not the views only of the overwhelming majority of Canadians, they are the views of the overwhelming majority of moderate Muslims. It is up to the leader of the Liberal Party to explain why he is so far outside that mainstream.

Indeed, Prime Minister Harper publicly accused Mr. Trudeau of opposing the "the overwhelming majority of Canadians" and "the overwhelming majority of Muslims," such as the organizations Muslims Facing Tomorrow and the Coalition of Progressive Canadian Muslim

Organizations, who believe that the niqab and burqa are not rooted in Islam and should be banned in public spaces. The Canadian Conservative government introduced and defended its ban on Muslim women wearing the niqab and burqa during the oath of allegiance at Canadian citizenship ceremonies, drawing on arguments similar to those advanced by three Canadian Muslim organizations: the Muslim Canadian Congress (MCC), the Coalition of Progressive Muslim Organizations (CPCMO), and Muslims Facing Tomorrow (MFT) as well as the late Egyptian Sheikh Mohammad Sayyed Tantawi (Egypt's senior Muslim authority). The government's policy, supported by these Canadian Muslim organizations and Sheikh Tantawi, reflects complex historical arguments that both Muslims and non-Muslims have used for centuries to contest the wearing of the niqab and burqa. I now examine the statements made by Prime Minister Harper and Minister Kenney, which echoed the positions of the MCC and CPMO.

To defend their face covering ban, the Canadian Conservative government cited a religious decree by the late Egyptian Sheikh Mohammad Sayyed Tantawi, who dismissed the burqa and niqab as cultural practices not grounded in Islam. In 2009, Sheikh Tantawi issued a fatwa (religious decree) and spearheaded a public campaign to ban the niqab in Egyptian universities, arguing that the burqa and niqab are secondary cultural practices rather than religious obligations in Islam. However, understanding this decree requires contextualizing it within the broader historical and political dynamics of Egypt at the time.[42] The ban on the niqab in Egypt was part of a power struggle between the Egyptian state and Salafist Muslims. Tantawi's actions were part of a state-led effort to counter the growing influence of Salafist

[42] In Egypt, Islam has come to embody a variegated process of movements, ideas, and practices. For some Egyptian Muslims, Islam is the cultural topography from which the Egyptian nation was built, a doctrinal system with political and juridical connotations of the proper ordering of state and society, and/or a system of beliefs harmonized to daily life. Whether women should cover their faces is a long-standing debate among scholars.

Muslims in Egypt. The decree was used to curb increasing Salafist public presence and political organizing.[43] More importantly, sectarian Salafist Muslim women believe the wearing of the burqa and niqab is a religious obligation integral to their practice (Al-Fartousi & Mogadime, 2012).

Minister Kenney justified the Canadian government's position by citing his meeting with Sheikh Tantawi during which Tantawi reportedly stated that face coverings were not a religious requirement in Islam. Kenney explained, "He clarified for me that people in the West who think this is a religious obligation do not understand Islam law. So, I am not going to second guess the most pre-eminent Sharia authority in the Sunni world" (Bell, 2012).

This citation of Tantawi as "the most authoritative" source reflects the government's strategy by framing the ban as aligned with 'authentic' Islamic interpretations to support their claims that the ban did not infringe upon religious freedom rights. What remains absent from the Canadian government's reliance on Tantawi's decree is an acknowledgement of the specific religious, social, and political contexts from which such political and theological positions emerge. These contexts include a diversity of interpretations, internal tensions, and theological differences that have long characterized debates over the niqab and burqa (and hijab) within Muslim communities. The niqab in this sense became more than a religious practice; it transformed into a symbolic site where geopolitical discourses, national narratives, and religious scripts converged and conflicted. In contrast, in Canada, the Conservative government seized upon Tantawi's decree to legitimize their argument that face coverings are cultural rather than religious.[44] Supporting Tantawi's decree and endorsing the Canadian government's ban was the

[43] We see these same politics playing out in France where the niqab has become linked to Salafists extremists.
[44] In this context, Egyptian government, politics, religion, and culture were intertwined in ways that blurred historical lines, merged divisive parties, and fused competing religious organizations into a complex social and political matrix that ultimately influenced the Canadian landscape.

Canadian Muslim Canadian Congress (MCC), a self-described "moderate Muslim" group that similarly framed face coverings as practices "rooted in Middle Eastern culture rather than in Islam" (Downie, 2013, p. 40).

The Muslim Canadian Congress (MCC) is a self-proclaimed "moderate Muslim" organization formed in the aftermath of 9/11. The organization is committed to promoting a "progressive, liberal, pluralistic, democratic secular society where everyone has the freedom of religion" (Downie, 2013, p. 30). According to their mission statement, the MCC upholds the "Charter of Rights and Freedoms and the Canadian Constitution" as their guiding principles and seeks to ensure that Muslim communities are equal and active contributors to the development of a just, democratic, and equitable society in Canada.

In October 2009, the Muslim Canadian Congress (MCC) lobbied the Canadian Federal Conservative government to introduce legislation banning the wearing of masks, burqas, and niqabs in public (Downie, 2013). The organization argued that face covering practices "reflect a mode of male control over women and are remnants of 'medieval culture' that have no place in modern Canadian society, where gender equality is recognized as an inalienable right for all" (Downie, 2013, p. 30). The MCC framed their arguments through orientalist perceptions, depicting the niqab and burqa as "symbols of gender inequality, oppression, and subordination" (Downie, 2013, p. 30). These garments, they contended, prevented niqab-wearing Muslim women whom they characterized as "a very extremist element in our community from fully participating in and integrating into democratic society" (Downie, 2013, p. 40). This perspective aligns with orientalist narratives that associate the niqab and burqa with a 'medieval and backward' culture, portraying them as incompatible with Canadian values. Furthermore, the MCC declared that the niqab and burqa were not religious requirements, but practices rooted in

tribal desert cultures, rather than Islam (Downie, 2013, p. 40) Based on this assertion, they urged the Canadian government to legislate a ban on wearing these garments in public spaces.

Strands of the MCC's argument were echoed by then Minister Jason Kenney, who defended the Conservative government's new policy, Operation Bulletin 359, in various media appearances. In an interview on the Canadian Broadcasting Corporation's *Power and Politics* (2011) with Evan Solomon, Kenney stated that the niqab "reflects a misogynistic culture—a treatment of women as property rather than people, which is anchored in medieval tribal customs as opposed to any religious obligation" (cbc.ca). On January 23rd, 2012, nearly a month after the introduction of Operational Bulletin 359, the Muslim Canadian Congress hosted an event honoring Minister Kenney, who served as the keynote speaker, to celebrate his "courageous" decision to ban the niqab during the oath of citizenship (Bell, 2012). Similarly, the Coalition of Progressive Canadian Muslim Organizations (CPCMO), another group advocating for "moderate" Muslim values, supported the ban on the niqab and burqa by citing security concerns and the belief that these garments are political symbols of Islamic extremism.

The Coalition of Progressive Canadian Muslim Organizations (CPCMO) describes their organization as a "think tank" that provides a platform for diverse voices within the Muslim communities of Canada, who are engaged in following the principles and values stated in the Canadian Charter of Rights and Freedoms and support Muslims who are working towards "reform."[45] According to their website, the CPCMO is an umbrella for progressive Muslims

[45] It is, important to note that the moderate Muslim construct draws into the discussion of 'reforming' Islam. The calls and arguments for a "reformation" of Islam from inside and outside of the tradition is centuries old (Karim, 2014). However, the difference between them, I would argue, is lost in translation and understanding. This is not to say that the distinction is one of simply "semantics or formal linguistic accuracy" (Filali-Ansary, 2003: 20). Filali-Ansary locates their distinction within the ideological underpinnings that presupposes the framework from which the terms are understood. In stressing this difference, Ansari makes an important point, from within the tradition, the 'reformist' movement was not coupled with the way "religious views were transmitted to and received in public" (2003, p. 21). Filali-Ansary points to the concept embodied in the Arabic term, *Islah* which means redress or reform

across Canada who uphold Canadian values, especially separation of religion and politics, gender equality, one law for all, freedom of expression and education against radicalization (cpcmo.org). The current Chair of the (CPCMO) and past vice-president of the Muslim Canadian Congress (MCC), Salma Siddiqui has since 2007 lobbied the Canadian government to ban Muslim women from wearing the niqab and burqa in Canadian public spaces since they pose a "security risk" because they conceal the wearers' identity and are political symbols of Islamic extremism.

5.2.4 Statecraft and Culture

The MCC, CPCMO, and the MFT (Muslims Facing Tomorrow) argue that the niqab and burqa are cultural products rather than religious practices, legitimizing the transformation of religion to culture in their arguments. This approach, as Joan Wallach Scott (2007, p. 7) suggests, treats culture as an entity of fixed, homogeneous values, ignoring the complexities of politics, history, and religious interpretation. Roy (2009) argues that claims that represent the "true" religion often rely on constructing culture as something distinct and separate from religion. This distinction is evident by how the MCC, CPMO and MFT represent the niqab as a cultural practice devoid of religious significance. The Canadian government, alongside the MCC, CPMO, and MFT use the concept of "culture" as a tool to reassign the religious practice of niqab-wearing women as cultural (Beyer, 2020), therefore denying it the protections afforded by religious freedom under the *Charter*. For example, Muslims Facing Tomorrow (MFT)[46] was

(p. 21) until the 1920's, Muslim thinkers and political leaders used the concept as a lens from which they sought to address contemporary issues, the need to cure social ills and *reforming* in the sense of improving the overall quality of life amongst Muslims not, reformulating or the fashionable "reformation" of religious beliefs (p. 21) and practices by Muslims by *other* Muslims.

[46] Muslims Facing Tomorrow (Council for Muslims Facing Tomorrow) describe their organization as a think tank whose mission statement reads in part:
"Our mission is to reclaim Islam for, as the word itself means, securing Peace for all people, and to oppose extremism, fanaticism and violence in the name of religion; and

"alarmed" by the Federal Court's ruling that the government's face-covering policy was "unlawful." In a press release issued on February 18, 2015, they stated:

> MFT strongly disagrees with this ruling. The claim of Ms. Ishaq, on the grounds of freedom of religion, that she is required to wear niqab because of her faith in Islam and in belonging to the Hanafi school or fiqh within Islam is untrue. Islam makes no such requirement as obligatory on Muslim women, and there is no such ruling made obligatory for Muslim women in Hanafi rites or jurisprudence within Islam. The wearing of full face covering by that small segment of Muslim women, such as Ms. Ishaq, is a custom turned into religious mandate by Muslim extremists in Pakistan, and elsewhere in Muslim majority countries, and such contentious mandate enforced in public by coercion is of recent origin. MFT would make no objection to Ms. Ishaq's claim if made on the basis of certain custom in which she was raised and which she adopted, and the Court accordingly found relief for her custom.
>
> (Muslims Facing Tomorrow, 2015)

This statement creates a form of inter-legality, that intermingles norms, meanings, values, and legal elements in its statement to legitimize the national legal order (Hoekema, 2008, p. 4). By semantically linking modern governance with historical narratives, such statements obscure the power dynamics between different interpretations of the same religion. At the state level, the representation of intracommunal differences undermines those Muslims that do not conform to this version of Islam (Hirji, 2010, p. 20). This process also reinforces majoritarian ideas about how religion should be expressed and organized in the public sphere. The critical issue here lies in the power dynamics that define the boundaries of religion and culture. These dynamics initiate a strategic process of coerced religion and subject formation, where niqab-wearing women, are defined, categorized, and codified as "prosthetic believers" (Alibhai, 2020). Such characterizations reduce the historical, social, and political complexities within the religious landscape by simplifying diverse interpretations, sects, identities, practices, embodiments, and

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Our vision is to advance among Muslims the principle of individual rights and freedoms, and for Muslims to embrace the idea of openness, of relating to others as equal and deserving of equal respect, and of defending freedom of speech as the basis of all other freedoms enunciated in the constitutions of liberal democracies, such as ours in Canada. Mission | Muslims Facing Tomorrow

beliefs into a narrow framework of acceptable religious practice. This approach marginalizes and excludes those who do not conform to the prescribed norms. As Asad (2006) argues, the state assumes the role of religious arbiter and authority, embodying a single absolute power while claiming to represent transcendental neutrality (p. 498). In this role, the state links real beliefs to good citizens versus false (misguided) beliefs to bad citizens.[47]

5.2.5 Statecraft: Our religion Her Culture

> So just to finish the point on this—the putative religious obligation there is not a word in the Quran or the Hadith that requires that women cover their faces. To the contrary, the only requirement is that they uncover their faces when they're doing the haj. This is why the vast major—and here's a critical point, Evan. Because those who are arguing for allowing face – people to obscure their faces while taking the citizenship oath are, I think, unintentionally legitimizing this symbol of the oppression of women, this misogynistic symbol that's rooted a Medieval tribal culture (Kenney, 2015).

Based on the statement above, I want to consider the authoritative statements by the Prime Minister and his governments' ability to know the truth. Bakht (2020) draws our attention to how male perspectives, particularly those of non-Muslims or those distanced from the lived realities of Muslim women dominate the public discussion. Bakht (2020) argues that we must pay critical attention to the gendered dynamics inherent in statements made by a white, male, non-Muslim individual interpreting and explaining the 'real' meaning behind a religious garment worn by a racialized Muslim female (Bakht, 2020, p. 3) or any woman. Indeed, the issue is not merely about questioning the sincerity or commitment of a Muslim woman wearing a niqab but rather challenging her interpretation and understanding of her own beliefs and practices.[48]

[47] Distinguishing between "good/real" Muslims and "bad/false" Muslims (Mamdani, 2002, p. 767).
[48] Popularly referred to as mansplaining, a pejorative term.

This vulgar use of culture (Fournier, 2002) fosters stereotypical, caricatured representations of niqab-wearing women, which can be categorized into three major strands. First, transforming religious symbols into cultural ones preserves the hegemony of majority religious groups, diminishing the religious significance of such practices to maintain hierarchies, divisions, and marginalization. Second, this transformation legitimizes the invisibility of dominant Christian symbols. Third, it sustains orientalist constructs that frame Muslim women in reductive and harmful ways. Contemporary scholarship indicates that visible, acceptable forms of religious expression in the public sphere are often shaped by small "p' protestant norms, which privatize faith and belief as matters of personal conviction (Sullivan, 2011). Consequently, practices like face covering are perceived as excessive, eliciting responses of fear, distrust, and anxiety, drawn from an orientalist archive that foster "knowing" through stereotypes. Amiraux (2014) highlights that such knowing functions as societal gossip. Amiraux (2014) argues that authoritative statements about Muslim women who cover their hair and/or face are discussed in a manner similar to celebrity gossip: through rumors and assumptions, creating an illusion of authority without grounding in fact (Amiraux, 2014, p. 2).

This transformation from religion to culture arises within a gendered narrative of the Canadian family, where women's bodies act as markers and reproducers of the nation, its values, and communities (Razack, 2008; Hoodfar, 1997). Assertions that the niqab is "oppressive" or "backward" stem from orientalist perspectives, which frame Islam as purportedly inherently violent and oppressive. Such views reduce the niqab from a complex religious symbol to a cultural stereotype by reinforcing orientalist ideologies. Linking these orientalist representations to Canadian values creates an intricate space where national anxieties about identity are both intensified and reified through such reductive portrayals. This "othering" process marginalizes

specific religious beliefs and embodied practices, which are "defined out" as non-religious (McGuire, 2008, p. 74) and thus unworthy of protection under the Canadian *Charter of Rights and Freedoms*. Ryder (2005) contends that freedom of religion and state neutrality require that governments refrain from enacting laws or policies that impose specific religious practices, interpretations, or indoctrinate citizens into particular beliefs (Ryder, 2005, pp. 174-175). However, this ideal of religious freedom and state neutrality falters when a singular practice and believer is legitimized and deemed acceptable in public spaces, thereby qualifying for the protection and benefits of religious freedom (Amiraux, 2016). At the same time, other forms of religiosity are dismissed as illegitimate, misguided, and unworthy of such protections. This selective validation or conditional inclusion undermines the principles of neutrality and inclusivity that underpin religious freedom (Hurd 2015; Hassan 2021; Kassam & Mustafa, 2018). Consequently, constitutional religious freedoms are eroded and replaced by a uniquely Canadian form of orientalism. Although Canada was the first country to enshrine multiculturalism as a constitutional right, orientalist ideologies emerge as tools of governance, shaping and guiding public behavior a form of power that Foucault (1978) refers to as the "conduct of conduct." In the case of the face covering ban, the state reassigns a religious obligation as a cultural practice to support policies of religious and cultural assimilation that produce state approved identities. This dominant, state-authorized interpretation of religion is rendered invisible in the public sphere, thereby intensifying the visibility of minority claims to public space (Amiraux, 2014, p. 8). This magnifies tensions between national values and legitimate religious beliefs.

Through its actions, the state disciplines the prosthetic citizen and prosthetic believer. Textual interpretations, authority figures, and governance structures from regions like Egypt are imported into Canadian public life, becoming codified in state policy. This process, described as

theology shopping, selectively affirms or rejects particular religious beliefs, creating a false impression of a singular theological Islam. By linking modern governance with historical narratives, this semantic alignment obscures the power dynamics between interpretations of the same religion and reinforces normative ideas about public religious expression. By transforming a religious obligation into a cultural product, the government uses this redefinition as a strategy for religious and cultural assimilation, creating tolerable, state-approved identities. This framing further marginalizes minority religious practices, subjecting them to scrutiny and exclusion. As discussed above, the relationship between the state and Muslim organizations what Hirji (2010, p. 20) describes as state-endorsed intracommunal differences. These differences undermine Muslim groups that do not conform to state-approved interpretations of Islam. As mentioned this creates a form of inter-legality (Hoekema, 2008, p. 4) often with the complicity of Muslim organizations that adopt and reproduce dominant state narratives. As Asad (2006) argues, the state can assume the role of a religious authority, embodying absolute power while claiming transcendental neutrality (p. 498). This allows the state to distinguish between "good/real" Muslims and "bad/false" Muslims (Mamdani, 2002, p. 767).

The MCC, CPCMO, and MFT's disavowal of niqab-wearing women's religious practices exemplifies this dynamic. For instance, these organizations characterize the niqab as a "symbol of social separatism and a refusal to integrate," advocating for its outright ban in Canada. Such statements align their social strategies with Canadian values, reconfiguring religion into forms that the state deems suitable for regulation. These dynamics highlight what Dressler and Mandair (2011) conceptualize as "religion-making from above," wherein authoritative discourses define and confine practices as "religious" or "secular" through state mechanisms. Simultaneously, "religion-making from below" occurs when organizations adopt the state's language to frame

their theological positions, legitimizing their identities within dominant social and legal frameworks (p. 21). These processes shed light on the ways that power and agency are redistributed, often privileging state-sanctioned versions of religion (Beyer, 2020). However, in the context of niqab bans, a disturbing circularity emerges between the Conservative government and the Muslim organizations mentioned above. These are forms of coercive religion that not only marginalize niqab-wearing women but also redefine religion and citizenship in terms of state-approved norms. From an intersectional perspective, religious identities intersect with other social identities, often brushing and chafing against each other. As Beaman (2013) notes, majoritarian religion is "woven through social institutions as a subtle yet powerful organizer of social life" (p. 68). These dynamics force niqab-wearing women to seek "permission to differ," reducing their identities to singular, objectified categories. These patterns of exclusion illustrate broader mechanisms of disciplinary regulation that shape markers of citizenship, establishing forms of conditional inclusion within the nation. In the next section, the focus shifts to exploring how discourses surrounding the niqab intersect with broader patterns of othering. These mechanisms often serve as tools of governance, regulating citizenship and shaping the boundaries of belonging within the nation-state.

5.3.1 Conditional Inclusion: The Majority is the Minority

In this section I want to pause and draw into the discussion the multiple ways that the niqab as a point of discursive pressure peaks into broader familiar modes of *othering* that regulate disciplinary measures that inform and construct the markers of citizenship to establish conditional inclusion with the nation. The Canadian Muslim Congress, the Coalition of Progressive Canadian Muslim Organizations, and Muslims Facing Tomorrow must be seen in a wider context that has emerged post 9/11 and that has framed most debates regarding Muslim

cultural politics (Zine, 2012, p. 14). These debates evoke concerns about how immigrants are integrating within the nation and whether immigrants are adopting "Canadian values" (Zine, 2012, p. 6). What cannot be overlooked is that the work that this does politically, legally, socially and economically makes the space for permissive othering.

Hassan (2021) argues that conditional inclusion frames the "Muslim model minority" discourse that alludes to limits of inclusion that permeate minority communities (p. 191). This framework compels the construction of an identity and sense of belonging that is conditional on reproducing majority-oriented structures and codes as a survival strategy. Conditional inclusion thus reinforces the *Good Muslim/Bad Muslim* trope, embedding it into popular, legal, and policy discourse. This process operates through internal and external mechanisms of othering, coerces individuals to subvert, negotiate, and resist, while simultaneously bearing the burden of representation (2021, p. 200). For organizations such as the MCC, CPMO, and MFT, this entails mobilizing representations of niqab-wearing women that align with the state's legal arguments, perpetuating exclusionary discourses to secure their conditional inclusion.

Cummins (2022, p. 130) identifies these internalized dynamics as *intra-umma dissonance*, the anxiety or discomfort some Muslims experience when confronted with the Muslim "other," those whose interpretations, embodiments, practices, or opinions of Islam differ from their own. This dissonance can manifest as self-preserving behaviors, including misperception and misrepresentation (p. 130). Expanding on Cummins' (2022) analysis, I argue that the complexities of "self-preservation" cannot be fully grasped without a more complex positioning of post 9/11 geopolitical policies, refashioning of citizenship, and the transgression of human rights in security discourses and international law. Within this framework, intra-communal hierarchies of legitimacy and difference should not be presumed as the natural order

of things (Meer, 2010). Instead, such hierarchies emerge from what Meer (2010) calls "normative grammars of involuntary identities," which have profound legal, political, and social consequences (p. 105). Muslim identities informed by diverse cultural, linguistic, and religious interpretations can coexist and engage in dialogue without invalidating or delegitimizing the other (Meer, 2010, p. 62). However, the positioning and actions of the MCC, CPMO, and MFT must be contextualized within the socio-political frameworks that shape their self-perception and the recognition they seek. Göle (2011) suggests that these dynamics of power are not static but fluid, shifting from domination to open-ended strategies. Yet, the primary issue remains the boundaries of public space and the degree to which difference is accepted within it (Göle, 2011, p. 136). These boundaries of public acceptability are critical to understanding how conditional inclusion functions.

Kassam and Mustafa (2018) argue that the boundary of acceptability operates as a mechanism to distinguish acceptable from unacceptable markers of religion's visibility in the post 9/11 context. These shifting boundaries have become the terrain upon which national values are deployed as a scapegoat for exclusionary statecraft (Kassam & Mustafa, 2018, p. 76). Canadian Muslim organizations, such as MCC, CPCMO, and MFT operate within clearly demarcated borders shaped by a national ideological structure defined by majority interpretations.

Agency within these complex terrains cannot be granted solely to those with whom we agree or withheld from those with whom we disagree. Conceptions of agency are fluid, dynamic, and socially situated, intertwined with constraints and opportunities. Mahmood (2005) critiques binary notions of resistance and subversion, suggesting that agency is neither universal nor innate. Instead, it manifests in diverse ways that may focus less on social change and more on

self-preservation, self-refashioning, and the cultivation of particular kinds of subjects (Mahmood, 2005, p.188).

In this light, the positions of organizations such as MCC, CPCMO, and MFT, while problematic from certain perspectives, must be understood as part of broader strategies of self-preservation and negotiation. These strategies highlight the interplay between agency and structural constraints, underscoring the complexities of conditional inclusion and the politics of representation.

5.5.1 Chapter Summary

The Conservative government employed a range of strategies to legitimize its policy banning the niqab and burqa during citizenship ceremonies. By citing organizations like the MCC, CPMO, and MFT, the government positioned its policy and legal actions as reflective of certain Muslim viewpoints. This strategic form of coercive religion allowed the government to redefine the practice of covering as cultural rather than religious, effectively marginalizing it within the public sphere. By framing the niqab as a cultural artifact, the government not only reduced the scope of constitutional protections for religious freedom but also reinforced a, state-sanctioned interpretation of religious practice. This deployment of political, social, and cultural ideologies underscores how orientalism functions not merely as a traveling theory or style of thought but as a form of statecraft. Through this governance technique, the state enforces specific religious practices while indoctrinating citizens into particular beliefs and identities, shaping them as both Canadians and Muslims. This process imbues national and religious identities with layered meanings, constituting novel forms of power and authority (Beaman, 2014, p. 54). Moreover, this process exemplifies how coerced religion operates as a mechanism of statecraft. By regulating religion through religion, the state normalizes certain behaviors and excludes

others, embedding orientalist logic into the core of Canadian governance. In doing so, the state not only delineates the boundaries of acceptable religious expression but also reinforces a hierarchical system of inclusion and exclusion, aligning national identity with state-sanctioned interpretations of religious practice.

CHAPTER SIX: TO DRESS AS SHE LIVES

6.1 Introduction

The judicialization of religious freedom has become instrumental for niqab-wearing Muslim women to assert their legal claims, particularly in relation to citizenship rights and their visibility in public spaces. This chapter examines the intersection between the "judicialization of religious freedom" and the regulation of religion, critically exploring how sociological understandings of lived religion as practice can conflict with state and legal definitions. This chapter is organized into four main sections. Section one outlines a few key points raised by Beckford (2003) and Asad (1993), who critique and caution against universal definitions of religion. Their critiques form the basis for analyzing how 'religion' is adjudicated in three legal cases under examination. Next, I turn to the sociological understanding of lived religion as practice, a conceptual framework that aligns most closely with how the women involved in these legal cases conceive of their religion. To illustrate my argument, I briefly review the relationship between power and law which is deeply gendered (Smart, 1989), before exploring two French legal cases: *Mme. M* (Faiza Silmi) case and *S.A.S. v. France*. These cases highlight the tensions and paradoxes between religion as it is lived and how it is imagined by the courts.[49] This tension is further explored in the Canadian case of *R. v. N.S.*, in which a legal suit brought by a woman against her childhood assailants became marred by 'niqab distractibility.' The focus on her niqab led to increased scrutiny of her sincerity of belief. In all these cases, the focus on the niqab serves as a mechanism for state control and legal power. However, as I will argue, it is the *Ishaq* case that sets a future-forming legal precedent. A deeper analysis of the *Ishaq* case will follow in chapter seven.

6.2.1 A Significantly Lived Religion

Beckford (2003) and Asad (1993, 2011) are less concerned with authenticity claims regarding religion as the lines of contestation are already drawn when quantifying religion. For Beckford (2003) the line of contestation delineates two boundaries: religion and non-religion. Beckford (2003) argues that a social constructionist approach to the social scientific studying religion is most effective when limited by what he calls the "boundary zone" (p. 4). This boundary zone demonstrates how the borders between religion and non-religion are staked out, defended, deployed, smudged, re-defined or even dissolved and it remains heavily contested. Beckford states that without compelling proof of the existence of a divine power/entity independent of human agents, social scientists should focus on how humans *use* religion (Beckford, 2003, p. 29). This approach leaves open the possibility that divine or supernatural powers might directly affect human life. Indeed, Asad (2011) argues that the *uses of religion* are critical for understanding how they shape practitioner's daily behaviour. It is precisely at this intersection where the possibility of engaging with divine power is mediated through the everyday and the concept of lived religion emerges. The framework of lived religion aligns most closely with how niqab-wearing women in this chapter conceive their religion.

The study of lived religion emphasizes what people do in their everyday lives (Ammerman, 2016; Hall, 1997; McGuire, 2008) and focuses on the practices used to remember, share, enact, adapt, and create the stories out of which they live (McGuire, 2008). Lived religion centers on 'ordinary' individuals navigating their way through choices, refashioning religious practices to meet personal and social needs. This approach does not claim that all forms of

[49] Sections of this chapter are reproduced with permission: Alibhai, Z. P. (2023). Bodies of becoming: Regulating spiritual ambition and the subjectivation of the secular body. In G. Pati & U. Greenberg (Eds.), *Handbook on religion and the body* (pp. 163-174). Routledge.

religion are completely detached from organized institutions, authoritative texts, or normative practices (Alibhai, 2019, p. 52). McGuire (2008) points out that individuals' lived religion can be closely linked with the teachings and practices of an official religion (p. 98).

Therefore, the lived religion approach destabilizes claims that religion operates solely behind the walls, theologically virtuous, or living in its assigned place (Asad, 2011). In this sense, context matters since naturalizing and/or privileging one belief and practice over another based on political, social, and cultural contexts can obscure the coercion and harm imposed on the body. The cultivation of religiosity is not relegated to the private sphere but is a means through which religious practice is framed by the everyday. Lived religion aligns well with the concept of 'lived citizenship' which similarly focuses on the everyday experiences of individuals and how religion and citizenship are experienced on the ground (Desforges et al., 2005 p. 447). Lived citizenship highlights moments when individuals, regardless of formal status, enact their citizenship through feelings, actions, and practices ((Desforges et al., 2005, p. 447). Lived citizenship recognizes the deeply embodied nature of citizenship and its connection to personal subjectivity, positionality, and identity. It emphasizes the emotional and sensory aspects of belonging or exclusion that are tied to the experience of both being and feeling like a citizen (Kallio, 2020).

6.2.2 Laws 'Truth Claims'

In *Feminism and the Power of Law,* Smart (1989) argues that the relationship between power and law is deeply gendered. Smart (1989) contends that there is a "congruence between law and 'masculine culture,'" where "law exercises power and disqualifies women's experience and knowledge" (Smart, 1989, p. 2). The masculine culture within law reflects patriarchal

interests asserting power through a claim to superior unified knowledge that disregards competing discourses (Smart, 1989, p. 4). Law's power lies in its ability to define itself and other discourses. Smart emphasizes that law is often seen as a singular, overarching structure consistent in its intent, theory, and practice (1989, p. 4). However, as Berger (2015) points out in *Law's Religion: Religious Difference and the Claims of Constitutionalism*, this well established and commonly held belief is part of law's conventional story (2015). Berger (2015) argues that "this positioning of law as a structure above and apart from the particularly and contingently cultural is essential to prevailing public stories." The presumption that the law and the legal process is autonomous does not necessarily mean a system unfettered from the social world and external influence. On the contrary Richardson (2006) argues that the courts "act within a cultural milieu, with its specific cultural values and beliefs, including ones concerning religion and religious groups" (Richardson, 2006, p. 283).

This chapter takes "decentering the law" to involve rethinking the law's role, not as a neutral arbiter but as a cultural construct shaped by majoritarian norms, values, and power dynamics. Berger (2015) succinctly describes this as "knocking law from its managerial or curatorial perch, from where it administers and assesses cultural claims, and understanding it instead as a cultural form—an interpretative horizon composed of sets of commitments, practices, and categories of thought, that both frames experience and is experienced as such" (Berger, 2015). Smart's (1989) warning that "the law exercises power and disqualifies women's experience and knowledge" (p. 2) is not an exaggeration. It reveals how law imposes its definition on everyday life shaped by majoritarian norms and, in the cases discussed orientalist notions (Beaman, 2011).

Law's "truth claims" are less about practice and more about the *idea* that law has the power to right wrongs (Smart, 1989, p. 12). Law has historically perpetuated patriarchal relations often excluded women's experiences and undermined women's precarious claims to equality

I now turn to the judicialization of politics which has significantly influenced the judicialization of religious freedom for niqab-wearing women.

6.2.3 The Politics of Religious Freedom

The judicialization of politics refers to the increasing role of courts and the judiciary in adjudicating moral political and policy matters, often shifting decision-making from the legislature, the cabinet, or the civil service to the courts (Vallinder, 1994, p. 91). Hirschl (2011) identifies this as problematic when it involves collective identity, nation-building processes and struggles over the very definition or raison d'etre of the polity (p. 257). Hirschl (2011) argues that this judicialization requires a constitutional framework, an autonomous judiciary, and a political environment conducive to judicial intervention (p. 258).

In his article titled, "*Managing Religion and the Judicialization of Religious Freedom*" Richardson (2015) draws from the term the "judicialization of politics" to argue that courts rather than legislatures increasingly define and expand the meaning of religious freedom. The critical point here, Richardson argues, is that the courts in several Western countries are playing a principal role in defining and expanding the meaning of religious freedom and in this way, the courts are deeply involved in the social construction of religious freedom (Richardson, 2015, p. 13). Richardson (2015) asserts that, "religious freedom is being interpreted in new and different ways" (p. 4). This evolving interpretation broadens the concept of religious freedom, allowing newer, smaller, and less popular faiths greater freedom to practice their religion without legal repercussions (p. 10).

The judicialization of religious freedom has become instrumental for niqab-wearing Muslim women's legal claims, access to citizenship rights, and visibility in public space while at the same time unsettling notions of agency and blurring the boundaries between religion and citizenship. It should not go unnoticed that in the three legal cases the government imposes a majoritarian notion of religion to prevent niqab-wearing women from living their citizenship. In the next section, I explore how these mechanisms influence the legal regulation of sincerity in religious belief and practice highlighting their implications for religious freedom.

6.4.1 Can 'Stay at Home Moms' Be French? The Case of Faiza Silmi[50]

On June 27, 2008, the French *Conseil d'Etat* (Council of State), the highest administrative jurisdiction in France denied the citizenship request of Faiza Silmi referred to alternatively as "Mme. Machbour," and "Mme M in court documents." I refer to her as Mme. Silmi. The Conseil denied Mme. Silmi's application for French citizenship on the basis that her purported radical practice of Islam, in the government's view prevented "insufficient assimilation," to warrant citizenship under Article 21(4) of the French Civil Code. The government contended that her "radical religious practice" was incompatible with the fundamental values of French society, particularly gender equality (Vakulenko, 2009).

Mme. Faiza Silmi was born in Morocco. In 2000, she married a French national, moved to a French suburb, and had four children. After moving to France, she adopted the niqab and long cloak, a dress style typical of women from the Arabian Peninsula, finding her traditional Moroccan *djelaba* (long flowing garment with a head scarf) insufficiently modest (Koussens, 2011, p. 7). In 2004, Mme. Silmi applied for French citizenship. Her initial application was

[50] This title is influenced by Afsaneh Najmabadi (2006) important article *Gender and secularism of modernity: How can a Muslim Woman be French?*

denied in 2005, prompting an appeal to the Conseil d'État. However, in 2008, her petition was once again rejected. The Conseil's judgment was based on a dossier compiled by Mme. Emmanuelle Prada Bordenave, the Government's Commissioner, which included three interviews with social services and police. According to the dossier, Mme. Silmi had only 'adopted the niqab only after her arrival in France and at the request of her husband' from this the report determined that Mme. M. only wore a niqab 'out of custom rather than conviction,' and that puts it on as soon as she leaves her home and, even in her apartment, she puts it on when she has male visitors who are not related to her or her husband' and therefore the report determines that she has 'preserved very strong ties with [her] culture of origin' and that her conduct was indicative of 'a radical religious practice incompatible with the essential values of French society,' in particular gender equality (Vakulenko, 2009, p. 144).

In her defense, Mme. Silmi argued that maintaining ties with her culture of origin did not conflict with French nationality. She stated that she had never sought to undermine the values of the French Republic and that she firmly believed in *liberté, égalité, fraternité*, and above all, *laïcité*. She further claimed that these values allowed her to practice her religion freely and pointed to the guarantees of religious freedom enshrined in both the French Constitution and the European Convention on Human Rights.[51]

However, the Conseil rejected her arguments, relying heavily on the interpretation of Mme. Silmi's lifestyle and religious practices as evidence of her supposed "total submission" to men. The court viewed her niqab as a symbol of this submission and noted her willingness to remove it only for identification purposes during administrative proceedings. This compliance

[51] The European Convention on Human Rights is directly applicable in France.

was perceived as problematic, as she resumed wearing the niqab immediately after the meetings concluded, even in the corridors of the administrative offices (Vakulenko, 2009).

Especially notable is the unwillingness of the Conseil within the juridical context to relinquish the stereotypical and caricatured interpretation of the passive and submissive Muslim woman. The civil servants who interviewed Mme. Silmi noted that she had no problem removing her niqab for identification purposes. Yet, Mme. Silmi's willingness to comply with the State in this instance, is in fact problematic just the same since she "only" takes of her niqab when asked to do so "directly" and they note that as soon as the meeting is over, she puts her niqab back on, and walks veiled "in the corridors of the administration." Silmi's argument was dismissed as 'very summative and very general', as no evidence was produced by Mme. Silmi concerning her 'personal situation, which would support her contestation' (Vakulenko, 2009, pp. 144-45).

The Conseil's judgment reflects deep-seated orientalist assumptions about Muslim women, particularly the notion that the niqab is inherently a symbol of oppression. Mme. Silmi's everyday life which included housekeeping, caring for her children, visiting family, and occasionally grocery shopping—was portrayed as evidence of "total submission to men and her family" (Selby, 2014, p. 443). Despite her fluency in French, her use of a male gynecologist, and the fact that her children attended state schools, the Conseil concluded that her lifestyle conflicted with French values, preventing her from embodying *laïcité* and therefore disqualifying her from citizenship.[52] Additionally, the Conseil ruled that she wore the niqab not out of sincere

[52] The Conseil constructs Mme. M's 'total submission' in two interrelated ways, first by her mundane everyday life and second, her niqab. The report referred to and detailed Faiza Silmi's "secluded" mundane everyday lifestyle that begins every morning with housecleaning, going for walks with her baby, taking her children to school and in the afternoon, she visits her father or father-in-law and although she will on occasion go to the grocery store alone, she typically likes to go to the supermarket with her husband (Selby, 2014, p. 443). Commenting and reflecting on Mme. Silmi's everyday life experiences that the judge surmised that she lives in 'total submission to men and to her family.' Despite the appropriation of some 'positive' French values such as, Faiza Silmi's fluency in French, her

religiosity or "genuinely expressed religious modesty" but out of custom (imposed by her husband) rather than conviction" (Koussens, 2011, p. 8).

The Conseil's analysis hinges on the ideological resiliency of the workings and effects of the "Orientalist cargo" of meanings and representation of the niqab as an "oppressive," and "backward" cultural practice (Ahmed, 2011). Despite Faiza Silmi's testimony the Conseil is unwilling to let go of orientalist representations and colonial constructs of Muslim women as passive, oppressed and "under the thumbs of Muslim men" (Valenta, 2006, p. 457). Hoodfar (1997) argues that the static colonial image of the oppressed veiled Muslim woman often contrasts sharply with the lived experience of veiling and to deny this is also to deny Muslim women their agency (p. 421). More to the point, the overwhelming focus on covering becomes a mechanism of State control and power that singles out the veil as Faiza Silmi's obstacle to citizenship.

6.4.2 The Myth of Motherhood and Gender Equality

The myth of Mme. M woven into the Conseil's report inflicts epistemic violence. The Conseil's decision not only misrepresents Faiza Silmi's identity but also inflicts epistemic violence on women more broadly by vilifying and mocking her stay-at-home lifestyle. Her routine mirrors the lives of many "stay-at-home" mothers (and fathers) worldwide, including those in Western democracies. The Conseil's reliance on gendered Orientalist tropes to justify its decision imposes a particular vision of gender roles in French society. The implication of this historically gendered discourse denies women the possibility for agency through their choice to stay at home and care for their children and family. The Conseil's reliance on gendered

male gynecologist and that her children are educated at a state school Faiza Silmi is constructed as living a life in conflict with French values.

orientalist tropes to justify their denial of French citizenship subsumes certain power relations that underpin an understanding of gender and gender roles in French society. The Conseil imposed their own patriarchal understanding of gender and gender equality. Gender equality is not a benign concept (Lombardo, 2009). It does not exist in a vacuum shielded from social, political and economic forces and agendas that intersects with and is indivisible from, other power relations.

Gender equality is a nebulous and often contested concept; its multiple meanings and functions bend, shrink, or become fixed at a given moment depending on the social, economic, and political positions as well as the ideological goals and frameworks of various actors (Lombardo, 2009). Globally, the concept of 'gender equality' can imply equal opportunity between genders; more specifically, it refers to the promotion, advancement or empowerment of some women (Lombardo, 2009). Indeed, feminist scholars argue that the goal of equal opportunity remains unreachable when specific instances of patriarchy go unaddressed. In the case of Faiza Silmi, the Conseil substitutes one hegemonic ideology (orientalism) for another based on the assumption that gender equality has already been achieved in France and uses this assumption to deny her citizenship. In so doing, the Conseil overlooks the pervasive struggles that many women face and fails to address intersectional inequities related to family, social and religious institutions, race, class and the economy (Dillabough & Arnot, 2005, p. 161).

Paradoxically, the Conseil not only imposes a specific identity on Faiza Silmi but also discredits a specific gendered discourse and the lived reality of many women. The Conseil imposes the identity it wants from Mme. M (passive and subordinated by the men in her life) by silencing Faiza Silmi's voice to create a specific reality encrypted with meanings that have and continue to be imposed on women who veil and over which they often have no control (Zine,

2012, p. 45). The burqa and niqab have become entities with a history that has symbolically reviled and represented them as symbols of gender oppression, subordination and as a threat to the legitimacy of gender equality. It is from this history that, in this instance, gender equality becomes an open concept that functions as a tool of the French State to legitimate gender in-equality.

Concepts that define traditional gender roles and moral constraints should not be taken for granted since religious and spiritual paths become avenues where for some people engaged in embodied and bodily practices embrace, transform and re-create new gendered subjectivities. McGuire (2008) calls this "gendered spiritualities" since gender, sexuality, and gender identity play significant roles in many individuals lived religion (p. 159). Religious/spiritual communities and embodied practices are important ways that women negotiate new identities and forge new social relationships that have the potential to transcend boundaries established by sexist, racist, and classist social norms (Woodhead, 2011, p. 183). As I explore in *S.A.S v. France*, when the boundaries themselves become regulated how can women like S.A.S live their religion?

6.5.1 *S.A.S.*'s World Without Edges: Lived Religion

> On 11 April 2011 Act No 2010-1192 of 11 October 2010 prohibiting any person from concealing their face in public came into force in France. The French law prohibits wearing any kind of face-covering in public spaces on French territory.[53]

[53] Section 1 "No one may, in public places, wear clothing that is designed to conceal the face."
Section 2 "I. 'public places' comprise the public highway and any places open to the public or assigned to a public service. II. The prohibition provided for in section 1 hereof shall not apply if the clothing is prescribed or authorised by primary or secondary legislation, if it is justified for health or occupational reasons, or if it is worn in the context of sports, festivities or artistic or traditional events."
Section 3 "Any breach of the prohibition laid down in section 1 hereof shall be punishable by a fine, at the rate applying to second-class petty offences (contraventions) [150 euros maximum].

While Act no. 2010-1192 is neutral in language and nature in that the law does not specifically mention face veils but rather articulates, "the concealment of one's face in public," section 3 of the law makes clear who are the main

S.A.S., is a French national born in 1990, is a devout Muslim for whom wearing the veil is fundamental to her religious belief, culture, and personal convictions. She differentiates between the *burqa*, a full body covering including a mesh over the face, and the niqab, a face veil that leaves an opening for the eyes. *S.A.S.* wears both but is selective about when and where. While she often wears the niqab in public, she does not do so systematically, opting to remove it in certain contexts, such as visiting a doctor or socializing with friends. *S.A.S.* does not always wear the niqab in public places but wants the religious freedom to be able to wear it when she *chooses* (emphasis mine) to do so, depending on her spiritual feelings. There are certain times (for example, during religious events such as Ramadan) when she believes that she ought to wear it in public to express her religious, personal and cultural faith. She does not want to annoy others but wishes to feel at inner peace with herself. *S.A.S* submits that she recognizes the need to remove the niqab when undergoing a security check, at the bank or in airports, and she complies by showing her face when requested to do so for necessary identity checks. *S.A.S.* emphasizes her autonomy in making these choices, stating that neither her husband nor her family pressures her to dress in this manner. The French government criticized *S.A.S.*'s submission as:

> a totally disembodied argument, lodged on the very day the prohibition on concealing the face in public came into force by an applicant who ha[d] not been the subject of domestic proceedings and of whom nothing [was] known, except what she [had] seen fit to say about her religious opinions and about her *uncertain way of expressing them in her behaviour* (*S.A.S. v. France*).

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targets. An obligation to follow a citizenship course, as provided at paragraph 8o of Article 131-16 of the Criminal Code, may be imposed in addition to or instead of the payment of a fine." The provisions for the obligation to follow a citizenship course can be found in Articles R. 131-35 to R. 131-44 of the Criminal Code. 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. It also seeks to further the person's social integration (Article R. 131-35).

The ways and modalities that some Muslim women such as *S.A.S.* participate, express, embody, and live out their religion (their definitions of self) are actualized in and out of 'public' space. *S.A.S.* articulates, however, a more fluid relationship with herself and her practice that requires public space to manifest her religious ethic. She links her religious commitment to knowing herself that she cultivates and nourishes by her choice of when, where and what to 'wear' that moment. She 'tunes into self.' For *S.A.S* being herself signifies a daily regime of processes, inter-connectivity and relationality to transgress and "get outside the dualisms" that mark out govern, regulate and determine spatial laws for when, what, where and which self and parts of the self can be actualized in a world without edges (Asad, 2018; Beaman, 2017; Connolly, 2011). To put it another way, the imbrications between practice, embodiment, experience, cultivation, and nourishment of self requires a relationship, in Göle's (2013) words, a "mixing" and communique with the public sphere tout court. The ethics of the "religious" subject are worked out, negotiated, developed, performed in the becoming of the self as a citizen and believer actualizing from the inside out and from the outside in (Göle, 2013, p. 6). In this conceptualization of religion as lived and practiced, Muslim women cross the public and private borders so to speak, just like everyone else. Which position Muslim women who veil, as the visible actors who call into question majoritarian public privilege marked by as Göle (2013) argues the fragility of the boundaries between private and public. The historical and contemporary reality of course is that the private sphere has never been private for women. A world without edges to live out one's religion disturbs what was previously thought immobile; it fragments what was thought whole and troubles associations and lineages that we contemporarily take for granted. Yet, as discussed in chapter five by Barras et al. (2018) the rules of majoritarian invisibility where the assumed invisibility of Christianity contrasts with the hypervisibility of

Islam underscores the public/private boundaries (p. 97). According to *S.A.S*. the French state uses the "invisibility" of Christianity as a form of "indirect discrimination" against Muslim women whose beliefs require them to wear the full-face veil. She highlights to the Court that the law's exceptions privilege the Christian majority, allowing Christians to wear face-concealing clothing during public festivities and celebrations (Catholic processions, carnivals, or rituals like dressing up as Santa Claus) while Muslim women who wish to wear the full-face veil in public remain bound by the ban, even during the month of Ramadan.

6.5.2 Spiritual Ambition

S.A.S. demonstrates that the window into her spiritual feelings and her body interrelate. She constructs meaning influenced by her spiritual mood and then seeks to actualize her body's connection to the material world. Yet as *S.A.S*. herself admits, she can't predict her spiritual mood and therefore her spiritual growth becomes legally adjudicated in a manner that is "a detriment" to Muslim women like her. *S.A.S*. likened the law to coercing her (and women like her) to adopt a "Jekyll and Hyde personality" since the law draws and demarcates the boundaries between the spaces where she can manifest her faith, "live it," in public (cited in *S.A.S v. France*). *S.A.S.* impassions the Court to understand that wearing the full-face veil satisfies her and her conscience. *S.A.S* 's commitment to her faith is bound, nourished and cultivated through her body as a medium that is sensorial, emotional that links the implicit non-verbal practices, learned and lived dispositions into public visibility and conscious meaning making (Göle, 2008, p. 123). For *S.A.S* to actualize and manifest her religion as a French citizen she requires the social world as a partner on her path to *becoming*. Drawing from *S.A.S.*'s own words, we observe the disjunction between how the state imagines religion and how it is lived and practiced. This contrast is often shaped by normative assumptions about religion. Despite *S.A. S's* detailed

account of her religious practice, the French state casts doubt on her sincerity. Her lived approach to wearing the veil is seen as inconsistent, challenging normative constructions about how religion and religiosity should be expressed. The state's view reflects a broader tendency to equate religious sincerity with rigidity where commitment to faith is connected to an idealized notion of purity and uniformity. In the next section, I turn to the Canadian case of *R. v. N.S.* (2010) to explore how courts in another jurisdiction engage with the question of religious sincerity and the challenges it poses for niqab wearing women.

6.5.3 *R. v. N.S*

The case *R. v. N.S.* concerns right of a Muslim woman (*N.S.*) to wear her *niqab* while testifying as a victim in a sexual assault trial against her male Muslim relatives. NS alleges that between1982 to 1987 beginning when she was six years old, she was repeatedly sexually assaulted by two male family members (*R. v. N.S.*2010). In 2007, *N.S.* brought charges of various sexual offenses against the two accused. As of the date of the court proceedings, *N.S.* had been wearing her niqab for about five years. The two men accused of sexually assaulting *N.S.* elected trial by judge and jury and both men sought an order requiring *N.S.* to remove her niqab when testifying at the preliminary inquiry. *N.S.* objected. The preliminary inquiry Judge Norris Weisman elected to informally question her. *N.S.* (wearing her niqab) testified that her objection to uncover her face was "strong" and rooted in her religious beliefs that are premised on "modesty, respect and honour" (*R. v. N.S.* 2010) that required her to cover her face in the presence of men who are not close relatives. Upon further questioning, *N.S.* disclosed that she did un-veil in front of other women, children and very close married male family members but she does not appear in public without her veil. She described wearing her niqab "as part of me" (*R. v. N.S.* 2010) and that she would feel more "comfortable" wearing her niqab in the courtroom

(*R. v. N.S.* 2010). Judge Weisman concluded that he was not convinced that her religious belief was "that strong" and therefore, "not sincerely held" since N.S. had been "content" (*R. v. N.S.* 2010) to remove her niqab when taking her driver's license picture by a female photographer—a piece of identification that he argued can be required to show "all sorts of males," from "police officers and border guards" (*R. v. N.S.* 2010).

N.S. objected to the preliminary court's ruling and progressed her case up the judiciary and to the Supreme Court of Canada, seeking an order permitting her to wear her niqab while testifying. On December 20th, 2012, the Supreme Court delivered its judgement dismissing *N.S.*'s appeal and remitting her case back to the preliminary judge. Although the Court remitted the *N.S.*'s case back to the preliminary judge the majority emphasised that it had been "inappropriate" for Judge Weisman to conclude that *N.S.*'s religious beliefs "were not that strong" (*R. v. N.S* 2012). The majority stated that, "a sincere believer may occasionally lapse, her beliefs may change over time, or her belief may permit exceptions to the practice in particular situations" (*R. v. N.S* 2012). Ultimately, the court decided that whether a witness could testify while wearing a niqab for religious reasons during a criminal trial would be matter decided on a case-by-case basis in accordance with their newly devised balancing test.

On April 24, 2013, Judge Weisman citing risks to trial fairness held to his original ruling that *N.S*. must remove her niqab to testify in her sexual assault trial (Cader, 2013, p. 91). In his judgement Judge Weisman held that he was "satisfied" that *N.S.*'s "wish to wear her niqab in court is based on a religious belief that is both sincere and strong" (p. 91). Yet Judge Weisman framed *N.S.*'s search for justice against the men who had sexually assaulted her as a "choice." Judge Weisman stated that *N.S.* "could have had her day in court back in 2008 but she has

chosen, however, to spend the last five years fighting for her right to freedom of religion, all the way to the Supreme Court of Canada (Weisman cited in Cader, 2013, p. 91).

Judge Weisman's statement foregrounds *N.S.* as fully and wholly constituted by her religion that serves as the ideological functioning of causally linking her to the outcome of her case. This system of representation and causality is much more complex and nuanced than this chapter permits but in effect what Judge Weisman is saying is that N.S may have received justice had she simply removed her niqab. *N.S.* appealed. In 2014, the Crown withdrew the sexual assault charges against the two men accused of sexually assaulting *N.S.*, stating that there was no reasonable prospect for conviction (Cader, 2013, p. 91).

6.5.4 Normative Intervention Part II: Public Modesty

Zunera Ishaq submitted to the Court that the purpose and effects of the government's policy was unconstitutional since it infringed on her religious beliefs and compelled her and others like her to temporarily abandon a religious practise. Ishaq further submitted that in fact the effects of the government's policy were enough to violate the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982 section 2(a), which affirms the fundamental freedom of conscience and religion and 15(1) every individual is equal before and under the law without discrimination and, in particular, without discrimination based on race, national, or ethnic origin, colour, religion, sex, age, or mental of physical disability.

Ishaq argued that wearing the niqab was a form of modesty she felt obligated to observe. Her niqab, which covers her face, is essential for creating and expressing this modesty, as well as embodying and living it. Scholars, historians, and communities differ over this historically complex issue. Some niqab wearing women believe that to cultivate the necessary attributes of

self, the Islamic virtue of modesty must be lived and embodied to be realized. These women argue that for them wearing a niqab expresses "true modesty" and is the means through which modesty as a virtue is attained. For them, modesty *is* the normative intervention that they seek to cultivate, and the veil is the bodily form of that norm (Mahmood, 2005, p. 23).

6.5.2 What it Means to Her: A Significant Violation

Asad (2006) and Beaman (2011, p. 462) argue, that if the wearer and or claimant believes that the veil is an obligation of her faith, and that her conscience compels her to wear it as an act of her belief, practice or personal statement the niqab becomes for that reason an integral part of herself. For her it is not a symbol intended to communicate something but part of an orientation, a way of being that is integral to her. Asads' (2006) argument is critical because he questions how the state addresses the pain of people who are forced to give up part of their religion to be considered acceptable (pp. 94, 103). He answers this by suggesting that the state expects Muslim women to take their beliefs lightly. In her affidavit to the court, Zunera Ishaq accused the governments' policy of coercing her and others like her to temporarily abandon a religious practice (*Ishaq*, at para. 22). Through her legal representative she makes a compelling argument linking the government's policy to her religious beliefs and the denial of access to citizenship:

> … she must abandon either her religious beliefs or her dream of becoming a citizen, for which she has already made significant sacrifices. Offering citizenship as a prize for such a choice is a significant violation since it denigrates her deeply held beliefs, and she says that the accommodation offered by the respondent does not solve the problem; it only serves to stigmatize her for her convictions (*Ishaq,* at para. 23).

In stark contrast, court transcripts reveal that the Respondent (Minister of Citizenship and Immigration) argued that Ms. Ishaq "asserted nothing more than a subjective belief," since "she had removed her veil in the past," (*Ishaq,* at para. 34) therefore, in the government's view the removal of her veil would be nothing more than "a trivial violation, as the oath takes less than a

minute to recite" (*Ishaq,* at para. 34). Moreover, the respondent noted since the Applicant had removed her veil for her driver's license, security and identity purposes, therefore "the effects are not onerous" as "wearing the niqab is just a personal choice" (*Ishaq* at para. 36).

The minimization of Ishaq's religious belief as that which can be suspended — even for less than a minute — and then resumed, trivializes the harm and exclusion that Ms. Ishaq contended was the purpose of the government's policy to "compel her and others like her to temporarily abandon a religious practice" (*Ishaq,* at para. 22). The selectivity with which practitioners live, approach, negotiate, embody and cultivate their religion should not undermine their claim to its sincerity or strength to become reduced to 'got you' vindications (Alibhai, 2019, p. 60). Drawing the boundaries between legitimate religion, belief and practice, the Courts seek to regulate the lived religious practices of Faiza Silmi, *S.A.S.*, *N.S.* and as the Canadian government attempted to do in the Zunera Ishaq's case. By creating and embedding hierarchical standards such as the idea that if she uncovered her face there then she could do it here reflects the notion that religion is an identifiable object that can be removed and assumes that religious practices are secondary to belief (Alibhai, 2019). It is precisely here, where the invisibility of majoritarian notions of religion becomes visible.

Constructs and representation of 'religion,' prescriptions for 'proper' or 'acceptable' religious behaviour depend on certain relations of power and hierarchies. Neitz (2008) contends that the western narrative of what is presumed acceptable religious transformation and identity is gender specific and assumes an autonomous male perspective whose journey towards transformation is always underpinned by rational of choice and discipline (pp. 81-97). Likewise, Beaman (2008) argues that states and the courts privilege and collude with a male perspective and have the tendency to regulate more systematically women and girls' bodies. Most often, the courts

contribute and participates in gendered constructions of religious identities by demarcating the limits, addressing the conflicts and stretching the boundaries of tolerable and intolerable religious practices atop the bodies of women and girls. Bakht (2022) argues that framing the niqab from the perspective of the wearer occurs at the intersection of public space and the citizen. The capacity to actively navigate and shape public space necessarily engenders a more nuanced perspective of lived religion and citizenship. As discussed earlier, historical narratives often influence case law, shaping the legal scripts and narratives produced through jurisprudence. For example, Ms. Silmi simply seeks the same citizenship status as her children, *S.A.S.* wishes to avoid arrest when she visits a café, whether she chooses to wear a hijab or a niqab (depending on her spiritual mood). *N.S.* aims to hold accountable those who sexually assaulted her as a six-year-old child, and Zunera Ishaq's legal argument is not that her religious practice conflicts with state policies but that her religious and Canadian values and identities are prevented from co-existing by the governments' policy. Zunera Ishaq desires to wear her niqab while she recites the oath of Canadian citizenship. However, in each case, the state's representation heavily relies on orientalist narratives that frame the niqab as an 'oppressive' and 'backward' cultural practice (Ahmed, 2011). Despite Silmi's testimony, the Conseil d'État adheres to these orientalist and colonial constructs, portraying niqab-wearing Muslim women as passive, oppressed, and 'under the thumbs of Muslim men' (Valenta, 2006). Hoodfar (1997) contends that this static colonial image starkly contrasts with the lived experience of veiling and denies Muslim women their agency (p. 421).

The niqab was singled out as Silmi's obstacle to French citizenship and her citizenship request was denied by the Conseil d'État primarily because she adopted the niqab *after* immigrating from Morocco. The Conseil ruled that she did not wear the niqab out of sincere religiosity or genuinely expressed religious modesty, but out of custom [imposed by her husband]

rather than conviction. Similarly, in *S.A.S. v. France*, the Court agrees with the French State that her arguments lack sincerity, describing them as 'completely disembodied.' The Court judges *S.A.S.*'s practice of choosing where, when, and what time of day she wants to wear a hijab or niqab lacks discipline and consistency since her choice is dependent on her 'spiritual mood.' For *S.A.S* the ability to embody both her religion and citizenship are challenged. For Mme. Silmi, *S.A.S*, religion and citizenship are both lived and inextricably linked. In the Canadian case *R v. NS* [2012], the Supreme Court had to decide between the right of a Muslim woman to wear her niqab while testifying as a victim in a sexual assault trial against her male relatives. During the preliminary inquiry, *NS* described wearing the niqab as 'part of me,' but the presiding judge questioned the strength and sincerity of her belief, noting that she had removed her niqab for border checks and a driver's license photo. As I discuss in the next section, similar arguments were used by the Conservative government to question Zunera Ishaq's sincerity of belief and prevent her access to citizenship.

The ambiguity surrounding the legal treatment Muslim women who cover reveals that recourse to the law and the legal process has been both precarious and unwieldy for them. Despite the considerable lapse of legal restitution, I cannot stress enough that access to the law and participation in the judicial process has become instrumental for niqab-wearing Muslim women. At the same time, a critical point must be made here, for Muslim women who cover a reliance on the law and judicial rulings have not produced nor contributed to justice or equality In this sense, the law is limited by its own ethic of magnanimity, which affects its ability to properly address rights issues. This implies that the legal process, which is based on general application and majoritarian beliefs can impose coercive judgments on specific cases.

6.6.1 Chapter Summary

This chapter has examined four legal cases to highlight the vagueness and indeterminacy embedded within the coded language of legal rulings, showing how discourses of power and hierarchy are deployed to provide a legal basis for the management and regulation of religion. The analysis focused on the judicialization of religious freedom and state regulation of religion to critically examine how sociological understandings of lived religion as practice can conflict with state and legal definitions of "religious freedom" and what constitutes tolerable or intolerable religious identities and practices. By engaging with the French cases of Mme. M (Faiza Silmi) and *S.A.S. v. France*, I illustrated how courts manage the boundaries of religious freedom, particularly for niqab-wearing women. These cases reveal the implicit biases that inform legal interpretations of sincerity, coercion, agency, and autonomy. Returning to Canada, I explored *R. v. N.S.* to highlight similar dynamics. I demonstrated how the courts, under the guise of upholding religious freedom, can reinforce exclusionary and hierarchical definitions of religion, often leaving lived religious practices, particularly those of marginalized groups, subject to state regulation and scrutiny. These legal cases help frame the discussion around the precedent forming aspects of *Zunera Ishaq v. Canada (Minister of Citizenship and Immigration)*, which is analyzed in more depth in chapter seven.

CHAPTER SEVEN: IN THE INTEREST OF JUSTICE: DEEP EQUALITY AND LAW

7.1 Introduction

This chapter extends the analysis of the state' s adjudicative shift to regulate and ban niqab-wearing women's religious practice and access to citizenship. For Muslim women who cover, seeking recourse through the law has often been both challenging and precarious. Here, I maintain the centrality of law, especially as it is the legal system that Zunera Ishaq turns to, and upon which her path to Canadian citizenship depends. Through a discursive exploration rooted in the concept of deep equality, this chapter seeks to highlight how law can function as a tool for social justice and deep equality My central argument is that, unlike in other cases discussed (see chapter six), the allyship between law and deep equality in the *Ishaq* case secures the right to Canadian citizenship for Zunera Ishaq and other niqab-wearing women. This alliance marks a pivotal moment in Canadian history, shifting the scales of justice and political power in favor of inclusivity and a deeper conception of equality. The following sections examine the *Ishaq* case as an example of how law can reshape the meaning of "difference," counter political rhetoric that often invokes fear, orientalism, and discrimination within the framework of an exclusionary Canadian identity. This case demonstrates the transformative power of law not only to interpret facts but also to shape narratives that contribute to a more inclusive national landscape. The chapter begins with a brief review of some key aspects of Canadian jurisprudence on religious freedom. The primary focus is the achievement of deep equality in this case, using Lori Beaman's (2011) four conditions for deep equality outlined in her article, *It Was All Slightly Unreal: What's Wrong with Tolerance and Accommodation in the Adjudication of Religious*

Freedom. Beaman developed these four conditions specifically in relation to the *N.S.* case (discussed in chapter six), which, like *Ishaq*, involved the issue of compelling a Muslim woman to remove her niqab. Beaman (2011) argues that achieving substantive or deep equality requires a context-sensitive approach. Although Beaman later explores deep equality as extending beyond the legal domain, here she articulates a more robust approach to substantive equality, equating it with deep equality (Beaman, 2017). Drawing on her arguments, I support my claim that in the *Ishaq* case, the court adopts a deeper engagement with equality as a principle in the interest of justice.

7.1.2 Law's Privilege: A Neutral Arbiter

Berger (2007) focuses on the interaction between law and religion, arguing that when "religion is put before the bar of law, law understands and casts its subject in accordance with its own informing commitments" (p. 265). Berger (2007) further asserts that "any effort by law to define religion will necessarily misunderstand it," as legal definitions of religion inevitably become encoded with the law's own self-understanding, which shapes its subject according to its own symbolic and normative commitments (Berger, 2007, p. 265). Shrubsole (2019) builds on this by arguing that the law is culturally situated, and in the Canadian context, this cultural positioning reflects an "internal colonialism," embedding cultural incompatibilities within the legal system. This paradox highlights the coercive aspects of the lingering influence of majoritarian religion (Beaman et al., 2018). Beaman (2010) cautions that it is important to recognize the enduring Protestant predisposition embedded in Canadian social and legal institutions. These Protestant affinities not only shape how religion is imagined and practiced but, as Berger argues, unfold within a social, political, and legal environment that often goes unnoticed or unchallenged. Berger notes that, at the level of political and legal rhetoric, this

cultural positioning includes a commitment to multiculturalism and the protection of diverse cultural forms (Berger, 2008). However, this commitment often frames religious practice as 'essentially individual,' 'private,' and focused on 'autonomy and choice.'

7.1.3 Leaning into Religious Freedom

Canadian jurisprudence has in many cases leaned into legally protecting religious freedom rights in a manner beholden to Canadian Charter of Rights and Freedom, religious freedom, religious equality, and multiculturalism. This is not to claim that the *Charter* offers carte-blanche to all religious freedom claims.[54] According to Esau (2008), in most freedom of religion cases in Canada the claim "was upheld because it was fairly easy to do so, because the countervailing interests that had to give way for the religious practice were minimal and even trivial," and there are no major compromises by the Court (p. 10). The key here though is that the history of Canadian jurisprudence on religious freedom has in several transformative legal cases *seemingly* pushed past majoritarian ideas and constructs of legitimate religion and practice. The *N.S* case notwithstanding there have been certain exceptional moments of religious freedom jurisprudence where the Court ushered in a more engaged and expansive definition of religious freedom. Rulings in *R. v. Big M Drug Mart Ltd*., (1985) and *R. v. Brooks*., (2001) were the beneficiaries of the transformative impact of (at the time) the new *Canadian Charter of Rights and Freedoms* and specifically the freedom of religion as protected under section 2(a) Everyone has the following fundamental freedoms: freedom of conscience and religion.[55]

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[54] Indigenous religious claims that are linked to land claims.

[55] Including: Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
(2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic

The landmark decision in *R. v. Big M Drug Mart Ltd.,* a religious freedom case that changed the Canadian landscape concerned the issue of the Lord's Day Act—the federal government law that prohibited businesses from opening on Sundays (respecting Christian Sabbath). The Supreme Court of Canada stated that:

> What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not … be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of the 'tyranny of the majority.

Justice Dickson, in the *Big M* decision, highlighted a deeper conception of equality, stating that "religious freedom does not require identical treatment of all religions. In fact, the interests of true equality may well require differentiation in treatment." Drawing on Dickson's perspective, the following section provides a brief overview of the method of analysis, discursive investigation, and the chapter's focus on deep equality. Deep equality allows for a more interdisciplinary and creative socio-legal approach, which is less constrained by traditional legal frameworks. In the case under examination, I argue that deep equality highlights the potential of the law to effectuate social justice for niqab-wearing women. However, I first address the paradox of using deep equality as a conceptual method.

7.3.2 The Paradox of Deep Equality in Law

> … deep equality may exist in law, it is not a legal, policy, or social prescription, nor is it achievable by a magic formula that can be enshrined in human rights codes. It is, rather, a process, enacted and owned by so-called ordinary people in everyday life. Deep equality is a vision of equality that transcends law, politics, and social policy, and that relocates equality as a process rather than a definition, and as lived rather than prescribed. It recognizes equality as an achievement of day-to-day interaction, and it is traceable through agonistic respect, recognition of similarity, and a concomitant acceptance of difference, creation of community, and neighborliness. It circulates through micro-

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origin, colour, religion, sex, age or mental or physical disability. Section 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

> processes of individual action and inaction and through group demonstrations of caring (Beaman, 2017, p. 13).

The paradox that emerges when using deep equality as an analytic tool in law is as Beaman (2017) is quick to point out that while deep equality may exist in law, "it is not a legal, policy, or social prescription, nor is it achievable by a magic formula that can be enshrined in human rights codes" (p. 13). Why are these distinctions important? Because as Beaman (2017) points out in the public imaginary equality is often assumed to fall under the purview of the legal process, constitutions, and associated with conflict (p. 7). Much of the discourse surrounding multiculturalism in Western democracies has traditionally framed diversity and religious plurality as challenges that require management through regulation and legal processes. Using this as an analytical starting point Beaman (2017) contends that this perspective has positioned diversity as a *problem* that can be *solved.* What then are the implications of this analytical positioning? The danger of this simplistic equation: diversity as a problem = solution is especially acute and has in fact *created* more problems, divisions and serious inequities that have had damaging effects on lived realities of people and communities. Beaman (2017) attempts to make sense of the overtly top-down onslaught of political and social philosophies, policies, academic research, studies, and projects that in very few instances produce transformative possibilities for peace, justice, and well-being.[56]

[56] The Global Centre for Pluralism in Ottawa, Canada is an example of one such institution founded by His Highness the Aga Khan IV in partnership with the Government of Canada. The Centre serves as a global platform for analysis, education, and dialogue inspired by the Canadian experience with diversity. The Religion Diversity Project (2010-2017) was a major collaborative research initiative funded by the Social Sciences and Humanities Research Council of Canada and led by Dr. Lori G. Beaman involving 37 researchers from across the world.

The simplistic equation of diversity as a problem with law as the solution creates blind spots that obscure majoritarian power structures and perpetuate exclusivity under the guise of inclusivity. Instead of resolving issues, these approaches often result in new forms of exclusion. Beaman (2017) argues that not only do these top-down approaches ignore the voices and needs of diverse groups themselves but that the problems often *did not exist* in the first place, or the contours of which were completely different than imagined (Beaman, 2017).[57] Beaman (2017) advocates instead for a deeper conceptualization of equality that includes the interactions and narratives of so-called ordinary people or what she points out as micro-processes, or non-events. Beaman (2017) contends that beginning from the everyday provides a clarity of analysis on how diversity and difference are engaged, negotiated, and encountered as micro-processes and non-events. Beaman's work reveals stories of encounters of engagement where difference is minimized, accepted, and respected, and similarity is emphasized—where *people* resolve or work with difference which can tell us a story that leaves traces of larger themes, practices, and ways of being that builds frameworks of deep equality. Deep equality is an achievement found in the everyday—an ethic embedded in social practices.

This is not to suggest nor does Beaman (2017) claim for a conceptual or systemic coup to upend the law or that law is inconsequential. To the contrary, deep equality seeks to challenge the notion that equality is solely advanced through legal discourse, but she acknowledges the power of law and law's capacity to contribute to the potential for justice. While law remains a powerful force deep equality recognizes that law and legal processes often enforce identity rigidity which presses people to take 'hard' positions about their identity which most often

[57] For example, as outlined in chapter three: Canadian law had legal requirements in place to verify a prospective citizens identity. Therefore, the political and legal reasoning behind the federal government's Directive 359 lacked factual basis and merit.

overlooks the complex ways that identities weave through daily life. The politics of identity and representation are complex and necessitate caveats such as de-essentializing identity categories to navigate power (to a certain extent) away from majoritarian ideals of religion and religiosity. With this perspective in mind, I draw into the discussion Crenshaw's (1989) paradigmatic concept intersectionality.

7.3.3 Intersectionality

Intersectionality is an interpretive framework for thinking through how intersections of gender, race, class, ethnicity, religion and in our case citizenship status shape and produce multiple points of discrimination and oppression. The challenges of intersectionality are discussed below but as an analytic tool intersectionality renders more clearly the discursive measures and strategies that sheds light on multiple layers of oppression and discrimination. Intersectionality is important to draw into the discussion because as Crenshaw states:

> The struggle over which differences matter, and which do not is neither an abstract nor an insignificant debate among women. Indeed, these conflicts are about more than difference as such; they raise critical issues of power (Crenshaw, 2004 p. 411)

Intersectionality draws critical attention to how inequalities are produced on an institutional scale, through legislation, processes, and techniques of governance (Rahman, 2009, pp. 2-3). Given these complexities, my use of intersectionality is not simply an additive feature of deep equality but is used as a principle of deep equality. This is not to suggest that intersectionality cannot stand alone but what I mean is that intersectionality supports deep equality to critically assess, challenge and make visible the hierarchies that are obscured when equality is equated with sameness, and this assumes equal or same treatment that perpetuates "durable inequality" (Tilly, 1998). What this does is raise the issues and arguments that advance and reproduce

majoritarian privilege and status or more succinctly, the social power that renders some citizens 'more equal' than others (Young, 2009, p. 259).

Deep equality and intersectionality ally well together. Both approaches recognize that individuals who face discrimination or oppression due to their complex identities can reshape and redefine popular notions of agency and self-empowerment in ways that reflect their unique social and political contexts. Both approaches focus on the material and limiting effects of justice within the law. Despite the critiques of using intersectionality in legal analysis it is important to recognize the complexities and tensions involved. Intersectionality can shed light on the ways in which law imagines and often misrepresents niqab-wearing women, as I demonstrated in the previous chapter where niqab-wearing women's identities were flattened into simplistic orientalist narratives. Given these tensions and complexity, critical attention must still be kept on the law especially since there are a cluster of legal cases where "law imagines women, especially religious women as either choosing badly or as having no choice"[58] (Beaman, 2008; 2013). Beaman's (2017) overarching concern is that law and the legal process can contribute to a construction of difference that "press people to take 'hard' positions about their identities" which then can flatten the complexity of identities that weave, ebb, and flow through daily life (p. 6). Beaman's (2017) argument is threefold: first, law is incapable of enforcing features of deep equality we see in daily life, for example micro-processes. Second, law inevitably focuses on difference in a manner that reinscribes and isolates characteristics from their context. Third, language in law. Beaman aptly states, "Law has colonized the meaning of equality, watering it down and displacing it with concepts like 'reasonable accommodation' and tolerance (2014, p. 92).

[58] The history and discourse of women *choosing* badly has its seeds and roots in so many discourses that link gender and nation.

Nonetheless, there remains a tension between Beaman's critique of law and her optimism about its potential to achieve deep equality. The significance of this tension lies in the law's power to shape and disseminate the facts. It is the law that has the power to shape the facts into a story that become part of our understanding of the world. Under the framework of deep equality, storytelling in law gains visibility by acknowledging the power of the 'everyday' and the idea that law can play a positive role in shaping everyday life. It is precisely here the positive place that law occupies where deep equality and intersectionality complement each other by re-framing social, political, and legal power relations. In the next section, I begin my exploration of Zunera Ishaq's submission to the Federal Court.

7.4.1 Claiming Her Identity: Women (that are) Like *Me*

Before beginning this section, I do not claim that Zunera Ishaq explicitly invokes deep equality in her legal arguments. Rather, I use deep equality as a lens to show how Ishaq asserted her right to Canadian citizenship. For the purposes of this section, I have limited my analysis to the specifics of the case particularly as it relates to deep equality by virtue of the framework listed above. I begin with a brief recap of the foundation of deep equality: agonistic respect. Drawing on Connolly's (2005) cardinal virtue of agonistic respect, Beaman (2017) argues that this concept forms the bedrock of deep equality because it requires people to relinquish their sense of rightness and the conviction that one is imbued with the truth.

Agonistic respect paves the way for deep equality by initiating the negotiation of difference by beginning with the self or *us* rather than the other or *them.* This does not imply abandoning one's commitments and beliefs but rather opening them up to the process of give-and-take of navigating, negotiating, understanding and mutual discovery (Eck, 2003, p. 168). *We* absorb the agony of having elements of our faith, belief, religion, non-religion, and worldview

called into question by others, and we fold agonistic contestation by others into the respect we convey *to* them (Connolly, 2005, pp. 123-124). Understanding the everyday process of navigation and negotiation necessitates an understanding of the inner (self) workings of deep equality that is connected to how one thinks, acts, lives, and engages actively with difference. Amelie Barras (2016) describes navigation as the internal arithmetic that religious practitioners perform daily as they balance work, life, home, and other priorities. Barras (2016) contends that navigation is often the first step in an external negotiation with others where differences are worked out.

As I noted in the previous section, claiming a singular religious identity especially in the legal process is tricky since it can most often result in the danger of identity rigidity which has legal, political, and ideological consequences. Identity rigidity is a sub-division of the diversity ⇔ problem = solution ⇔ tolerance and accommodation equation. As a result of this, Beaman (2017) argues that this rigidity overlooks the complexities and ways that identities weave through daily life and come in and out of prominence (p. 6). The danger of identity rigidity is that it can suppress all other identities and subjectivities coercing individuals into a singular fixed identity.

Ironically Ishaq is coerced into the identity rigidity matrix by the government to claim her right to religious freedom under Canadian law. Within the identity rigidity framework, the government not only regulates what it means to be a Muslim woman and what she should look like but also defines what it means to be a Canadian citizen and, in the process, conjoining a specific framing of religious identity and religion to citizenship.

7.4.2 My Religious Beliefs: Legal Precedent

> My religious beliefs would compel me to refuse to take off my veil in the context of a citizenship oath ceremony, and I firmly believe that based on existing policies, I would therefore be denied Canadian citizenship. I feel the governmental policy regarding veils at citizenship oath ceremonies is a personal attack on me, my identity as a Muslim woman, and my religious beliefs. (*Ishaq*, at para. 6).

Claiming 'religious identity' as *her* identity, Ishaq is indeed, *re-claiming* her identity. She does this by shifting the balance from difference to similarity. She draws on the *Charter* and the legal precedents set by the highest Court in the country, the Supreme Court of Canada. Ishaq submits to the Court that the government's Policy infringes on paragraph 2(a) of the *Charter*:

> (1) wearing the niqab is a religious practice in which she sincerely believes; and
> (2) the Policy interferes with that practice in a manner that is more than trivial or insubstantial. She claims both requirements are satisfied (*Ishaq*, at para. 21).

Through her legal team Ishaq submits to the Court that, even though not all sects of Islam consider wearing a niqab mandatory, her sincere belief in its necessity should be sufficient to establish a violation of her Charter rights. She cites key legal precedents set by the Supreme Court of Canada, including *Syndicat Northcrest v Amselem* (2004) and *Multani v Commission scolaire Marguerite-Bourgeoys* (2006), which affirm that a sincere belief with a *nexus to religion*[59] is enough to warrant protection under the *Charter*. Furthermore, Ishaq contends that the Policy in question infringes on her religious belief in more than a trivial way, compelling her to temporarily abandon a religious practice. She argues that such a requirement is

[59] Zunera Ishaq's legal team Waldman & Associates (Lorne Walman, Marlys A. Edwardh, Naseem Mithoowani, and Daniel Sheppard) submitted legal precedents and judicial decisions set by the Supreme Court of Canada in *Syndicat Northcrest v Amselem, 2004 SCC 47 at paragraph 52, [2004] 2 SCR 551;* and *Multani v Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6 at paragraph 39, [2006] 1 SCR 256)*.

unconstitutional, as established in *R v Big M Drug Mart Ltd* (1985), regardless of the Policy's effects. Additionally, Ishaq submits that the Policy infringes on her religious belief in more than a trivial way since it compels her and others like her to temporarily abandon a religious practice, and such a purpose will always be unconstitutional regardless of its effects (*R v Big M Drug Mart Ltd, [1985] 1 SCR 295 at 334, 18 DLR (4th) 321 [Big M]*). With Canadian law and precedent supporting her argument Ishaq asserts her right to religious freedom is protected under the *Charter* and that the government's Policy is inconsistent with the law established in the *Act* and *Regulations.*

Ishaq submits to the Court that the real issue for the government is not her religious practice *per se* but: "Muslim women like her" (*Ishaq*, at para. 22). Ishaq calls attention to various public statements made by the Minister of Citizenship and Immigration [Minister] at the time the Policy was introduced, as well as the language used by the Policy, to disclose that its "true target are Muslim women like her" (*Ishaq*, at para. 22).

Based on the court transcripts and my analysis through the lens of deep equality, Ishaq absorbs the agony of having her religious practice of her face veil called into question and challenged. She articulates feeling devalued, excluded and endures significant distress due to the scrutiny of her religious practice of wearing a niqab. She argues that the government's policy and rhetoric reinforce stereotypes and prejudices against Muslim women like her, personally attacking her identity and beliefs (*Ishaq*, at para. 6). This, she contends, "makes her feel worthless and as if she does not belong in the Canadian family (*Ishaq*, at para. 6). Additionally, Ishaq challenges the identity imposed on her by the state and reframes their arguments, setting the stage for the application of deep equality principles in the courtroom. From my analysis she does this in two ways: first to counter their identity rigidity construct, a characteristic of the

diversity ⇔ problem = solution⇔ tolerance and accommodation equation Ishaq introduces or 'educates' the state to the notion that even though some sects of Islam do not consider wearing a niqab as a mandatory requirement of faith—she does. Second, Ishaq addresses and re-claims the identity rigidity construct by foregrounding her religious identity as her primary identity that is not simply part of her but obligatory to her, but this should not constitute a singular understanding of herself. Throughout the legal process Ishaq claims, navigates, and negotiates the identity rigidity matrix without becoming trapped within it.

In the interest of justice, fairness, and following the legal rules of the nation written in the *Manual*, Ishaq absorbs the agony of having her religious practice called into question by the government and their Policy, their public statements perpetuate stereotypes, and prejudice that make her feel worthless as if she does not belong to the Canadian family (*Ishaq*, at para. 27). Yet Ms. Ishaq offers the government simple and expedient solutions for accommodation. Before proceeding, I must note that while at first read Ishaq's use of the concept of accommodation is consistent with the language of the tolerance and accommodation equation she is indeed from my analysis, (I examine this connection more fully in chapter eight) carving out the space for the elements of deep equality to take root.

The process of navigating and negotiating difference—when difference is noticed—can be organic and infused with multiple identity points. Ishaq reconstitutes her identity imposed on her by the state and repositions their arguments to set the stage for deep equality in the courtroom. Absorbing the agony of having elements of one's faith, belief, religion, non-religion, and worldview called into question by others, does not mean giving up your commitments and beliefs. Rather absorbing the agony serves to open-up those commitments to the give-and-take of navigating and negotiation. Ishaq does this by first showing the court that as a niqab-wearing

woman she is not what Barras (2016) identifies as a "rigid requester" (p. 68). Barras (2016) argues that the notion of religious differences that underpins the discourse of request produces an image of religious minorities (especially Muslims) as "rigid" requesters for special privileges, differentiating them from "flexible" institutions. Requesting, therefore, becomes a central component to how these minorities are imagined to act, and becomes at the same time a way to locate and delimit their religiosity (Barras, 2016, p. 68). Contrary to the rigid requester identity, Bakht (2022) identifies that despite deeply held beliefs about their niqab many women describe a contextual flexibility with their willingness to remove their niqab (p. 7). Indeed, Ishaq demonstrates to the Court that in fact she is not a rigid requester and indeed the institution is flexible, but it is the state that has become the rigid requester. She contends that:

> there is no rational connection between ensuring that the oath was taken and visual inspection, since such a method could only confirm that the participants' mouths were moving; citizenship officials are not lip readers. Indeed, the Applicant notes that *every new citizen is already required to sign a declaration that they took the oath* (see form CIT 0049 (02-2008)), *which binds them to it* (emphasis mine). The Respondent will get her signed declaration in any event, and the Applicant says that watching her lips move provides no real assurance that she took the oath (*Ishaq*, at para. 25).

Ishaq submits to the Court that the Policy affects about 100 to women per year, and that the oath takes less than a minute to recite. Moreover, Ishaq rejected the government's 'offer' to seat her in a front or back row next to a woman at the ceremony to prevent others from easily seeing her face (*Ishaq*, at para. 8). She argued that this arrangement was insufficient because the citizenship judge and officers could still be male, and photographers might be present at the ceremony. Ishaq also pointed out that the government's proposed accommodation did not address the issue; instead, it would only serve to further stigmatize her for her convictions (*Ishaq*, at para. 23). Therefore, Ishaq provides two methods that "are less intrusive and better at ensuring that women wearing a *niqab* took the oath" (*Ishaq*, at para 26). Ishaq argues that it would be easy for a

female citizenship judge or official to take those women's oath in private if there is cause to doubt whether they recited the oath, which Ishaq points out was a procedural safeguard that was done prior to the adoption of the Policy. Second, niqab wearing women could be seated closer to the official or have a microphone attached to them, so that officials could hear them taking the oath. Ishaq submits that these methods are less intrusive and better at ensuring that a woman wearing a *niqab* takes the oath (*Ishaq*, at para. 26).

Ishaq and her legal representatives then remind the government that the Policy is inconsistent with the *Regulations* in the *Citizenship Act* since the *Act* requires people take the oath, not to be *seen* taking the oath. Indeed, according to section 21 of the *Regulations*, every new citizen is required to sign a declaration form that they took the oath which binds them to it (*Ishaq*, at para. 25). To this end, Ishaq submits that what the government's Policy does is unduly fetters citizenship judges to "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof.' Which as Ishaq submits, forces citizenship judges to violate that mandate and unduly fetters their discretion in this regard (*Ishaq*, at para. 29). Ultimately, Zunera Ishaq's legal argument is not that her religious practice conflicts with the policies in the Manual but that her religious and Canadian values and identities are prevented from co-existing by the government's policy. Ishaq argues that the issue lies with the Policy itself, which conflicts with the law.

7.5.1 The (Face-Covering) Policy That is Not a Policy

The Respondent (Minister of Citizenship and Immigration) submitted to the Court a variety of arguments that claimed that Ishaq's submission for judicial review was in fact premature since the Policy (Operational Bulletin 359) was not *really* a Policy but merely a non-binding guideline with the expectation that it may be followed, the Respondent submitted that:

> The Policy is not mandatory, and citizenship judges are free not to apply it. As such, there is no way to know what would have happened had the Applicant attended the ceremony and refused to uncover her face. The Respondent agreed with Ishaq in that "there was nothing in the Act or the Regulations which requires that one be "seen" taking the oath" and that "the Policy is not *de facto* legislation." Moreover, the Respondent argued that the Policy cannot fetter the discretion of citizenship judges since the Policy is directed more to CIC staff and not really addressed to citizenship judges and that they can apply it or not (*Ishaq*, at paras. 30-31).

In addition to this, the Respondent submitted that while the Policy does affect mostly Muslim women—there is no proof of any pre-existing disadvantage, stereotype or prejudice that is perpetuated by requiring the Applicant to show her face while taking the citizenship oath (*Ishaq*, at para. 36). First, let us recall the history and colonial discourse discussed in Chapter 3 which precisely argues this very disadvantage, stereotype, prejudice, and discrimination against Muslim women. Second, by denying "any pre-existing disadvantage" the State legitimizes their actions by limiting the scope of religious freedom.

7.5.2 Sincerity of Belief: It Takes Less Than a Minute

The government argued that with respect to section 2(a) of the *Charter*, "a violation only occurs if the Applicant's religious practice might reasonably or actually be threatened" (*Ishaq*, at para. 34). The government submitted to the Court that Ishaq has asserted nothing more than a subjective belief that her religious freedom would be interfered since she had removed her veil in public for identity and security purposes and for her driver's license picture—even though they argued, Ishaq does not drive (*Ishaq*, at paras. 36-38). In addition to this, the government argued that the Applicant has not proven anything more than a trivial violation, as the oath takes less than a minute to recite (*Ishaq*, at para. 34).

Drawing from this evidentiary record, the government informed the Court that "wearing the niqab is just a personal choice, not a basic sacrament" (*Ishaq*, at para. 38). Therefore, it stood

to reason from their point of view to ask that, "why a citizenship ceremony, which happens once in a lifetime, is not one of those rare instances where it is absolutely necessary for the Applicant to remove her *niqab*" (*Ishaq*, at para. 38]. More to the point, and by the government's estimation "citizenship is a privilege, not a right. If the Applicant is opposed to baring her face, then the Respondent says that she should just accept the consequences of not becoming a citizen; she will retain all the benefits of permanent residency." The government concluded that given all these factors and that they had offered to accommodate the Applicant, it would be reasonable for a citizenship judge to favor the Respondent (*Ishaq*, at para. 39].

7.5.3 What Really Matters to the Government

I want to think through Beaman's four intersecting conditions (quoted in full below) carefully, as the government's arguments to the Court reflect a dangerous blend of state patriarchy and majoritarian notions of religion that obstructs deep equality. The government's minimization of Ishaq's religious belief suggesting that it can be subsumed, suspended, or temporarily set aside — for less than a minute — and then resumed, trivializes the harm and exclusion that Ms. Ishaq contends "makes her feel worthless" and as though "she does not belong to the Canadian family." This minimization speaks to a dangerous discourse of religion and citizen-making. Applying the concepts of deep equality and intersectionality here allows me to deconstruct the binary of notions of religion and religious singular identity and to bring into focus the intersectionality of gender, class, and citizenship. It also reveals a particular form of structural injustice. Drawing from Young (2009) this kind of structural injustice arises from a tolerance and accommodation framework which limits opportunities for social and economic well-being thus "preventing the full realization of their potential as citizens" (Rahman, 2009, p. 356). What is at stake then, is not only about the rights for religious freedom and expression (as

framed by the Charter) but about the opportunities to be the Canadian citizen one wants to be and to have "a meaningful voice in the governance of the institutions whose roles and policies conditions their lives" (Young, 2009, p. 290). The government's submission to the Court effectively hinders the conditions necessary for deep equality. I am certain that Beaman might argue that this represents a clear case of *deep inequality.* When the State publicly and legally attempts to regulate, ban, and control what someone wears they are in effect controlling the citizen they can be, what opportunities they can seek and how they are treated by other members of the polity. I discuss this more fully in chapter eight where we see more clearly the way deep equality works as a counterstrategy on the ground and in the everyday when injustice is in the air so-to-speak. I now turn to my analysis of the Federal Court of Canada and the ruling by the Honorable Justice Keith Boswell.

7.5.4 Detour One

Detour: The Road to the Federal Court

January 14, 2014

> *On 14 January 2014 Zunera Ishaq was scheduled to become a Canadian citizen instead she filed an application for judicial review in the Federal Court.*

June 30, 2014

> *On 30 June 2014 the Honorable Keith M. Boswell was appointed to the Federal Court by the then Prime Minister of Canada, Stephen Harper. Prior to his appointment to the bench, Justice Boswell's main areas of practice included business, corporate and commercial law.*

6 February 2015

> *On 6 February 2015 Justice Boswell delivered his judgement and reasons between Zunera Ishaq v. The Minister of Citizenship and Immigration.*

7.6.1 The Federal Court Speaks: What Matters to Law

At the outset it must be noted that the Federal Court declined to consider the Charter issues raised by Ms. Ishaq:

> While the evidentiary record was adequate to decide the matter, it was not voluminous, and the hearing itself was relatively brief. Thus, judicial economy is not a major consideration, and there is no compelling need for certainty since the Policy will be set aside regardless of its constitutionality. Therefore, it would be imprudent to decide the Charter issues that arose in this application and I decline to do so (*Ishaq*, at para. 67).

Decentering law is not rejecting law but holding it, for a time in a suspended state to facilitate the recovery of some under-explored spaces where seemingly irreconcilable differences

According to Beaman the Court must exhibit four intersecting factors (quoted in full):

(a) The colonial and/or post-colonial context is addressed and its potential impact on the issues raised in the case are acknowledged.
(b) The Court's willingness to both move past superficial renderings of the situation and to reshape existing legal boundaries.
(c) The multicultural character of Canada is given meaningful interpretation that understands an intersectional approach to identity and religious commitment.
(d) Language (what I insinuate as conceptual traps) such as tolerance and accommodation would be replaced by language that takes as its point of departure the equality of members of religious minorities (Beaman, 2011, p. 455).

Together, these four conditions provide the basis for my discussion and serve as the entry points into the judgment in *Zunera Ishaq v. The Minister of Citizenship and Immigration* [2015 FC 156]. I begin by addressing the first two intersecting factors: first, the colonial (or post-colonial) context and its potential impact on the issues in the case are acknowledged and, second, the Court's willingness to both move past superficial renderings of the situation and to reshape existing legal boundaries.

Judge Boswell begins his judgement by first making short work of the Minister of Citizenship and Immigration—the *Respondent*'s argument that the application for judicial review was premature since according to the *Respondent* Ms. Ishaq had not attended the citizenship ceremony and there is no telling what would have happened since the Policy is not a Policy. Boswell does this by addressing the first condition of deep equality with an intersectional contextual re-framing of the facts. Contextual re-framing addresses two significant concerns surrounding the perception and representation of a niqab-wearing woman before she enters the courtroom. First, the highest standards of justice, fairness and equity become the focal point instead of colonial and orientalist notions of niqab-wearing women. Second, while the language of tolerance and accommodation may be in the air, the judicial proceedings and ruling are not dominated nor marred by the discourse. More precisely, the language of benevolence, ownership, and permission is replaced by the language of deep equality. Boswell supports Ishaq's position by showing that niqab-wearing women are not situated as "rigid requester." A contextual re-framing of the facts not only highlights what is significant to the Court but also challenges orientalist notions and majoritarian privilege, while identifying the systemic boundaries and disadvantages created and perpetuated by the Policy. These issues affect not only Ishaq, but, as I will discuss later in this section, also citizenship judges, and other potential citizenship candidates—a point that the Court itself acknowledges. From Justice Boswell's initial decision, it is evident that the Court is about to take a different approach. Boswell begins by rejecting the Respondent's argument that Ms. Ishaq's application for judicial review is premature. After citing legal precedent, Boswell asserts, "Indeed, part of the reason that policies are published is so that people can know of them and organize their affairs accordingly" (*Ishaq*, at para. 42). At this

juncture, Boswell could have concluded the first ruling and moved on to the next matter, yet he chose to continue:

> …and the Policy in this case could be dissuading women who wear a *niqab* from even applying for citizenship. In such circumstances, a direct challenge to the Policy is appropriate (*Ishaq*, at para.42).

Deep equality factor one and factor three:

> Factor 1: Intersectional contextual re-framing of the facts of the case recognizes and acknowledges the colonial (or post-colonial) context and its potential impact on the issues in the case at hand.
>
> Factor 3: Language such as tolerance and accommodation are replaced by language that takes as its point of departure the *equality* of members of religious minorities.

Boswell's immediate concern is that the government's policy could *dissuade* niqab-wearing women from *even* applying for Canadian citizenship thereby creates a legal space for deep equality to emerge. Boswell draws attention to what really matters to the Court, and it is with how the Policy is perceived as mandatory by niqab-wearing women. Before proceeding further, it is essential to ask why is distinguishing between the government's public portrayal of the Policy as "mandatory" and its legal status significant?

The framing of the Policy and the public language used creates structural barriers that may dissuade niqab-wearing women from fully pursuing citizenship rights and accessing the legal system. This deterrence stems from the inability to navigate the deliberately ambiguous legal language of the federal policy. Boswell highlights the very heart of structural gender inequality that lies in how the policy sets boundaries and conditions that precariously position niqab-wearing women's legal status by a condition that the Court would later adjudicate as superfluous. Structural systems of inequality are embedded in the government's negligent

consideration of what is truly at stake when a policy is publicly promoted and implied as mandatory.

It is necessary to pause and consider Boswell's concern about the government's careless argument regarding the "the benefits" of permanent residency status. The effects carelessness is far-reaching. The state's ambiguous framing of the policy which prohibits Ishaq and niqab-wearing women from wearing their niqab during the oath taking portion of the citizenship ceremony leads to oppressive material realities, systemic barriers, and exclusions. These include the right to vote, the opportunity to run for political office, hold a Canadian passport, or obtain high-level security employment. Such conditions have material, everyday consequences that limit the political ambitions, economic opportunities, and social lives of niqab-wearing women. The government's purposely ambiguous language acts as a barrier to access and effectively renders niqab-wearing women as outlaws—excluded from full legal protection of citizenship. These are the inequalities that are hidden by the government's rhetoric, careless representation of citizenship, and willingness to discriminate both directly and indirectly. The significance of legal recognition of full citizenship cannot ever be overstated since it is in the words of Hannah Arendt (1973) it is about the "right to have rights," which as Brown (2000) asserts, rights are things we cannot *not* want (emphasis added).

The values of deep equality are evident in the language and analytical approach that the Court adopts. Boswell's overarching concern with the government's legal argument that the "Policy is not mandatory" but that the policy is *perceived* as mandatory which could dissuade niqab-wearing women *from even applying* for Canadian citizenship is a radical position. In a political, legal, and ideological landscape where countries are drafting legislation that would indeed, dissuade niqab and hijab wearing women from seeking full legal protection of citizenship

rights, Boswell's position is significant. Barriers to citizenship for niqab-wearing women have become inextricably linked to the visual representation of national values. To link the visuality of an uncovered face as an embodiment of national values, culture, and practices is part of what Beaman (2011) calls the abusive practices of the values discourse, and is without question, a form of racism. As discussed in chapter six, similar issues arise in cases like Ms. Faiza Silmi's, where the Frech Court essentially reprimands her for being a stay-at-home mom and in the S.A.S case where her religious practice was a matter of un-learning her values, and learning acceptable values enforced by French citizenship tests. French citizenship tests go beyond civic knowledge requirements and into the prospective citizens "inner disposition" to determine their thoughts and beliefs on a range of topics that include gender, gender equality, religion, culture, marriage, same-sex relations (Shachar p. 134; Asad 2006, p. 94).

Government policies, institutional practices and authoritative frameworks are powerful and influential discursive measures that can shape, alter or determine one's access to citizenship and crucially, the legal protection of full citizenship rights. Boswell is fully aware of the inequity between the political, social, and legal statuses of temporary, permanent, and full citizens. None of the legal cases discussed in chapter six focused on or were concerned with the reduction of rights for the small number of niqab-wearing women affected by such regulations and bans. The question then must be asked, why is the Court's action important?

At this moment the Court's gaze penetrates the government's rhetoric drawing attention to the structural context that Beaman argues is critical when rethinking boundaries. In this case, the Policy itself becomes a barrier that prevents access to full citizenship rights and even the legal system. The core of my analysis reveals that through the lens of deep equality the law's focus shifts to the political and social status of Ishaq and other niqab-wearing women. For

example, evidence submitted to the Court indicated the Policy only effected about100 women per year (*Ishaq,* at para. 26). However, the exact number of niqab-wearing women who may have been dissuaded from seeking citizenship under the 2011 policy is unknown. According to a spokeswoman for Citizenship and Immigration Canada, only two individuals were known to have opted out of the citizenship ceremony due to the requirement to remove their face coverings (ctv.ca).[60]

The Court's priority is to eliminate the language of inequality by exposing not only "how inequalities are produced on an institutional scale," but "through untangling the legislation, processes, and techniques of governance" (Beaman, 2011, p. 456) that sustain them. Boswell language reflects a consideration of the structural context which Beaman argues is implicit in the way the majority or most of the community is defined (p. 457). At this juncture the law acts as the producer of 'truth,' justice, and deep equality. I now turn to another facet of deep equality, an everyday story of negotiation of difference—the non-event.

7.6.2 Everyday Narratives: The Non-Event Enters the Law

When a non-event enters the legal process, it demonstrates first the different ways that people attempt to work out solutions and the legal space systemically opens the possibility for a deeper, reconstituted ideal of equality. This, of course, requires some clarity as to what an

[60] One of these women may have been Maiia Mykolayivna Zaafrane who moved to Canada from Ukraine. In December 2013 Ms. Zaafrane attended her citizenship ceremony along with 400 prospective citizens. Ms. Zaafrane was the only participant prevented from reciting the oath of allegiance. Citizenship officials requested that Ms. Zaafrane remove her niqab. Ms. Zaafrane refused. CIC officials offered to reschedule her oath taking at a smaller ceremony (80 people) she declined. Ms. Zaafrane offered to remove her veil in a private room, in front of a female official but did not want to uncover her face during the public ceremony. CIC officials refused. In April 2014 Ms. Zaafrane filed a human rights complaint with the Canadian Human Rights Tribunal. She claimed that she was discriminated against based on her religion since she was not allowed to participate in a citizenship ceremony unless she removed her niqab. The federal government filed a motion to adjourn the case pending the outcome of the Zunera Ishaq case by the Federal Court. At the time the government's motion was dismissed and Ms. Zaafrane complaint was scheduled to proceed to the Canadian Human Rights Tribunal (MacLeod, 2015).

everyday story of negotiation of difference looks like in the legal process, and in this regard Judge Boswell shares with the court an albeit brief but powerful story where law shifts a narrative of conflict into a narrative that reflects respect, understanding, caring, and neighborliness. In other words, the values of deep equality and the micro-processes that make up the everyday negotiation of difference.

The rush to 'solve' the problem of diversity has most often ignored the on the ground, everyday realities and ways that people resolve or work with difference and the needs of diverse groups themselves. Local solutions have meant that issues are de-escalated, rather than reaching public frenzy (Beaman, 2017). When a non-event (however briefly) enters the legal process three conditions of deep equality can be discerned:

(1) The Court's willingness to both move past superficial renderings of the situation and to reshape existing legal boundaries.

(2) The multicultural character of Canada is given meaningful interpretation that understands an intersectional approach to identity and religious commitment.

(3) The language (what I insinuate as conceptual traps) such as tolerance and accommodation are replaced by language that takes as its point of departure the equality of members of religious minorities.

The second, third, and fourth conditions are met in a particularly striking retelling by Boswell who describes in scant detail how one citizenship judge *chose* to negotiate and navigate the Policy. In response to, and one day after Directive 359 was publicly introduced a citizenship judge went on CBC Radio to discuss the new policy. During an interview with CBC [Canadian Broadcasting Corporation] Radio on December 13, 2011, a Toronto-area citizenship judge took a different view and suggested that:

> If [veiled women] don't take the face covering off, there is an opportunity for them to come in front of the judge again after the ceremony and take the oath. … [T]hey don't have to remove the veil right there in front of all these people (*Ishaq,* at para. 48)

What stands-out in this brief passage is the way that the foundational element of deep equality, agonistic respect is seamlessly woven through the judge's statement to demonstrate an engagement with the *possibility* of greater understanding of niqab-wearing women's positionality. Without resorting to a tolerance and accommodation discourse, the citizenship judge evidences respect, caring, and shifts the language from conflict to *cooperation*. Therefore, "a reimagining becomes possible under conditions in which similarity is recognized, cooperation is emphasized which link to more specific values, such as respect and neighborliness" (Beaman, 2017, p. 59). Instead of resorting to a position of diversity as a challenge the judge begins from a position of diversity as an opportunity. The judge highlights the courts openness and willingness to negotiate, navigate, and cooperate *with* veiled women. It is here, where we can most clearly see the distinction between tolerating difference and what it means to engage with difference. Perhaps the most impressive part of the statement above is the contextual reframing which lays the foundation for niqab-wearing women to see themselves in the eyes of the law and not in the ideological, political caricatured rhetoric of the federal government. At the time that this citizenship judge was interviewed by the CBC the ban was announced one day earlier by the Minister of Citizenship. The Minister introduced the ban by drawing from historical stereotypes, suspicious narratives, accusations that niqab-wearing women were "hiding" something, and ultimately, questioned their loyalty to Canada.

Yet the judge navigates and negotiates the conditions of the new policy from what I analyse as a position of deep equality. He demonstrates the court's willingness to *honour* niqab-

wearing women's difference not by highlighting it but through engagement. By allowing that prospective citizens can appear in front of the judge ***after*** the ceremony encourages niqab-wearing women to attend the ceremony and take the final step to becoming a Canadian citizen rather the deterring them from the process altogether. This point bears repeating because it is *this* that really matters to law—that niqab-wearing women are not deterred from the taking the oath of citizenship which is the final step in the long process of Canadian citizenship. Beaman (2011) argues that the courts must consider the *impact* of a situation (such as reciting the oath of citizenship) openly and honestly, assessing publicly the ways that justice can be achieved such as the judge clearly articulates on public radio as the opportunity for the time and space for niqab-wearing women to recite their oath of citizenship in front of the judge ***after*** the ceremony.

What emerges from brief narratives such as the one above is the moment where the values of deep equality such as respect, caring, and neighborliness are brought to bear on broader concepts such as justice, fairness, and equality or equity (Beaman, 2017, p. 108). A key tenet of the tolerance and accommodation equation has created 'blind spots' as to how, where, and when difference is worked out, navigated, and negotiated between people. There is a parallel here between an everyday negotiation of difference, the cooperative spirit, and the recognition of similarity. The recognition of similarity resides between evaluations of difference and sameness as a possible shared space that is flexibly understood on any number of bases (Beaman, 2017, p. 65). According to Beaman, "similarity reconciles difference without creating sameness by finding common ground, or a space where deep equality can be accomplished" (p. 69). Boswell noted that a subsequent internal e-mail correspondence between CIC media officials indicated that the public comments by this citizenship judge to negotiate the new Policy was deemed "problematic" and "contradict our lines" (*Ishaq,* at para.48).

It is precisely this small fragment of an everyday narrative that we observe how law allies with deep equality to create the space for inclusion and justice. The allyship between law and deep equality ensures that the values of respect, caring, and neighborliness take center stage, effectively decentering the government's so-called "Policy that is not a Policy."

7.6.3 Intersectionality according to Judge Boswell: What do a Citizenship Judge, a Monk, a Mute Person and Niqab-wearing Women Have in Common?

> … how can a citizenship judge afford the greatest possible freedom in respect of the religious solemnization or solemn affirmation in taking the oath if the Policy requires candidates to violate or renounce a basic tenet of their religion? For instance, how could a citizenship judge afford a monk who obeys strict rules of silence the "greatest possible freedom" in taking the oath if he is required to betray his discipline and break his silence? Likewise, how could a citizenship judge afford a mute person the "greatest possible freedom" in taking the oath if such person is physically incapable of saying the oath and thus cannot be seen to take it? (*Ishaq,* at para. 54).
>
> Indeed, as noted above, any requirement that a candidate for citizenship actually be seen taking the oath would make it impossible not just for a niqab-wearing woman to obtain citizenship, but also for a mute person or a silent monk (*Ishaq,* at para. 61).

In the two statements above, Judge Boswell draws parallels between a citizenship judge, niqab-wearing women, a monk, and a mute person. By doing so, Boswell integrates intersectionality's co-constitutive axis of power relations and shifts the focus from difference and particularity to similarity and commonality. By emphasizing similarity and commonality, Boswell effectively illustrates how the government's policy[61] imposes coercive burdens that intersect and impact these four different identities. Boswell keeps Ishaq's difference in view and situates it within a broader context. More importantly, he does not minimize Ishaq's claim to legal remedy since as discussed, the Court's immediate concern is the language of intent that the policy is mandatory.

[61] This approach is particularly interesting, as Boswell argument is underscored by the government's public statements, internal correspondence, responses to a local citizenship judge, and sections of the citizenship manual.

Boswell acknowledges and identifies the systemic inequality that seriously disadvantages niqab-wearing women while also attending to the intersection of inequality that the policy produces for monks, mute people, and citizenship judges. Recognizing this unique convergence of coercion that the policy produces, however, does not erase Ishaq's difference, undermine her legal claims, nor drag her religious practice under legal scrutiny. This removes the issue from the politics of identity, a case of exception, or a special privilege and into the unlawful issue that flattens and presses the coercive effects onto a prospective citizen, a monk, a mute person and equally constrains and fetters the scope of the very same institution responsible for administering the oath, citizenship judges. I am sure that the point Boswell is attempting to make is not to universalise or erase 'difference' but rather does two things: first, Ishaq should not be positioned in a discourse of request since the policy is far-reaching and such comparisons become a method that seeks to question boundaries and flatten barriers that "undermine, rather than promote deep equality" (Beaman, 2011, p. 458). Second, Boswell shows how the rhetoric of the policy becomes a site where four identities intersect and has serious social, political, and legal consequences that impact not only Zunera Ishaq and niqab-wearing women's path to Canadian citizenship, but also citizenship judges, monks, and mute people. This legal, contextual, and intersectional re-framing makes deep equality possible because Boswell demonstrates the far-reaching impact of the state's careless defense argument that their policy is not a real, mandatory policy. In contrast to the French cases of Mme. M (Faiza Silmi) and *S.A.S. v. France*, and the preliminary *R. v. N.S* the Courts overlooked the pervasive struggles many women face and failed to address intersectional inequities linked to family, social and religious institutions, race, class, and the economy (Dillabough & Arnot, 2005, p. 161), Judge Boswell in the *Ishaq* case takes the opposite approach. He prioritizes an intersectional framework, recognizes how various

overlapping social factors impact individuals differently, and addresses the specific burdens placed on niqab-wearing women.

By bringing these four identities together Boswell is positioning the court in the language of Beaman, *to enter their life worlds*. By drawing us into their life worlds Boswell artistically weaves difference and similarity, cooperation, understanding, neighborliness and caring into a narrative of deep equality in law.

7.6.4 The Federal Conservative Government Breaks the Law

The attempt of the legal remapping of the auditory (hearing the oath) to the visual seeing the oath recited was one that Judge Boswell adjudicated as "superfluous" since as Judge Boswell pointed out that pursuant to sub-section 19 (1) or 20 (1) of the Regulations: at the time the person takes the oath of citizenship a signed certificate in prescribed form (of the text of the oath) *certifying* that the person has taken the oath, and the certificate is countersigned by the citizenship officer and forwarded to the Registrar. Federal Court judge, Keith M. Boswell ruled (partially) in Ms. Ishaq's favour. The Court's judgement is clear:

> The portions of the Policy and Manual that require candidates to ***remove face coverings*** or ***be observed*** (emphasis mine) taking the oath are unlawful. Specifically, sections 6.5.1 to 6.5.3 of the Policy, as well as the second paragraph of section 13.2 of the Manual and the reference to "those wearing a full or partial face covering that now is the time to remove it" in section 16. 7 of the Manual, are unlawful (*Ishaq,* Judgement).

In short, the Conservative Government's ban against wearing the niqab during the oath of allegiance at the Canadian citizenship ceremony was unlawful. In the next section I explore the judgement by the Federal Court of Appeal.

7.7.1 A Very Unusual Day at the Federal Court of Appeal[62]

In a single day, the Federal Court of Appeal issued a unanimous six-paragraph ruling from the bench, dismissing the Conservative government's appeal. The appeal brought by the government did not require deep, legal analytical thought nor timely deliberation as standard procedure dictates. For the justices delivering the ruling immediately from the bench was in their words, "in the interest of justice" (*Minister,* at para. 5)

The first important point that the Federal Court of Appeal makes upholds the Federal Court's judgement that established that the government's Policy was perceived as mandatory and that this conflicted with the requirements of the *Citizenship Act*, R.S.C. 1985, c. C-29 and the regulations made under that Act. The Court confirms that the policy change did not follow the chain of authority so-to-speak and therefore was not adopted by the Governor in Council. The Court stated:

> […] this appeal must be dismissed in part because paragraph 27(1)(h) of the Citizenship Act delegates authority to make regulations regarding the taking of the oath of citizenship to the Governor in Council and this policy change was not adopted by the Governor in Council (*Minister,* at para. 3).

To this the Court avers that they "see no basis to interfere" with the Federal Court's "finding as to the mandatory nature of the impugned change in policy" given that, "the finding is overwhelmingly supported by the evidence" (*Minister,* at para. 4). Additionally, the Court notes that while they agree with the crux of the legality that the Federal Court has adjudicated the Ishaq case, the justices make clear for the judicial record that they do *not* agree with *all* of the

[62]Kymlicka calls the expediency of the judgement by the Court of Appeal, "something very unusual" since the Court did not follow standard procedure such as listening to the lawyers on both sides; taking several months to study both arguments and then issue their decision. Kymlicka argues that in effect the Court is saying to the government that their arguments are weak, a waste of the Court's time and therefore, need not timely consideration (2021, p. 128).

Federal Court's reasons. The Court does not expand on this statement, and we are left wondering exactly which reasons the Federal Court of Appeal disagrees on with the Federal Court.

7.8.2 Paragraph Five: In the Interest of Justice

The Court begins paragraph five by declining to address Zunera Ishaq's claims over the legality of the impugned policy change under the *Canadian Charter of Rights and Freedoms* since as the Court determines, it is "unnecessary" and the record before them is "fairly scant." The justices could have adjudicated and dismissed the appeal with costs precisely here in view that the fact of law had been established.

But Honourable Justice Johanne Trudel, Hon. Justice Wymann W. Webb and Hon. Justice Mary J.L. Gleason decided that in the interest of justice they had to add one more sentence to paragraph five that unites (in my analysis) all four conditions of deep equality to deposit what Beaman herself may well conclude, the moment where the legal language transforms the possibility of deep equality into the reality of deep equality in law.

> **Moreover, we believe that it is in the interests of justice that we not delay in issuing our decision through the examination of an unnecessary issue so as to hopefully leave open the possibility for the respondent to obtain citizenship in time to vote in the upcoming federal election** (*Minister*, at para. 5).

By framing the government's case or rather so-called problem as an "unnecessary issue" the court is doing four things: First, it is publicly articulating their displeasure (for the judicial record) with the government's intentional disregard for the rule of law clearly stated in the *Citizenship Act*, confirmed by the federal court, and re-affirmed by the Court of Appeal. Second, the Court is demonstrating its fidelity to the rule of Canadian law and not to the vagaries of politics and ideology. Third, the Court is asserting the strength and independence of the

Canadian judiciary. All three justices were appointed to the bench by then-Prime Minister Harper himself. Fourth, they draw a direct correlation between Zunera Ishaq obtaining Canadian citizenship as a principle in the "interest of justice." In the following section, I take a detour into another "non-exceptional" issue from recent Canadian history. This detour is essential to fully grasp before I discuss the significance of the final line of paragraph five and the subtle way in which the Court chooses not to directly address the *Charter* issue, while still drawing from the spirit of the *Charter*.

7.8.3 Detour Two: History Repeats Itself

It is important to be aware that this was not the first (nor would this be the last time) that Prime Minister Harper sought to prevent niqab-wearing women from voting and ignoring the statutes of Canadian law. In March 2007 ahead of three provincial byelections in Québec, the provincial chief electoral officer Marcel Blanchet clarified current election law in Québec that allows niqab-wearing women, burn victims, and other citizens unable to show their face to fully participate in the democratic process and vote if they have proper identification, had signed a sworn statement, or accompanied by another citizen able to verify their identity. Chief Electoral Officer for Elections Canada Marc Mayrand concurred with Blanchet and confirmed the policy. Unfortunately, Mr. Blanchet found himself at the center of a "too much accommodation" controversy that provoked fierce public debate and non-partisan outrage by the province's main political leaders. Mr. Blanchet attempted to mollify public and political dissent by arguing that the law as it stood was not intended to accommodate religious practices but was a general rule of application and he was respecting the letter of the law.

CBC reported at the time that most Muslim women in Québec do not wear a niqab, there was no record of any niqab-wearing women requesting an accommodation to the law and the very small number of niqab-wearing women in Québec do not have an issue with showing their faces to a poll clerk to confirm their identity. Sarah Elgazzar spokeswoman for the Canada Council on American-Islamic Relations (CAIR-CAN) said that of the estimated 200, 000 Muslims residing in Québec only about 50 women wear the niqab. Elgazzar noted that this accommodation was not even something niqab-wearing women wanted:

> If anybody had actually bothered to ask the women that actually concerned, and we are talking about a very small minority of women, they would have told them that they always take it off to identify their faces, [they] do it at the bank, they do it at border crossings, [and] at the airport. (cbc.ca, 2007).

These facts did not quell public debate. The issue became fuel for all three main political leaders Jean Charest (Liberal), Andre Boisclair (Parti Québecois) and Mario Dumont (Action Democratic du Québec) who turned a non-issue into an issue as a conduit to secure votes. They publicly criticized and admonished Mr. Blanchet for not reversing the law. Mr. Blanchet, the Elections Québec staff, and headquarters became a site for angry emails, phone calls, and death threats that forced Mr. Blanchet to hire security detail for him and assign security officials to monitor their building. A few days prior to voting day on March 26, 2007, Mr. Blanchet announced that as Chief Electoral Officer for the province of Québec he would use the special powers entrusted to him to reverse the electoral law of general application and make it obligatory for niqab-wearing women to show their faces if they wanted to vote in the upcoming provincial election. Spokesman with Elections Québec, Denis Dion made clear that the rule of law was reversed to ensure that voting day in Québec could proceed without "trouble." Indeed, voting day in Québec went ahead without incident but this would not be the end of the controversy.

Historically, the voter identification requirement to vote in a federal election consisted of a voter's name listed on the voter's list for that polling station. In June 2007 Parliament passed Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, as enacted by S.C. 2007, c. 21. Bill-C31 introduces the concept of voter identification with the enactment amended the Canada Elections Act:

> To improve the integrity of the electoral process by reducing the opportunity for electoral fraud or error. It requires that electors, before voting, provide one piece of government-issued photo identification showing their name and address or two pieces of identification authorized by the Chief Electoral Officer showing their name and address, or take an oath and be vouched for by another elector (O'Malley, 2007).

The new electoral rules provide guidelines to identify registered voters whose faces are covered for medical or religious reasons. Registered voters with their faces covered can present two pieces of ID with one piece including their address, they can have another registered voter in the same district vouch for their identity and if the registered voter can only provide one piece of ID they may be required to uncover their face to verify their identity. When these new guidelines aligned with federal law (Bill C-31) were posted on Elections Canada's website during the autumn of 2007 it coincided with Quebec federal byelections scheduled for September 17, 2007. Provincial premier Jean Charest urged Elections Canada to reverse the new rules since the matter had already been settled in Québec with veiled voters having to uncover their face to vote. Premiere Charest argued that those are the policies that should be applied in Québec and across the board. The Bloc Québecois said that they had sent a letter to Elections Canada requesting that they change the new rules before the byelections.

At the time the major federal political leaders disagreed with Mayrand and publicly voiced that niqab-wearing women should be forced to reveal their faces so that their identities

can be verified.[63] Prime Minister Harper publicly voiced his "disappointment" with Elections Canada and with Mr. Mayrand's "decision." Over the course of two days, speaking on foreign soil and in the presence of international press during the Asia Pacific Economic cooperation (APEC) summit in Sydney, Australia; Harper publicly chastised Elections Canada and Canada's chief electoral officer for undermining the will of Canadian Parliament, publicly accused Canada's chief electoral officer of subverting the law, Elections Canada of making their own laws, and adjured Mr. Mayrand to change "his decision" permitting niqab-wearing women to cast their vote without having to uncover their face. I would be remiss if I did not mention the role that Elections Canada plays internationally as a trusted monitor of democratic and fair elections across the globe. A role that the Prime Minister of Canada called into question in public and on foreign soil.

Prime Minister of Canada speaking to international press:

> I'm obviously very disappointed with this decision. Parliament has just passed a law and its intention is very clear – the intention is to have photographic identification of voters.
>
> I have to say that it concerns me greatly, because the role of Elections Canada is not to make its own laws. It's to put into place the laws that Parliament has passed, so I hope they will reconsider this decision.[64]

Let us recall that indeed, Parliament passed Bill-C31 in the Spring of 2007 but there was *no* explicit "uncovered face" requirement to vote.

[63] See O'Malley, K. (n.d.). *Blast from the past: That whole voting debacle*. Maclean's.
[64] Canadian Press (2007). *Harper slams Elections Canada over veiled voting*. CBC News: Harper slams Elections Canada ruling on veils | CBC News

7.8.4 Proving a Voter has a Face: Another Solution in Search of a Problem[65]

On September 10, 2007, Canada's Chief Electoral Officer, Mark Mayrand held a press conference to publicly remind the prime minister of Canada that a House of Commons committee vote was not equivalent to an act of Parliament. Mayrand clarified to the press and to the Canadian public that the new voter identification guidelines were in line with Bill-C31 amendments that were posted on the Elections Canada website. Mayrand stated the new federal voter identification requirements of the Canada Election Act provide voters with two alternatives to voting without photo identification (i.e., providing two pieces of non-photo identification, or taking an oath). Mayrand stated that an uncovered face could not be a requirement of the *Act* since there would be no means of making a visual comparison of the voter's face with a photograph. Indeed, Mayrand pointed out that the *Act* offers other modalities to vote that do not require the visual comparison of a voter to his or her photograph. For example, mail-in ballots (voting by mail), an option that approximately 80,000 Canadian electors exercised in the 2006 election. Mayrand argued that Elections Canada is an independent institution and that he is simply *following* the law and that it is only Parliament that has the power to change the law. Mayrand made clear that in 140 years there has never been a problem with veiled voting since only a small minority of women in Canada wear face-coverings, and no Canadian Muslim has requested any specific treatment in regard to voting.

On September 13, 2007, the House of Commons Standing Committee on Procedure and House Affairs strongly urged Mayrand to reverse his position that he would not require women who wear veils or burqas to remove their face covering to vote. The Committee also requested

[65] Globe and Mail (2007)

that Mr. Mayrand as chief electoral officer exercise his power of adaptation to impose an uncovered face requirement to vote. Speaking to the Committee, Mayrand repeatedly informed members that it would be inappropriate for him to use his power of adaptation since the situation under examination did not meet the standards of section 17 of the *Act,* which was reserved for emergencies, unforeseen events, and only in exceptional circumstances. Mayrand argued that he did not consider veiled voting "an exceptional circumstance" and the situation did not warrant offending the *Act.* Conservative MP Tom Lukiwski seemed deeply troubled by Mayrand's answer and framed the same question differently to which Mr. Mayrand repeated his answer. Conservative MP Tom Lukiwski could not understand that if Mr. Mayrand "had the power to ensure that veiled women remove their veil," why did he not "wish to exercise that authority?"

On October 26, 2007, the Leader of the Government in the House of Commons, Hon. Peter Van Loan introduced Bill C-6, An Act to amend the Canada Elections Act (visual identification of voters). Bill C-6 was a refinement of Bill C-31, and required that voters who present themselves to vote, register to vote, or vouch for a voter have an uncovered face when doing so. Additionally, some voters who are residents in Canada would also be required to have an uncovered face when they receive a special ballot.[66] An exception to the requirement to have an uncovered face when voting, registering to vote, or vouching for another voter is provided in cases where, in the opinion of an election official, removal of a face covering would be harmful to the individual's health. The amendments to Bill C-31 were panned in the Canadian media. The

[66] For the complete transcripts see: Canada. Parliament. House of Commons. Standing Committee on Procedure and House Affairs. (2007, February 1). *Evidence: 39th Parliament, 1st Session, Meeting 63*. Library of Parliament. (2008, February 4). *Bill C-42: An Act to amend the Citizenship Act (conditions for granting citizenship for certain persons born abroad)* [Legislative Summary 39-2-C42-E].

Globe and Mail described the bill as "a solution in search of a problem," and that "showing an uncovered face would only prove that the voter has a face."

It may not be unequivocal to assert that the Federal Court of Appeal is explicitly drawing from this same history, but it is certainly plausible. What remains undeniable is that the strategy used by Prime Minister Harper in 2007 to publicly pressure independent Canadian institutions like Elections Canada to bend to the will of his government mirror his aggressive comments in the press and in the House of Commons. He described the Federal Court's ruling, which overturned the Conservative government's ban on face coverings during the oath of allegiance at the citizenship ceremony as "disappointing," and "offensive." It is not unreasonable to suggest that the Court of Appeal may view such public shaming of the Canadian legal system unfavourably. Concluding this detour, I now transition to the next section, where I analyze the significance of the final line in paragraph five. Here, I explore the nuanced approach taken by the Court in refraining from directly addressing the *Charter* issues, while simultaneously invoking its underlying principles. This subtle yet deliberate choice reflects a judicial strategy that aligns with the broader spirit of the Charter without explicitly engaging in constitutional interpretation.

7.9.1 The Right to have the Right to Vote

> Moreover, we believe that it is **in the interests of justice** that we not delay in issuing our decision through the examination of an unnecessary issue so as to hopefully **leave open the possibility for the respondent to obtain citizenship in time to vote in the upcoming federal election** (*Minister*, at para. 5).

Although the Federal Court of Appeal overtly declines to address the Charter issue directly, it subtly leans into Section 3 of the Charter—one of the few provisions that apply explicitly and exclusively to Canadian citizens:

> Section 3: *Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.*

In the final words of the judgment under appeal, the Court emphasizes expediting Ishaq's path to citizenship so that she may exercise *her* right to vote. This decision highlights the enduring relevance of historical and ongoing barriers that have disproportionately hindered women, particularly minority women, from accessing voting rights.

In Canada, women's right to vote has historically been marred by provincial, racial, religious, and social prejudice. Joan Sangster (2018), in her book *One Hundred Years of Struggle: The History of Women and the Vote in Canada*, argues that the history of women's suffrage in Canada has often been portrayed as an unqualified achievement of progress; however, the reality is much more complex and riven with inequality. The history of voting rights in Canada is deeply intertwined with the country's colonial past, where access was determined by race, class, religion, gender and province. Visible minorities were banned from voting in Canada until the mid-nineteenth century. Canadian women did not gain the right to vote until 1918, when a federal law was passed ensuring that no Canadian could be denied this right. As Fleras (2017) reminds us, Indigenous peoples were denied Canadian citizenship and the right to vote in federal elections until 1960 and only if they relinquished their Indian Act status, proved themselves sufficiently "civilized," and assimilated into mainstream Canada. To clarify, I am not drawing a direct parallel between the Zunera Ishaq case and the history of First Nations peoples in Canada, nor am I suggesting that the Court of Appeal is drawing from this history. Rather, I am asserting that these bans and the histories that underpin them are techniques of governance that embed majoritarian values of proper religious practice and citizenship. The right for women to vote for women has been historically, contemporarily, and especially for niqab-wearing women fraught

by barriers of access and inequality.[67] These barriers persist globally, whether through political tactics such as gerrymandering in predominantly non-white districts in the United States or the imposition of values tests in countries like France. In Canada, similar dynamics were evident in 2007, as discussed earlier, where niqab-wearing women faced exclusionary policies that limited their full participation in civic life. Recognizing the broader context of paragraph five is essential to understanding how colonial patterns of domination continue to resurface under specific contemporary conditions. By situating the Court's decision within this larger framework, we can critically examine how legal and political structures may inadvertently or deliberately perpetuate historical inequities.

In response to the decision by the Federal Court of Appeal, particularly its emphasis in paragraph five, the Federal government chose to escalate the matter by appealing the case to the Supreme Court of Canada. The lawyers representing the Minister of Citizenship and Immigration filed a Notice of Application for Leave to Appeal to the Supreme Court and sought a stay of the judgments from both the Federal Court of Appeal and the Federal Court.

7.9.3 Defining Irreparable Harm

> *…irreparable harm is harm which will occur in the interim between now and the time the application for leave and judicial review is adjudicated upon. Irreparable harm is harm which can not be cured, and the applicant must establish on a balance of probabilities that harm is likely to occur. The existence of irreparable harm is fact specific. The evidence must be credible and the harm non-speculative.*
>
> *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2006 FC 72.

[67] However, in Québec women did not secure the right to vote until 1940.

Responding to the decision by the Federal Court of Appeals (and by extension paragraph five) the Federal government decided to appeal the case to the Supreme Court of Canada. Lawyers for the Minister of Citizenship and Immigration filed a Notice of Application for Leave to Appeal to the Supreme Court of Canada and sought a stay of the Federal Court of Appeal and Federal Court's judgements. The Federal government submitted to the court that granting Zunera Ishaq citizenship (and by extension allowing her to vote) before the 2015 federal election would cause *irreparable harm* to the public interest. The government argued in part the following:

- By providing guidance to citizenship judges who must ensure that the oath, the last statutory requirement to become a citizen, is taken, the policy at issue enhances the integrity of obtaining citizenship and promotes the broader objective of having the oath recited publicly, openly and in community with others. These are important Canadian values and an integral part of becoming a Canadian citizen. Irreparable harm to the public interest in these values would result from the policy being subject to a declaration of invalidity pending the appeal to the Supreme Court of Canada;
- These are important Canadian values and an integral part of becoming a Canadian citizen. Irreparable harm to the public interest in these values would result from the policy being subject to a declaration of invalidity pending the appeal to the Supreme Court of Canada;
- Regarding the balance of inconvenience, the irreparable harm to the public interest represented by the Minister if the stay is not granted exceeds the harm to the Respondent if the stay is granted;
- This stay Motion is urgent because if the stay is not granted, the Respondent's taking of the oath will render the Minister's appeal to the Supreme Court of Canada moot; (*Minister*, at para. 11.)

"… *how can one raise a claim of irreparable harm*?"

Justice Johanne Trudel (2015)

In 2007 then Prime Minister Stephen Harper appointed Justice Johanne Trudel to the Federal Court of Appeals. By 2015 Justice Trudel had earned the reputation for being "rigorous," "thorough," and a "succinct" legal writer (Globe and Mail, 2014). On September 15, 2015, Justice Trudel, Justice Gleason, and Justice Webb submitted a remarkably succinct six-paragraph

ruling dismissing the government's appeal of the Federal Court ruling. The Justices held that their expedient ruling was based in large part to leave open the possibility for Zunera Ishaq to obtain citizenship and vote in the upcoming election on October 19, 2015.

On October 5, 2015, three weeks after Justice Trudel and her fellow justices ruled from the bench and two weeks before the 2015 Federal election, Justice Trudel wrote a careful twenty-four paragraph dismissal of the government's motions for stays of both the Federal Court and the Federal Court of Appeal rulings.

Justice Trudel focused on the government's language surrounding the Policy submitted to federal court that indeed the Policy under examination was not mandatory, citizenship judges were free to apply it or not, and that the Policy merely amounts to an encouragement in the strongest language possible. Justice Trudel then asked, "how can one raise a claim of irreparable harm? (*Minister*, at para. 20). Trudel averred that the government's counsel had, already submitted that the Policy had "no force or effect prior to any judicial intervention (*Minister*, at para. 21). As a matter of legal interpretation and perhaps the most problematic argument for Justice Trudel was the government's emphasis on irreparable harm to the public interest. Trudel reminded the government that by their own submission to the Federal court that the Policy under examination was not mandatory, citizenship judges were free to apply it or not, and that the Policy merely amounts to an encouragement in the strongest language possible (*Minister*, at para. 20). The Federal Court summed up the Policy as: "superfluous," "fetters the discretion of citizenship judges," "inconsistent," "invalid" and, "unlawful" (*Minister*, at para. 5) and the Court of Appeal labelled the case, an "unnecessary issue" ((*Minister*, at para. 5)

The issue that Justice Trudel had to decide was between whether granting the stay of appeal would cause irreparable harm to the public interest. Trudel reminded the government by

their own submission to the Federal court that the Policy under examination was not mandatory, citizenship judges were free to apply it or not, and that the Policy merely amounts to an encouragement in the strongest language possible (*Minister*, at para. 20). Justice Trudel held that the juxtaposition between the Policy and that the application for stay until *after* the election would cause irreparable harm to the public interest was "simply inconsistent to claim" (*Minister*, at para. 21) and that Citizenship and Immigration Canada already had valid guidelines and procedures to ensure that citizenship candidates take the oath prior to the adoption of the Policy (*Minister*, at para. 22).

In other words, what the government is essentially asking the court to do is to not only delay Zunera Ishaq's hard won legal right to full citizenship status but also any other niqab-wearing woman until after the election and after a ruling by the Supreme Court of Canada. Political, social, and legal expediency in this case fell to Zunera Ishaq since it is her and "women like her" that would suffer *irreparable harm*. It seems that "in the interest of justice" is in the "public interest." Justice Trudel held that the juxtaposition between the Policy and that the application for stay until *after* the election would cause irreparable harm to the public interest was "simply inconsistent to claim" (*Minister*, at para. 21).

At this juncture, it becomes almost too clear that law emerges as the only site of resistance against the Conservative government's unfettered strategy to undermine the rule of law. The case now centers on the government's attempt to bend the will of the law, effectively repudiating the rule of law to achieve their strategy. While acknowledging that the claim of the government's repudiation of the rule of law is strong, the evidence is both accessible and clearly articulated in the legal record. Justice Trudel, for instance, effectively dismantles the government's legal claims by simply reiterating their own submissions to the court. As evidenced

by Trudel's twenty-four paragraphs, she succinctly questions, "*How can one raise a claim of irreparable harm*?"

7.11.1 Chapter Summary

Following Beaman's framework, we must ask: does the Court achieve deep equality in this case? I believe it does. Implicit in the Court's modus operandi is a focus on what truly matters to the law in this case, as evidenced by the single sentence known as *paragraph five*. This brief yet powerful sentence transcends the immediate legal rules of the game, addressing a fundamental principle: the right to equality and participation in public life. The Court's reasoning shifts away from symbolic debates over the niqab and instead prioritizes the practical and material consequences of its decision. By doing so, the Court ensures that the law serves its purpose of upholding social justice and fostering inclusivity, reflecting the core ethos of deep equality. This focus on substantive justice, rather than cultural or political biases, demonstrates the law's role in creating space for the diverse lived realities of citizens, particularly those marginalized by dominant narratives.

CHAPTER EIGHT: ACTS OF DEEP CITIZENSHIP AND CONCLUSION

8.1 Introduction[68]

The regulation of space played a critical role not only by shaping how Zunera Ishaq navigated her religion and religious identity but also by determining how she could embody her national identity. By regulating and controlling space in this way, both her religious and civic identities were simultaneously shaped and constrained. Through the Federal Conservatives' face-covering ban during the oath of allegiance, their legal efforts to shift emphasis from auditory (hearing the oath recited) to the visual (seeing the oath recited), along with public statements in the Canadian House of Commons, and the media, the citizenship ceremony was symbolically and legally redefined. These actions imbued the physical space of the Canadian citizenship ceremony with material significance framing it as the literal ground upon which proper religious and national identities could be embodied, enacted, defined, and protected. The government attempted to define Canadian national identity and niqab-wearing women's religious practice as distinct from each other and in this respect, then, the visual became the boundaries of the imagined or desired Canadian family (Alibhai, 2023 p. 119). The revaluation of space, by the Conservative government linked the space of the citizenship ceremony to a reinterpretation of Canadian values; a shift from the citizenship space as not only physical and material but as a state of mind, a mental, psychological, social, and symbolic way of being Canadian or more

[68] Segments of this chapter are reproduced with permission and originally appeared in: Alibhai, Z. P. (2023). At face-value: The refashioning of the body in law, public policy, and the virtual public square. In C. Larouche & F. Pasche-Guignard (Eds.), *In/visible bodies: Gender, religion and politics*. University of Laval Press.

aptly, how to be Canadian that is bound up in power and politics (Cotter, 2013, p. 3). This revaluation of spatial politics demonstrates the necessity to become more attentive to the mechanisms of power and the cultivation of space as a site for orientalist constructed historical narratives that act as motive and effect in contemporary discourses.

In this way, space is produced to reflect a specific cultural and historical context that functions both "discursively and materially" to define and delimit those within and outside its bounds (Morin & Guelke., 2007, p. xix). The physical space of the citizenship ceremony, for instance, delineates religion and religious practice as momentary, confined to specific places and contexts. Consequently, space becomes a medium through which religion is defined, regulated, and controlled, determining where and when it can be expressed. As Massey (1994) argues, space is one of the axes along which we experience and conceptualize the world. From a socio-spatial perspective, space is not only a place where "things happen," but rather a "social action situation" in which material (including bodily) and discursive relations are interwoven (Massey, 1994, p. 4). Indeed, when the regulation of space, such as during the oath of Canadian citizenship is contingent on the visibility of the face; it becomes a technology of governance that colludes with a particular episteme and ordering of the nation that is contingent on an exclusive ideal of citizenship. It is precisely here, where statecraft under the auspices of liberal governance is most visible. As I discussed in chapters four and five, Asad (2003 p. 3) argues that, a distinctive feature of modern liberal governance, is neither compulsion nor negotiation but statecraft that uses "self-discipline:" Canadian citizenship candidates wearing face-coverings are required to remove them for the oath, "participation:" prospective citizens who do not comply with the government's directive and remove their face-covering, their application for citizenship is terminated, and the "law:" the Federal government appealed the Court of Appeal's ruling to the

Supreme Court of Canada and then, sought an immediate stay of the Court of Appeal's ruling which would have prevented Ishaq from attaining Canadian citizenship before the upcoming Federal election. In turn, the Federal Court of Appeal denied the government's request and (once again) instructed that Zunera Ishaq be allowed to take her oath of citizenship in order, to vote in the upcoming election. The state uses statecraft neither for compulsion nor negotiation but as a political strategy that functions to withhold niqab-wearing women's access to citizenship, and full and equal participation within the nation. Space is not, and has never been, simply an abstract theory of fixed surfaces or "things" but the spatial is a product of social, cultural, political, and economic relations, processes and practices that are engaged and co-created (Massey, 1994).

Space is also about control and struggle over power, rights, meaning, identity, inclusion and most importantly how the regulation of space influences and shapes the future. This tensional atmosphere of spatial politics then, moves us to consider who controls the spatial conditions for telling historical narratives, because it is within these spatial conditions that we can most clearly see who is producing such narratives and how such stories gain prestige and authority to become part of the landscape of the social world. At the same time, Massey (1994, p. 3) argues that space is co-constitutive of multiplicity, space has its own varying degrees of density that are constituted through flows and interactions that unfold to open up the dimensions of multiple and contested processes of power and the agency of the happening of multiplicity as possibility. Massey (1994) contends that, in this way, space is always "under construction" and "never finished" in order to make possible the engagement with new social formations and multiple relationships intersecting within those formations (p. 3). Indeed, Bakht critically argues for the need to frame the niqab from the perspective of the women wearing them. Women

construct their religious selves through diverse means, embodying religiosity and conduct in ways that resonate with their personal values, faith traditions, religious institutions and national values. The spatial politics surrounding the citizenship ceremony raise crucial questions: who controls the conditions for telling historical narratives, and how do these narratives gain authority and prestige within the social world? The Conservative governments' rhetoric, exemplified by former Prime Minister Stephen Harper's question, "Why would Canadians, contrary to our own values, embrace a practice...rooted in a culture that is anti-women?" highlights the orientalist discourse used to marginalize niqab-wearing women. To challenge these hegemonic discourses, Zunera Ishaq revealed her identity to Canadians through media appearances and an opinion piece in the *Toronto Star*, titled "Why I intend to wear a niqab at my citizenship ceremony" (Ishaq 2015).

8.2.1 She Wore a Niqab to Her Citizenship Ceremony[69]

'Why I intend to wear a niqab at my citizenship ceremony'

I am Zunera Ishaq. I am a mother. I am university educated. I believe that the environment needs saving and I try to do my part by joining campaigns to plant trees. Chasing my boys in the snow is one of the things I love most about winter. I believe we should strive to give back to others, and for me that means volunteering: at women's shelters, for political candidates or at schools. I also wear a niqab. And according to my prime minister, that is all you need to know about me to know that I am oppressed. It's precisely because I won't listen to how other people want me to live my life that I wear a niqab. Some of my own family members have asked me to remove it. I have told them that I prefer to think for myself (Ishaq, 2015).

Zunera Ishaq opens her opinion piece by foregrounding her shared humanity and common experiences with readers, emphasizing her identity as a mother, her education, her

[69] For a detailed discussion on my analysis of Zunera Ishaq's opinion piece for the Toronto Star including the segments that have been reproduced with permission see: Alibhai, Z. P. (2019). The boundaries of religious pluralism. In Bock, Fahy, & Everett (Eds.), *Emergent religious pluralisms* (pp. 49–71). Palgrave Macmillan.

environmental activism, and her volunteer work. At the onset of her opinion piece, Zunera Ishaq foregrounds her most important identity one that elicits common ground with her audience as a parent. She begins with the simple yet powerful statement, "I am a mother," positioning her role as a parent as central to her identity. Ishaq then establishes her university education to challenge stereotypes that her interpretation of faith is "rooted in a culture that is anti-woman." Reiterating her parental identity, she expresses her love for Canadian winters and her concern for the environment, emphasizing her role as an active citizen by volunteering and planting trees—acts that signify community-building and neighbourliness. Notably, she does not mention her religion in her opening paragraph, instead highlighting shared values and experiences, such as chasing her children in the snow and contributing to her community. These examples foster a sense of commonality with other Canadians while tactfully shifting the focus away from religious difference.

In the second paragraph, Ishaq introduces her religious identity with the understated but deliberate phrase, "I also wear a niqab." This rhetorical strategy subtly reorients the narrative to include her religion and religious practice without reducing her identity to it. She engages directly with the historically constructed discourses surrounding the "Muslim woman" trope, often mobilized by the Conservative government, addressing them with clarity and a tone of agonistic respect. For instance, she acknowledges Stephen Harper as "my prime minister," signaling loyalty, while simultaneously critiquing his policies by equating the coercion of forced covering with the coercion of forced uncovering.

By acknowledging the fears and anxieties that some Canadians might feel about her choice to wear a niqab. She reassures readers by listing the contexts in which she removes her niqab for security purposes, thus demonstrating her cooperation with Canadian norms and laws.

Invoking the *Canadian Charter of Rights and Freedoms*, she frames her choice as aligning with quintessential Canadian values, such as freedom of belief and thought, contrasting this inclusionary ideal with the exclusionary rhetoric of the Conservative government. Bakht (2022) has argued that despite deeply held beliefs about the niqab and the willingness to wear it irrespective of the sometimes very severe social, political and legal consequences, for some there is a great deal of flexibility regarding when a niqab should be removed.[70]

Throughout her narrative, Ishaq weaves together threads of similarity, cooperation, and mutual connection, balanced with the acknowledgment of difference. She asserts that her choice to wear a niqab does not prevent her from integrating into Canadian society. Rather, she positions herself as an active member of both her religious community and the broader Canadian community. Her volunteering in schools, women's shelters, and environmental initiatives demonstrates her embodiment of lived citizenship—engaging with public life in ways that challenge stereotypes about niqab-wearing women's societal roles. By centering her difference alongside shared values, Ishaq neither erases nor overemphasizes her religious identity. Instead, she navigates the delicate balance between similarity and difference, reinforcing a vision of inclusivity within Canadian society.

Moreover, Ishaq's narrative illustrates how lived religion and lived citizenship coexist and intersect. Her acts of community service are informed by her religious and Canadian values,

[70] For example, the Canadian Council of Muslim Women (CCMW) conducted a study titled *Women in Niqab Speak: A Study of the Niqab in Canada*, which found that Muslim women who wear the niqab or burqa in Canada generally do not object to uncovering their faces in specific public settings when necessary. Participants reported showing their faces during airport security screenings, for official identification purposes, and when accessing medical services. The same spirit of cooperation extends to the confirmation of identity prior to the recitation of the oath of citizenship. Similarly, Bakht's (2022) research confirms that many Canadian Muslim women who wear the niqab are willing to briefly remove it for identification or security checks at border crossings. While participants expressed a strong preference to show their face to women officials, some indicated a willingness to show their faces in front of male officials when necessary.

showcasing her integration of the two. Ishaq's articulation of her identity reflects a conscious resistance to the structures of power that seek to define her in narrow, exclusionary terms. Her opinion piece points to how public spaces, despite their constraints, can become arenas for expressing dissent, redefining boundaries, and fostering recognition of diverse identities. Ishaq demonstrates that citizenship and religious identity are not mutually exclusive but can coexist harmoniously, embodying Canadian national and where *deep equality* thrives. By crafting her narrative, she not only counters stereotypes but reclaims and redefines the terms of her public identity. Her story exemplifies deep equality, balancing difference and commonality, and foregrounding the coexistence of her lived religion and citizenship. In doing so, she highlights the fluid and co-constructed nature of space, identity, and belonging in the Canadian context.

8.3.1 Concluding Themes

This thesis has demonstrated that state regulation of religious identity is part of an ongoing negotiation over religion, power, and national identity in Canada. In this thesis I have shown that citizenship is and continues to be a deeply gendered concept. Historically and contemporarily, women's bodies have served as symbolic yardsticks for the nation-state, functioning within a highly gendered and bounded system that reflects structural power. The adjudicative turn to regulate and ban women from wearing the niqab or hijab must not be viewed solely as an issue affecting Muslim women but as part of a broader, more complex, and pervasive social construct of state-patriarchy and the visuality of gendered national identity. Abu-Laban (2008) argues that the nation-state is intrinsically encoded with gendered assumptions, which in turn produce gendered outcomes. These configurations of power and discipline over the body, therefore, bear the unmistakable imprint of state authority.

Within this fraught political and social environment, this thesis critically analyzed the Conservative government's conjoining of religion and access to citizenship. This link sheds light on the state's gendered construction of *prosthetic citizen* and *prosthetic believer* which exposes how gender, religion, and the state intersect. The Federal government's legal attempts and persistence that Zunera Ishaq remove her niqab during the oath of citizenship despite Zunera Ishaq's willingness and flexibility to un-cover her face before a female official or judge exemplify these dynamics. This persistence highlights the state's sovereign power to regulate women's bodies reinforcing patriarchal structures. Bakht draws our attention to the intersectional and patriarchal privilege that Prime Minister Harper and Minister Jason Kenney embody as white, male, non-Muslim political leaders who define for Zunera Ishaq and the Canadian public the 'truth' behind her religious practice. Their arguments relied on claims from "moderate Muslims" to delegitimize Zunera Ishaq's religious practice, claims to religious freedom, and access to Canadian citizenship. This metonymical transformation reducing a religious practice into a cultural practice is a redistribution of power (Beyer, 2020) that erases the religious meaning and way of being that is inseparable from the self (Asad, 2006, p. 94). However, it is essential not to become ensnared in these limiting discourses. As chapters six and seven demonstrated, the law has become an instrumental tool for niqab-wearing Muslim women to claim access to citizenship rights, public visibility, and the privileges of equal membership, while simultaneously unsettling conventional notions of agency and blurring the boundaries between lived religion and practice.

Lived religion-as-practice approach examined in this thesis raises critical questions about how religion is conceived and understood in contemporary society. It challenges static definitions of religious experience, practice, and space, shedding light on how these definitions

shape the ideological, legal, and political landscape that seeks to regulate the religious identities of niqab-wearing women. Göle (2013) observes that agency is particularly fraught for religious women, who are often subjected to what Beaman (2016) terms "agency override," especially in matters concerning the state (p. 7). Yet, what is often lost in these discussions is the agency of the women themselves, women such as Zunera Ishaq who are advancing social justice by deepening equality. This is why this thesis's original contribution to knowledge is the method of analysis, discursive investigation, and arc of chapter seven, deep equality.

Deep equality enables a more interdisciplinary and creative socio-legal approach that adheres less to "the rules of the game" and in the case under examination, recourse for law's capacity to effectuate social justice. Despite the significant delays and challenges in obtaining legal restitution, it is crucial to emphasize that access to the law and participation in the judicial process have become instrumental for niqab-wearing Muslim women. However, a critical point must be made that reliance on the law and judicial rulings have not necessarily led to justice or equality for these women. Regardless of their legal outcomes, Ms. Silmi, *S.A.S* and *N.S* actively engaged in the democratic process, asserting their right to determine how they embody their religion and participate in the social, legal, and political imaginary to which they rightfully belong. The significance of this cannot be overstated. These women addressed, engaged with, and contested the very nature, form, and content of legal access, legislation, and structures, developing their own strategies and embodiments of citizenship, power, agency, and self-definition.

Notwithstanding the arguments, critiques, and very much gender-blind inequalities that are part and parcel of the masculine culture of the law does not, according to Smart (2013), hold the keys towards unlocking patriarchy (Smart, 2013, p. 88) nor does the law have the monopoly on

patriarchy. Therefore, as Beaman suggests, we should shift our attention to the ways that patriarchy oppresses the material and lived realities of different women—*differently*. What this can achieve of course is a focus on how the law can contribute to the conditions and opportunities where patriarchy is subordinated. It is important to emphasize that the law is not inherently resistant to change. At its most transformative, the law, as a crucial institutional site, can reimagine national understandings that foster a more equitable society, promoting the social, political, and economic well-being of all citizens. This transformative potential is exemplified in all three cases of the *Zunera Ishaq v. The Minister of Citizenship and Immigration* 2015, *Federal Court (2015 FC 156), The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario the Court of Appeal (2015 FCA 194)* and the *Motion for Stay (2015 FCA 212) The Minister of Citizenship and Immigration v. Zunera Ishaq and Attorney General of Ontario,* where the courts upheld Ms. Ishaq's right to wear her niqab while reciting the oath of allegiance at her citizenship ceremony, ruling the case as a matter beholden to "the interest of justice" (*Minister*, para. 5). As noted in chapter seven, Beaman does not claim deep equality as epistemologically new or privileged since deep equality can be imagined as an alternative ethic that already exists. Within the foundational principles of deep equality: agonistic respect, similarity and non-event can provide the space and the opportunity for the law to focus on the everyday material contours that prevent women's social, political, and material flourishing. This is not to state naively that deep equality is the cure to law's historical ills and ideological spills both are culturally bound.

My analysis is, by necessity, constrained by the time limits of this thesis, and I cannot argue every ideological point and nuance of the interlocking systems of power that are embedded in the Conservative governments' ideological system. Nilüfer Göle has argued that a significant

issue in the regulation and banning of Muslim women's religious practices lies in the presumption that these women are actively included in the discussions, discourses, and debates that shape these regulations. In reality, their voices are often absent, silenced, or overridden by dominant narratives that speak for or about them rather than *with* them. What is often lost in these discussions is the agency of the women themselves, women such as Zunera Ishaq who are advancing social justice by deepening equality. As a scholar of sociology and religion, I contend that this absence highlights the urgency of examining the jurisprudence of legal cases in which Muslim women themselves actively enter, claim, and position their identities within legal frameworks. By doing so, they challenge entrenched power relations, assert their agency and redefine societal and legal norms. These legal interventions provide an invaluable lens to explore how we can all navigate and contest the structures of power that seek to regulate our bodies, identities, and religious practices. Through this examination, we can better understand the complexity of diversity as an opportunity towards greater social justice and wellbeing.

8.3.2 Concluding Remarks: Understanding *Us*

Opening the introduction of this thesis and structuring each chapter with a personal narrative about Zunera Ishaq reframes the conventional story that challenges the depiction of niqab-wearing women, in the words of the former Prime Minister of Canada, Stephen Harper (2006-2015) as oppressed.

This thesis has shown that state regulation of religious identity is part of an ongoing negotiation over space, power, and identity in Canada. The Zunera Ishaq case illustrates the importance of examining legal frameworks and the judiciary's role in protecting religious freedom. By challenging exclusionary policies, niqab-wearing women contribute to a more

equitable and diverse society, ultimately redefining the boundaries of citizenship and belonging in contemporary Canada as a matter of justice.

Chapter two outlined the theoretical, methodological, and literary foundations of this thesis, demonstrating how historical narratives serve as a critical lens to interrogate contemporary discourses surrounding citizenship, national identity, and governance. Drawing on Edward Said's concept of *traveling theories*, the chapter examined how historical ideologies particularly colonial and orientalist constructs are transported and transformed across time and space. This framework allows for a deeper exploration of how these past ideologies continue to shape and sustain present-day understandings of religion, gender, and belonging. By situating citizenship within this historical and ideological framework, the literature review emphasized the relationship between national identity, religion, and statecraft. It critically examined how these elements have intersected historically to produce exclusionary narratives and policies and how they continue to inform contemporary governance. Informed by these theoretical insights, chapter two concluded with an argument for the importance of interrogating the orientalist cargo embedded within legal and political discourses. This provides the foundation for subsequent chapters, which analyze the legal and political mechanisms through which these discourses are operationalized. Having established the theoretical and historical context, Chapter three critically examined the political and legal frameworks underpinning the Canadian government's face-covering ban during citizenship ceremonies. Chapter three detailed key regulations and legal precedents established under the *Citizenship Act* (R.S.C., 1985, c. C-29). It highlighted the procedural and ideological origins of the niqab ban, tracing its conception to a phone call between Conservative MP Wladyslaw Lizon and then-Minister of Immigration, Citizenship, and Multiculturalism, Jason Kenney. Kenney's subsequent speech, *On the Value of Canadian*

Citizenship, marked a pivotal moment in formalizing the ban. This speech introduced *Operational Bulletin 359*, which was integrated into section 6.5 of the Canadian Citizenship Manual. The chapter dissected the "facially neutral" requirement and its real-world applications, focusing on the experiences of Zunera Ishaq as a case study. By presenting a timeline of Ishaq's path to citizenship and her legal challenges, the chapter illustrated how the policy functioned as a mechanism of exclusion under the guise of promoting neutrality.

Chapter three concluded with the policy's reversal following the election of the Liberal government in 2015. A phone call from Minister of Justice Jody Wilson-Raybould to Ishaq symbolized the official end of the ban, signaling a shift in the federal government's approach to religious freedom and multiculturalism. This chapter set the stage for a broader critique of the political and legal discourses surrounding the niqab ban, which I explored in greater depth in the following chapters. In **Chapter four**, I examined former Prime Minister Stephen Harper's controversial statements, particularly his invocation of the term "old-stock Canadian." This term, deeply tied to the Canadian family ideology, carried significant implications for the construction of national identity. I traced its historical origins and analyzed how such exclusionary narratives have shaped contemporary political understandings of belonging. This chapter also addressed public reactions to Harper's statements, highlighting resistance to these divisive ideas and exploring their broader impact on national identity.

Chapter five shifted focus to the Conservative government's policy banning the niqab and burqa at citizenship ceremonies. I demonstrated how the government strategically framed the niqab as a cultural, rather than religious, symbol, thereby undermining its constitutional protections under the guise of neutral statecraft. Drawing from organizations like the MCC, CPMO, and MFT, the government positioned its legal actions as reflective of "moderate

Muslims," using these to legitimize its policy. This framing reinforced a hierarchical distinction between acceptable religious practice and the "proper" Canadian identity. I argued that this process exemplifies the workings of orientalism as a form of statecraft defining citizenship through state-sanctioned interpretations of religious practice, which marginalize certain religious beliefs while asserting national unity. **Chapter six** explored French and Canadian cases (e.g., Mme. M, *S.A.S. v. France*, *R. v. N.S.*), I illustrated the discursive power embedded in legal rulings. These cases reveal how courts, often reproduce exclusionary hierarchies, especially in relation to marginalized religious identities. The legal framework, simultaneously regulates and constrains the practices of religious minorities, thereby shaping what is deemed acceptable religion and religious practice in public. These discussions set the stage for a deeper analysis in chapter Seven of the legal, political, and social significance of the Zunera Ishaq case. In **Chapter seven**, I analyzed *Zunera Ishaq v. Canada* (2015), where the courts upheld Ms. Ishaq's right to wear the niqab during her citizenship ceremony. Drawing from Beaman's framework and four conditions of deep equality in law, I explored how the Canadian legal system foster social justice by recognizing and addressing the historical and material realities of marginalized women. This perspective is crucial for understanding the intersection of religion, gender, and citizenship in the context of niqab-wearing women.

By examining the jurisprudence of four legal cases, I demonstrated how legal frameworks can either perpetuate, challenge, or transform gendered power relations. Despite the patriarchal structures that often marginalize niqab wearing women's agency, the Ishaq case provides a transformative framework for how legal recognition of women's religious choices can contribute to a more inclusive society.

Through their legal interventions, niqab-wearing women challenge entrenched power relations and redefine societal norms. These cases provide valuable insights into how power structures operate and how marginalized groups can navigate and contest these systems. This thesis has demonstrated how the regulation of religious identity is part of an ongoing process and negotiation over space, power, and identity in Canada. Ishaq's case highlights the potential for legal frameworks to safeguard religious freedom and contribute to a more equitable society. The Ishaq case exemplifies the role of the law in promoting deep equality. The Court's decision to prioritize the right to equality and participation in public life embodied in the powerful and succinct paragraph five of the judgment demonstrates the law's potential to transcend cultural and political biases. This approach fosters a more inclusive understanding of citizenship that takes into account the diverse lived realities of all citizens. By moving beyond historical and orientalist constructs of the niqab, the Court upheld the fundamental principle of justice, ensuring that the law serves the needs of marginalized groups and contributing to a more inclusive and pluralist society. Gender and citizenship status are important intersections of identity and oppression in this case.

Deep equality and an intersectional analysis broaden the frames of analysis to focus on the *issues* at stake which are not simply about a Muslim woman whose religion compels her to wear her niqab during the oath of citizenship. Crenshaw argues that "the struggle over which differences matter, and which do not is neither an abstract nor an insignificant debate among women" (2004, p. 411) significantly these issues are not only about difference but raise critical issues of power, choice, and agency. Ishaq is staking out her identities: as a niqab-wearing Muslim woman whose religious practice is obligatory to her, as a member of the Canadian family, and as a Muslim woman. To counter prevailing discourses, I concluded this thesis with

Zunera Ishaq opinion piece in *The Toronto Star* titled *"Why I intend to wear a niqab at my citizenship ceremony"* (Ishaq, 2015). She effectively creates a space to articulate her identity and challenge stereotypes. In her writing, Ishaq draws the reader into her lifeworld with vivid imagery, such as "chasing my boys in the snow," which exemplifies the integration of her religious and daily practices. Through descriptions of volunteering at women's shelters, planting trees, and contributing to her community, Ishaq portrays herself as embodying both her faith and Canadian values, illustrating how these identities coexist and even overlap. This deliberate act of narrative-building challenges dominant stereotypes of niqab-wearing Muslim women. Ishaq uses the tools of the public sphere to reclaim and shape her identity, presenting a counter-narrative that is personal and empowering. She centers her religious practice as a deliberate and meaningful choice, linking it to the broader Canadian ethos of individual freedom. As she argues, the right of a citizen to define their identity both in practice and appearance is inherently Canadian and underscores the principles of democracy and pluralism (Ishaq, 2015). As explored in chapter four, this co-creation of discourse reveals the ways in which power operates, often covertly, to normalize specific understandings of "religion," "citizenship," "national identity," and "gender." These frameworks frequently privilege certain identities while marginalizing others, particularly through representations of acceptable public presence. Nevertheless, Ishaq demonstrates how women even when identities are imposed upon them strategize, negotiate, and create complex spatial possibilities to maintain their sense of self.

Through her actions, Ishaq not only claimed but enacted her citizenship, performing an act of civic participation that transcends formal status. This challenges the conventional boundaries of public space, asserting the presence and legitimacy of marginalized identities in the public sphere. These spaces, while sometimes in tension with dominant frameworks, open

avenues for agency, dissent, and a deeper, more pluralistic understanding of democracy and human rights (Bakht, 2022). Ishaq's public engagement serves as a testament to these possibilities which can redefine and expand the contours of shared public spaces, fostering healthier more inclusive democratic conversations (Adrian, 2016, p. 9). Nilüfer Göle critiques the presumption that Muslim women are included in the discussions that shape regulations governing their religious practices. The lack of representation of niqab-wearing women in the public discourse surrounding the niqab ban underscores the importance of examining legal cases where women, such as Zunera Ishaq, actively assert their identities. Despite enduring orientalist legacies that perpetuate such depictions Canadian scholarship has focused on challenging and shifting these narratives. This body of research focuses on the embedded power differentials and the material, socioeconomic, and legal structures that prevent niqab-wearing women from living their religion and citizenship. Natasha Bakht argues that understanding the niqab from the perspective of the wearer and taking their views seriously is critical to the kind of society and political community *we* want to live in (Bakht, 2022, p. 10). Zunera Ishaq contends that,

> If they want to know whether or not the niqab is a sign of oppression, or if they want to know whether or not this niqab is the wrong thing, […] "what they need to do is just come close to us people, the niqabi people, and just get to know each other […].
>
> (Ishaq, 2015).

Centering the voices of niqab-wearing women opens the space for deep equality to flourish and refocuses the gaze from *them* to *us* as a principle of justice.

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