

**Facing the Public Eye: Analyzing Discourse on the Niqab and the Visibility of the Face in
Canada**

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Abstract

The niqab is a veil worn by some Muslim women that covers the face except the area around the eyes, which can be seen through a rectangular slit in the fabric. In recent years, a number of countries have enacted measures against the niqab in public spaces. Canadian law and policy makers have made significant contributions to ongoing debates about the niqab as well as the acts of facial covering and uncovering. While objections to the niqab have been framed in many different ways, the guiding premise of this dissertation is that negative reactions to the niqab are grounded within the expectation and demand to see the human face. Drawing upon the case of *R. v. N.S.*, the niqab ban during the Canadian citizenship oath, and *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, this dissertation considers how Canadian legal and political actors have justified restrictions against the niqab by invoking the idea that the visibility of the face is a central part of Western cultural values. Ultimately, my research questions the kind of work that the human face and the sense of sight is expected to do by examining how demands to see people's faces reflect and maintain interlocking sites of privilege and oppression such as racism, sexism, ableism, imperialism, and colonialism.

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Chapter 1: Introduction

“The quality of strength lined with tenderness is an unbeatable combination, as are intelligence and necessity when unblunted by formal education.”

Maya Angelou (1969, 213)
I Know Why the Caged Bird Sings

“Understanding is the first step to acceptance, and only with acceptance can there be recovery.”

J.K. Rowling (2000, 590)
Harry Potter and the Goblet of Fire

“We are biologically, cognitively, physically, and spiritually wired to love, to be loved, and to belong. When these needs are not met, we don’t function as we were meant to. We break. We fall apart. We grow numb. We ache. We hurt others. We get sick. There are certainly other causes of illness, numbness, and hurt, but the absence of love and belonging will always lead to suffering.”

Brené Brown (2010, 26)
The Gifts of Imperfection: Let Go of Who You Think You're Supposed to Be and Embrace Who You Are

Introduction: Faces and Sight as Products of Cultural Values

Organs, muscles, bones, tissues, fluids, and flesh are a product of the sociocultural context in which they are studied. Beyond physiological functions, parts of the body are examined, characterized, and coded based upon dominant cultural values. As such, perceptions of different body parts are informed by what a society idealizes and normalizes as important, valuable, positive, and negative. Arguably the feature that best highlights these ideals and norms is the human face. The face is one of the most studied

and documented parts of the human body (Mules 2010). It is a valuable social symbol that has come to represent being and personhood (Talley 2014, 14). In this sense, the face is strongly tied to powerful Western narratives about human consciousness such as the meanings of reality, truth, and the purpose of existence.

The pivotal status of the human face is deeply connected to the sense of sight, as most judgments based off of people's faces are mediated by vision. In other words, the value of the face assumes that it is visible. Like the face, sight plays an integral role to Western understandings of being, truth, and personhood (Behiery 2013; Howes and Classen 2014; Synnott 1993). So what does it mean when certain faces cannot be seen? Specifically, what happens when the faces in question are those of Muslim women who wear the niqab?

Contextualizing Responses to the Niqab

Since former President of the United States George W. Bush declared a global "war on terror" in response to the attacks on the World Trade Centre and the Pentagon that took place on September 11, 2001 (Guardian 2001; New York Times 2001; Washington Post 2001), Arab and Muslim people have been increasingly subject to surveillance, discrimination, and persecution (Ahadi 2009; Brown 2006; Gates 2011; Jiwani 2006; Magnet 2011; Razack 2008; Thobani 2007; Zine 2012). To this end, the aftermath of September 11, 2001 has produced a climate where Arabs and Muslims as well as people perceived to be Arab and/or Muslim are targeted by "various security, immigration, and other institutional personnel" in Canada and the United States (Magnet 2011, 47). In recent years, this fixation and negative attention has intensified around the subject of the niqab. The niqab is a veil worn by some Muslim women that covers the face except the

area around the eyes, which can be seen through a rectangular slit in the fabric. A number of countries and districts therein have recently imposed restrictions on this piece of clothing.

As of April 11, 2011, facial veils such as the niqab and the burqa¹ have been banned throughout France (Arseneault 2011; Chrisafis 2011b; Erlanger 2011; Rustici 2011; Weaver 2017). This legislation, which was the first of its kind to be officially enforced in Europe (Erlanger 2011; Weaver 2017), has outlawed Muslim women from wearing facial veils everywhere except inside their homes, during worship in a religious institution, and when travelling in a privately owned car² (Chrisafis 2011a, 2011b; Weaver 2017). Anyone who violates this law by wearing a full-face veil in public may face arrest (Chrisafis 2011b; Rustici 2011) and is required to pay a fine of €150 and/or complete a citizenship course (Arseneault 2011; Chrisafis 2011a, 2011b; Erlanger 2011; Rustici 2011). Additionally, anyone who forces a woman to wear a veil that covers her face can be penalized with a €30,000 fine and a one-year prison term (Arseneault 2011; Chrisafis 2011a; Erlanger 2011; Rustici 2011). These penalties may be doubled in cases where an adult coerces a minor to wear a facial veil (Rustici 2011).

On July 23, 2011 Belgium enacted a similar ban on the niqab and burqa (BBC News 2011b; Jozwiak 2011; RTÉ News 2011). In accordance with this policy, anyone who wears a facial veil in public is subject to a fine of up to €137.50³ and up to seven days in jail (BBC News 2011b; Brems 2011; Jozwiak, 2011; RTÉ News 2011) Earlier that year, the German state of Hesse banned public sector workers from wearing full-face

¹ I make a distinction between these two different facial veils in Chapter 2, "Literature Review."

² Traffic police are permitted to stop a vehicle if they are concerned that a facial veiling is obstructing the driver's vision (Chrisafis 2011a).

³ Although the text of this law states a penalty range of €15 to €25, the fines in the Belgian Criminal Code are multiplied by an additional factor that is currently set at 5.5 (Brems 2011).

veils (BBC News 2011a; Kirschbaum 2011). Parts of the Catalonia region of Spain including Barcelona and El Vendrell have also introduced bans in public spaces (BBC News 2010; Roberts 2010; Tremlett 2010). Proposed legislation against full-face veils is also at various legal stages in countries such as Italy (Edwards 2017; Pianigian 2011; Tharoor 2015), Switzerland (BBC News 2017a; McParland 2015; WITW Staff 2015), the Netherlands (Agerholm 2016; BBC News 2016; Escritt 2016), Austria (BBC News 2017b; Dearden 2017; Oltermann 2017), and Norway (Associated Press 2017; BBC News 2017c; Fouche and Solsvik 2017).

In the past few years, Canada has joined the growing number of countries that are enacting measures against the niqab in public spaces. In the Canadian context, restrictions have emerged as the result of provincial and Supreme Court rulings regarding the presence of the niqab during cross-examination,⁴ a former federal ministerial directive that required niqab-wearing citizenship candidates to show their faces while reciting the Canadian citizenship oath (Kenney 2011a; Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011), and legislation that outlaws Muslim women from wearing the niqab while giving and receiving public services in the province of Québec (Drainville 2013; Weil 2010; Vallée 2017a).

The subject of the niqab has become so prevalent in Canadian society that it played a considerable role in the 2015 federal election. In addition to challenging a federal court decision to overturn his government's ministerial directive ban on the niqab during the Canadian citizenship oath (CBC News 2015c; Kirkup 2015; MacCharles 2015a), former Prime Minister Stephen Harper promised to reintroduce the niqab citizenship oath ban as a form of legislation (MacCharles 2015a) and campaigned to ban federal public servants

⁴ *R v NS*, 2009 CanLII 21203 (ON SC.); *R v NS*, 2010 ONCA 670.; *R v NS*, 2012 SCC.

from wearing full-face veils if re-elected (CBC News 2015c; Chan 2015; Kirkup 2015; MacCharles 2015a). Indeed, the niqab received a level of political exposure that competed with and perhaps even overshadowed more pressing election issues such as the economy (Kirkup 2015; MacCharles 2015a).

In addition to the Conservative Party's electoral campaign, the subject of the niqab has been used to evaluate the demise of the New Democratic Party (NDP). Although his position has not changed, Former NDP leader Thomas Mulcair has framed his stance on the niqab as a key factor in his unsuccessful election campaign. Mulcair has argued that support for the NDP in Québec plummeted after a leadership debate in which he stated that the niqab should be permitted during the Canadian citizenship oath (Galloway 2016; Tasker 2016). Describing the niqab as “the defining moment of his political career” (Galloway 2016), Mulcair has attributed his party's fall from official opposition to third party status to his inability to nuance his defense of the niqab while campaigning in Québec (Tasker 2016). While the outcome of an election should not be reduced to one single issue, it is important to recognize that debates about the niqab have recently shaped the landscape of Canadian politics. Ultimately, this impact continues beyond the scope of the last federal election.

Key Arguments, Research Questions, and Objectives

Canadian policy and lawmakers have made significant contributions to ongoing debates about the niqab as well as the acts of facial covering and uncovering. Opponents of the niqab have used a number of positions to justify restricting its presence in public spaces (Bakht 2012a). These arguments include critiques about social integration, women's oppression, the importance of secularism, fear and discomfort, safety and

security, covering the face as being impolite, facial covering as an obstruction to communication or social relations, concerns about identification, facial covering as an affront to the values of tolerance and respect, and the assertion that Islam does not require women to wear the niqab (Bakht 2012a). Although objections to the niqab have been framed in many different ways, the guiding premise of this dissertation is that the basis of these reactions is grounded within the expectation and demand to see the human face. In other words, I argue that the desire to ban the niqab is tied to the belief that the visibility of the face is a central part of Western cultural values. As I will discuss later on, Canadian policy makers, including former Québec Premier Jean Charest (Chung 2010), former Prime Minister Stephen Harper (Milewski 2015), former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney⁵ (Goodman 2014; Kenney 2011; Raj 2011), and current Member of Parliament Larry Miller (O'Malley 2015) have invoked this idea to support policies against the niqab.

I maintain that it is necessary to consider how and why the human face and the act of seeing have come to be so important. More specifically my research addresses the following questions: what kind of work is the face and the sense of sight expected to do? What are the implications of placing so much value on the ability to see people's faces? How do dominant assumptions and biases about concepts such as gender and racialized status⁶ inform the ways that certain faces are perceived? Whose faces are targeted by these ideas? How do demands to see people's faces reflect and maintain interlocking cites

⁵ In November 2015 Justin Trudeau's Liberal government renamed this position as Immigration, Refugees and Citizenship (Dyer 2015), however, I maintain the title of Citizenship, Immigration and Multiculturalism in my work in order to be consistent with the time period and context I am discussing.

⁶ As suggested by my supervisor, Dr. Denise Spitzer, I use the term racialized status throughout my work to signify that race is a social construct.

of privilege and oppression such as racism, sexism, ableism, imperialism, and colonialism?

Throughout this dissertation, I aim to show that discussions about the face, the sense of sight, and what it means to see and be seen are integral to conversations about the niqab. Given the fervent political push to outlaw the niqab in public spaces it is an opportune time to unpack what the desire to see faces means in terms of the presumed value of the uncovered face. Challenging the heightened scrutiny that is often placed upon certain Muslim women's bodies, my research reflects the attention back to the discourses used by opponents of the niqab. The following is an overview of the themes that I address in my research as well as the tools that I use to help me carry out this work.

Chapter Summaries

In Chapter 2, "Review of Literature", I draw upon a broad range of literature in order to critically address the subjects of veiling, the human face, the sense of sight, and the unequal power dynamics that often inform the act of looking. By bringing all of these concepts together I create a space where I can engage with discussions about veiling practices, the high cultural value afforded to both faces and the act of seeing, and the power imbalance between people who are looking and the subjects they target with their gaze. Connecting these themes together creates a starting point where I can build upon existing research and identify the gaps that I recognize in this dissertation.

I begin this section by emphasizing the need to clearly define and contextualize the concept of veiling. In order to address the varying, fluid, and shifting meanings of veiling, I examine its etymology in both English and Arabic. Additionally, I trace the origins of veiling as a practice and stress that contrary to widespread assumptions, veiling

has existed for thousands of years and did not originate from Islam (Amer 2014; Hoodfar 2003). After outlining the roots of veiling, I recognize the considerable contributions that many scholars have made to challenge negative stereotypes about veiling practices adopted by some Muslim women (Ahmed 1992; Alvi, Hoodfar, and McDonough 2003; Amer 2014; Bailey and Tawadros 2003; Droogsma 2007; Hayes 2010; Heath 2008; Hoodfar 1992/1993; Jiwani 2010; Khan 2009; Mernissi 1975; Razack 2008; Scott 2010; Zine 2009). Building upon the growing body of literature that is specifically focused on the niqab (Bakali 2015; Bakht 2012a, 2012b, 2015; Behiery 2013; Burchardt 2016; Choudhury 2012; Clarke 2013; Conway 2012; Dobrowolsky 2017; Flanagan 2014; Fournier and See 2012; Golnaraghi and Mills 2013; Hong 2011; Jarram 2014; Khelifa 2017; Leckey 2013; Melançon 2015; Qureshi 2014; Rochelle 2013; Selby 2014; Sharify-Funk 2011; Tessier and Montigny 2016; Zine 2012), this dissertation highlights how demands that niqab-wearing women unveil are framed in terms of sight and uncovered faces.

Though opposition to the niqab takes many forms, I make the case that no matter what the rationale may be, the core basis for banning the niqab in public spaces is predicated by the proclaimed need to see the human face. I argue that although proponents of the niqab often suggest that the visibility of the face is a key part of *our values* they do not usually elaborate on exactly how or why this is the case. I seek to fill this void by tracing how the human face and the act of seeing have achieved such a high level of importance. Applying literature from disciplines such as philosophy, art history, and sensory studies, I examine how both the human face and the sense of sight have

reached an iconic cultural status that extends far beyond their physiological and functional features.

As I reach the end of Chapter 2, I address the imbalanced relationship that often exists during the act of looking. To this end, I analyze the unequal position between those who look and those who are seen as described by the concept of the gaze (Fanon [1952] 2008; Foucault [1973] 2003; Mulvey [1975] 1999; Razack 1998). In this sense, I consider how the act of looking can be racialized, gendered, and sexualized. As I conclude, I explain how niqab-wearing women challenge the gaze by subverting the dynamics of looking and filtering what is available to other people's eyes. Finally, I argue that this disruption can help us become more aware of the limits of privileging the visibility of the face and the act of seeing. This final point sets the path for the rest of my chapters.

In Chapter 3, "Setting the Foundations for my Research Journey", I establish the theoretical and methodological foundations for my research. I start off this chapter by employing an exercise called "in the beginning" which gives researchers the space to share the experiences in their lives that have led them to their research. The goal of this section is to position myself within my research by engaging with the feminist practice of reflexivity. After reflecting upon the personal reasons why I have been drawn to debates about the niqab and outlining how certain events in my life have deeply informed the way I approach my work, I highlight parts of my identity that afford me privilege. I wish to advise readers that this section includes content about sexual assault, including descriptions of sexual violence. I recognize that these subjects may be difficult and triggering for many people. I offer this warning to give readers the opportunity to prepare for the material ahead because I feel that my role as a researcher involves the ethical

responsibility to ensure that everyone accessing my work can make informed decisions about subject matter that may impact their well-being.

After making these personal connections I situate my work within a bricolage of theoretical paradigms that include interlocking analysis, Canadian critical race feminism, critical disability studies, and an area, which I describe as anthropological, philosophical, and cultural views of the body and senses. By bringing all of these different frameworks together I seek to create a praxis that will help me advance discussions about the presumed importance of the human face, the sense of sight, and negative responses to the niqab. This variety of perspectives will also enable me to address complex sites of privilege and oppression such as sexism, racism, imperialism, colonialism, and ableism by applying what Sherene Razack (1998) calls an interlocking analysis. This conceptualization involves an understanding of inequality that highlights how “positions of subordination...simultaneously [reflect and uphold]...privilege” (Razack, 1998, 14). Creating a framework by combining a number of theoretical fields will strengthen my ability to address how systems of domination require and secure one another.

In the final part of this chapter, I identify the methodological tools I use to achieve my research goals. I begin by theorizing what the methodology of discourse analysis can offer my work while outlining the specific ways that I understand this concept. As I reach the end of this section I discuss how I apply the techniques of genealogy and etymology to gather my research data. When analyzing subjects such as the cultural value afforded to faces and vision as well as the expectation that niqab-wearing women uncover their faces, I draw upon the method of genealogy, an approach attributed to the work of Michel Foucault (1972) which imagines knowledge as “a series of infinitely proliferating

branches” (Stone 2010). In this sense genealogy challenges linear and logical progressions of information. I argue that genealogy is particularly well-suited for my research because it offers me a way to challenge concepts and ideas that are often taken for granted and assumed to be beyond the scope of analysis. In the context of my work, this method helps me to trace the roots of concepts such as the human face, the act of seeing, and the information expected to come from faces and sight. To reinforce my usage of genealogy, I pair it with Paula Blank’s (2011) conception of etymology. This understanding of etymology recognizes word origins as well as the relationship between earlier usages of words and their current meanings (Blank 2011, 110-111). As such, I show how the tool of etymology enables me to trace both the “what” and “when” of the key words that define my research.

Before outlining my next chapter, I wish to advise readers that this is another part of my research that focuses on content about sexual assault. This section includes descriptions of sexual violence, discussions about stereotypes and myths used to legitimize sexual assault, and tactics used by defence lawyers to degrade, humiliate, and traumatize sexual assault complainants with the intent of ending cases at the preliminary inquiry stage before they even go to trial. As I have noted above, I acknowledge that these subjects may be difficult and triggering for many people. I offer this warning so that readers can prepare for the material ahead and decide how to proceed before exposing themselves to subject matter that may have a negative impact on their well-being.

I begin Chapter 4, “Justice and the Truth of the Face”, by examining the figure of the Roman goddess Justitia who is commonly known as Lady Justice. In this section I consider the implications of personifying justice as impartial and objective with the

image of a woman whose eyes are covered with a blindfold (Jay 1999). I argue that the official and dominant narrative of law rests upon a troubling symbol of justice that associates male vision with reason and good judgement and female vision with irrationality and impaired judgement unless a woman's ability to see is controlled and taken away. Thus, I maintain that Lady Justice represents a highly gendered conception of sight that results in an application of justice that sees female vision as too precise and discriminatory to result in fair and just judgement unless it is filtered and restricted. Additionally, I argue that goddess Justitia is an ableist personification of justice that serves as a feminine version of a philosophical prop known as "the Hypothetical Blind man" (Kleege 2010). Drawing upon work about sightedness and blindness, I challenge conflicting norms about sight and vision in the context of the justice system.

Once I problematize the gendered and ableist assumptions that inform connections between vision and justice, I shift the focus of my discussion to the subject of sexual assault. In this section I examine how sexual assault continues to be an area of law that is dominated by phallogentric and ocularcentric perspectives as well as troubling ideas about what constitutes appropriate and rational judgement. I highlight that sexual assault is gendered (Johnson 2012, 613), racialized (Anderson 2001; Bakht 2012b; Razack 1998), ableist (Martin 2015; Young et al. 1997), and is deeply informed by a number of stereotypes and myths that impact whether complainants are perceived as credible victims or not (Johnson 2012; Tanovich 2015).

After giving an overview of the uniquely troubling realities of sexual violence, I draw upon *R. v. N.S.* as an example of a case where attitudes about a complainant's clothing made her the main focus of a preliminary inquiry instead of the serious sexual

violence that she allegedly experienced as a child. I argue that in contrast to the goddess Justitia, a woman whose gaze must be yielded because her vision is too powerful to be fair and impartial, N.S. the niqab-wearing woman has been framed as an obstruction to justice because she covers her face. At the core of this section I analyse the legal concepts of demeanour and the right to make full answer and defence and consider the limits that these ideas impose on conceptions of vision, truth, and justice. As I reach the end of this chapter, I examine the violent practice of whacking, a tactic used by defence lawyers that involves strategically attacking the complainant during the preliminary inquiry in order to end a sexual assault case before it goes to trial (Schmitz 1988). I conclude by arguing that the demand that N.S. remove the niqab in order to testify should be understood as an example of whacking because this narrative allowed the defence to redirect the focus of the case to the issue of what a niqab-wearing woman could wear in court based on the presumed necessity that seeing her face was a requirement for a fair trial. By examining the two opposing figures of Lady Justice and the niqab-wearing woman I hope to expose how conflicting and inconsistent ideals about vision, the face, truth, and knowledge pervade the justice system; particularly in the area of sexual assault.

In Chapter 5, “Showing the Face to ‘Join the Canadian family’”, I challenge the premise that Canada is an inherently welcoming place. I begin by highlighting how citizenship is a complex gendered (Benhabib and Resnik 2009; Gordon-Zolov and Rogers 2010; Lister 2003) and racialized concept (Ahmed 2000, 2014; Bannerji 2000; Razack 2008; Thobani 2007). I then argue that contrary to common myths that praise Canada for its openness and diversity, Canadian citizenship as well as those who have been included as and excluded from being Canadian must be understood in the context of

imperialism, colonialism, and white supremacy. Recognizing that Canadian citizenship was created by the dispossession and colonial genocide of Indigenous⁷ peoples and sustained and shaped by a series of government policies designed to “Keep Canada White” by restricting the entrance of migrants from regions such as Africa, Asia, and the Caribbean (Arat-Koç 2006; Bannerji 2000; Black 2013; Décoste 2014; Thobani 2007) I reveal how the designation of being Canadian was created by giving rights and privileges to certain people at the expense of many racialized Others.

After exposing the violent and exclusionary origins of Canadian citizenship, I shift my focus to a recent policy that has brought the niqab and the act of covering the face to the centre of debates about what it means to be considered a Canadian citizen. More specifically, in the second half of this chapter I address the niqab ban during the Canadian citizenship oath that was enacted by former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney. In effect, this ministerial directive required that niqab-wearing women lift or remove their facial veils while reciting the oath in order to obtain Canadian citizenship (Kenney 2011a; Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011). Consequently, refusing to take the oath with an uncovered face meant that they would remain as permanent residents (Payton 2011; Smith 2011). Once I give a timeline of this policy as well as the legal battle that ensued, I outline how this ban created a political climate that conceived of niqab-wearing women as an affront to Canadian identity. To this end, I argue that the ban on the niqab during

⁷ The word Indigenous is defined as “born or produced naturally in a land or region; native or belonging naturally *to* (the soil, region, etc.)” (Oxford English Dictionary 2017). In Canada, the term Indigenous is increasingly becoming the preferred word used to describe peoples from the communities that inhabited this territory before European contact. This shift represents an effort to reclaim identity and is also in part because “some see [the term Indigenous as] providing a connection with the land” (Marks 2014). Supporting this shift, I use the word Indigenous throughout my work unless I am referencing a quotation or the name of an organization or document that includes other terms.

the oath portrayed the act of showing the face as a way of protecting the integrity of Canadian citizenship.

In the final parts of this chapter, I stress that critical connections need to be made between the treatment of niqab-wearing women in Canada and the legacy of violence committed against Indigenous peoples. Although the demand that niqab-wearing women show their faces cannot be equated with the state sanctioned policies that have resulted in the dispossession and annihilation of Indigenous peoples, it is important to understand that assimilation has been a key end goal in both of these contexts. Thus, I emphasize that policies such as bans on Indigenous customs and rituals including ceremonial feasts, dances, and marriage practices (Cairns 2000; Monture-Angus 1995; Truth and Reconciliation Commission of Canada 2015), the implementation of the residential school system (Anderson 2001; Cairns 2000; Chansonneuve 2005; Grant 2004; Jordan-Fenton and Pokiak-Fenton 2014; Kay Dupuis and Kacer 2016; MacKenzie 2016; Miller 1996; Million 2000; Milloy 1999; Monture-Angus 1995; Sterling 1992; Stirbys 2016; Stout and Peters 2011; Truth and Reconciliation Commission of Canada 2015), and the ban on the niqab during the Canadian citizenship oath share the core expectation that certain groups of people forcibly alter their way of living to comply with the demands of the state. More specifically, the ministerial directive banning the niqab during the Canadian citizenship oath compelled niqab-wearing women to adopt the state's imposed value of an uncovered face. As such, this policy required niqab-wearing women to assimilate their dress by removing their clothing so that citizenship court officials could see their faces. After making these connections, I consider how the expectation that niqab-wearing women uncover their faces in order to integrate into Canadian society

positions the act of covering the face as the limit of what is considered acceptable in Canada. Finally, I conclude that niqab-wearing women actually belong by not belonging, as the uncovered face could not be defined as a requirement to being part of ‘the Canadian family’ without covered faces against which to be compared.

In Chapter 6, “Showing the Face During Public Services to ‘Live Together in Harmony’”, I address *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*⁸ (Vallée 2017a). The law, which has been described as the first of this kind in North America (Authier 2017a; Hamilton 2017; Shingler 2017a; Valiante 2017) includes a section that requires everyone giving and receiving public services in Québec to have their faces uncovered during the delivery of the services (Authier 2017a; Hamilton 2017; Shingler 2017c; Valiante 2017). I begin the chapter by situating this recently passed legislation in a post 9/11 context fueled by fear and anxiety about Islam. I then outline how *Bill 94: An Act to establish guidelines governing accommodation requests within the Administration and certain institutions* (Weil 2010) and *Bill 60: Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests* (Drainville 2013) have forged the path to *Bill 62*.

After contextualizing the political context that gave rise to this legislation, I give an overview of what is known about the *Act* at this time. This part of the chapter also includes a critique of Stéphanie Vallée’s inconsistent explanation of the terms of the law

⁸ This legislation was originally introduced as *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies*, however the title was modified during the committee stage (Vallée 2015).

and the ways that it will be enforced as well as a summary of the legal challenge that has recently ensued. Once I profile the court challenge, I examine how *Bill 62* has contributed to the idea that niqab-wearing women disrupt basic terms of social order. More specially, I show how banning the niqab while public services are being given frames the act of showing the face as the key to harmonious social interaction. I then challenge this perspective by arguing that *Bill 62* conflicts with conceptions of social cohesion that encourage values such as cooperation and access to resources for all members of society. I also argue that requiring niqab-wearing women to unveil in order to give and receive public services is a form of racialized structural ableism.

My final chapter “Looking Past Faces” offers a brief summary of my main research questions and a review of the key arguments that I have presented in order to answer them. After returning to the previous sections of my work, I reflect upon Canada’s current position in a context where the human face and the act of seeing continue to occupy dominant ideas about everything from processing information, social interaction, migration, and belonging. I tie up this dissertation by considering future possibilities for work about the niqab, faces, and the sense of sight. It is my hope that these recommendations will lead to more discussions that continue to challenge the fixation with looking, seeing, and judging the appearance of people’s faces.

Chapter 2: Review of Literature

“Dans nos sociétés occidentales, le visage est la partie du corps qui porte le cœur de l’individu, l’âme, la raison, la personnalité. Chez nous, c’est un héritage culturel séculaire.”⁹

Nadeje Laneyrie-Dagen (2009, 8)

Mission d’information sur la pratique du port du voile intégral sur le territoire national

“If seeing the other’s face constitutes a prerequisite for the subjectivity of both the seer and the seen, then it follows that a covered face could seemingly unstitch the foundational narratives of the Euro-American imaginary and its structuring of self.”

Valerie Behiery (2013, 783)

Bans on Muslim Facial Veiling in Europe and Canada

“The serial number of a human specimen is the face, that accidental and unrepeatable combination of features. It reflects neither character nor soul, nor what we call the self. The face is only the serial number of a specimen.”

Milan Kundera (1991, 12)

Immortality

Introduction

In this chapter I draw upon a broad range of literature to bring together the key themes that I explore within my work. These areas include the practice of veiling — with a focus on the niqab, the iconic status afforded to the human face, the high cultural value given to the sense of sight and the act of seeing, and the power imbalance between those who are looking and those who are seen. This is the space where I will highlight the

⁹ My English translation of this statement is as follows:

In our occidental societies the face is the part of the body, which wears the heart of the individual, the soul, the reason, the personality. For us this is a cultural secular heritage.

important contributions that scholars have made when addressing the subjects of veiling, the human body, and the senses. As I piece together the work that has already been done, I consider how my research can build upon it. In other words, this chapter will help me identify significant gaps and plan out the possible interventions that my research can make. I begin this endeavour by exploring the complex and context specific meanings of veiling practices.

Contextualizing the Complexity of Veiling Practices

Although many forms of dress have been subject to debate (Davis 1992; Eicher and Roach-Higgins 1991; Joseph 1986; Poll 1962), few articles of clothing have attracted the same level of scrutiny as veils, and by extension, practices of veiling (Ahmed 1992; Alvi, Hoodfar, and McDonough, 2003; Amer 2014; Bailey and Tawadros, 2003; Bullock 2007; Hayes 2010; Heath 2008; Hoodfar 1992/1993; Jiwani 2010; Khan 2009; Mernissi 1975; Razack 2008; Scott 2010). “Like any piece of clothing, the...meaning of the [veil] depends upon the context in which it is worn” (Bullock 2007, 86). That is to say, the way people dress is deeply embedded within social, cultural, and religious contexts (Heath 2008; Kaiser 1990; Lindisfarne-Tapper and Ingham 1997). In addition to these varying factors, Sahar Amer (2014) notes, “veiling has always had a multiplicity of competing meanings and motivations at different times and in different places” (5). In other words, veiling practices fluctuate over the course of different time periods, places, and spaces.

Given that clothing visually signifies a multitude of “ideas, concepts, and categories” that ascribe meaning to the body (Arthur 1999, 1), the concept of veiling should be understood as complex and fluid. However, a critical problem with much of the discourse surrounding the term veil and descriptions of veiling practices is that variants

of the word veil are often used interchangeably with little nuance (Amer 2014; Droogsma 2007; Hajjaji-Jarrah 2003; Heath 2008; McDonough 2003). Therefore, it is important to clearly define and explain the different meanings of the term *veil* in order to better situate it within the specific context that it is applied. In the section that follows I outline the etymology of veiling in both English and Arabic. I also trace the origins of this complex practice, which began long before the foundation of Islam (Amer 2014, 1). By taking these steps I seek to challenge and problematize common misconceptions of veiling as a uniquely Muslim practice that was created by Islam.

The Origins of Veiling

The English word veil derives from the Latin term *uelum* (or *velum*), which means sail, cloth, or covering (Skeat 1974, 686). “The verb *velare*, to veil, means to conceal” (Heath 2008, 5). “To qualify as a veil, the scarf, the head-covering, or the cloth usually requires a mystique, and religious or magico-religious significance” (Heath 2008, 5). Although veiling is disproportionately associated with Islam, it originated as a symbol of social status in non-Arab Middle Eastern and Mediterranean societies such as the “ancient Greco-Roman, pre-Islamic Iranian and Byzantine empires” (Hoodfar 2003, 6). That is to say, the practice of veiling has existed for thousands of years and it began a considerable time before Islam was established in the early seventh century (Amer 2014; Zahedi 2008).

The first reference to veiling dates back to an Assyrian¹⁰ legal text from the thirteenth century B.C. which restricted the practice of veiling to elite women and

¹⁰ Assyria was an ancient urban civilization in Mesopotamia (an area that roughly corresponds to what is now known as the countries of Iraq, Iran, and Syria, as well as the Southeastern part of Turkey) (Amer 2014, 5) The Assyrians were descendants of the Sumerians and Akkadians (Amer 2014, 5).

forbade lower-class women, sex workers,¹¹ and slaves from veiling (Amer 2014; Hayes 2010; Hoodfar 2003; Keddie 2004; Kuhns 2003; Zahedi 2008). While upper-class married women and concubines who were travelling with their mistresses were obliged to veil when they went outside in public, commoners, sex workers, and slaves were outlawed from veiling and could face punishment if they did (Amer 2014, Zahedi 2008). In this context, being veiled signified that a woman was a member of the aristocracy and therefore, she did not need to go outside to work like peasant women or slaves (Amer 2014, 6). It was not until “the Ottoman Empire — which extended into most of the area that is today known as the Middle East and North Africa — and particularly until the reign of the Safavids (1501-1722) in Iran that the veil emerged as a widespread symbol of status among the Muslim ruling classes and urban elite” (Hoodfar 2003, 7). Over time Muslims assimilated and adapted practices such as veiling that originated from other societies that came under their rule (Amer 2014; Zahedi 2008). Consequently, contrary to dominant narratives and assumptions about Muslims, the practice of veiling is by no means a creation attributed to Islam, but rather an appropriation of longstanding customs that were practiced by Byzantine, Persian, Jewish, and Christian societies (Amer 2014, 10).

Likely to reflect the great variance of Muslim veiling practices, there is no single word for *veil* in Arabic and there is no direct equivalent for the term in the other “languages spoken in Muslim-majority societies” (Amer 2014, 12). Although it does not directly translate to the English word veil, the Arabic word *hijab* is perhaps the most similar term that exists (Amer 2014, 12). However, initial understandings of the word

¹¹ Married hierodules, who were “former sacred prostitutes” were exempt from this rule and required to veil (Amer 2014, 5).

hijab did not specifically reference women, veiling or clothing (Amer 2014; Hajjaji-Jarrah 2003; Shaheed 2008). According to Aisha Lee Fox Shaheed (2008) the direct translation of the Arabic word hijab is the English word barrier (295). More specifically, Amer (2014) explains that, “the term hijab comes from the Arabic root h-j-b, which means to screen, to separate, to hide from sight, to make invisible” (12). During the time of the Prophet Muhammad and his contemporaries, the term hijab was quite removed from concepts of dress or clothing. In terms of general usage in the Qur’an, Soraya Hajjaji-Jarrah (2003) explains that variants of the word hijab were initially interpreted as “either a physical or a metaphorical barrier” (184). However, these interpretations have certainly shifted over time, as many people now also apply the word hijab to describe both Muslim women’s clothing in general as well as many different forms of head and hair coverings (Amer 2014; Hajjaji-Jarrah 2003).

Given the ever-changing and complex interpretations of veiling practices it is imperative that I remain cautious of the language I use in my analysis. After drawing upon literature to contextualize, situate, and trace the origins of veiling, it is important to build upon these themes and ideas by considering the ways veiling will be discussed throughout this dissertation. In the following section, I will make a distinction between the term veil as a word that is applied in a singular and uniform sense, and plural terms such as veils, veiling, and veiling practices, which I hope to apply in a more open way.

Challenging Usage of the Term Veil

A central argument made within much of the literature on veiling is that veiling practices are complex and their constantly shifting meanings show that veiling should not and cannot be described in a monolithic way (Ahmed 1992; Alvi, Hoodfar, and

McDonough, 2003; Amer 2014; Bailey and Tawadros, 2003; Bullock 2007; Droogsma 2007; Hayes 2010; Heath 2008; Hoodfar 1992/1993; Jiwani 2010; Khan 2009; Mernissi 1975; Scott 2010). In order to challenge simplistic, vague and misleading descriptions of veiling practices, it is important to avoid the use of language that reduces veiling to one all-encompassing word. As Amer (2014) argues, invoking the singular word *veil* rather than the plural word *veils* creates a false sense of veiling as a uniform kind of dress that is only understood in one way (12). Yet just like head and facial coverings from other religious, ethnic, and cultural communities, Muslim veiling practices vary beyond a singular term, image or practice. Therefore, it is ideal that the English word *veil* be applied “as an umbrella term that refers to all kinds of Muslim women’s veiling practices” (Amer 2014, 12). In order to foster dialogue that treats this vast category of dress with the depth and nuance that it deserves, I avoid using the word *veil* in a singular sense. Instead, I apply terms such as veiling and veiling practices that better reflect the complexity of this subject, while also referring to specific kinds of veiling by their name(s) such as niqab and burqa, as they pertain to the focus of this dissertation.

Now that have I outlined the complex historical and etymological roots of veiling as a practice as well as the language that I will use to discuss it, it is critical to trace the insurgence of contemporary dominant narratives that represent veiling in the most negative terms. As Amer (2014) explains, “‘veiling’ today is not simply a descriptive or neutral term. It is also a judgmental term, especially when associated with Islam” (2). Indeed, veiling has become a subject about which many people have extremely strong feelings (Alvi, Hoodfar, and McDonough, 2003; Amer 2014; Bailey and Tawadros, 2003; Bakht 2012a; Brown 2006; Heath 2008; Scott 2010). Especially when it is associated

with Islam, veiling seems to evoke visceral reactions including “fear, anxiety, and a rising sense of threat, particularly in the aftermath of 9/11, the onset of the war in Afghanistan, and the 2003 U.S. invasion of Iraq” (Amer 2014, 2). In the section that follows, I draw upon literature to explain how veiling has come to be commonly portrayed as a negative manifestation of Islam.

Tracing Negative Perceptions of Veiling Practices

As I have previously mentioned, even though veiling is now a strongly contested subject, preoccupations with Muslim women’s veiling practices are relatively new (Amer 2014, 3). Research shows that veiling received little attention until the nineteenth century when colonial occupiers such as France and Britain began portraying the veil as a negative manifestation of Muslim societies (Ahmed 1992; Amer 2014; Hoodfar 2003; Shaheed 2008). From this point onwards, Western colonial discourse has frequently cast veiling as an oppressive, patriarchal symbol that reflects the backwardness and inferiority of Muslim majority societies and ultimately justifies imperialist projects (Amer 2014; Brown 2006; Droogsma, 2007; Hayes 2010; Hoodfar 2008; Jiwani 2010; Kahf 2008; Khan 2009; Razack 2008; Scott 2010; Thobani 2007).

Unveiling Muslim Women in the Name of Empire

Many campaigns against Muslim women’s dress exhibit strong ties to the project of empire. Notably, Leila Ahmed (1992) discusses how toward the end of the nineteenth century, British political officials and missionaries used discourse against veiling practices to reinforce Victorian ideals as a measure of civilization. These narratives were used to uphold beliefs of European superiority, legitimizing Britain’s domination of other societies (Ahmed 1992, 151). Veiling came to signify “the most visible marker of the

differentness and inferiority of Islamic societies” as it was synonymous with Muslim women’s oppression and the backwardness of Islam (Ahmed 1992, 152). Consequently, veiling “became the open target of colonial attack and the spearhead of the assault on Muslim societies” (Ahmed 1992, 152). This trend is exemplified by British Consul-General, Lord Cromer, whose actions and writings demonstrate how feminist rhetoric has been co-opted to promote imperialism (Ahmed 1992; Kahf 2008; Khan 2009; Macdonald 2006).

Cromer argued that Egyptian society required European Christian reform because practices of veiling represented Islam’s degradation of women, and ultimately, the inferiority of Muslim society as a whole (Ahmed 1992, 152-153). He prescribed that by “abandoning these practices” Egypt could achieve greater “mental and moral development” (Ahmed 1992, 153). While allegedly championing women’s rights by unveiling Egyptian women, Cromer placed restrictions on girls’ access to government-run schools and discouraged the training of female doctors, limiting their medical schooling to midwifery (Ahmed 1992, 153). Most hypocritically, Cromer actively challenged women’s rights in Britain, as a founding member and president of the Men’s League of Opposing Women’s Suffrage (Ahmed 1992; Khan 2009; Macdonald 2006). Paradoxically, Cromer manipulated women’s rights discourse to further serve Britain’s colonial and imperial conquest of Egypt, while simultaneously resisting the feminist movement in his own country (Ahmed 1992; Khan 2009).

Echoing Lord Cromer’s agenda, British missionaries adopted a similar discourse against veiling practices. For instance, missionary-school teachers explicitly challenged veiling by persuading girls to go against their families’ wishes and stop wearing the hijab

(Ahmed 1992, 154). Like Cromer, the missionaries saw women and girls as the key “to converting backward Muslim societies into civilized Christian societies” (Ahmed 1992, 154). Thus, “the ideas of Western feminism essentially functioned to morally justify the attack on native societies to support the notion of the comprehensive superiority of Europe” (Ahmed 1992, 154). Ultimately, Ahmed (1992) characterizes this deployment of feminism as a “docile servant” to “the system of white male dominance” (154-155).

By extension, these imported ideas were soon reproduced and disseminated into Arab discourse by male members of the Egyptian elite, who subsequently proved to be more pervasive “servants of empire” than the Europeans serving Britain (Ahmed 1992, 149). Significantly, Western ‘feminist’ views against the veil helped inspire Qasim Amin’s controversial 1899 text, *Tahrir al-mar'a* (The Liberation of Woman) (Ahmed 1992; Kahf 2008; Khan 2009). *Tahrir al-mar'a* calls for the transformation of Muslim society in Egypt by reforming the position of women and abolishing veiling (Ahmed 1992; Khan 2009). Rather than a nuanced analysis of Egyptian life, Amin’s work reflects “the internalization and replication of the colonialist perception” (Ahmed 1992, 160). His arguments follow the same lines as the Western model, calling “for the substitution of the garb of Islamic-style male dominance for that of Western-style male dominance” (Ahmed 1992, 161). Consequently, Amin’s book marks the entry of colonial narratives about women, veiling, and Islam into mainstream Arabic discourse (Ahmed 1992, 163).

While narratives casting Islamic veiling practices as oppressive to women first gained prevalence in the later part of the nineteenth century, these views continue to persist well into the twenty-first century. The story of the ill-fated woman who is forced

to veil continues to dominate narratives about Muslim women's status in society¹² (Kahf 2008, 31). To many, seeing Muslim women wearing veils in public spaces signifies “proof that Islam is quintessentially opposed to women's rights” (Amer 2014, 3). In this sense, veiling is perceived as “the ultimate otherness and inferiority of Islam” (Amer 2014, 3). Depictions of veiling as an important site of feminist struggle have predominantly revolved around men like Cromer and Amin who promote colonialism and patriarchy, and more recently Western women, who ignore the actual experiences and realities of veiled Muslim women (Ahmed 1992; Kahf 2008; Khan 2009; Macdonald 2006). These dominant narratives have been refashioned to support a variety of imperial and colonial endeavours, including: Western military intervention in Afghanistan and Iraq (Khan 2009; Macdonald 2006; Thobani 2007), racial profiling and the violation of peoples' rights in the name of the ‘War on Terror’ (Brown 2006; Jiwani 2006, 2010; Razack 2008, 2010), and legislation against Muslim women's dress, including the hijab and the niqab (Brown 2010; Fournier and See 2012; Razack 2008; Scott 2007; Zine 2009).

As this “static colonial image” (Hoodfar 1992/1993, 5) continues to re-emerge well into the twenty-first century, many have challenged prevailing attitudes about veiling practices adopted by some Muslim women (Ahmed 1992; Alvi, Hoodfar, and McDonough 2003; Amer 2014; Bailey and Tawadros 2003; Droogsma 2007; Hayes 2010; Heath 2008; Hoodfar 1992/1993; Jiwani 2010; Khan 2009; Mernissi 1975; Razack

¹² It is important to note that not all Muslim women adopt veiling practices because they want to do so. I recognize that some Muslim women are compelled to don the hijab, the niqab, the burka, and other types of veils under serious threats of both state-sanctioned and community-based penalties and violence. Like any performance of gender or faith, the act of veiling has the potential to be both empowering and oppressive. However, the issue is not the clothing itself, but the use of force. As Arundhati Roy (2014) argues, “coercing a woman out of a burka is as bad as coercing her into one. It's not about the burka. It's about the coercion” (36).

2008; Scott 2010; Zine 2009). Much of this work primarily addresses headscarves such as the hijab, and has raised significant awareness about various shifting meanings behind these forms of dress. These contributions have shaped important nuanced and critical discussions about different forms of head and hair coverings.

In recent years there has been an increasing degree of negative attention around the presence of the niqab in public spaces. “It seems that as Westerners we have barely recovered from the fact that some Muslim women wear the hijab that the latest focus of anti-Muslim [panic] is in full swing, this time over women who wear the niqab” (Bakht 2012a, 70). As such, there is a growing body of literature that is specifically focused on the niqab (Bakali 2015; Bakht 2012a, 2012b, 2015; Behiery 2013; Burchardt 2016; Choudhury 2012; Clarke 2013; Conway 2012; Dobrowolsky 2017; Flanagan 2014; Fournier and See 2012; Golnaraghi and Mills 2013; Hong 2011; Jarram 2014; Khelifa 2017; Leckey 2013; Melançon 2015; Qureshi 2014; Rochelle 2013; Selby 2014; Sharify-Funk 2011; Tessier and Montigny 2016; Zine 2012). Although there are certainly links between negative responses to the hijab and the niqab, these forms of dress are not the same (Amer 2014; BBC News 2015). Therefore, it is important that I clearly define the term niqab in order to set it apart from other veiling practices.

What is the niqab?

The niqab is a full-face veil worn by some Muslim women that covers the face except the area around the eyes. According to Lynda Clarke (2013) the word “niqab is originally an Arabic term referring to the ‘aperture’ in the face cover for the eyes” (4). Sahar Amer (2014) describes the niqab as “a free-flowing piece of black (at times, white) cloth that can be of different lengths and that is tied around the head...covering the lower

part of the face” (206). Additionally, most niqab-wearing women also wear dark overcoats such as *baltos*¹³, *jilbabs*¹⁴, or *abayas*¹⁵, as well as thick dark socks and gloves (Amer 2014, 207).

Although the niqab is just one form of facial veiling, it has been argued that all kinds of full-face veils have the tendency to get reduced to the burqa (alternative spelling burka) (Behiery 2013; Williamson and Khiabany 2010). Indeed, the term burqa is sometimes used interchangeably or mistakenly for the niqab. Given the discrepancies it is crucial to differentiate between these forms of dress. In contrast to the niqab, the burqa “is both a face and body garment with crocheted eyeholes” (Amer 2014, 202) that is specific to Afghanistan (Amer 2014, 202; Clarke 2013) and “increasingly the Sudan” (Amer 2014, 202). In Afghanistan the burqa is traditionally blue or white, though in most other places it is black (Amer 2014, 202). While the niqab is limited to an extremely small minority of Muslim women in Canada, the burqa is even more rare (Clarke 2013, 4).

Responses to the Niqab: The Demand to See the Face

Although it is unknown exactly how many women in Canada wear the niqab, Clarke (2013) maintains that there are not many (7). Yet the niqab continues to be subject to a heightened degree of scrutiny, as a number of policy and lawmakers insist that niqab-

¹³ The balto is “a one-piece, loose-fitting, full-length overcoat, at times with cuffs and a belt” originally worn by upper-class women in Yemen (Amer 2014, 202).

¹⁴ The Jilbab “is the Qur’anic term that refers to women’s clothing. Today, the jilbab is tailored and made to be fashionable with matching headgear, so that women can appear both pious and modern. It is frequently associated with Western-style business suits to which a headscarf is added” (Amer 2014, 204-205). This form of dress is worn by women in Egypt, Syria, Indonesia, and North African immigrants in Europe (Amer 2014, 204).

¹⁵ The abaya is a long and loose cloak that is usually black (Amer 2014, 201). “It is at times embroidered around the edges and has tussled tie cords” (Amer 2014, 201). The abaya is worn in a number of regions including, Saudi Arabia, Iraq, Egypt, suburbs of Paris, and parts of the United States such as North Carolina (Amer 2014, 201).

wearing women show their faces. As I will discuss in Chapters 4, 5, and 6, the demand to see niqab-wearing women's faces has emerged in the form of court rulings, a federal ministerial directive, and legislation. To this end, a number of different arguments have been made against the niqab (Bakht 2012a). As Natasha Bakht (2012a) explains, opposition to the niqab takes many forms, including: concerns about social integration, women's oppression, the value of secularism, intimidation and discomfort, safety and security, facial covering as being impolite, covering the face as a barrier to communication or social relations, issues of identification, facial covering as an act of intolerance and disrespect, and the premise that wearing the niqab is not a religious requirement of Islam.

However, despite the broad range of these arguments, this dissertation takes the stance that no matter what the rationale may be, the basis for banning the niqab is grounded by the proclaimed need to see the face. In order to support their position, proponents of the niqab often suggest that the visibility of the face is a key part of Western values. Canadian policy makers have invoked this idea many times.

Former Québec Premier Jean Charest has described his position against the niqab with "two words: uncovered face...the principle is clear" (Chung 2010). Defending the niqab ban that he introduced during the citizenship oath at Canadian citizenship ceremonies, former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney suggested that covering the face undermines Muslim women's ability to become members of Canadian society and questioned how people can be full citizens "from behind a kind of a mask" (Raj 2011). He has also stated that, "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 proud commitment to openness and to social cohesion” (Goodman 2014). During an open-line radio talk show Conservative Member of Parliament Larry Miller responded to a Federal Court ruling against Kenney’s ban by stating, "Frankly, if you're not willing to show your face in a ceremony that you're joining the best country in the world, then frankly, if you don't like that or don't want to do that, stay the hell where you came from, and I think most Canadians feel the same” (O'Malley 2015). Former Prime Minister Stephen Harper also challenged the Federal Court’s ruling and told the House of Commons “We don't allow people to...cover their faces during citizenship ceremonies. And 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” (Milewski 2015). These remarks point to the politicization of the visibility of the face within current disputes about the niqab.

Yet references to the value of the human face and by extension the uncovered face as an integral part of *our values* seems to lack an explanation about how or why this is the case. Thus, it is critical that this part of the discussion be better reflected within academic scholarship. In order to fill this gap, this dissertation traces how the human face and the act of seeing have come to hold such high cultural value. I begin this examination with an overview of the origins and etymology of the face as well as an outline of the physical, metaphorical, and cultural understandings and applications of this concept.

The Face as a Part/Area of the Human Body

According to the Oxford English Dictionary (2014) the word face first appeared in the manuscript “Saints’ Lives” from c1300 by Saint Thomas Becket, which is found in

the *Early South English Legendary* (1887): “more blod par nas in al is face”. When defined as a noun, face refers to “senses denoting a part of the body, and related uses” (Oxford English Dictionary 2014). Moreover, the word face denotes “the front part of the head, from the forehead to the chin, and containing the eyes, nose, and mouth; the countenance, visage” (Oxford English Dictionary 2014). In this context, the face applies to a section of the human body that includes several other parts and facets of the body. For instance, the face is the location of the vital functions of breathing, eating, and drinking (Gates 2011; Synnott 1993; Talley 2014). It is also the central site of the senses of sight, smell, hearing, and taste (Gates 2011; Synnott 1993; Talley 2014). Therefore, when examining and defining the face, it can be useful to consider it as a collection, which includes a combination of important physiological functions.

Since this area involves so much, faces can perhaps be described as “assemblages of skin, muscle, bone, cognition, emotion, and more” (Gates 2011, 23). Understanding the human face as a mass, a grouping, or a cluster of various physical elements can allow us to classify this concept without completely isolating or disassociating it from the rest of the human body. In other words, conceptualizing the human face as an assemblage helps to recognize its complex level of functions. Rather than a single piece or element, the face exists as an entity made up of a sum of several different parts. In this sense, the face is distinct and important, but it should not be cut off from the rest of the human body. Ultimately, just like the concept of veiling, the face should not be interpreted in a singular or uniform sense. Like the word veiling, the word face involves many different things and can be applied as an umbrella term that includes a number of parts, roles, and functions.

The Face as a Social Symbol

In addition to housing the body parts that intake and maintain access to air, food, and drink, as well as the body parts, which process the senses of sight, smell, hearing, and taste, the human face is also associated with what it means to be read as a person. In this sense, the term face can be defined as “a principal feature in recognition” (Oxford English Dictionary 2014). Or put differently, the face is considered the key site upon which each individual is identified and mediated as a person. As this understanding suggests, the face is about more than just a part or section of the human anatomy in a physiological sense. It is a symbol by which humans relate to and process their existence. Arguably it is this application of the face that affords it such a high level of importance within Western societies.¹⁶ It seems that the face has come to represent the intrinsic importance of the very meaning of human identity.

In a journal issue on “The Face and Technology” (2010) the editors of *Transformations*¹⁷ describe the human face as “a vital element in the grand narratives of being for Western culture.” That is to say, the face occupies a pivotal place in Western understandings of what it means to exist as a being. Consequently, in addition to its status as a body part, the face can be seen as a valuable social symbol that represents “human subjectivity and public personhood” (Talley 2014, 14). In this sense, the face is strongly tied to understandings of key sites of human consciousness such as the meanings of

¹⁶ It is important to note that Western societies do not hold a cultural monopoly on the significance of the human face. For instance, Chinese societies also focus on the face, both metaphorically and physically. This value is represented by the concepts of “*lien* and *mien-tzu*” (Ho 1976, 876). For more information about the face in this context, see:

Ho, David Yau-fai. 1976. “On the Concept of Face.” *American Journal of Sociology* 81 (4): 867–84.
doi:<https://doi.org/10.1086/226145>.

¹⁷ This part of the issue is identified as an editorial and does not include specific authors’ names.

reality, truth, and the purpose of existence. The face “is the coding of the human, and the over-coding of the body, it proceeds the body, it is the body’s a priori” (Editorial 2010). It seems that the face has come to represent the link to the meaning and recognition of personhood. As a result, the face occupies a place as both a physical and metaphorical concept that is critical to overarching teachings and views about the place of humans in the world.

The highly privileged status of the face is perhaps also tied to a fascination with its aesthetics and form. Indeed, the prominent location of the face is well documented visually as it is “one of the most studied, drawn and reproduced features of the human body” (Mules 2010). One way to measure this level of status is by examining the face’s presence within visual art. According to Valerie Behiery (2013) “the face occupies a central position in Western art, which likes to trace its tradition of portraiture back to the early first millennium portraits of Fayoum, as well as in philosophy” (782). Based on its place as a common reoccurring subject, art depicting the human face can be read as a visual manifestation of what is intriguing or important to Western society. Devoting this kind of attention to a particular aspect and concept of the body reaffirms the face’s status as a central icon.

The Face as a Form of Social and Physical Currency

In addition to its status as a social symbol and visual icon, the face can also be understood as a form of social and physical capital that is used to measure and determine a person’s place in the world. That is to say, the human face has value and therefore, its appearance can be conceived as a form of currency (Talley 2014, 14). In this sense the face is used to make a number of inferences about a person’s position in society. There is

a common belief that the face can be an indicator of age, gender, racialized status, health, socioeconomic status, moods and emotions, and possibly even character and personality (Synnott 1993, Talley 2014). Whether the inferences made on the basis of a person's face are accurate or not "every face-to-face human interaction is premised on the 'social fact' that our faces tell us something about each other" (Talley 2014, 13). These expectations reinforce the idea that the human face symbolizes exactly who and what a person is. Additionally, in some cases these perceptions are also used to justify who and what a person cannot or should not be.

For instance, during the 1993 Canadian federal election campaign, the Progressive Conservative Party of Canada released a personal attack ad against Liberal Party leader Jean Chrétien that focused on distorted images of his face (Gould 1993; LeDuc and Pammett 2016, 413). The intention of the ad was "to make voters feel embarrassed about him as a potential prime minister" (LeDuc and Pammett 2016, 413). However, the ad received immediate and intense backlash from the general public who condemned it for mocking the partial paralysis on Chrétien's face — a result of Bell's palsy (Gould 1993). Members of the Progressive Conservative Party, including then Prime Minister Kim Campbell condemned the ad and consequently, it was soon taken off the air (Gould 1993). This notorious 'face ad' has been described as "the final nail in the coffin of the PC's electoral hopes" (LeDuc and Pammett 2016, 413) because it backfired on Campbell's campaign so badly.

Another example of the weight of facial currency can be felt by the remarks that current American President Donald Trump made about Carly Fiorina when they were competing for the Republican Party presidential nomination. Discrediting Fiorina's

candidacy, Trump uttered the following: “*Look* at that face!...Would anyone *vote* for that? Can you imagine that, the face of our next *president*?!... I mean, she's a woman, and I'm not s'posedta say bad things, but really, folks, come on. Are we *serious*?” (as cited in Solotaroff 2015). Among many things, these words suggest that the gendered characteristics of Fiorina’s face made her unsuitable and simply inconceivable to be chosen to represent the Republican Party, let alone be elected as President of the United States.

These instances suggest that judgments of faces have the ability to impact a person’s life chances. Arguably these chances are determined by the value of the elements that other people see. Given that some aspects of identity are considered more valuable than others, it is important to recognize that not all faces are treated equally. This means that some faces grant people access to privilege while others are used to justify discrimination and oppression. As Heather Laine Talley (2014) explains, the face “determines our status in social relations and systems of power. Its lines, colors, features, and adornment are all evidence upon which people are labeled, differentiated, and potentially stigmatized or celebrated” (13). Indeed, the fate of a person’s facial value is subject to the sites of identity it is believed to reflect and the way that these judgments measure up against ideals of what it means to be a normal and successful person. Given that factors such as whiteness (Fanon [1952] 2008; Razack 1998, 2008; Razack, Smith, and Thobani 2010; Thobani 2007), cis-genderedness (Baril 2013; Meeuf 2017), heterosexuality (Ahmed 2006; Puar 2007), ability (Bell 2010; Connor, Ferri, and Annamma 2016; Davis 2013; Goodley 2013; Healey 2017; Kleege 2010; Marks 1999; Meekosha and Shuttleworth 2009), youth (Wolf 1990), wealth (hooks 2000; Marx and

Engels [1848] 2012), and happiness (Ahmed 2010) are idealized by our society, these are the standard markers that are often used to assess the value of a person's facial aesthetic. By extension, when a face is considered attractive it is arguably related to its likeness to and representation of these qualities. Whereas faces that are considered unattractive are often perceived as such because they do not conform to dominant standards of racialized status (Brodkin 1998; Ignatiev 1995; Synott 1993), gender identity (Meeuf 2017), sexuality (Synott 1993; Talley 2014), ability (McEachran 2011; Talley 2014), age (Talley 2014; Wolf 1990), socio-economic status (Synott 1993; Talley 2014), and/or temperament (Ahmed 2010; Synott 1993). In this sense, there are strong links between conceptions of beauty and sites of privilege and oppression.

According to Anthony Synott (1990, 1993), physical attractiveness has been equated with goodness and favourable disposition for a considerable time, and these qualities converge at the site of the face. He maintains that "in the Graeco-Roman Western tradition" it is impossible to separate physical beauty from the face (Synott 1990, 407). Synott (1990, 1993) attributes this strong connection to the ideologies of beautyism and facism. According to Synott (1990), beautyism refers to the pervasive philosophy that "exalts and institutionalizes the primacy of the beautiful over the ugly" (407). He traces the tendency to privilege beauty and associate it with good, with Homer who equated ugliness with evil, and Plato who equated beauty with the divine and love (as cited in Synott 1993, 78-79).

In order to connect beauty to the concept of the face, Synott (1993) highlights the work of Aristotle, who believed that the face could be studied and judged as an indication of a person's "mental character" (as cited in Synott 1993, 80). Synott (1990) describes

this fascination and judgment of the face as facism; a term which he defines as “the belief that the face, as the pre-eminent symbol of the self, is the mirror not only of the personality but also of the soul, as it is often of the emotions” (407-408). Later on in his work, Synott (1993) also describes facism as a form of institutionalized “prejudice and discrimination” that favours whatever a culture defines as “beautiful and attractive” over whatever is considered “ugly and less attractive” (100). In this sense, the value ascribed to a person’s face can be seen as a product of the social norms and identities that are privileged within that society.

In today’s context this means that the human face is highly racialized, gendered, sexualized, ableist, ageist, classist, and subject to value-laden ideas about displays of emotion. This level of judgment and measurement sets the face up as a site of social inequality, which is central to determining whether or not an individual will be granted social capital. In sum, a person’s face is a principal determinant of the way that they will be perceived, and consequently, what their apparent beauty or ugliness will mean for their sense of worth and life chances (Synott 1990, 1993; Talley 2014). The consequences of these factors are so pervasive that Synott (1993) classifies aesthetic prejudice and discrimination as an unrecognized form of inequality that needs more exposure (100). He argues that since the way people’s faces are perceived impacts all areas of their social lives, “aesthetic relations” should be identified and discussed as a powerful form of social stratification (Synott 1993, 101). In a culture that idolizes the face, there is a high cost to living with what is deemed to be an ugly or unattractive face. However, these understandings of inequality presume that all faces can be seen.

Surely, this deep attachment to the human face is connected to an equally strong attachment to vision as mediated by the sense of sight. Indeed, the way we perceive faces rests on the assumption that each and every human face should be uncovered and visible for everyone to see. In the following section I trace how the sense of sight, like the human face, has come to hold an extremely high level of importance. I consider how privileging the sense of sight above hearing, smell, taste, and touch, shapes and restricts the way people process information. Then I draw upon the concept of the gaze to outline how the act of looking can be understood as a form of inequality. Ultimately, I examine how the esteemed values of the human face, the sense of sight, and the act of seeing come together when people demand that niqab-wearing women uncover their faces in order to make their bodies visible and open to judgment. Identifying and studying this convergence will enable me to address negative reactions to the niqab later on in my work from what I hope to be a more complete perspective.

Sight: The Most Privileged Sense

The human senses can tell us a lot about the way we become aware of our existence. Although each sense offers unique experiences, the way we classify this information is far from neutral. As David Howes and Constance Classen (2014) note, “perception is informed not only by the personal meaning a particular sensation has for us, but also by the social values it carries” (1). In other words, the way we interact with our senses is informed by the way that certain feelings and ways of processing information are considered and positioned within society. Howes and Classen (2014) describe this relationship as “a politics of the senses” which denotes that perception should be understood as culturally specific because society impacts and shapes “how and

what we sense” (5). As a result, certain sensory and social formations are favoured over others.

In Western societies, it is the sense of sight, and by extension the act of seeing that has achieved the most favourable position (Howes and Classen 2014, 1). That is to say, in Western societies vision is privileged above all other senses (Behiery 2013; Synnott 1993). Similar to the status of the human face, the high cultural value of sight reaches beyond its physiological and functional attributes. Vision has come to be equated with knowledge as the sense of sight is deeply connected to both sacred and profane conceptions of enlightenment (Howes and Classen 2014; Synnott 1993). This supremacy can be traced back to key figures in ancient Greek philosophy such as Plato and Aristotle who linked vision with reason.

Plato ([360] 2008) associated the sense of sight with the creation of philosophy and as the source leading to God and truth. Like Plato, Aristotle ([1933] 2014a) also gave primacy to sight and accorded it with knowledge and reason for helping “us to know things” and make distinctions between things (3). Additionally Aristotle ([1926] 2014b) ranked the senses making a designation between those that were human and those that were animal. The top of his ranking begins with human senses (Aristotle [1926] 2014b, 173-183). Sight is considered the supreme sense and is followed by hearing and smell (Aristotle [1926] 2014b, 173-183). The lower end of Aristotle’s ranking order consists of animal senses, which include taste followed by touch (173-183). These two senses are considered to be inferior because they represent vices when in excess, namely gluttony and lust (Synnott 1993, 132). Consequently, the sense of sight is categorized as a “distinguishing feature of humanity” (Synnott 1993, 132) far above the inferior

animalistic senses of taste and touch and the highest of all the superior human senses.

Sight, Looking, and Knowledge

Over time Aristotle's hierarchical ranking of the senses has had a profound effect on the way people are expected to receive and process information. Given that sight is perceived as the highest sense while touch is viewed as the lowest, the disparity between these senses is particularly telling of the constraints that unequal sensory stratification puts on our ability to apply our senses. As Howes and Classen (2014) note, in certain contexts "ways of seeing are also ways of not touching" (5). To explain the impact that sight has on dominant understandings of knowledge, Howes and Classen (2014) offer art as an example. They outline how in the context of the museum, our sensory relationship to art has come to be overwhelmingly visual. In this context, classifying something as art creates an environment in which "non-visual qualities are suppressed" and by extension the expectation that art only be consumed by eyes (Howes and Classen 2014, 17).

Although art was once appreciated in tactile ways in churches, private collections, and museums in the seventeenth and eighteenth centuries, a major shift began in the nineteenth century (Howes and Classen 2014, 19). On a practical level, as exhibits became more open to the general public, museums moved away from touching in order to better preserve collections by reducing the risks of damage and theft (Howes and Classen 2014, 19). However, there were also powerful cultural forces that mediated this change.

During the sixteenth century Protestant reformers associated touching religious images with idolatry (Howes and Classen 2014, 19). Additionally reformers were defensive about sensuality, and given that touch was considered the most "sensuous of the senses" these attitudes led many people to shy away from interacting with art in a

tactile way (Howes and Classen 2014, 19). These views were also later reinforced by philosophers such as Immanuel Kant, who believed that touch was too close and intimate of a sense to perceive art (as cited in Howes and Classen 2014, 20). By this logic, sight was the best way to study art because this sense was the most detached (Kant as cited in Howes and Classen 2014, 20). These views contributed to an understanding of art solely directed toward the eyes and solidified the museum as a place where art could only be seen and not touched.

However, the concept of learning solely by sight pervades far beyond the confines of the museum. Seeing and looking has inspired a number of different inventions and continues to shape the advent of new technology. In the twentieth century our connection to looking and seeing expanded with the invention of photography and film (Howes and Classen 2014). The value of vision has continued to shape technology through devices such as televisions and computers, which give us information about the world through our eyes (Howes and Classen 2014). In addition to images, this sensory relationship also applies to our connection with written symbols and words. That is to say, we visually consume, process, and share text-based information through the use of books, signs, tablets, computers, and smart phones. Our relationship to giving and receiving information is deeply shaped by what and how we see.

In addition to the physical objects that we see and process with our eyes, our close relationship to sight has had a symbolic effect on the way we use and interpret language. Indeed, sight's cultural position as the "noblest" sense, has had a considerable impact on many of the words we use in our everyday lexicon. The value of sight is reflected in language as a great deal of vocabulary demonstrates how "sight is equated with

understanding and knowledge” (Synnott 1993, 208). Words such as appear, clarity, enlighten, farsighted, highlight, idea, illuminate, insight, light, observation, overview, perspective, point of view, reflect, reveal, show, survey, visible, and vision indicate just how important the sense of sight has become (Jay 1986; Ong 1977, 133). Synnott (1993) also draws attention to the inverse of this pattern by noting that antonyms of these terms such as blind, cloudy, dark, dim, hidden, invisible, obscure, and unclear “imply a lack of knowledge and understanding” (208). These words are laden with “intellectual and emotional negativity” (Synnott 1993, 208) and suggest that the sense of sight and the act of seeing are far from neutral.

Looking as an Act of Inequality

Perhaps what is most telling about the value of sight is its connection to the way that people interact and engage with each other. This is because there is often an unequal relationship between the people who are looking and the people being viewed. In other words, there is a power imbalance between those who look and those who are seen. As a result, the act of looking creates a distinct form of judgment that is used to objectify and Other the subject of the viewer’s gaze.

In *The Birth of the Clinic: An Archaeology of Medical Perception*, Michel Foucault ([1973] 2003) has described the unequal act of looking between doctors and patients as the medical gaze. In this context, physicians and psychiatrists examine patients in order to pathologize and classify their bodies in terms of perceived illness and disease. As such, the patient’s body is subject to a “penetrating gaze” that determines how “a disease is circumscribed, medically invested, isolated, divided up into closed privileged regions, or distributed throughout cure centres, arranged in the most

favourable way” (Foucault [1972] 2003, 17). This form of looking serves to measure, categorize, regulate, and institutionalize abnormal and deviant bodies.

In addition to a clinical act of looking, the gaze can be understood as a process of racialization. Notably, in *Black Skin, White Masks* Frantz Fanon ([1952] 2008) discussed the inescapable attention he received when white people stared at him, and repeatedly singled him out due to his Blackness (91). Whenever white people looked at him they become fixated with his Blackness. Fanon ([1952] 2008) described this attention as “the white gaze.” Emphasizing the racialized impact of this gaze, he explained that “[i]n the white world, the man of colour encounters difficulties in elaborating his bodily schema” (Fanon [1952] 2008, 90). In other words, in places dominated by whiteness, racialized men struggle to challenge and take control of the representations of their bodies.

Fanon ([1952] 2008) explained that as a Black man he was visually objectified and over-determined by the colour of his skin. Under the white gaze Fanon ([1952] 2008) felt responsible “not only for [his] body, but also for [his] race and [his] ancestors” (92). He shared his struggle as a man who always needed to be aware that white people had their eyes on him. Constantly being gawked at and judged, Fanon ([1952] 2008) felt that he existed as a slave to his appearance (95). Even if he challenged or defied stereotypes about what white people think it means to be a Black man, Fanon ([1952] 2008) was constantly reminded that he was merely an exception or an anomaly (96-97). In white people’s eyes he could only be remarkable *for a Black man*. Fanon could not ignore or get beyond the way he was scrutinized and judged for being Black.

In addition to the racialized overdetermination of the Black man due to the colour of his skin and the depersonalization that marks the colonial encounter, the gaze is also

experienced in highly gendered and sexualized ways. As Howes and Classen (2014) explain, “the dominant male perspective in the West” simultaneously sees women as objects of desire and dangerous to men because they feel threatened by women’s sensuality (6). The gendered and sexualized way that heterosexual men view women is commonly referred to as the male gaze. The original usage of this term has been attributed to Laura Mulvey ([1975] 1999) who first applied the male gaze in her work on mainstream film. Identifying a general sexual power imbalance exercised by the act of looking, Mulvey ([1975] 1999) describes this relationship as a dichotomy between “active/male and passive/female” (837). In the context of popular narrative film, women are traditionally portrayed as figures of the male fantasy (Mulvey [1975] 1999, 837). They exist as sexual objects who “are simultaneously looked at and displayed, with their appearance coded for strong visual and erotic impact” (Mulvey [1975] 1999, 837). Embodying looking as an act of male pleasure, the visual presence of women in film serves as a spectacle, which performs and represents the essence of male desire (Mulvey [1975] 1999, 837).

Breaking down the woman’s specific position within the male gaze, Mulvey ([1975] 1999) explains that she is traditionally put on display for two different audiences. In this sense, the woman is an erotic object for the male characters within the film as well as the men who are viewing the film (Mulvey [1975] 1999, 837). Her position fluctuates between these two levels as the camera enables the act of looking to shift between the gaze of the men in the film and the gaze of the men on the other side of the screen (Mulvey [1975] 1999, 837). This element of the male gaze takes the spectacle of the woman to a level of eroticism that is “outside its own time and space” (Mulvey [1975]

1999, 837). In this sense, the male gaze represents an unequal position between men and women that extends beyond the confines of cinema. This gendered and sexualized act of looking reflects a power imbalance that is prevalent in a society that privileges the pleasure of heterosexual men (Mulvey [1975] 1999).

Given that the act of looking can be racialized, gendered, and sexualized, it is important to understand how the gaze functions when all of these dimensions come together at the same time. That is to say, these different ways of looking must be examined when racialized women become the subjects who are being looked at. In *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms*, Sherene Razack (1998) brings all of these dimensions together to discuss the racialized, gendered, and sexualized ways that veiled Muslim women experience the white gaze. Razack (1998) offers an extension of Fanon's work, which recognizes the interlocking ways that racialized women encounter the act of seeing and being seen.

Razack (1998) prefaces her text with the intent to create "a gendered version of Fanon's goal — the liberation of the woman of colour from herself, her release from the gaze and its consequences" (Razack, 1998, 5). Razack (1998) highlights how colonial images of Islamic veiling practices affect how Muslim women are seen and heard in Canada. She notes that when veiled Muslim women meet white people's gaze they become trapped between rigid understandings of Muslim culture as barbaric, sexist and, inferior to the West (Razack, 1998, 121). Thus, like the fact of Blackness, as described by Fanon, veiled Muslim women are racialized and overdetermined by their clothing. However, it is worth noting that there is another important factor that also complicates and arguably undermines this manifestation of the gaze: Muslim women who wear facial

veils such as the niqab challenge the reach of the gaze by actively denying viewers of the ability to openly see their bodies.

It is perhaps during this interaction that the privileged status of the human face, the sense of sight, and the act of seeing are subverted. In a context where the face is deeply fixed to understandings of human identity and being there is also an expectation that it be seen. Given that the face is a site of judgment upon which viewers expect to exercise their gaze, the esteemed values of the face and the act of seeing it are called into question when niqab-wearing women put boundaries on other people's eyes. In this final section I consider how niqab-wearing women disrupt norms about faces, sight, and looking and consider the positive impact of this disruption.

Conclusion: Disrupting Conceptions of the Face, Sight, and the Gaze

By covering their faces, niqab-wearing women challenge common practices that assume visible faces are required for all forms of human interaction. Additionally, they create an environment where they can see but not be seen. Or rather niqab-wearing women filter what is available to other people's eyes. Given that the act of looking at another person rests on the expectation that their body is open for view, the unequal power of the gaze is threatened when the subject of looking is not readily accessible to other people's line of sight. As Behiery (2013) notes, "hidden from physiological sight and subverting the (sometimes) objectifying effect of the other's gaze, the facially veiled Muslim woman inhabits and appropriates for herself the viewing position, thus wielding control over the gaze/image" (781). In other words, niqab-wearing women challenge how they are looked at and seen by intercepting the gaze. Thus, women who wear the niqab

put deeply held cultural beliefs about the primacy of the face, vision, and the power of sight into question.

However, I would argue that this kind of disruption is not necessarily a bad thing. Instead, this disruption can be used as an incentive to become more aware of the limits of privileging the visibility of the face and the act of seeing. In the chapters that follow I hope to situate my work as a starting point for more discussions on dominant expectations and perceptions about faces, vision, and seeing as well as the problems and limitations of these cultural fixations. In the following chapter, I will map out the theoretical foundations of my research as well as the methods I will employ to carry out this work.

Chapter 3: Setting the Foundations for my Research Journey

“The personal is theoretical. Theory itself is often assumed to be abstract: something is more theoretical the more abstract it is, the more it is abstracted from everyday life. To abstract is to drag away, detach, pull away, or divert. We might then have to drag theory back, to bring theory back to life.”

Sara Ahmed (2017, 10)
Living a Feminist Life

“And I thought, you know, I am a storyteller. I'm a qualitative researcher. I collect stories; that's what I do. And maybe stories are just data with a soul.”

Brené Brown (2010)
The Power of Vulnerability, TED Talk

“Honesty and openness is always the foundation of insightful dialogue.”

bell hooks (2000, 185)
All About Love: New Visions

Introduction

A core element of feminist research involves reflecting upon the components of the research process that have shaped, mediated, and contextualized the kind of work that a researcher does. As Sharlene Nagy Hesse-Biber and Patricia Lina Leavy (2007) explain, it is critical for feminist research to be understood as a comprehensive exercise that includes theoretical as well as practical elements (4). Conceiving of my own work as a holistic project, I use this chapter to outline the theoretical and methodological foundations of this dissertation. I begin this endeavour by examining the concept of reflexivity and reflecting upon the experiences in my life that have deeply informed the

way I approach my work and help explain why I have become so invested in pursuing research about the niqab and the presumed importance of the human face and sight. After addressing these personal connections, I consider how certain aspects of my identity afford me significant privileges. After identifying how these factors have influenced my “perspective on reality” (Hesse-Biber and Leavy 2007, 4) I outline how I apply interlocking analysis, Canadian critical race feminism, critical disability studies, and an area, which I describe as anthropological, philosophical, and cultural views of the body and senses to create the theoretical framework for this dissertation. In the final part of this chapter I clarify the difference between a research methodology and a research method. After making this distinction I discuss how I articulate discourse analysis as a methodology within my research. Then I outline how I will apply the techniques of genealogy and etymology as methods to gather my data. However, before taking these steps I begin by defining the concept of reflexivity

Reflexivity

Reflexivity describes a researcher’s efforts to acknowledge, and engage with the ways that she or he has impacted the research process (Dowling 2006; Hesse-Biber and Leavy 2007; Koch and Harrington 1998; Palaganas et al. 2017). This concept challenges the assumption that researchers can separate themselves from the subjects that they study so that they can remain objective (Hesse-Biber and Leavy 2007; Palaganas et al. 2017). By contrast reflexivity involves a commitment to self-awareness, highlighting the significant role that a researcher plays in her/his work (Koch and Harrington 1998; Palaganas et al. 2017). This level of consciousness includes an analysis of the ways that her/his “aspirations, characters, values philosophies, experiences, belief systems, political

commitments, and social identities have shaped the research” (Palaganas et al. 2017, 430). Ultimately, Palaganas, et al. (2017) stress that every researcher has a responsibility to practice reflexivity for both the purpose of learning and “enhancing theory building” (428). As a feminist scholar I am committed to practicing reflexivity within my work. I will now devote some space to address my relationship to my research.

My Reflexive Connection

For years I have thought about my relationship to the work that I do. However, it was not until recently that I decided I was ready to discuss it. In May 2017 I attended a group meeting with my supervisor and several other graduate students who were also working with her. We concluded by discussing an exercise called “in the beginning” which involves the practice of sharing the experiences in our lives that have led us to our research.¹⁸ Although I did not offer my thoughts about this approach during the meeting, the discussion gave me the support I needed to finally settle a conflict that I had been struggling with for quite some time: whether I should disclose the personal reasons why I have been drawn to the subject of the niqab so that I can openly acknowledge how certain events in my life have shaped and informed the kind of work that I do.

Before explaining what has brought me to this area of research, I feel that it is necessary to offer a warning that the following section includes content about sexual violence and trauma. I recognize that these subjects may be difficult and triggering for many readers, so I want to ensure that everyone who is engaging with my work has adequate notice that the material ahead may impact their well-being. If you are concerned that the upcoming section is not safe for you to read at this time, you can move ahead to

¹⁸ My supervisor took part in this exercise while visiting the Asia Research Institute at the National University of Singapore. She recounted her experience during our group meeting.

the subheading entitled “Building a Theoretical Framework.”¹⁹

In spring 2010 I read about a case that concerned a niqab-wearing woman from Toronto who would soon appear before a panel of three judges at the Ontario Court of Appeal. This woman known as N.S., sought the right to wear the niqab while testifying against two men charged with sexually assaulting her when she was a child (Tyler 2010). The allegations, which took place between September 1, 1982 and June 30, 1987, involved several forms of sexual abuse, including forced sexual intercourse (Abdul 2010). Although I did not know N.S., I felt invested in her appeal because when I was a child I was supposed to be a key witness in a sexual assault trial. I still have vivid memories of the grueling legal process and the barriers that prevented me from testifying.

The accused was someone close to me who I had known all my life. We were part of the same community.²⁰ He still lives just a few kilometers away from the home where I grew up. He and his family are still in contact with many people that I know. When I read that the two men who allegedly sexually abused N.S. throughout her childhood were her uncle and cousin²¹ and that they attend the same mosque as her family²² I could relate to the uncomfortable reality of sharing spaces and places with those who have caused so much hurt.

I remember visiting the courthouse with my parents and the other key witness to prepare for the preliminary inquiry. When we entered the courtroom a kind man²³ showed us where everyone would be sitting and outlined what would happen during the

¹⁹ I recognize that my committee is required to read this full dissertation. This warning is directed at readers from an outside context.

²⁰ Although I now live in a different city, I often return to visit friends and family who still live there.

²¹ *R v NS*, 2010 ONCA 670, at para 2.

²² *R v NS*, 2009 CanLII 21203 (ON SC), at para 12.

²³ I do not remember who this person was.

proceedings. He explained that there would be a screen around the witness box, so that the other witness and I would not have to see the accused when we were being cross-examined. We reviewed the statements that we had given to the police. We then took turns talking about the kinds of questions that we might be asked. Questions about when and where the alleged acts had occurred, what we were wearing at the time, why we did not tell another adult right away, and if we knew how serious our claims were. We were instructed to sit as still as we could and to try our hardest not to get upset. Several people cautioned us that the defence lawyer was likely going to speak to us in a way that could make us scared, embarrassed, sad, frustrated, or angry. We were advised that it was this lawyer's job to convince the judge that the other witness and I were lying, even if we were telling the truth. He might do this by using big words and talking about complicated things so that we would get confused or stressed and make mistakes during cross-examination. We needed to prepare for the reality that the defence would suggest that we had made up false stories to get attention. He would question everything we said had happened.

As the court date approached, the other witness and I learned that the defence had been granted access to all of our medical records and planned to share personal information about us during court proceedings. Our parents were concerned about the impact that this would have on our well-being. As a result, they made the decision to end the case before we were exposed to additional harm. They accepted a plea bargain. As a result, there was no preliminary inquiry and consequently no trial. The accused plead guilty to a lesser degree of sexual assault. He agreed to attend a few weeks of counseling and was prohibited from having contact with the other girl and I until we were 18. I

remember feeling both relieved and disappointed that I did not get to testify. I have never been satisfied with the outcome and remain doubtful that a brief period of counseling could change this man's behaviour in a meaningful way. I still wonder if he has harmed anyone else. However, I reluctantly accept that I will never know.

I followed N.S.'s legal battle for four years, hoping that she could receive justice. I fervently wished that she would get respect, validation, and closure. I wanted the Canadian criminal justice system to support N.S. more adequately than it had me. It frustrated me that her case became centered on what she could or could not wear instead of the serious allegations of sexual violence that she had faced. The trauma that I have experienced has deeply informed my attachment to this case. Although this dissertation explores a number of issues that stretch far beyond what is now known as *R. v. N.S.*, my decision to pursue this research stems from a very intimate place.

In addition to my familiarity with sexual violence and the limitations of the Canadian criminal justice system, my identity as a Jewish scholar has shaped the way I conduct research pertaining to Muslim women. In this sense, my work is informed by the realities of being a religious minority. My faith has been questioned within academic, feminist, and social justice communities, and throughout general public contexts. In many cases I am the first and only Jewish person that my acquaintances, friends, neighbours, colleagues, and clients know. I am often expected to represent and speak on behalf of all Jews. If my behaviour defies stereotypes or assumptions about Judaism, my authenticity as a Jew can be challenged. I understand what it feels like to be Othered and marginalized based on faith. To some extent, my experiences as a Jewish woman may overlap with those of Muslim women. However, I am not a Muslim woman, I do not wear the niqab,

and my life experiences can never be equated as such.

Indeed, my relationship to the work that I do must extend beyond the pain and struggles I have experienced. Establishing a conscious connection requires that I also recognize the many aspects of my life that afford me privileges. As Razack (1998) argues, when addressing issues of difference and diversity, people within the feminist movement tend to identify solely as members of marginalized groups rather than confronting their positions of privilege (131-132). As a result, feminists “fail to consider...how we are implicated in the subordination of other women” (Razack 1998, 132). Or put differently, we avoid taking responsibility for the roles we play in systems of domination and maintain that we are not involved in the subordination of others. While it is easier to remain “anchored on the margin” there are grave consequences of refusing to recognize complicity and active involvement in systems of domination (Razack 1998, 132). This avoidance reinforces “moves of superiority, notably pity and cultural othering” and renders us “unable to interrogate how multiple systems of oppression regulate our lives and unable to take effective collective action to change these systems” (Razack 1998, 132). Following Razack’s (1998) call to action, it is critical that I recognize the many interlocking forms of privilege that make up my identity and the benefits that they grant me. Although this is certainly not an exhaustive account, here are some of the ways that certain parts of my identity offer me significant advantages:

For me, one of the most complex facets of my life lies within my identity as an Ashkenazi Jew. My maternal ancestors came to Toronto during the nineteenth century seeking refuge from the persecution they experienced in Russia. My paternal grandparents were Holocaust survivors and came to Winnipeg as refugees. I grew up

learning about the violence and trauma that consumed their lives. I have experienced and still sometimes experience anti-Semitism. However, I do not wear clothing that visibly signifies that I am Jewish, so unless people are told otherwise they assume that I am Christian. This matters because in countries such as Canada and the United States Christianity is still treated as the default or norm (Friedrichs 2015; Johnson 2016; Mogilevsky 2015).²⁴ In addition to passing as Christian, I also benefit from being viewed as white. Although Ashkenazi Jews have been racialized (Brodin 1998; Jaret 2017) and this process continues to erase and stigmatize the existence of Black Jews (Boyarin 2017; Donnell 2016), my whiteness affords me a vast degree of privilege that informs the realities of my life. As Peggy McIntosh (1988) explains, “white privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools, and blank checks” (26). Whiteness is an aspect of my identity with an impact that cannot be overstated.

In a Canadian context, white privilege is deeply connected to imperialism and colonialism. As I discuss later on in Chapter 5, “Showing the Face to ‘Join the Canadian Family’”, as a settler-based society the meaning of being Canadian is entrenched in imperialism, colonialism, and the institution of white supremacy (Dua, Razack, and Warner 2005; Thobani 2007). To this end, the concept of Canadian citizenship was created by the dispossession and genocide of Indigenous peoples (Thobani 2007, 74). This process converted colonizers, settlers, and migrants into Canadians at the expense of

²⁴ This occurrence has been described as Christian privilege, which Maisha Johnson (2016) defines as “a set of advantages that benefit Christians, but not people who practice other religions or no religion at all.” This form of privilege enables Christians (whether they are observant or not) to “openly express their faith, while people affiliated with other religions or no religion are othered and marginalized for practicing theirs” (Johnson 2016). These advantages pervade many important institutions including the education system, the criminal justice system, politics, and healthcare (Friedrichs 2015; Johnson 2016).

Indigenous peoples who were made into foreigners in their own territories (Thobani 2007, 74). My status as a Canadian citizen and the privileges that this title gives me are borne out of a legacy of colonial genocide. In other words, my whiteness and ‘Canadianess’ is a product of empire and colonization.

I was born and raised on unceded and unsurrendered Mississauga territory. I now live, work, and take up space on unceded and unsurrendered Algonquin territory. I obtained Canadian citizenship at birth. Since I am white neither my citizenship nor my national identity has ever been called into question. No one has ever questioned my ability to speak English. I am viewed as belonging *here*; I have never been asked where I am *really* from or told to go back to where I came from. I have never experienced problems travelling across borders. I am not a specific target of scrutiny, state surveillance or intervention. I have never been stopped on the street by police for no apparent reason and asked to show identification and give personal information. I have not been apprehended or arrested because law enforcement officers mistakenly assume that I look like the suspect of a crime. I have never been followed around a store or accused of stealing an item because it looks too valuable for me to own. People who look like me are well represented in books, films, music, and television shows. People who look like me make and enforce laws.

In addition to the colour of my skin, my physical appearance fits within dominant beauty norms. I can easily find clothes that fit me. People do not pressure me to lose weight or assume that I am lazy or of poor character because of the size of my body. I am able-bodied. I socialize, learn, think, and process information in ways that most people find acceptable. I can move on my own and live my life with physical autonomy. Other

people do not pity or shame me because of how I look, act or move. I am not perceived as a burden to others. The world is designed in ways that are accessible to me.

I am heterosexual. I have never been harassed or assaulted for holding my spouse's hand or kissing him in public. No one has disowned me because they did not approve of my sexual orientation. No one has ever suggested that me being straight is just a phase. I have never been denied services or employment because I am heterosexual. I am cis-gendered. My sexuality and gender are never questioned or subject to scrutiny. My body is not policed when I inhabit public spaces such as washrooms and change rooms. I have never been subject to violence because I do not embody dominant gender norms.

Class is also a factor that offers me considerable privileges. I have access to clean air, potable water, and healthy food. I have good credit. Banks have approved to loan me money so that I can own a home. I have never had my heat or electricity cut because I could not afford to pay my utility bills. I can afford to pursue post-secondary education. I work in a safe environment. I have access to health care and health insurance. I am not accused of abusing or draining social services.

These are just some of the unchecked benefits I receive because of my identity. There are definitely many others of which I am not yet conscious. Though, I hope that by naming as many forms of privilege as I can, I am taking the first steps to accepting responsibility for my role in sustaining and benefitting from dominance and subordination. Now that I have situated myself within my research in terms of my personal connections and sites of privilege, I will outline the theoretical and methodological tools that I use to anchor this dissertation. I begin by summarizing the concepts and areas of thought that I bring together to create my theoretical framework.

Building a Theoretical Framework

This dissertation is situated within a bricolage of theoretical paradigms, which include interlocking analysis, Canadian critical race feminism, critical disability studies, and an area, which I describe as anthropological, philosophical, and cultural views of the body and senses. By combining these frameworks I seek to create a praxis that will help broaden existing discussions about the niqab and the visibility of the face. The purpose of this approach is to draw upon a variety of perspectives to better explain the complex operations of sexism, racism, imperialism, colonialism, and ableism.

Interlocking Analysis

A vital tenant of my work is the theoretical concept of interlocking analysis, which enables me to identify and understand how complex sites of identity and power maintain and sustain relationships of domination and subordination. My application of this theoretical tool is grounded in Razack (1998), who conceives of interlocking analysis as a way to understand how systems of oppression require and secure one another (14). Consequently, oppression should not be understood as an additive concept. It is not simply an equation in which separate forms of discrimination or difference are added together so that subjects with the highest sum are considered to be the most oppressed or in the lowest position (Champeau and Shaw 2003; Hillsburg 2013; Razack 1998). Rather, sites of identity such as gender, racialized status, religion, class, disability, and sexuality interlock to produce subjectivities while also operating together as inextricable forms of privilege and oppression. Or as Donna Champeau and Susan M. Shaw (2003) explain: “each oppression actually gives shape to the others” so it is this interlocking that “structures each person’s relationships of domination and subordination” (208). This

conception of identity will be particularly useful in Chapter 4, “Justice and the Truth of the Face”, when I examine the gendered, racialized, and ableist dimensions of sexual assault as well as the tactic of whacking the complainant.

To me, one of the greatest strengths of interlocking analysis is its ability to help me demonstrate that forms of oppression and privilege are not static, but are shifting and in flux. That is to say, identities constantly change and inform each other, so that no individual or group is always either only oppressed or an oppressor of others. In this sense, both oppression and privilege are relative and context specific. A person may experience oppression in some ways, but be privileged or empowered in others (Alpert 1998; Sedgwick 1990). For instance, as I discussed earlier on, as an Ashkenazi Jew I have experienced anti-Semitism, though I have also benefitted from my whiteness. In this sense I echo Amy Jaret’s (2017) sentiment that experiencing anti-Semitism and perhaps feeling uneasy with whiteness “doesn’t mean I don’t experience these privileges. It just indicates an unsurprising failure of white people to acknowledge the diversity in their midst.” This aspect of my identity is an example of the real complexities of domination and subordination. Thus, it is important to consider the fluidity of identity and it is my view that applying an interlocking analysis is an effective way to do this.

Canadian Critical Race Feminism

Given that my research is situated within a Canadian context I have made strong efforts to bring Canadian critical race feminism to the core of my theoretical framework. Sherene Razack, Malinda Smith, and Sunera Thobani (2010) describe Canadian critical race feminism as a field that actively identifies and challenges the Canadian state as a white settler society (Razack, Smith, and Thobani 2010, 1). As such, Canadian critical

race feminism recognizes and builds upon Indigenous women's critiques of the violence of Canadian settler colonialism (Razack, Smith, and Thobani 2010, 1). This form of colonialism is gendered and continues to perpetuate sexual violence, which is perhaps best illustrated "today, with hundreds of 'missing' Indigenous women, women who are presumed murdered" (Razack, Smith, and Thobani 2010, 2). Therefore, Canadian critical race feminism requires that we acknowledge that colonial violence began with Indigenous peoples; particularly women, and continues today.

It is also crucial to recognize that racialization cannot be separated from colonialism and imperialism. As I have previously mentioned, both oppression and privilege are relative and context specific. Given the complex colonial history of this nation, it is important to consider that certain groups of people such as niqab-wearing women can experience discrimination such as racism and Islamophobia while at the same time benefitting from colonialism because they are inhabiting unceded and unsurrendered territory. As Andrea Smith (2006) has emphasized, racialized people do not all experience racism and white supremacy in the same way (67). To highlight her argument, Smith (2006) proposes a framework called the "Three Pillars of White Supremacy" that recognizes racism and white supremacy as "separate and distinct, but still interrelated, logics" (Smith 2006, 67). A key part of this framework compares and contrasts the relationship between Indigenous peoples who are cast as "disappearing", and racialized people who are perceived as "inferior and as posing a constant threat to the well-being of empire" (Smith 2006, 68).²⁵ In the context of my research, restrictions imposed on the niqab can be connected to the legacy of violence committed against Indigenous peoples.

²⁵ Although this work comes from an American context, Smith's (2006) model is a useful way to understand the complex workings of racism and white supremacy.

Notably, I address distinct, yet interrelated forms of racism and white supremacy in Chapter 5, “Showing the Face to ‘Join the Canadian Family’”, when I explore the concepts of Canadian citizenship, integration, and assimilation.

Ultimately, Canadian critical race feminism rests on the uncomfortable reality that “it is so much easier to forget that this is stolen land, and that Indigenous men, women, and children continue to bear the ongoing violence of dispossession on their bodies” (Razack, Smith, and Thobani 2010, 2). This discomfort means that when theorizing gender, space, and place, we must always be aware of the intricate connection between oppression, resistance, and access to social capital. Or as Razack, Smith, and Thobani (2010) ask: “How can we theorize our ‘place,’ when the place itself is stolen?” (2). Therefore, Canadian critical race feminism will aid me in identifying, challenging, and working through the complicated and uneasy relationship between whiteness, racialization, and colonialism as well as the uneven and inconsistent ways that different people are both included and excluded as Canadian.

Critical Disability Studies

Another important part of my theoretical framework is the field of critical disability studies. Critical disability studies involves a complex and deep understanding of the lived experiences of disabled people²⁶, as well as the oppression they face when their bodies are judged and classified as ‘abnormal’ (Meekosha and Shuttleworth 2009). Borrowing from other fields within the social sciences, humanities, and cultural studies, which seek to ‘decentre subjectivity’, critical disability studies takes on “a more self-

²⁶ I use ‘disabled people’ in order to be consistent with the language used in Meekosha and Shuttleworth’s (2009) work. Though I recognize that many people prefer other terms such as people with disabilities, (dis)abled, dis/abled, and crip.

conscious focus on critical theorizing” (Meekosha and Shuttleworth 2009, 50). In this sense, critical disability studies challenges and distances itself from public and private institutions that have appropriated language from disability studies in order to address disability as a form of deficiency (Meekosha and Shuttleworth 2009, 50-51).

According to Lennard J. Davis (2013) “to understand the disabled body, one must return to the concept of the norm, the normal body” (1). This is because the idea of the normal body is dependent upon the disabled body to define and reinforce which kinds of bodies are constructed as standard and functional and which kinds of bodies are perceived as deviant and lacking. Focusing on “the construction of normalcy” Davis (2013) problematizes how norms are used to conceive and classify people with disabilities as problems (1). This is because disabled bodies disrupt the normal body. As such, disabled bodies are considered threatening to the construction of the normal body because they challenge conventions and standards (Goodley 2013; Marks 1999).

Given that this dissertation challenges the presumed importance of seeing niqab-wearing women’s faces, constructions of normal and abnormal bodies are especially significant to me in the context of blindness and sightedness. As Devon Healey (2017) argues, the idea of not seeing is presented as a problem because the concept of sight cannot conceive of blindness “as a *site* of value and production” (93). In other words, vision and visibility is privileged and normalized because dominant understandings of sight cannot see blindness as anything more than a lack of sight.

In Chapter 4, “Justice and the Truth of the Face” I draw upon work about sightedness and blindness in order to critique conflicting norms about sight and vision in the context of the justice system. I begin this chapter by identifying the goddess Justitia

as a gendered and ableist personification of justice that is dependent on the premise that female vision must be obscured in order to avoid biased and imbalanced judgment. I then problematize the figure of the niqab-wearing woman who is perceived as an obstruction to justice because she covers her face. In this context, a critical disability studies framework strengthens my ability to show that the covered face is often presented as a problem because opponents of the niqab cannot move beyond the concept of demeanour as a manifestation of visible facial cues.

As I address debates about the niqab and the presumed importance of uncovered faces, I am also particularly interested in the ways that perceptions of normal and abnormal bodies interlock with ability and racialized status. In order to make links between ableism and racism, I draw upon an application of critical disability studies known as DisCrit. David Connor, Beth Ferri, and Subini Annamma (2016) define this theoretical lens as “a dynamic framework through which to simultaneously engage with Disability Studies (DS) and Critical Race Theory (CRT), [that] can be traced through an academic lineage of boundary pushing” (1). DisCrit builds upon Chris Bell’s (2010) efforts to problematize the limited discussion of race within disability studies. Bell (2010) has critiqued disability studies for presenting itself as an inclusive field by arguing that it has failed to engage with issues of race and ethnicity in substantial ways.

Although DisCrit is rooted in the context of the American education system, I will extend this framework to the areas of law and citizenship in Canada. To this end, DisCrit will enable me to highlight how racialized status and ability impact “who is perceived as an ideal citizen, including who is allowed to represent or signify a nation” (Connor, Ferri, and Annamma 2016, 24). Taking an interlocking approach to the relationship between

racialization and ability will help me to show how the demand to see niqab-wearing women's faces comes out of an ableist account of the political subject. In Chapter 6, "Showing the Face During Public Services to 'Live Together in Harmony'" I emphasize that requiring niqab-wearing women to give and receive publicly funded services with an uncovered face is an example of a racialized and ableist understanding of social relations. However, as Martha Nussbaum (2006) argues, a more equitable conception of citizenship requires "a new way of thinking about who the citizen is and a new analysis of the purpose of social cooperation" (1-2). As such, I extend Nussbaum's (2006) critique of social contract theory in the context of disability to call for a more inclusive understanding of social engagement that encourages access to public services instead of public policy that creates new barriers.

Anthropological, Philosophical, and Cultural Views of the Body and Senses

Since a pivotal part of this dissertation involves an analysis and critique of dominant meanings ascribed to the human face, it is important that my theoretical framework recognizes the "presence of the body as a sign and symbol of social and political processes (Featherstone and Turner 1995, 1). That is to say, in order to challenge values associated with faces, I need to emphasize that the body is a symbolic representation of social and political discourses rather than just a physiological entity. As Nancy Scheper-Hughes and Margaret Lock (1987) show, questioning conceptions of the body that are privileged in Western societies requires an understanding "of the body as simultaneously a physical and symbolic artifact, as both naturally and culturally produced, and as securely anchored in a particular historical moment" (7). Thinking

about the face as a physical, metaphorical and context specific concept enables me to address the recent demand that niqab-wearing women uncover their faces.

To this end, I identify the idea of the uncovered face as a cultural construction of the body that sustains what Scheper-Hughes and Lock (1987) describe as “particular views of society and social relations” (19). In terms of my research, cultural constructions of the face have been used to uphold beliefs about the relationship between facial cues and assessments of truth and justice (Chapter 4), the uncovered face as a requirement to protect the virtue of the Canadian citizenship oath (Chapter 5), and the uncovered face as a necessary element to maintain social interaction while giving and receiving publicly funded services (Chapter 6). Thus, my research offers a reading of the face that recognizes the body as a value-laden symbol that is used to establish and maintain social norms, processes, and institutions.

In addition to the face, a critical part of my work involves the concept of seeing and vision, so it is important that I use theory to understand how the sense of sight has become such a valued way to process information. I do this by drawing upon theories of the senses from philosophical, cultural, and anthropological perspectives. According to David Howes and Constance Classen (2014), perception consists of both the personal meaning of a specific sensation and the social values that it represents (1). In Chapter 2, “Literature Review”, I began by tracing the significant cultural value of the sense of sight and examining how vision has come to be privileged above all other senses (Aristotle [1933] 2014a, [1926] 2014b; Behiery 2013; Plato [360] 2008; Synnott 1993). Building upon this work, in Chapter 4, “Justice and the Truth of the Face”, I examine the value of vision in the context of law as personified by the Roman goddess *Justitia*, also known as

Lady Justice. More specifically, I contrast the gendered implications of an image of justice that rests upon a woman whose eyes are covered with a blindfold with the presumption that a niqab-wearing woman obstructs justice by covering her face except her eyes. In Chapter 5, “Showing the Face to ‘Join the Canadian Family’”, when unpacking the niqab ban during the Canadian citizenship oath, I continue applying anthropological, philosophical, and cultural perspectives to show how sight, vision, and the presumed value of the human face are tied to discussions concerning racialized status, gender, and supposed Canadian cultural values.

As Nira Yuval-Davis (1997) notes, these areas tend to become closely tied to women’s bodies. She argues that: “gendered bodies and sexuality play pivotal roles as territories, markers and reproducers of the narratives of nations and other collectivities” (Yuval-Davis 1997, 39). As such, women’s bodies become representations of identity affirmation and conflict. In this part of my research, these points converge with niqab-wearing women’s faces and the concepts of Canadian citizenship as well as the rendering of publicly funded services in the province of Québec. Consequently, these theoretical perspectives will enable me to study important connections between constructions of sight, vision, the human face, and what these concepts mean when applied to racialized women’s bodies.

By using a variety of perspectives including interlocking analysis, Canadian critical race feminism, critical disability studies, and a combination of anthropological, philosophical, and cultural views of the body and senses this dissertation will reveal how systems of domination require and secure one another. These diverse theoretical frameworks will help me create new ways to think about subjects such as responses to the

niqab and the presumed importance of sight and the human face, while making connections between different subjectivities and sites of oppression such as sexism, racism, ableism, imperialism, and colonialism. Now that I have outlined the ways that I will use theory to reinforce my research, I will devote the remaining part of this chapter to the methodological fixtures of my work.

The Difference Between Methodology and Method

In *Feminism and Methodology* Sandra Harding (1987) stresses the importance of making a clear designation between the terms methodology and method (2). She problematizes the practice of using these ideas interchangeably within research discussions and notes that the word method is often applied as an umbrella term, which includes multiple aspects of the research process. To avoid repeating this trend within this dissertation, I will make a designation between the concepts of methodology and method. As such, “a *methodology* is a theory and analysis of how research does or should proceed” (Harding 1987, 3) whereas “a research *method* is a technique for (or way of proceeding in) gathering evidence (Harding 1987, 2). In other words, a methodology is the overarching theoretical tool used to articulate how research will be done and a method is the practical tool that is deployed to collect the research data.²⁷

In the context of my research, methodology involves a theoretical analysis of discourse in terms of knowledge, power, and language patterns (Foucault 1972, [1978] 1990). After establishing this theoretical backing, I explain how I will apply the methods of genealogy and etymology as techniques to gather evidence to support the content of

²⁷ I would like to thank Dr. Denise Spitzer for helping me understand the difference between these research tools.

my research. Now that I have made this distinction, I will begin by examining the study of discourse by drawing upon the work of Michel Foucault.

The Methodology of Discourse and its Connection to Knowledge and Power

In *The Archaeology of Knowledge* (1972) Foucault describes discourse as “sometimes...the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a certain number of statements” (80). This vision includes a conception of discourse as a general field, as well as a more specific entity that can be broken down into thematic subcategories and more concise linguistic data sets. In this sense discourse refers to the ways in which an issue or subject is described through acts such as “speech, texts, writing, and practice” (Carabine 2001, 268). These discursive acts come together to create images and representations of the issues or subjects (Carabine 2001, 268). Ultimately for Foucault (1972), discourses are productive; they construct certain kinds of realities.

Jean Carabine (2001) explains that “to understand discourse we have to see it as intermeshed with power/knowledge where knowledge both constitutes and is constituted through discourse as an effect of power” (275). This conception of knowledge supposes that ideas and ‘truths’ are socially and culturally constructed. These constructions are mediated through discourses as an effect of power. For instance, in *The History of Sexuality: An Introduction, Volume I*, Foucault ([1978] 1990) highlights the shift away from a sovereign power of deduction involving a ruler’s absolute right to seize control over life in order to suppress it, to a decentralized model of power that circulates throughout all levels of society (see 142-143; 144-145). This conception of power is

productive. Rather than acting to repress or silence sexuality, Foucault ([1978] 1990) sees power as drawing specific attention to sex through a proliferation of discourses in order to control the general population and discipline individual bodies (see 146-147). So when studying discourse from a Foucauldian perspective, it is key to consider that the circulation of power and knowledge is informed by social context and social relations (Carabine 2001, 275).

As I will show in Chapters 4, 5, and 6, discourses about vision, sight, and the human face are used to construct and justify particular responses to the niqab as well as images of gendered and racialized faces. “These discourses are also productive in that they have power outcomes or effects. They define and establish what is ‘truth’ at particular moments” (Carabine 2001, 268). Hence, discourse about sight and the need to see human faces operates to produce certain ‘truths’ about what uncovered faces supposedly tell us. Or put differently, discourses inform ideas about the kind of work that uncovered faces are expected to do. Though before I move on to this content, it is important that I hone in on the way that I will analyze discourse within this dissertation. In the following section I outline the perspectives that I will employ to articulate discourse analysis in my work.

Discourse Analysis as Articulated Within My Research

Simply put, discourse analysis is “the close study of language in use” (Taylor 2001, 5). I have chosen to apply this definition within my work because it gives space to interpret the complex ways that language is deployed. Jennifer Milliken (1999) contributes to general discussions about discourse analysis by treating it “as an emerging research programme engaging a community of scholars” (226). Conceiving of discourse

analysis as a “conceptual network”, Milliken (1999) sets out more specific criteria to show how discourse can be studied effectively. Although she addresses several different types of discourse studies, for the purpose of this dissertation I will be engaging with what Milliken (1999) calls the theoretical commitment of discourse productivity (229). This aspect of discursive study recognizes discourse’s ability to produce or reproduce the subjects that it defines (Milliken 1999, 229). This understanding emphasizes that in addition to providing “a language for speaking about (analysing, classifying) phenomena, discourses make intelligible some ways of being in, and acting towards, the world, and of operationalizing a particular ‘regime of truth’ while excluding other possible modes of identity and action” (Milliken 1999, 229). Another key element of this particular theorization of discourse involves the definition of what Milliken (1999) describes as “*knowledgeable practices*” (229). This mode of discursive productivity mediates the relationship between “*subjects authorized to speak and to act*” and the ideas, groups, and places that they define as objects (Milliken 1999, 229).

As a result of this form of discursive knowledge production “people may be destroyed as well as disciplined, and social space comes to be organized and controlled” (Milliken 1999, 229). This means that in addition to defining and enabling, the productive property of discourse also works “to silence and to exclude...by limiting and restricting” who can be an authority or expert to members of certain groups and maintaining certain perspectives, while “making other modes of categorizing and judging meaningless, impracticable, inadequate or otherwise disqualified” (Milliken 1999, 229). Or put differently, this tenant of discourse informs which groups of people can be decision makers and stakeholders, the perspectives, meanings, and practices that are established as

legitimate, and the ways that people who defy these delineations will be monitored, disciplined, and controlled.

In terms of my research, a theorization of discourse productivity shows how public officials such as judges, lawyers, politicians, and law enforcement officers are authorized to make legal and policy decisions about the presumed need to see people's faces based upon their understandings and expectations about sight, vision, and human faces. As I show later on in this dissertation, these positions transpire into case law, forms of public policy, and legislation, which can disproportionately impact certain people's lives.

Now that I have set the methodological foundations for this project I will conclude by laying out the methods I apply to gather my data. Building upon the theorization of discourse as productive, I apply the techniques of genealogy and etymology to collect my research findings. In the following sections I outline what these tools will offer my work and explain the strategies that I will use to deploy them. I begin by discussing the method of genealogy.

Genealogy as a Method Within My Research

As I have noted in Chapter 2, "Literature Review", both the human face and the sense of sight have achieved extremely high cultural value and this privileged status often escapes explanation, challenge or question. Since the presumed need to see the human face is arguably taken for granted, I look to genealogy to address this discursive gap. Heavily influenced by Friedrich Nietzsche's *On the Genealogy of Morality* ([1887] 1998), Foucault is accredited with developing the concept of genealogy. As Stone (2010) explains, Foucault conceived of genealogy as "a series of infinitely proliferating

branches.” Foucault (1984) has emphasized that many branches lead to dead-ends and there is often no logical progression (see 81). Given that my research on origins of the importance of the human face and the sense of sight have often led to sources that have eventually brought me nowhere or in directions lacking coherent links, it is helpful to use a method that challenges linear and logical progressions of knowledge.

As I discussed earlier on in this chapter, the Foucauldian concepts of discourse, power, and knowledge are closely related. Carabine (2001) describes this relationship as an “interconnected triad” (267). She explains that Foucault’s approach to examining this triad is the method of genealogy (Carabine 2001, 267). “Genealogy is concerned with describing the procedures, practices, apparatuses and institutions involved in the production of discourses and knowledges, and their power effects” (Carabine 2001, 267). In other words, genealogy involves an analysis of the sites and sources of discourse to better understand the ways that power and knowledge circulates. “This is not simply about exposing the processes through which discourses are produced, but also about establishing the ways that those discourses are practiced, operationalized and supported institutionally, professionally, socially, legally and economically” (Carabine 2001, 276). Given the complex relationship between and across discourse, power, and knowledge genealogy seeks “to map those strategies, relations and practices of power in which knowledges are embedded and connected” (Carabine 2001, 276). A key aim of genealogy then, is to trace “the development of knowledges and their power effects so as to reveal something about the nature of power/knowledge in modern society” (Carabine 2001, 277). In this context of my work, power/knowledge relates to seeing the human face.

As I will show later on in my research, certain expectations and ideals about vision and faces require opposing representations to be defined against. As such, applying a genealogical analysis will help me examine these dichotomies. In *Discipline and Punish: The Birth of the Prison*, Foucault ([1977] 1995) outlines how authorities have applied binaries for the purpose of classification within institutions such as asylums, prisons, reformatories, schools, and hospitals (see 199). Foucault ([1977] 1995) describes “binary division and branding” such as “mad/sane; dangerous/harmless; normal/abnormal” (199). He argues that “all of the mechanisms of power which, even today, are disposed around the abnormal individual...are composed of those two forms from which they distantly derive” (Foucault [1977] 1995, 199-200). That is to say, classifications of what is considered to be normal require the abnormal, and mechanisms of power rely on these divisions in order to function. Thus, dominant ideals are dependent on being measured against those that are designated as deviant or abnormal. Notably, in Chapter 5, I show how the niqab-wearing woman is required to establish the presumed limits of assimilation and what it means to be Canadian.

Finally, as I have suggested at the beginning of this section, a key facet of genealogy is that it offers a way to challenge concepts and ideas that are usually assumed to be beyond the scope of analysis. Highlighting this strength, Paula Saukko (2003) defines genealogy as a method that is used by scholars “to become aware of the historical and political underpinnings of their own theories and methods...[by] investiga[ing] how certain taken-for-granted, such as scientific, truths are historical constructs that have their roots in specific social and political agendas” (115). For the purpose of my research, I use the method of genealogy to expose the primacy of sight and the human face. I seek to

trace the social and political agendas behind the demand that niqab-wearing women uncover their faces as well as the discourses that prioritize vision and the uncovered face. “By exposing that certain ways of thinking are not timeless truths but historical constructs, genealogy opens up space to think about them differently” (Saukko 2003, 116). By repositioning the sense of sight and the human face as social and cultural constructions, the method of genealogy will help create space to think about the limitations of relying so heavily on vision and faces. Indeed, applying genealogy in this way involves a close study of history for the purpose of challenging long held truths (Saukko 2003, 117)

Tracing the proliferation of these discourses will also help me to better situate current responses to the niqab and assumptions about the face within both pre-existing and contemporary social and cultural constructions. Saukko (2003) describes this approach to “doing genealogy” as “investigat[ing] the historicity of phenomena that are forming in the ‘present’” (134). So whether it involves the past or the present, doing a genealogical analysis still challenges dominant and assumed ways of thinking. As Milliken (1999) explains, “genealogical studies...emphasize that dominating discourses, including contemporary ones, involve relations of power in which unity with the past is artificially conserved and order is created from conditions of disorder” (243). Therefore, genealogy challenges dominant discourses across time and space.

Etymology as a Method Within My Research

In order to reinforce the strength of my genealogical analysis, I pair it with the practice of etymology. Like the study of discourse, etymology has been used in different ways (Blank 2011). However, for the purpose of this dissertation I apply this technique as

defined by Paula Blank (2011). She describes etymology as “not only...the identification of word origins...but also...the identification of earlier usages of current words generally” (110). My research will benefit from this conception of etymology because identifying shifting meanings of the key terms that I use enables me to challenge the idea that they have always been understood in the same way. For instance, in Chapter 2, I used this practice to show that veiling predates Islam even though it is predominantly associated with Islam today. This application of etymology will enable me to show that the meaning behind words is context specific. As Blank (2011) explains, this form of etymology “implicitly rethinks place along with time—where words come from as well as when” (111). Ultimately, tracing the way that terms have shifted and evolved will allow me to demonstrate that sometimes common assumptions and expectations about words are very different than their past meanings.

Limitations

Since I have pursued my research concurrently with the adoption of legislation and during the course of a number of legal battles, my analysis has often occurred in ‘real time.’ Or put differently, I have had to address current political and legal events at the same time that they were unfolding. Therefore, it is important to recognize how close I am to this project. As Carabine (2001) cautions, when “doing current policy discourse analysis” researchers can experience “the difficulty of ‘stepping outside’ the data” (307). In response to this challenge, I have made great efforts to take time away from my work so that I reduce the risk of getting too attached. Additionally, Carabine (2001) notes that: “it is sometimes difficult to identify discourses within which we ourselves are immersed, or that we agree with, or which we accept as ‘taken for granted’ or common sense” (307).

To this end, I must recognize that my support for niqab-wearing women to have access to all institutions, public services, resources, and citizenship rights without being told what they can and cannot wear will be open to critique. Indeed, many people do not share this position and I need to take this into account. However, it is my hope that the arguments I use within this dissertation will have the potential to push opponents of the niqab to rethink the assumptions they make about the human face and the sense of sight.

I must also acknowledge that there are no standardized rules that outline, “step by step, what a genealogical analysis is” (Carabine 2001, 268). Given that Foucault did not offer specific guidelines on exactly how to do genealogy, this method varies between researchers (Carabine 2001, 268) For this reason it is important to be clear about what genealogy does do. Foucault’s genealogy offers researchers “a lens through which to undertake discourse analysis and with which we can read discourse” (Carabine 2001, 268). This lens reads discourse as imbued with power and knowledge, while also “playing a role in producing” networks of power and knowledge (Carabine 2001, 268). Thus, what is common to the usage of genealogy is the application of Foucault’s concepts of discourse, power, and knowledge, and by extension, the lens through which data is read (Carabine 2001, 268).

Lastly, although genealogy “may pave the way for new ways of thinking about ourselves and the world” it is important to note that “coming up with these alternative ideas is not the task of genealogy, which remains a tool to continue challenging the basic premises of ideas both old and new” (Saukko 2003, 133). This means that when proposing ‘alternative ideas’ about vision, sight, and the face I need to recognize that these conceptions are not beyond future genealogical analysis and critique. Keeping this

in mind helps to clarify what my chosen methods can and cannot do. Despite these limitations, I am confident that I can maintain a strong methods-based foundation in this dissertation.

Conclusion

The goal of this chapter was to reflect upon my connection to the work that I do and to establish an outline of the theoretical and practical elements that I will be using to reinforce the focus of this dissertation. By recognizing that research begins far before data collection and analysis, I have shown that it is beneficial to conceive of research as a holistic process. In this sense, the tools I use to prepare for this journey are just as important as the steps that I take to complete it. Now that I have set out these foundations I will move on to the core content of this project.

Chapter 4: Justice and the Truth of the Face

“The majority assumes the importance to trial fairness in seeing a face, although this has never been tested. The only reason given is that seeing the face is historic practice; in other words, this is how we have always done it.”

Natasha Bakht (2015, 423)

In Your Face: Piercing the Veil of Ignorance About Niqab-Wearing Women

“Proponents of the reliance on demeanour evidence argue that it is necessary to the truth seeking function of a trial. However, in the sexual assault context this argument cannot be appreciated without also considering that ordering a woman to remove something which she considers a vital piece of clothing, could lead to unreliable testimony or perhaps worse – no testimony altogether.”

Amna M. Qureshi (2014, 31-32)

Relying on Demeanour Evidence to Assess Credibility during Trial: A Critical Examination

“When the terrain is sexual violence, racism and sexism interlock in particularly nasty ways. These two systems operate through each other so that sexual violence, as well as women’s narratives of resistance to sexual violence, cannot be understood outside of colonialism and today’s ongoing racism and genocide.”

Sherene Razack (1998, 59)

Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms

Introduction

As I have already emphasized, this chapter is heavily focused on content about sexual assault, including descriptions of sexual violence, discussions about stereotypes and myths used to legitimize sexual assault, and tactics used by defence lawyers to degrade, humiliate, and traumatize sexual assault complainants. Once again I wish to advise readers that these subjects may be difficult and triggering for many people. I offer

this warning so that everyone engaging with my research is aware of the material ahead. I want to offer readers the chance to decide how they will proceed before exposing themselves to subject matter that may have a negative impact on their well-being. Once again, if you are concerned that the upcoming chapter is not safe for you to read at this time, you can skip ahead to Chapter 5, “Showing the Face to ‘Join the Canadian Family’”.

Drawing upon the case of *R. v. N.S.* this chapter will explore the complex and paradoxical relationship between the image of goddess Justitia who has come to represent justice, and the conception of the niqab-wearing woman who is frequently portrayed as an obstruction to justice. By contrasting these female figures I examine the ways in which they reinforce conflicting and inconsistent ideals about vision, the face, truth, and knowledge. I then highlight the troubling limits of a legal system that relies so heavily on sight and faces when assessing credibility. I begin by (re)positioning the figure of Justitia or Lady Justice, who invokes key ideals about the way law is presumed to function.

Goddess Justitia: Challenging Justice, Gender, Vision, and Sightedness

According to Ngaire Naffine (1990) the realm of law positions itself as “an impartial, neutral, and objective system for resolving social conflict” (24). This vision of law is personified by the Roman goddess Justitia, also known as Lady Justice. Although she wields a sword in one hand and a set of scales in the other, Justitia is most commonly associated with the blindfold that covers her eyes (Jay 1999, 19). It is this attribute of Lady Justice that most iconically symbolizes “a positive emblem of impartiality and equality before the law” (Jay 1999, 20). In this context, the act of obscuring vision is positive and necessary to avoid biased and imbalanced judgment.

However, this conception of sight is by no means a neutral one. It is a highly gendered concept. Covering Lady Justice's eyes, has arguably more to do with obscuring or inhibiting the female gaze than a general form of impartiality. This is because qualities have been assigned to the way men and women use their senses and interpret the law. Martin Jay (1999) explains that "male judgment tends to be abstractly universalist, decontextualized, and formalistic [while] its female counterpart, they tell us, is more frequently sensitive to particular detail, narrative uniqueness, and specific context. Instead of acknowledging an only and imagined 'generalized other,' it focuses on the actual 'concrete other' before it" (28). So in the context of law, women are thought to exercise a form of vision that is too precise and discriminatory to result in fair and just judgment.

Based on these presumptions it would seem that Justitia appears with a blindfold over her eyes to hinder "the specifically female gaze, or at least...those qualities that have been associated with it in our culture" (Jay 1999, 28-29). In this sense the female gaze can only fit within the confines of the law provided that it is covered. This maintains a phallogentric form of ocularcentrism that associates men's sight with reason and good judgment and women's sight with irrationality and impaired judgment unless their ability to see is controlled and taken away. In other words, the concept of justice is embedded within a system that ascribes unequal value to the ways in which men and women are presumed to process information and make decisions.

The key site of these qualities is the eyes. This is because eyes are considered "the most discriminating of the sense organs [due to their] ability to register minute differences" (Jay 1999, 26). As I have previously mentioned, female vision is

essentialized by eyes, which apparently look and see extremely closely. These eyes are considered best equipped at identifying and contextualizing the most intricate and hidden details (Jay 1999, 28). Although these may seem like valid and important ways of seeing, the characteristics associated with female vision are devalued and even considered threatening to a notion of common law that relies on universal consistency. To uphold this perspective Justitia must be deprived of her vision “to maintain the fiction that each judgment brought before her is a ‘case’ of something more general, equivalent to other like cases and subsumable under a general principle” (Jay 1999, 26). Thus, Lady Justice can only personify dominant qualities of justice so long as she cannot see. It would seem that the official and dominant narrative of law rests upon a troubling image of a woman whose vision is considered too powerful unless it is filtered and restricted to emulate the male gaze.

In addition to being gendered, the image of goddess Justitia is also ableist. Lady Justice serves as a feminine application of a philosophical prop that Georgina Kleege (2010) calls “the Hypothetical Blind man.” This figure emphasizes the value of sight and invokes awe and pity so that sighted people feel gratitude for having vision (Kleege 2010, 523). To this end, the idea that wearing a blindfold enables Lady Justice to be rational and impartial is tied to the assumption that blind people are inherently separated and isolated beings. Kleege (2010) describes this belief as the misconception that “because the blind are immune to images they must also be immune to the significance of the events, and therefore must be somehow detached from or indifferent” to the kinds of feelings that sighted people possess (525). In the context of law, associating justice with

blindness reinforces the idea that blind people lack empathy, and are removed from emotional human interaction.

Using 9/11 as an example, Kleege (2010) explains that visual cues are not required to engage with and respond to an event. Recalling accounts of the attacks on the World Trade Centre, Kleege (2010) highlights that many sighted people described their experiences in non-visual terms,

Many people who were in the vicinity of Ground Zero during and soon after the disaster found it hard to put what they saw into words, in part because visibility in the area was obscured by smoke and ash, and in part because what they were seeing did not correspond to any visual experience for which they had language. People described instead the sound of falling bodies hitting the ground, the smell of the burning jet fuel, and the particular texture of the ankle deep dust that filled the streets (525).

These accounts show that the sense of sight is not necessarily the most effective way for people to relate to an experience. Whether a person can see or not, vision is not an all-encompassing way to process information.

Representing justice as a figure with shielded eyes exaggerates and misconstrues the value that sight plays in perception. Having covered eyes does not render Justitia completely removed from her senses. It is both inaccurate and troubling to equate blindness with neutrality and impartiality. Sightedness is merely one form of judgment. Thus, a vision of law that depends on a figure's (in)ability to see should not be the measure of what constitutes adequate justice.

A Disconcerting Vision of Sexual Assault in Canada

Arguably the one area of law that is most rife with troubling assumptions about what constitutes appropriate and rational judgment is that of sexual assault. Given the intimate and traumatic nature of sexual violence it is critical that sexual assault be

addressed in a sensitive way. Yet, the serious and supportive response that sexual assault deserves does not fit well within the limits of “the official version of law” (Naffine 1990, 24) because there is inherently nothing impartial, neutral, or objective about it. Sexual assault is the most underreported crime (Johnson 2012, 613). Additionally, it is gendered (Johnson 2012, 613), racialized (Anderson 2001; Bakht 2012b; Razack 1998) and ableist (Martin 2015; Young et al. 1997). What is arguably most uniquely troubling about sexual assault is that “it is one offence where, more often than not, the complainant is more vulnerable than the accused on account of gender, race or Aboriginality, or physical and/or mental disability” (Tanovich 2015, 502). In other words, identity can have a significant impact on the ways a complainant experiences the Canadian criminal justice system.

Despite considerable reforms to the laws governing sexual violence in Canada, largely in response to important lobbying and activist work done by feminist groups,²⁸ responses to and interpretations of sexual assault are still heavily “influenced by long-standing, deeply entrenched biases (Johnson 2012, 624). These biases include beliefs that women are responsible for sexual violence because they have consumed alcohol or drugs, worn short or tight clothing, gone out at night alone, travelled alone, consented to sexual activity with their assailant in the past, are in a relationship with/married to their assailant, are obligated to meet their partner’s/spouse’s supposed physical needs, receive food or material goods and therefore owed sex in return, changed their mind about

²⁸ For a detailed outline of these changes see:

Comack, Elizabeth. 1999. *Locating Law: Race/Class/Gender Connections*. Halifax, N.S.: Fernwood Publishing.

Ehrlich, Susan. 2001. *Representing Rape: Language and Sexual Consent*. London: Routledge.

consent during sexual activity, did not physically resist, did not say ‘no’, have had many previous sexual partners, have had sex outside the institution of marriage, continue to interact with their assailant after the violence occurred, engage in stigmatized sexual practices such as BDSM (Bondage & Discipline / Domination & Submission / Sadism & Masochism), engage in sex work, are not white.²⁹ As Holly Johnson (2012) aptly explains, women who report sexual assault experience a “level of skepticism and outright bias” like no other crime (626). Rigid stereotypes of who can and cannot be an ideal rape victim continue to inform whether complainants will be seen as credible or not, even though the ideal rape victim does not truly exist.

No matter how unfounded these stereotypes and myths about sexual assault may be, they continue to impact decisions throughout every level of the criminal justice system. Unfortunately in some cases, these attitudes make the complainant the focus of a trial instead of the defendant(s). A recent example is the case of *R. v. N.S.* that arguably became more about whether a niqab-wearing woman was too covered to testify against her alleged assailants than the serious forms of sexual violence that they allegedly committed against her when she was a child. In the following section, I examine the assumption that N.S. should uncover her face to ensure that the accused maintains their right to a fair trial. After offering a summary of the case, I will outline and examine legal concepts such as full answer and defence and demeanour as they pertain to sight, vision,

²⁹ This is by no means an exhaustive list. For more details about rape myths see:

Brownmiller, Susan. 1975. *Against Our Will: Men, Women, and Rape*. New York: Simon and Schuster.

Burt, Martha R. 1998. “Rape Myths.” In *Confronting Sexual Assault*, edited by Mary E. Odem and Jody Clay-Warner, 199-144. Wilmington, DE.: Scholarly Resources.

Harding, Kate. 2015. *Asking for It: The Alarming Rise of Rape Culture –and What We Can Do About It*. Boston: Da Capo Press.

and the face. My aim is to challenge the notion that an uncovered and visible face is required to uphold justice, whereas a face covered by the niqab is an obstruction to justice.

Summary of *R. v. N.S.*

N.S. is a Muslim woman from Toronto who has been wearing the niqab since 2003 (Wong 2011). In 1992, she told a teacher that she had been repeatedly sexually assaulted by her Uncle M—l S. and cousin M—d S.³⁰ The alleged assaults occurred between 1982 and 1987³¹ (Abdul 2010), and included forced sexual intercourse.³² N.S.’s father did not want to press charges when she was a child, so she brought her case forward in 2007 as an adult.³³ The case however, was halted at the preliminary inquiry stage for six years because N.S. sought the right to wear the niqab while testifying. N.S. stated that she wished to testify wearing the niqab because it is part of her religious belief as a Muslim to cover in front of men who are not close family.³⁴ N.S. was asked to remove the niqab because the defence maintained that it would compromise their ability to assess her demeanour — and hence the validity of her testimony.³⁵

During the preliminary inquiry Justice Norris Weisman ordered N.S. to remove her niqab after determining her religious belief was “not that strong.”³⁶ Justice Weisman based this decision on N.S.’s testimony that she would remove her niqab for border security checks, and that she had previously removed the niqab for her driver’s license

³⁰ *R v NS*, 2010 ONCA 670, at para 2.

³¹ *R v NS*, 2009 CanLII 21203 (ON SC), at paras 3, 5.; *R v NS*, 2010 ONCA 670, at para 2.

³² *R v NS*, 2009 CanLII 21203 (ON SC), at paras 3, 5.

³³ *R v NS*, 2009 CanLII 21203 (ON SC), at para 80.; *R v NS*, 2010 ONCA 670, at para 2.

³⁴ *R v NS*, 2009 CanLII 21203 (ON SC), at para 29.; *R v NS*, 2010 ONCA 670, at para 5

³⁵ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Respondent Crown).

³⁶ *R v NS*, 2009 CanLII 21203 (ON SC), at para 34.

photo, although this photo was taken by a female staff member.³⁷ The case was then heard by the Superior Court of Justice. The Superior Court quashed the order that N.S. had to remove the niqab while testifying, holding that if N.S. claimed it was her sincere religious belief to wear the niqab, she would be permitted to wear it while testifying.³⁸ However, the Superior Court ruled that N.S.'s evidence could be excluded if the preliminary inquiry judge believed that the niqab hindered proper cross-examination.³⁹ In other words, if N.S. wore the niqab, it would be up to Justice Weisman's discretion as to whether her testimony could be included or not.

This decision was appealed by N.S. and cross-appealed by M—d S., so the case was then brought to the Ontario Court of Appeal. After attempting to assess the competing claims, the Court of Appeal found that if N.S.'s religious beliefs could not be balanced with the rights of the accused to a fair trial, she could be ordered to remove her niqab.⁴⁰ When explaining the decision the Court of Appeal laid out several factors that are to be considered when determining whether a Muslim woman should be required to remove her niqab, including whether witness credibility is contested and whether the garment impedes on assessing demeanour. N.S. appealed this decision to the Supreme Court of Canada. This case was heard on December 8, 2011, by a panel of seven judges⁴¹ (CBC News 2011; Tyler 2011).

³⁷ *R v NS*, 2009 CanLII 21203 (ON SC), at para 33.

³⁸ *R v NS*, 2009 CanLII 21203 (ON SC).

³⁹ *R v NS*, 2009 CanLII 21203 (ON SC).

⁴⁰ *R v NS*, 2010 ONCA 670.

⁴¹ Although there are nine Justices of the Supreme Court of Canada, Justice Michael Moldaver recused himself from the case because he was one of the three judges on the panel who heard the case at the Ontario Court of Appeal. Justice Andromache Karakatsanis was also removed from the case so that there would be an odd number of judges sitting on the panel. Both of these judges represented the province of Ontario. Consequently, Justice Rosalie Abella was the only judge from Ontario to sit on the case. According to N.S.'s counsel David Butt, it was atypical for the Supreme Court to remove a second judge from Ontario.

On December 20, 2012 the decision was announced. The Supreme Court formulated a test to determine whether a woman can testify while wearing a niqab, with the intention of balancing the rights of the accused to a fair trial and a niqab-wearing woman's right to religious freedom.⁴² The Court examined the *Canadian Charter of Rights and Freedoms*, focusing on freedom of religion as guaranteed by section 2(a) and the right of the accused to a fair trial and to make full answer and defence, as outlined in sections 7 and 11(d).⁴³ In a split decision described as 4-2-1⁴⁴, the Supreme Court ruled that if the aforementioned *Charter* rights cannot be exercised in harmony, then the right of the accused to a fair trial can surpass a niqab-wearing woman's right to religious freedom.⁴⁵ Writing for the majority of the Court, Chief Justice McLachlin summarized the decision by outlining certain situations where a witness will be required to remove her niqab:

a witness who for sincere religious reasons wishes to wear the niqab while testifying in a criminal proceeding will be required to remove it if: (a) requiring the witness to remove the niqab is necessary to prevent a serious risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and (b) the salutary effects of requiring her to remove the niqab, including the effects on trial fairness, outweigh the deleterious effects of doing so, including the effects on freedom of religion.⁴⁶

In other words, Justice McLachlin ruled that N.S. would be required to testify without wearing the niqab if there was no alternative way to ensure that the rights of the accused

This is because it is usually ideal to have as many justices representing the region from which the case originated as possible.

⁴² *R v NS*, 2012 SCC 72, [2012] 3 SCR 726.

⁴³ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726.

⁴⁴ Four Supreme Court judges ruled that N.S. may be required to remove the niqab if the proceeding judge deems it is necessary; two judges ruled that she should not wear the niqab at all during testimony; one judge dissented and ruled that the niqab should be permitted except in circumstances where the identity of the witness would be at stake (MacKinnon 2012).

⁴⁵ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726.

⁴⁶ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, at para 3.

were protected and if the positive impact of requiring the niqab to be removed outweighed the negative impact of this demand.

On April 24, 2013, preliminary inquiry judge Justice Weisman announced his decision. After applying the test laid out by the Supreme Court, he ruled that N.S. would be required to remove her niqab to testify (CBC News 2013a). The preliminary inquiry was scheduled to begin the following week, however, N.S. appealed the ruling (CBC News 2013a; Qureshi 2013). Justice Weisman, who was about to turn 75 at the time of the ruling, retired on May 1, 2013 (CBC News 2013a). The case was then taken over by Justice Charles Vaillancourt (Hasham, 2014). Upon presiding over the case, Justice Vaillancourt made it clear that he would uphold Justice Weisman's position regarding the niqab.⁴⁷ Eventually, Justice Vaillancourt and N.S. reached a compromise. According to Toronto Star reporter Alyshah Hasham, in November 2013 Justice Vaillancourt ruled on N.S.'s request not to see or make eye contact with "anyone save and except the judge, Crown counsel and court staff" (Hasham, 2014a). However, Vaillancourt amended N.S.'s request and added the accused to the list, citing their right to face their accuser (Hasham, 2014a). N.S. agreed to comply with the court order to remove her niqab while testifying provided that the only other people present in the courtroom were Justice Vaillancourt, court staff, her counsel David Butt, the accused, and the counsel of the accused.⁴⁸ No members of the public were permitted in the room.⁴⁹ Anyone attending the case out of personal interest/for the purpose of media coverage did so from a separate video overflow

⁴⁷ Although transcripts from this part of the case are unavailable, I received these details during personal correspondence with N.S.'s counsel David Butt.

⁴⁸ Ibid.

⁴⁹ Ibid.

room where they could watch and listen to the proceedings via camera.⁵⁰ However, the camera angle was adjusted so that N.S.'s face was not visible to the people observing the case from the video overflow room.⁵¹ Hasham (2014a) reported that the camera feed for the public “would only show the back of [N.S.'s] head.” The preliminary inquiry resumed on January 14, 2014 (Hasham 2014a).

Once the preliminary inquiry was completed, Justice Vaillancourt concluded that there was enough evidence for the case to proceed and the accused were ordered to stand trial.⁵² Despite the fact that the case was committed to trial, it ended abruptly before reaching the Ontario Superior Court when the Crown suddenly announced that it would be dropping the charges. On July 14, 2014, the Crown attorney Michael Cantlon withdrew the sexual assault charges against M—l S. and M—d S., “stating that ‘there [was] no reasonable prospect of conviction’” (as cited in Hasham 2014b). Both Cantlon and an unnamed spokesperson for the Ontario Ministry of the Attorney General alluded to the “receipt of additional material” which led the Crown to the decision that the charges should be withdrawn (Clarke 2014; Hasham 2014b). However, no further details were provided regarding the content of the “additional material”.⁵³ Effectively, the case came to an end.

Perhaps what is most frustrating about this unexpected result is that it remains unknown as to whether the Canadian criminal justice system could be willing to let go of or at least open to adapting strongly held ideas about the visibility of the face and its supposed connections to truth and justice in the courtroom. In the following section I

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Although he could not offer more details about this decision during our personal correspondence, David Butt stated that he believes that the Crown acted in good faith.

examine the legal concept of demeanour and the right to make full answer and defence and outline the limits they pose to understandings of vision, truth, and justice.

Defining Demeanour

The concept of demeanour is often tied to perceptions of credibility in the courtroom. In a legal context, this applies to the way a witness is perceived while giving testimony and by extension, how this assessment is used by finders of fact, such as judges, lawyers, and jury members, as a way to determine whether or not the witness is trustworthy and reliable. According to Safiyah Rochelle (2013), the term demeanour can “refer both to how a person behaves in relation to others, as well as a person’s physical outward, appearance. These elements may be taken as a whole, or independently” (111). Demeanour, by extension, is often interpreted and applied as a form of evidence to support whether a witness is being truthful or not. More specifically, Anna Qureshi (2014) describes demeanour evidence as a series of cues, which can offer information about a person’s state of mind. These cues “are non-verbal behaviours which include audible cues like speech hesitations and pitch as well as visual cues like gaze and blinking, smiling, scowling, crying, blushing, scratching, swallowing prior to responding, nervous twitches, leg and foot movements” (Qureshi 2014, 10). In this sense, demeanour evidence can include any form of movement, pattern, motion, action, or sound that an observer perceives as indicative of a person’s truth, lie, innocence, or guilt.

However, how and even whether demeanour can be used as an effective and reliable method of evaluating evidence is becoming increasingly questioned in academic and legal literature (Bakht 2012b, Kaufmann et al. 2003; Qureshi 2014). Moreover, although a person’s behaviour around other people as well as her or his physical

presentation in terms of body language, movement, gestures, and expressions can include a full range of body parts, functions, and forms of perception, debates about the niqab tend to focus on the importance of assessing demeanour of the uncovered face. Thus, in the section that follows, I show that in addition to being a contested concept in terms of reliability, in this case, demeanour also seems to be applied in unclear, incomplete, and selective ways with a heavy reliance on ableist ideas about visible facial cues. That is to say, I seek to challenge the position that the niqab inhibits triers of fact from assessing a witness's credibility because it covers the lower half of the face. (It is important to recognize that the niqab does not cover the eyes.) I also argue that relying on assumptions about facial cues in the context of a sexual assault trial sets a harmful precedent within an area of law, which is already plagued by sexism, ableism, racism, and misogyny.

Doubts About Detecting Deception

In a research reported entitled “Are Facial Features and Movements Helpful in Detecting Lying?” Jonathan Freedman (2010) reviews a number of studies about audio and visual cues and lie detection.⁵⁴ After assessing this literature, Freedman (2010) concludes that even when they see and hear how and what someone is saying, people are still not very good at detecting deception (1). Despite variables such as the range in each person's skill at lying, an observer's professional experience and training, personal bias about whether people are more disposed to telling the truth or lying, the subject matter, and the seriousness of the outcome at stake in the situation, Freedman argues that people

⁵⁴ Jonathan Freedman prepared this report for David Butt, the lawyer representing N.S. in court. Butt sought to have Freedman testify as an expert witness “on the social science state of knowledge around detecting honesty through facial demeanour” (*NS v. HMQ*, 2013 ONSC 7019, at para 2). However, preliminary inquiry judge Justice Norris Weisman denied this request. Butt appealed the decision to the Ontario Superior Court of Justice, but his application was dismissed and Weisman's decision was upheld. David Butt has graciously shared both professor Freedman's report and the Ontario Superior Court ruling with me. He has also given me his permission to reference both of these documents.

are “not much better than chance at detecting lying” (1). In other words, after taking these different factors into consideration, numbers show an average of a 50-54% accuracy rate at best when people are tasked with determining whether another person is telling the truth or not (Freedman 2010, 1). Even though these results can vary to some degree, Freedman (2010) maintains that all of the studies he has reviewed conclude that people are quite bad at detecting lying (2). Moreover, Freedman (2010) notes that he has not found any published scientific research showing that people are good at telling when another person is lying (2). Therefore, it would seem that even when people have all possible cues, they are still often unable to confirm whether another person is being dishonest based on demeanour (Freedman 2010, 20).

In addition to human judgment alone, there is also doubt about the reliability of the devices used to detect lying. As Melissa Littlefield (2011) explains, “the history of mechanical lie detection is fraught with questions of legitimacy” as polygraph machines have been critiqued for being a form of pseudoscience (37). Notably, Leonarde Keeler — one of the inventors of the polygraph — stated in court that he would not want to convict someone accused of committing a crime based solely on the results of a lie detector test (Vollmer in Littlefield 2011, 37). Today, polygraph machines are banned in all federal and most state courts in the United States (Eschner 2017). In *R v Béland*, the Supreme Court of Canada ruled that polygraph results are not permissible forms of evidence in Canadian courts.⁵⁵ However, despite the fact that they have never been proven to be effective, polygraphs are still used in other areas of the criminal justice system. For

⁵⁵ *R v Béland*, [1987] 2 SCR 398

instance, the Royal Canadian Mounted Police (RCMP) continues to use polygraphs for criminal investigations (Ling 2016). Polygraphs are also still used by Canadian provincial police forces (Dwyer 2002).

Problematizing Demeanour Evidence Based on Facial Cues

When it comes to demeanour evidence that is specifically based on facial cues, findings are even more disconcerting. This is because untrained people are unable to rely on facial cues as an accurate means of detecting deception (Freedman 2010, 3). As Natasha Bakht (2012b) explains, even judges and lawyers can be classified as untrained in detecting lies based on the face because they “are not taught how to read facial expressions for truth or deceit” as “this is not a recognized area of their legal training” (598). Rather than a proven skill, triers of fact who purport to have the ability to assess demeanour in this way are merely relying on their own instincts and are no better at detecting lying than other untrained observers (Bakht 2012b, 598-599). In addition to being unreliable in particular, Freedman (2010) highlights evidence, which suggests, “that relying on facial cues may actually reduce overall accuracy” (3). This is because the way people interpret facial cues is often informed by biases and stereotypes about what certain facial movements and expressions mean. For example, several of the studies that Freedman (2010) examined discussed the assumption that people “avert their gaze or shift their eyes” when they are lying (3). However, this interpretation is both highly culturally specific and racialized.

As Razack (1998) explains, Indigenous men have frequently been presumed shifty or guilty to members of the criminal justice system such as police, lawyers, and judges because they look down or away when speaking. This is due to the differences in

understanding of what it means to make eye contact when speaking to people in positions of authority. Although averting one's gaze can be seen as a sign of respect, common Eurocentric ideas about the importance of maintaining eye contact pervade the Canadian criminal justice system.

Indeed these presumptions about facial cues as demeanour evidence show that there are serious limitations of relying on faces as beacons for truth in the courtroom. As Butt explains “[t]he scientific consensus is that facial cues do not increase accuracy in detecting lying; and our overconfidence about our ability to read facial cues can be dangerous.⁵⁶ These limitations are especially troubling in the context of sexual assault cases because they reflect deeply held stereotypes and forms of prejudice. At best these flaws are inconsistent and misleading, but at worst they are inaccurate, discriminatory, and perpetuate sexism, ableism, racism, and misogyny. Rather than revealing truth, Qureshi (2014) cautions, “relying on demeanour cues can be a distracting and unreliable method to assess credibility and can therefore affect the truth-seeking function of a trial” (9). That is to say, depending on facial cues can distort court proceedings and ultimately jeopardize the outcome of a trial.

Even if scientific research ended up proving otherwise, and facial cues based on demeanour could be read in an accurate and helpful way, Butt maintains that the niqab does not adversely impact a fact finder's ability to assess a witness's demeanour. He lists the following reasons to support this argument:

- Eye contact is unaffected by a niqab. The accused can still face his accuser.
- Evasion of eye contact remains readily ascertainable, for what it's worth.
- Eyes are a primary vehicle for expressing the entire range of human emotions.

⁵⁶ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 37.

- Eyes and the rest of the face are tightly coordinated in the expression of emotion. Therefore the eyes are a reliable surrogate for whatever the rest of the face expresses.
- Body language is unaffected by the niqab.
- Voice tone and inflexion is unaffected.
- The cadence of speech, confident and smooth, or hesitant and halting, is unaffected.
- The niqab has no impact on gestures, which can send strong nonverbal messages.
- The niqab has no impact on revealing subconscious movements like shaking, nodding, tensing up or shrugging.⁵⁷

As the above points show, even though it covers most of the face, the niqab gives triers of fact access to a number of demeanour cues that apply to the face in particular as well as other parts of the body, behaviour, and movement as a whole. Given that the eyes remain visible through a slit in the fabric, viewers can make a number of assessments about the uncovered part of the face in terms of how eyes reflect emotion as well as their connection to other facial cues from the lower half of the face that is covered. Additionally, regardless of the parts of the body that are covered, the niqab has no bearing on cues such as body language, voice, speech, gestures, and other physical movements. These examples help to show that covering the face should not make a person's feelings, actions, reactions, and movements unintelligible. Or as Butt aptly notes, "even with a niqab, counsel and fact finders retain access to a broad range of demeanour cues...[assuring] that the impact of the niqab on demeanour assessments is negligible."⁵⁸

Putting competing arguments about the accuracy and usefulness of facial cues and demeanour evidence aside, it is important to note that the presence of the niqab in the courtroom has been treated differently than a number of other circumstances that challenge or remove the ability to assess demeanour. Butt outlines a number of situations

⁵⁷ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 37.

⁵⁸ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 37.

in which accommodations are made without seriously questioning the issue of access to demeanour evidence. These circumstances include:

- Absent witness whose transcripts are read in
- Audio recordings admitted for the truth of their contents
- Business records admitted for the truth of their contents
- Video statements that are not in HD
- CCTV live testimony that is not in HD
- Persons who speak with mechanical aids (Lou Gehrig's disease, throat cancer, etc.)
- Stroke victims with significant facial paralysis
- Persons with significant facial disfigurement through disease, congenital defect, or trauma
- Persons with body paralysis that may affect body language
- Persons with Parkinson's disease, a disabling stutter, or other conditions that may mask demeanour
- Persons suffering from depression with flat affect
- Persons suffering from other mental illness (e.g. anxiety disorders) that amplify or distort emotional reactions
- Persons who communicate by sign language
- Persons who communicate in a language unknown to the fact finders such that the fact finders cannot assess demeanour through cadence, tone and inflection
- Sub-par surreptitious video surveillance
- Demeanour cues missed while the fact finder is making notes
- Demeanour cues missed because the fact finder sits at a sub-optimal angle to the witness
- Silent demeanour cues when a party is represented by a visually impaired lawyer
- Overturning convictions with no access to demeanour⁵⁹

Indeed, these examples show that there are a number of ways that evidence is permitted and evaluated with either restricted or no ability for the fact finders to assess demeanour.

It is important to note that several of these circumstances consider and perhaps even challenge common interpretations of demeanour that are based on limited able-bodied constructions of sight, sound, speech, body language, expression, behaviour, movements, communication, and methods of processing information. However, like most institutions, the criminal justice system continues to be a highly ableist environment and the area of sexual assault is no exception (Benedet and Grant 2007, 2012; Lefkowitz 1998; Martin

⁵⁹ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 40.

2015; Odette 2012; Razack 1998). As Janine Benedet and Isabel Grant (2007) argue the Canadian criminal justice system was not designed to meet the needs and interests of people (especially women) with disabilities. Therefore, it is fair to say that many of the points listed above are likely still subject to inaccurate and stereotypical assumptions reflected by ableist interpretations of demeanour. For instance, people who do not fit norms of able-bodiedness are often perceived as less competent or credible in court (Benedet and Grant 2012).

Yet, in spite of the widespread systematic barriers to bodies deemed inept, impaired, incomplete, broken, damaged, and disabled, it is important to question who is allowed to participate in court proceedings and what forms of evidence are considered to be credible and admissible. While factors such as mental illness, physical, and cognitive disabilities should not be treated as interchangeable with Muslim women's dress, it is notable that the niqab tends to be perceived and described as an impairment that interferes with justice. In this context, opponents of the niqab often see it as a physical obstacle that obstructs or hinders the kind of vision they are used to having. This vision is accustomed to seeing other people's faces and making value judgments based on what they think facial cues are telling them. As such, the covered face is framed as a problem because opponents of the niqab are fixated on demeanour evidence as a manifestation of visible facial cues.

However, as I have discussed above, there are serious limitations to this kind of vision. Although opponents of the niqab continue to insist that a visible and uncovered face is the ultimate key to assessing demeanour and by extension truth, "there is no clear evidence that facial expressions are helpful in assessing credibility. And there is some

evidence that facial cues may be unhelpful.”⁶⁰ So how is it that the uncovered face has become so strongly tied to trial proceedings? And why is it that despite a lack of scientific evidence to suggest otherwise, the niqab continues to be perceived as a barrier to the accused’s right to a fair trial? In the following section I address these questions by tracing how demeanour evidence based on facial cues has become tied to the legal concept of making full answer and defence.

The Right to Make Full Answer and Defence

The argument that the niqab obstructs fact finders’ ability to assess demeanour evidence based on facial cues is closely tied to the right to make full answer and defence. In this sense, those who object to the presence of the niqab in the courtroom tend to frame the act of facial covering as a threat to the accused’s right to a fair trial. Thus, it is important to trace how the right to make full answer and defence has become synonymous with “the requirement that the accused must be able to see a witness’s face” in order to fully exercise this right (Qureshi 2014, 3). The right to make full answer and defence includes several components. As outlined by the Supreme Court in *R. v. Rose*, “the right to make full answer and defence is one of the principles of fundamental justice protected under s.7⁶¹ of the *Charter*.⁶² This right “entitles the accused to rules and procedures which are fair in the manner in which they enable the accused to defend against and answer the Crown’s case.⁶³ In other words, the right to make full answer and defence gives the accused the right to defend herself or himself and respond to the charges presented against herself or himself by the state. This right is also contained

⁶⁰ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 2.

⁶¹ This section pertains to life, liberty and security of persons.

⁶² *R v Rose*, 1998 SCC 3, [1998] 3 SCR 262, at p 264.

⁶³ *R v Rose*, 1998 SCC 3, [1998] 3 SCR 262, at p 264.

within s.11(d) of the *Charter* which pertains to proceedings in criminal and penal matters and states that “any person charged with an offence has the right...to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”⁶⁴ This aspect of making full answer and defence is arguably one of the most basic and valued tenants of common law in Canada. Finally and perhaps most relevant to ongoing debates about the niqab, the right to make full answer and defence “includes the right to cross-examine prosecution witnesses without significant and unwanted constraint” (Qureshi 2014, 4). It is this application that calls into question whether covering the face poses a considerable and unjust barrier to the defence’s ability to cross-examine witnesses. Indeed opponents of the niqab are certainly strong supporters of this claim.

According to Michael Dineen and Douglas Usher — the counsel for the respondent M—d S. — N.S. sought “to jettison the centuries-old assumption of our legal system that observation of a witness can be useful to a trier of fact or to a cross-examiner.”⁶⁵ It would seem that N.S.’s request to wear the niqab while testifying in court was simply too radical for the supposed long held and unshakeable traditions of the courtroom. Dineen and Usher continue on to argue that “important elements of our legal system presume the importance of observing a witness, and this long established presumption should not be lightly set aside...Depriving the defence of this information with respect to a critical Crown witness would be a major interference with the ability to make full answer and defence.”⁶⁶ Here again Dineen and Usher emphasize the value of sight within the criminal justice system. They also suggest that seeing the face is so

⁶⁴ *Canadian Charter of Rights and Freedoms 1985*, s. 11(d).

⁶⁵ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Respondent M—d S.) at para 1.

⁶⁶ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Respondent M—d S.) at para 4.

crucial that the niqab would not only deprive their client of this expectation, but severely compromise his rights.

However, Butt challenges the expectations that an uncovered face is a requirement to uphold the accused's right to make full answer and defence by making a critical distinction between comfort and necessity. Or what he describes as the distinction "between the functional effect of the article in question, and its aesthetic."⁶⁷ In this sense Butt explains that it is important to consider that strong objections to the niqab have more to do with what most people are used to seeing than with its supposed impact on trial proceedings. He designates the distinction as follows:

Humans derive great meaning from their visual environment. Therefore, we can have strong visceral reactions to garments we perceive as jarring departures from our comfortable visual surroundings. To some, a niqab may be just such a jarring departure from a comfortable visual environment where exposed faces are the norm: in other words, a niqab is to such persons aesthetically displeasing, or even aesthetically offensive...Inevitable though these visceral reactions to jarring aesthetic differences may be...[they] cannot hijack the analysis of whether a niqab compromises courtroom proceedings. Because aesthetic perceptions evolve; in other words, we get used to seeing what we see repeatedly and it becomes no big deal anymore. And visceral pejorative presumptions about the symbolic meaning of garments are also problematically superficial: when consciously unpacked and examined, they are usually found wanting.⁶⁸

Thus, as Butt explains, although it may be unsettling and difficult, it is vital that we separate negative reactions from the niqab from debates about its impact in the courtroom. Just because most people do not cover their faces and this is taken as the norm, does not mean that the niqab is inherently threatening to the pursuit of justice because it disrupts what many people are accustomed to seeing. It is also important to recognize that people can adapt their reactions and senses after more exposure to

⁶⁷ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 59.

⁶⁸ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at paras 59-60.

different or new aesthetics. It is possible to work through knee-jerk reactions and become more open to things that were initially perceived as confrontational or uncomfortable. Doing this will enable more productive dialogue about the niqab and the act of covering the face. It also makes space for the possibility that eventually the niqab will not be a subject for debate or discussion at all.

The Question of Comfort in the Context of Sexual Assault Cases

When considering the possibility that one day the niqab and the act of covering the face may not be challenged like it is now, it is important to return to the subject of comfort. Or rather, what intersections between comfort and identity can tell us about whose comfort is typically valued and protected and whose comfort is dismissed and discredited. Indeed, as recently explained, many people become defensive and exercise deep resistance to experiencing and recognizing what they see as different and unsettling; especially if it means adapting to change. Feelings of aversion and discomfort can be very strong (Brown 2006). However, this kind of push back is particularly steadfast when it impacts people who are in positions of privilege because part of challenging privilege involves giving it up.

For instance, Robin DiAngelo (2011) argues that white people in North America benefit from living in a racially sheltered environment. This level of racial comfort reduces their ability to engage with racial stress and produces a state that DiAngelo (2011) calls white fragility. After experiencing “even a minimum amount of racial stress” that calls their privilege into question, white people tend to become defensive, respond with anger, fear, guilt, confrontation or silence, and a desire to leave the situation (DiAngelo 2011, 57). As a result, white fragility reduces their willingness to recognize

and give up their privilege. This adaption or surrender can be uncomfortable. As Chris Boeskool (2016) explains, “Equality can *feel* like oppression. But it’s not. What you’re feeling is just the discomfort of losing a little bit of your privilege.”⁶⁹

In the context of the courtroom, which functions within an adversarial system, issues of privilege and comfort can be difficult to balance because they tend to be framed as competing rights. Responses to these rights can be particularly intense during sexual assault proceedings because this area of law deals with subject matter that is extremely personal and these allegations are treated very differently than in other areas of law. As David Tanovich (2014) explains, “no one asks what someone was wearing when their house was broken into” (as cited in Muise 2014). Therefore, I would argue that sexual assault cases are inherently uncomfortable in ways that other kinds of cases are not (see Baker 2016). For these reasons it is necessary to consider how N.S.’s strong objection to removing the niqab while testifying has been framed in terms of comfort in contrast to the accused. It would seem that cross-examining a witness who wears the niqab is too uncomfortable to permit, but N.S.’s request to keep the niqab on is dismissed as merely being about comfort.

As I have previously discussed, to the defence, a face covered by the niqab upsets the expectations that the accused be able to see their accuser in order to evaluate her credibility while she testifies on the witness stand. Fixated on the norms of the courtroom, the defence was not comfortable with cross-examining a witness whose face was covered. They have argued “the assumption that demeanour assessment has value is so deeply rooted in our legal traditions that there is a heavy onus on the Appellant when

⁶⁹ In this context, Boeskool is unpacking responses of anger and resistance to the Black Lives Matter movement. His account is inspired by the following quote (with no known author), which circulated on social media: “When you’re accustomed to privilege, equality feels like oppression.”

she asks this Court to abruptly discard it.”⁷⁰ In this sense, they maintain that N.S.’s insistence on wearing the niqab is simply too much to ask of the legal system because her rationale is just not good enough.

One of the key ways that N.S.’s request to wear the niqab is devalued and discredited is by the use of comfort. This particular framing began when Justice Weisman first questioned N.S. about her reasons for wearing the niqab and the severity of her objection to removing it. Although her response included several points about respect, modesty, her religious beliefs, as well as when, where, and to whom she shows her face, there was a particular part of N.S.’s exchange with Justice Weisman that would later be used against her. This was the excerpt in which N.S. discussed her objection to removing the niqab in terms of comfort, “we are in a courtroom full of men and one of the accused is not a direct family member. The other accused is a direct family member and...I would feel a lot more comfortable if I didn’t have to, you know, reveal my face.”⁷¹ Given the serious and personal nature of the sexual abuse that N.S. allegedly experienced as a child, it should not be surprising that she expressed concerns about having to testify against two men that are family members in a courtroom full of other people.

As Bakht (2012b) notes, “courtrooms already require women to relive their horrifying experiences of rape and sexual abuse, reproducing the powerlessness they experienced during the rape. Having to confront this situation without one’s usual clothing is both perverse and grossly insensitive” (604). Yet, in spite of several different valid and significant reasons why N.S. strongly objected to removing the niqab, Justice

⁷⁰ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Respondent M—d S.) at para 8.

⁷¹ *R v NS*, 2009 CanLII 21203 (ON SC), at para 29.

Weisman decided that her rationale was not strong enough. Notably, the issue of comfort was a key factor in his ruling. He stated that:

...in investigating just how important a belief this was, it came down to [N.S.'s] candid admissions that it was a matter of her being "more comfortable" and to me that is really not strong enough to fetter the accused's rights to make full answer and defence...I find that the complaint's religious belief is not that strong...and that it is, as she says, a matter of comfort and I think she has to testify in this preliminary inquiry without the use of her veil.⁷²

So although it was by no means the only reason why N.S. did not want to remove the niqab, comfort became part of the forefront of the judge's ruling that she would have to testify without it. It would seem that N.S.'s discomfort with the prospect of taking off her clothes and uncovering her face in front of her alleged assailants and a room of several other men did not constitute a valid reason for refusing to unveil. That is to say, in this context N.S.'s comfort was judged to matter less than that of the accused.

Although this may seem like a matter of semantics, the subject of comfort can have a considerable impact on the outcome of sexual assault cases. It is crucial to consider that the way a complainant is treated in court can influence whether a case gets past the preliminary inquiry stage, the kind of evidence that will be permitted at trial, and ultimately whether others who have experienced sexual violence will decide to press charges and rely on the criminal justice system in the future. Indeed, people who report sexual violence and end up testifying in court must often do so in an extremely hostile environment. As Bakht (2012b) explains "the adversarial nature of our criminal justice system has often made women complainants feel as though they were on trial for their non-criminal behaviour" (595). That is to say, sexual assault complainants are frequently subjected to sexism, racism, ableism, and downright abuse to discredit them and to

⁷² *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Applicant) at para 17.

discourage them from pursuing the case. These tactics are commonly described as “whacking the complainant” (Tanovich 2015). Some have argued that the defence’s demand that N.S. remove the niqab in order to testify should be considered as an example of this practice⁷³ (Bakht 2012b). In the sections that follow I trace the origins of “whacking the complainant” and examine the impact that these tactics have on sexual assault cases in general. I then return to the case of *R. v. N.S.* in particular, and consider how demanding a niqab-wearing woman to unveil can be seen as whacking. I then outline how forcing a woman to show her face can distort the truth-seeking function of a trial and ultimately discourage others from reporting sexual violence.

Whacking and the Limits of the Right to Make Full Answer and Defence

As recounted by Cristin Schmitz (1988), Ottawa criminal defence lawyer Michael Edelson coined the term whacking during a workshop at a continuing legal education conference. Edelson is quoted as telling defence lawyers to “whack the complainant hard” at the preliminary inquiry in order to stop the case from ever going to trial. He described this strategy to the lawyers as follows:

Generally, if you destroy the complainant in a prosecution...you destroy the head. You cut off the head of the Crown’s case and the case is dead. My own experience is the preliminary inquiry is the ideal place in a sexual assault trial to try and win it all. You can do things...with a complainant at a preliminary inquiry in front of a judge which you would never do for tactical strategic reasons — sympathy for the witness, etcetera — in front of a jury...you’ve got to attack the complainant with all you’ve got so that he or she will say I’m not coming back in front of 12 good citizens to repeat this bullshit story that I’ve just told the judge (Schmitz 1988).

Edelson has infamously instructed other impressionable lawyers to intentionally create an environment so painful and toxic, that complainants will not be able to continue with the

⁷³ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women’s Legal Education and Action Fund) at para 20.

case. The practice of whacking invokes a kind of violence and harm that privileges winning a case at all costs. Tactics include humiliating, drawn out and aggressive cross-examination, requests for unnecessary but invasive personal information and records, and appeals to stereotypical assumptions and rape myths about consent (Tanovich 2015, 498-499).

Although a defence lawyer is responsible for being loyal to her or his clients by advocating for their right to make full answer and defence, Elaine Craig (2014) cautions that this right is not absolute (449). While the accused has an undeniable right to defend herself or himself “against allegations brought by the coercive authority of the state” (Craig 2014, 449), the right to make full answer and defence does not grant the accused the ability “to pursue any and every defence possible” (Craig 2014, 449). In other words, a defence lawyer’s duty to protect her or his client’s right to a fair trial is not a guarantee or free pass to apply whatever evidence and conduct is most favourable to win the case (Craig 2014, 449). This right has limits, which are balanced by other important principles such as the complainant’s equality rights, the complainant’s right to privacy, and a lawyer’s ethical obligation to act in good faith (Craig 2014, 449).

For example, a cross-examiner is not permitted to direct her or his line of questioning to a defence that lacks “knowledge, experience, or reasonable hypothesis to support it” (Craig 2014, 449). That is to say, even though a defence counsel’s goal is to discredit the complainant and the case presented by the Crown, practicing ethical conduct should require that the defence avoid the use of misleading or false information, speculation, harassment, and other abusive or discriminatory tactics. These limits should certainly include the practice of whacking. However, as Tanovich (2015) explains,

whacking causes damage that reaches beyond concerns about defence lawyers relying on questionable, inappropriate, and downright vicious tactics to win cases for their clients. Challenging whacking is about more than demanding that defence counsel find other ways to represent the accused and ensure their right to a fair trial. Whacking needs to be addressed as a serious systemic problem. In other words, the use of whacking must be identified as an ethical issue that threatens the profession of law as a whole because it sustains a system dependant on harmful stereotypes about gender, racialized status, sexuality, and ability, and hinders many people from accessing the justice system.

In order to do this, Tanovich (2015) puts the onus on defence counsel to change their conduct in sexual assault cases. He asks defence lawyers to question whether their interactions with witnesses and fact finders are based on “stereotypes about sexual assault and gender, sexual orientation, race or disability” (510). He also calls for defence counsel to think critically about the way their behaviour will impact complainants, especially in cases where the lawyers know that the complainants are telling the truth and the accused have committed the acts of violence in question (Tanovich 2015, 510). Addressing impeding future cases, Tanovich (2015) encourages defence lawyers to consider whether their conduct will contribute to a climate that creates barriers and discourages other complainants from reporting sexual assault, and ultimately runs the risk of squandering the public’s confidence in the criminal justice system (510).

Given the dire negative impact that whacking continues to wage on the ethics of the legal profession in general and the area of sexual assault in particular, it is important to consider how the outcome of *R. v. N.S.* can be understood within this context. In the section that follows I examine how the demand that a niqab-wearing woman show her

face in court while testifying against two men who allegedly subjected her to years of sexual abuse should be seen as a troubling example of whacking.

Demanding Unveiling as a Method of Whacking

Bakht (2012b) explains there is a lot at stake when a niqab-wearing woman is told to unveil in court. She highlights that the impact is especially disconcerting in the context of sexual assault cases. “In a sexual assault trial, more than perhaps in any other courtroom situation, the effect of forcing a woman to remove her niqab will be to literally strip her publically in front of her alleged perpetrator” (Bakht 2012b, 603-604). By insisting that N.S.’s covered face threatened the accused’s right to a fair trial, the defence shifted the focus of the case away from the serious accusations of repeated sexual violence committed by M—l S. and M—d S. to the way N.S. should be permitted to dress in court. As a result, the proceedings became more about N.S.’s credibility as a witness than the allegations against the accused.

In their factum as interveners for the case, the Women’s Legal Education and Action Fund (hereinafter to be referred to as LEAF) argues that the defence’s demand that N.S. remove the niqab must be considered as an application of whacking the complainant.⁷⁴ In addition to the expectation that N.S. take off clothing that is deeply personal to her in order to exercise her right to testify during the preliminary inquiry, LEAF explains that subjecting a niqab-wearing woman to cross-examination regarding the sincerity of her religious beliefs and reasoning for dressing the way she does must be

⁷⁴ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women’s Legal Education and Action Fund) at para 20.

understood as a hostile and conscious attempt to “humiliate, degrade and intimidate” her.⁷⁵ Moreover, this demand can result in an act of racialized and gendered violence.

As LEAF cautions, the right to a fair trial as interpreted by s. 7 of the *Charter* must include complainants as well as those accused of committing sexual assault. This interpretation requires that rights be informed “by the experiences and political and social realities of men and women.”⁷⁶ In this sense, being told to remove the niqab can violate a complainant’s rights because the forced act of undressing in the courtroom poses grave psychological harm. That is to say, “for niqab-wearing women, the order may be experienced as an act of male violence, a public undressing and nakedness, thus implicating the Canadian justice system in a very particular form of humiliation of Muslim women.”⁷⁷ In addition to the harm and violation of ordering a sexual assault complainant to remove her clothes, the demand that a Muslim woman remove the niqab exists within a climate that has recently become increasingly hostile to Muslim women’s dress (Bakht 2012b; Khan 2009).

As described above, a key goal of whacking is for the defence to win the case by strategically attacking the complainant during the preliminary inquiry in order to prevent the case from going to trial (Schmitz 1988). By demanding that N.S. remove the niqab, the defence did just that. Throughout years of appeals, a rare split decision by Canada’s highest court, and a transition between preliminary inquiry judges, the defence successfully crafted and maintained a fixation with what N.S. should and could wear in

⁷⁵ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women’s Legal Education and Action Fund) at para 20.

⁷⁶ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women’s Legal Education and Action Fund) at para 26.

⁷⁷ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women’s Legal Education and Action Fund) at para 26.

court based on the presumed necessity that seeing her face was a requirement for a fair trial. The end result was a six-year delay before the preliminary inquiry would eventually resume. Effectively the defence achieved their goal of ending the case before it could go to trial: N.S. had to testify without wearing the niqab, and despite Justice Vaillancourt's decision that there was enough evidence for the case to commit to trial, Crown attorney Michael Cantlon suddenly announced that he had withdrawn the charges by concluding that the case now lacked a reasonable chance of conviction (Clarke 2014).

Conclusion

Although the Crown did not elaborate more about the specific reasons for his decision, I would argue that the reasons do not matter. The end result of this case sends troubling messages to many people, particularly racialized women considering accessing the criminal justice system. For Muslim women who wear the niqab, the likely possibility that they will be forced to take off their clothes in order to be heard in court may be a strong deterrent. This has dire consequences for those impacted by sexual assault. As LEAF explains, "if niqab-wearing women risk being forced to remove their niqabs to testify, or if they face an onerous or demeaning procedure to justify their veils, the likelihood of these women reporting sexual assault diminishes even further...denying them access to the justice system, and exacerbating their inequality."⁷⁸ Though to me, what is perhaps most discouraging, is that even when niqab-wearing women like N.S. do undress it may still not be enough to obtain justice.

⁷⁸ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women's Legal Education and Action Fund) at para 27.

LEAF maintains that when debating the reliability of demeanour and the question of whether the niqab impacts the accused's right to make full answer and defence, it is important to remember that the purpose of a preliminary inquiry is not the same as a trial,

The preliminary inquiry is not a trial. Assessments of credibility are not made. The purpose of the preliminary inquiry is to determine if the Crown has some evidence upon which a jury could convict. While the accused may use the preliminary inquiry to explore the Crown's case, the accused have no constitutional right to this opportunity and it is one that is routinely and permissibly confined by the inability of the preliminary inquiry judge to order either disclosure or production of documents.⁷⁹

Although the purpose of the preliminary inquiry was meant to be an assessment of the evidence supporting serious allegations of sexual abuse against M—l S. and M—d S., this goal was too easily forgotten. The defence effectively shifted the focus of the case and made it into a debate about the presence of the niqab in the courtroom. In contrast to goddess Justitia, a woman whose vision is too powerful to be fair and impartial, N.S., the niqab-wearing woman was framed as an affront to justice for covering her face. While Justitia's eyes have been hidden to execute justice, N.S. was ordered to show her face to protect it. Ultimately, she needed to reveal more than her eyes.

It is my hope that my examination of these two opposing figures reveals the conflicting and inconsistent ideals about vision, the face, truth, and knowledge that pervade the justice system. Perhaps these parallels can open up space for more critical understandings of the role of sight and faces in court. Surely the criminal justice system, particularly the field of sexual assault law, can benefit from this kind of change.

In addition to criminal court, the presence of the niqab has also recently been debated in the context of Canadian citizenship court. To this end, the covered face has

⁷⁹ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726, (Factum of the Intervener Women's Legal Education and Action Fund) at para 9.

been framed as an affront to Canadian citizenship. In the following chapter, I address the Harper government's demand that niqab-wearing women show their faces in order to 'join the Canadian family' (Canadian Press 2015b; Foote 2015; Geddes 2015; Gollom 2015; Kenney 2011a; Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011; Whittington and Keung 2015).

Chapter 5: Showing the Face to ‘Join the Canadian Family’

“To me, the most important Canadian value is the freedom to be the person of my own choosing. To me, that’s more indicative of what it means to be Canadian than what I wear.”

Zunera Ishaq (2015)

Why I Intend to Wear a Niqab at my Citizenship Ceremony

“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.”

Sunera Thobani (2007, 3-4).

Exalted Subjects: Studies in the Making of Race and Nation in Canada

“Each member of the family in his own cell of consciousness, each making his own patchwork quilt of reality — collecting fragments of experience here, pieces of information there. From the tiny impressions gleaned from one another, they created a sense of belonging and tried to make do with the way they found each other.”

Toni Morrison (2000, 34)

The Bluest Eye

Introduction

In addition to debates about assessing demeanour based on a witness’s facial cues, the niqab has become central to recent discussions about what it means to be and become a Canadian citizen. Prominent political figures such as former Prime Minister Stephen Harper, and former Federal Cabinet Ministers Jason Kenney and Chris Alexander have fervently opposed niqab-wearing women covering their faces when they are ‘joining the

Canadian family' (Canadian Press 2015b; Foote 2015; Geddes 2015; Gollom 2015; Kenney 2011a; Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011; Whittington and Keung 2015). This debate was sparked on December 12, 2011, when the current Minister of Citizenship, Immigration and Multiculturalism Jason Kenney suddenly announced that effective immediately, the niqab would no longer be permitted during the Canadian citizenship oath (Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011). Consequently, niqab-wearing women were required to show their faces while reciting the oath in order to obtain Canadian citizenship (Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011).

Unlike nation-wide bans on the niqab that have been enacted in France (Arseneault 2011; Chrisafis 2011b; Erlanger 2011; Rustici 2011; Weaver 2017) and Belgium (BBC News 2011b; Jozwiak 2011; RTÉ News 2011) and local bans specific to certain regions in Spain (BBC News 2010; Roberts 2010; Tremlett 2010), Germany (BBC News 2011a; Kirschbaum 2011), Italy (BBC News 2017a; Tharoor 2015; Local 2015), and Switzerland (BBC News 2017a; McParland 2015; WITW Staff 2015), Kenney's ban was introduced as a ministerial directive. The ban was not drafted as a bill to be introduced and read in the Senate or the House of Commons (Library of Parliament 2016, 11; Solski 2006, 105). Consequently, it was not debated, voted upon, nor given Royal Assent by the Governor General before it came into effect (Library of Parliament 2016, 11; Solski 2006, 105). In other words, the ban was not a law.⁸⁰ This means that

⁸⁰ For more details on how laws are passed in Canada, see:

Minister of Public Works and Government Services. 2016. "Guide to the Canadian House of Commons." Ottawa, ON: Library of Parliament.
https://lop.parl.ca/About/Parliament/GuideToHoC/pdf/guide_canadian_house_of_commons-e.pdf.

Kenney used his power as a federal minister to shape and alter Canadian public policy without officially consulting Canadian lawmakers⁸¹ (Keung 2014; Keung 2015).

In the following chapter, I outline how this policy created a political climate that conceived of niqab-wearing women as an affront to Canadian identity. More specifically, I argue that the ban on the niqab during the oath portrayed the act of showing the face as a way of protecting the integrity of Canadian citizenship. I also argue that the ban was crafted with the aim of integration and assimilation in mind. In this sense, the visibility of the face is strongly tied to ideas about who can and cannot be considered Canadian. However, before discussing the specific details of the ban, the Federal Court challenge that ensued, or the way the ban was defended by Jason Kenney, former Prime Minister Stephen Harper, and other members of the Conservative government, I examine the very idea of citizenship.

I begin by identifying citizenship as a gendered and racialized concept. I then challenge the myth that the ‘Canadian family’ is an inherently welcoming place. That is to say, I consider how Canadian citizenship has been constructed and managed by misleading narratives such as openness and multiculturalism. I will then examine how the concept of Canadian citizenship was created from a legacy of violence and exclusion that has granted rights and privileges to some at the expense of many others. By recognizing that Canadian citizenship is actually a product of imperialism, colonialism, and white supremacy I hope to situate the niqab ban within Canada’s legacy of violence committed against Indigenous peoples. Making these connections will help me to challenge the idea

Solski, Ruth. 2006. *Our Canadian Governments: Grades 5-8*. Canadian Government Series. Napanee, ON: S&S Learning Materials.

⁸¹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156.

that women who wear the niqab should be compelled to show their faces in order to ‘join the Canadian family’. Ultimately, I conclude that niqab-wearing women actually belong by not belonging. In the section below I begin by defining and problematizing the concept of citizenship in general and then narrow my focus to the concept of Canadian citizenship in particular.

Defining and Problematizing Citizenship

Citizenship is a highly debated concept that is contested on several levels (Lister 2003, 3). These areas include the way it is defined, its political application, and its relationship to the ideals to which a particular society aspires (Lister 2003, 3). As a basic “legalistic construction, citizenship is a status that confers rights and imposes obligations” (Gordon-Zolov and Rogers 2010, 13). However, citizenship includes much more than this. It is also a lived experience. Feminist scholars have highlighted the distinction between citizenship as a practice and citizenship as a status (Benhabib and Resnik 2009; Fraser and Gordon 1992; Gordon-Zolov and Rogers 2010; Lister 2003) As Terri Gordon-Zolov and Robin Rogers (2010) explain, citizenship encompasses “social citizenship — a sense of belonging and active participation — as well as political citizenship, such as suffrage; and civil citizenship, the protection of rights” (13). In this sense, citizenship involves a high standard of living that includes elements such as rights, respect, solidarity, collective responsibility, and active participation in public life through social services and institutions (Fraser and Gordon 1992).

On top of all of these factors, citizenship is gendered. In other words, gender informs each person’s relationship to citizenship as well as the way that she, he, or they experiences it (Benhabib and Resnik 2009; Gordon-Zolov and Rogers 2010; Lister 2003).

However, Ruth Lister (2003) notes that many theorists still fail to recognize this reality. While there is a considerable volume of academic and political work on citizenship, much of this writing ignores the fact that it is not a gender-neutral concept (Lister 2003, 1). As Seyla Benhabib and Judith Resnik (2009) explain, applying a gender analysis to work on citizenship and migration fosters new questions “about feminist conceptions of women and men and...political theories of the state” (5). Such questions help identify why gender matters.

In addition to being gendered, citizenship is also highly racialized (Bannerji 2000; Razack 2008; Thobani 2007). That is to say, understandings of racialized status inform who is considered a citizen and who is not as well as who is welcomed into a society and who is not (Bannerji 2000; Razack 2008; Thobani 2007). Racial lines divide people up as citizens or aliens (Ahmed 2000), insiders or outsiders (Thobani 2007), and hosts who are already home or conditional guests who must be invited (Ahmed 2014). These facets of citizenship become all the more prominent when rigid geographical borders are reinforced. That is to say, the idea of ‘nation-specific citizenship’ further divides and complicates the meaning and application of citizenship.

As such, the concept of citizenship can also be understood as a form of property inheritance that is determined based on where a person is born (Shachar 2009). According to Ayelet Shachar (2009) the circumstances of a person’s birth are often the key “determinants of entitlement to full and equal membership in the citizenry body” (4). Given that no one can control the geopolitical context of their birth, “the vast majority of the global population has no way to acquire membership *except* by circumstances of

birth” (Shachar 2009, 4). Consequently, citizenship status is often no more than a lottery system.

Now that I have addressed citizenship as a general concept, I will narrow the focus of my discussion to the evolution of citizenship within Canada.

**Canadian Citizenship:
A Product of Colonialism, Empire, and White Supremacy**

In the context of Canada, citizenship is a highly restricted concept. Although Canada is commonly positioned as a country that is diverse, open, and accepting, there is a lot left out of this narrative. That is to say, this portrayal is limited and misleading, and many have argued that representations of Canada as a welcoming, kind, peaceful, and multicultural nation should actually be understood as a myth (Bannerji 2000; Dua, Razack, and Warner 2005; Fleras 2014; Jiwani 2010; Razack 2004; Razack, Smith, and Thobani 2010; Thobani 2007). In reality this image of Canada relies on “a profound belief in our own superiority, a superiority conveyed in the thousand ordinary phrases we use to express national character and belonging, and to expel so many Others from the nation” (Razack 2004, 14). Rather than inclusivity, Canadian citizenship should be understood in the context of exclusion.

Identifying the power of imagined ideas about Canada as a nation “allows us to recognise that the boundaries of nations are not simply geographical or geopolitical...but also discursive” (Ahmed 2000, 98). Arguably it is this construction that impacts who will or will not belong. For example, writing about her experience as a racialized woman who migrated to Canada from the Third World⁸² Razack (2004) describes how citizenship as she knows it is entrenched in whiteness, as it is white people who are conceived as “the

original citizens” while “Aboriginal peoples are considered dead or dying and people of colour are considered recently arrived” (13). In this sense, the reality and lived experience of being Canadian cannot be separated from the effects of colonialism, imperialism, and racism, as citizenship has not been equally applied to everyone in Canada.

As a settler-based society, what it means to be Canadian is deeply tied to imperialism, colonialism, and the institution of white supremacy (Dua, Razack, and Warner 2005; Thobani 2007). As Sunera Thobani (2007) explains, Canadian citizenship originated from the colonial destruction and dispossession of Indigenous peoples (74). Consequently, the concept of citizenship was created by a violent process that made Indigenous peoples foreigners in their own territories, while simultaneously converting colonizers, settlers, and migrants into Canadians (Thobani 2007, 74). Thus, the act of becoming Canadian nationals or Others has emerged from migration (Thobani 2007, 74), and these designations have been far from equal.

In addition to its roots in colonial genocide, Canadian citizenship has also been shaped by constructions of whiteness, as a number of racialized groups were denied citizenship for almost a century (Arat-Koç 2006; Bannerji 2000; Black 2013; Décoste 2014; Thobani 2007). Beginning in the late nineteenth century, the Canadian government enforced a series of policies to “Keep Canada White” (Thobani 2007). Racial classifications were legislated to restrict the immigration of “non-preferred races” which included migrants from Africa, Asia, and the Caribbean (Thobani 2007, 90). Measures such as the 1885 Chinese Immigration Act, the 1908 Continuous Passage Requirement, the inclusion of racial classifications in the 1910 Immigration Act, and the 1923

Exclusion Act constructed Black and Asian migrants as unassimilable and degenerate and thus unworthy of citizenship (Thobani 2007, 90). Despite the fact that Black and Asian migrants arrived during the pre-Confederation period, their contributions to the development of the country have been seriously minimized in the name of white supremacy (Thobani 2007, 90). To this end, Black and Asian migrants encountered severe racism and were formerly denied the same citizenship rights that their white counterparts received.

The “Keep Canada White” policies were also gendered, as women were especially defined for exclusion. Prior to the 1960s few women from China and South Asia were allowed entry to Canada (Thobani 2007, 92). Single Black women were permitted as domestic workers, provided that they did not bring their families (Thobani 2007, 92). “If white women were to be the ‘mothers’ of the nation, non-white women were said to herald its doom...women of the non-preferred races were constituted as morally degenerate, sexually depraved, and endowed with a fecundity more animalistic than human” (Thobani 2007, 92). Indeed, keeping non-white women out of Canada was a high priority. Subsequently, women of colour were cast as sub-human on the grounds of both gender and racialized status.

It was not until the 1960s and 1970s that Canadian immigration and citizenship policies experienced significant changes. Between 1962 and 1977 a series of transformations occurred (Thobani 2007, 97). At this time, citizenship became more open to groups from Africa, Asia, and the Caribbean who were previously excluded. Thobani (2007) attributes this shift to the removal of explicit racial classifications in immigration policies (97). Notably, the Canadian Point System was introduced in 1967 shifting the

ranking of prospective immigrants from racialized status to an emphasis on education, desired fields of employment, language, skill levels, and family ties to Canada (Tannock 2011; Thobani 2007). Consequently, the Point System was entrenched in the 1976-1977 Canadian Immigration Act (Thobani 2007, 97). This new system was celebrated for moving away from previous “overtly racist and discriminatory” Canadian immigration policies. Additionally, in 1971 Canada became the first country in the world to declare multiculturalism as an official state policy (Keohane 1997, 7).

As a result of these changes, Canadian immigration and citizenship policies are no longer formally discriminatory in terms of racialized status and gender, as they do not explicitly restrict migrants based on specific ethnic, geographical, or gender identities. However, this does not necessarily mean that discrimination has been completely eliminated. Indeed, both the Canadian Point System⁸³ and the approach of multiculturalism⁸⁴ have been critiqued for a number of reasons. These policies continue

⁸³ For specific critiques about the Canadian Point System, see:

Abu-Laban, Yasmeen and Christina Gabriel. 2002. *Selling Diversity: Immigration, Multiculturalism, Employment Equity, and Globalization*. Peterborough, ON: Broadview Press.

Anwar, Arif. 2014. "Canadian Immigration Policy: Micro and Macro Issues with the Points Based Assessment System." *Canadian Ethnic Studies* 46(1):169-179.
doi:<http://dx.doi.org/10.1353/ces.2014.0004>.

Kaushal, Neeraj and Yao Lu. 2015. "Recent Immigration to Canada and the United States: A Mixed Tale of Relative Selection." *International Migration Review* 49 (2): 479-522.
doi:<http://dx.doi.org/10.1111/imre.12093>.

Tannock, Stuart. 2011. "Points of Prejudice: Education-Based Discrimination in Canada's Immigration System." *Antipode* 43:1330-1356.
doi:<http://dx.doi.org/10.1111/j.1467-8330.2010.00864.x>.

Thobani, Sunera. 2007. *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto, ON: University of Toronto Press.

⁸⁴ For more in depth discussions and critiques about multiculturalism in Canada, see:

to be highly contested and are complex subjects in their own right. Though for the purpose of this dissertation I must put discussions specific to the Point System and multiculturalism as a state policy aside and return my focus to the subjects of the niqab, the face, and their connection to dominant narratives about Canadian citizenship. Now that I have contextualized the concept of Canadian citizenship as a product of colonialism, imperialism, and white supremacy, I will examine the ban on the niqab during the Canadian citizenship oath as a manifestation of troubling ideas about what it means to be Canadian. I will begin by summarizing the details of the ban and the legal challenge that ensued between a niqab-wearing woman seeking to become a Canadian citizen and the Canadian Federal Government.

Zunera Ishaq Versus the Canadian Minister of Citizenship and Immigration

As noted earlier, on December 12, 2011 — just days after the Supreme Court of Canada heard the case of *N.S. v. Her Majesty the Queen, et al.* — former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney suddenly announced that full-face veils would no longer be permitted during the Canadian citizenship oath

Bannerji, Himani. 2000. *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism, and Gender*. Toronto, ON: Canadian Scholars' Press.

Bissoondath, Neil. 2002. *Selling Illusions: The Cult of Multiculturalism in Canada*. Toronto, ON: Penguin Books.

Fleras, Augie. 2014. *Racisms in a Multicultural Canada: Paradoxes, Politics, and Resistance*. Waterloo, ON: Wilfrid Laurier University Press.

Guo, Shibao, and Lloyd Wong, eds. 2015. *Revisiting Multiculturalism in Canada: Theories, Policies and Debates*. Rotterdam: Sense Publishers.

Kymlicka, Will. 1996. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. New York: Oxford University Press.

Ryan, Phil. 2010. *Multicultiphobia*. Toronto, ON: University of Toronto Press.

Thobani, Sunera. 2007. *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. Toronto, ON: University of Toronto Press.

(Kenney 2011a; Mackrael and Perreaux 2011; Payton 2011; Raj 2011; Smith, 2011). The ban was introduced as a ministerial directive and made effective immediately. According to these regulations, niqab-wearing women would receive a warning when they checked in with a clerk before the citizenship ceremony and an additional, final warning from the citizenship judge before the oath began (Smith 2011). Anyone who refused to lift or remove the niqab while reciting the oath was required to leave (Payton 2011). In order to receive Canadian citizenship, niqab-wearing women had to return to take the oath with an uncovered face at the next ceremony (Payton 2011) — otherwise they would remain as permanent residents (Payton 2011; Smith 2011).

Kenney justified his position by referencing the need for citizenship court officials to confirm that niqab-wearing women were reciting the oath (Kenney 2011a, 2011b; Mackrael and Perreaux 2011; Payton 2011; Raj 2011; Smith 2011). To this end, Kenney explained that he had decided to enact a ban after one of his colleagues told him about a citizenship ceremony with four niqab-wearing women⁸⁵ (Kenney 2011b). More specifically, when asked why he had suddenly introduced this policy, Kenney stated that it came to light after Member of Parliament Wladyslaw Lizon, expressed concerns about a citizenship ceremony that he had attended in Mississauga, Ontario (Fine 2015; Kenney 2011b; Payton 2011; Smith 2011).

According to Kenney, Lizon witnessed four women taking the Canadian citizenship oath with their faces covered (Fine 2015; Kenney 2011b; Smith 2011). Consequently, Lizon raised his concerns with the citizenship court judge, but was told that there was nothing that could be done because there were no rules against niqab-wearing women reciting the oath (Kenney 2011b; Smith 2011). Kenney reported that he

⁸⁵ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 49.

was shocked to hear this, so he consulted citizenship court judges across Canada and decided to create a new policy (Kenney 2011b). During his announcement that day Kenney also stated that the ban was in response to complaints he had received from Members of Parliament and citizenship court judges about it being “hard to tell whether people with their faces covered [were] actually reciting the oath of citizenship” (Kenney 2011a; Payton 2011). Under this policy niqab-wearing women were suddenly suspect of undermining the oath. However, it was not long before Kenney would be required to defend his decision in court.

In 2014 Zunera Ishaq, a niqab-wearing woman from Mississauga, Ontario challenged the ban. Ishaq who had been a permanent resident since October 25, 2008⁸⁶ put her citizenship ceremony on hold as she applied to the Federal Court of Canada seeking the right to take the oath without removing the niqab (Keung 2014). Although a citizenship judge approved Ishaq’s citizenship application on December 30, 2013 and she was initially scheduled to attend a citizenship ceremony in Scarborough, Ontario on January 14, 2014, Ishaq objected to being compelled to take the oath without the niqab.⁸⁷ Consequently, on January 8, 2014 she sent a letter to Citizenship and Immigration Canada requesting that her citizenship ceremony be rescheduled.⁸⁸ The next day Ishaq submitted an application to the Federal Court seeking its review, and on January 10, 2014 “she moved for an order enjoining [The Minister of Citizenship and Immigration] from applying the Policy at her citizenship ceremony.”⁸⁹

⁸⁶ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 2.

⁸⁷ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at paras 2-6.

⁸⁸ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 7.

⁸⁹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 7.

Ishaq argued that it was unnecessary to remove the niqab during the citizenship oath for identity and security purposes.⁹⁰ She also described the ban and her likely denial of Canadian citizenship for refusing to unveil as “a personal attack on [herself], [her] identity as a Muslim woman and [her] religious beliefs.”⁹¹ Ishaq contended that the policy was unlawful for several reasons. Firstly, she argued that the niqab ban during the citizenship oath infringed upon her freedom of conscience and religion as guaranteed by section 2(a) of the *Canadian Charter of Rights and Freedoms*.⁹² Secondly, Ishaq argued that although the language of the policy was seemingly neutral, it discriminated against her on the grounds of religion and sex⁹³ because the ban disproportionately impacted niqab-wearing Muslim women like herself and perpetuated stereotyping and prejudice against them.⁹⁴ Thus, Ishaq argued that the policy violated section 15(1) of the *Charter*, which guarantees equality before and under the law as well as equal protection and benefit of the law without discrimination. Thirdly, Ishaq contended that the ban was outside the power of the Minister of Citizenship and Immigration because it was inconsistent with governing legislation.⁹⁵ Finally, she argued that the mandatory nature of the policy interfered with the duty of citizenship court judges to exercise discretion to accommodate citizenship candidates while administering the citizenship oath.⁹⁶

On February 6, 2015 Justice Keith Boswell announced his decision. Although he declined to evaluate the policy based on *Charter* issues, Justice Boswell ruled in Ishaq’s

⁹⁰ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 6.

⁹¹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 6.

⁹² *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 9.

⁹³ I use the term sex rather than gender to be consistent with the language used in this case.

⁹⁴ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 24.

⁹⁵ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at paras 28-29.

⁹⁶ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at paras 28-29.

favour.⁹⁷ He struck down the ban stating that the policy obstructed a citizenship court judge's obligation to allow citizenship candidates "the greatest possible freedom" while reciting the Canadian citizenship oath.⁹⁸ In this sense, the ban interfered with citizenship judges' ability to determine how the oath is administered and the conditions under which candidates are able to take it.⁹⁹ Justice Boswell also ruled that it was unlawful for Citizenship and Immigration Canada to require niqab-wearing women to show their faces while taking the citizenship oath in order to be granted Canadian citizenship.¹⁰⁰ Therefore, he approved Ishaq's request to reschedule her citizenship ceremony and take the oath without removing her niqab (Keung 2015).

Despite the fact that even the federal government's lawyers had admitted in court that after verifying a citizenship candidate's identity there was no legal basis to ban the niqab during the citizenship oath, former Prime Minister Stephen Harper announced that his government would appeal the Federal Court's decision (Whittington and Keung 2015). On September 15, 2015, the Federal Court dismissed the government's move to appeal the ruling¹⁰¹ (Canadian Press 2015a). The panel of three judges rejected the Harper government's request to suspend Justice Boswell's decision and ruled that there was no reason to interfere with his order to end the ban.¹⁰² Given the fast approaching federal election on October 19 of that year, the panel sought to "proceed quickly" and ruled from the bench so that Ishaq could hopefully become a Canadian citizen in time to vote¹⁰³ (Canadian Press 2015a).

⁹⁷ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at paras 67-68.

⁹⁸ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 68.

⁹⁹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 53.

¹⁰⁰ *Ishaq v. Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 69.

¹⁰¹ *Canada (Citizenship and Immigration) v. Ishaq*, [2015] FCA 194.

¹⁰² *Canada (Citizenship and Immigration) v. Ishaq*, [2015] FCA 194, at para 4.

¹⁰³ *Canada (Citizenship and Immigration) v. Ishaq*, [2015] FCA 194, at para 5.

The next day the Harper government announced its plan to challenge the Federal Court's decision in Canada's highest court (Canadian Press 2015b). Then Minister of Citizenship and Immigration, Chris Alexander, stated that the government would seek permission from the Supreme Court of Canada to appeal the case (Canadian Press 2015b). On September 18, 2015 the federal government announced that it was seeking a stay on the Federal Court's recent decision (Whittington 2015). To this end, the Harper government asked a Federal Court judge to temporarily put the ruling on hold while the government awaited for the Supreme Court to hear its appeal (Whittington 2015). If the request was granted, Justice Boswell's initial ruling would be suspended indefinitely and niqab-wearing women such as Ishaq would be required to uncover their faces while reciting the citizenship oath. Effectively, this also meant that Ishaq would not be able to obtain Canadian citizenship in time to vote in the upcoming election.

However, the Conservative government's application proved unsuccessful. On October 5, 2015 the Federal Court of Appeal denied the request (Bronskill 2015). Justice Johanne Trudel rejected the Harper government's motion for a stay by ruling that the applicant had failed to show how dismissing the application would cause "irreparable harm to the public interest" (Bronskill 2015). Consequently, on October 9, 2015, Ishaq attended a citizenship ceremony with her lawyers and was sworn in as a Canadian citizen (Boutilier 2015). The Harper government's legal battle over the niqab ended a few days later when the Liberal Party led by Justin Trudeau won the federal election and formed a new government. On November 16, 2015, Jody Wilson-Raybould, the current Minister of Justice and Attorney General of Canada, made the decision official by formally

announcing that the Trudeau government was dropping the previous government's appeal to the Supreme Court (MacCharles 2015b).

Although the ban no longer exists, it is still important to consider the impact that this government policy has had on understandings of Canadian identity and its supposed connection to the uncovered face. In the following section I examine how the ban was framed as a measure to protect the integrity of the Canadian citizenship oath. That is to say, a central justification of the ban was that niqab-wearing women should uncover their faces in order to ensure that they were actually reciting the oath. This rationale suggested that niqab-wearing women were an affront to Canadian identity because they could be violating the oath.

Face Covering as an Affront to Canadian Citizenship

Jason Kenney introduced the ban on the niqab during the Canadian citizenship oath in a speech entitled "On the value of Canadian citizenship" (Kenney 2011a). He began by describing Canada as 'a story' that was initially created by explorers from France including, Jacques Cartier, Pierre de Monts, and Samuel de Champlain (Kenney 2011a). He also referenced the establishment of European settlements in what is now known as Québec (Kenney 2011a). Consequently, Kenney lauded Canada as a society that was built over four centuries and is now "considered a model around the world" (Kenney 2011a). Although Kenney clearly acknowledged the way that European explorers and settlers have shaped what is known as Canada today, he did not include anything about Indigenous peoples in this narrative. Kenney's description of Canada made no mention of the existence of Indigenous peoples long before European contact or the violence committed against them by the settlers who colonized their land. Indeed, as I

have already outlined earlier on in this chapter, this vision of Canada is limited and misleading and erases the fact that Canadian citizenship was born out of imperialism, colonialism, and genocide.

After summarizing the Canadian ‘story’ Kenney then moved on to condemn those who have abused and exploited the Canadian immigration system. At the core of his speech, Kenney expressed his concerns about some newcomers not truly respecting their Canadian citizenship¹⁰⁴ (Kenney 2011a). At this point he referenced individuals who had not taken the citizenship oath openly and stated that starting that day, all citizenship candidates would be required to show their face while reciting the oath¹⁰⁵ (Kenney 2011a). Kenney emphasized the importance of the Canadian citizenship oath as “the bedrock on which Canadian society rests”¹⁰⁶ (Kenney 2011a). He concluded by describing the new policy as “the best way to honour” the value of Canadian citizenship as symbolized by the citizenship ceremony (Kenney 2011a).

This response to the act of facial covering can be understood as an example of what Bakht (2012a) calls “the impolite niqab” (88). This objection to the niqab targets niqab-wearing women as dishonest and justifies suspicion and distrust (Bakht 2012a, 88-

¹⁰⁴ Kenney went on to highlight his experiences meeting new citizens who could not speak English or French, problems with cheating on the knowledge section of the Canadian citizenship test, and allegations about residency fraud. He then outlined measures he had enacted to combat and investigate these issues (Kenney 2011a).

¹⁰⁵ Although he did not mention a specific garment or group in this announcement, when responding to questions from the media, Kenney made it clear that this policy was directed at Muslim women who wear full-face veils such as the niqab (Kenney 2011b; Mackrael and Perreux 2011; Payton 2011; Smith, 2011). While the written text of the directive used the term ‘full or partial face coverings’, this measure was described as a niqab ban.

¹⁰⁶ It is also important to note that the words of the citizenship oath reaffirm Canada’s ties to colonialism and imperialism, as it revolves around pledging loyalty to Queen Elizabeth II. The text of the Canadian citizenship oath reads as follows:

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 fulfill my duties as a Canadian citizen (*Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 2).

89). To this end the niqab is considered “as a form of confrontation or criticism against national ways of living and dressing. Niqabs are understood as plainly offensive to the values we cherish” (Bakht 2012a, 89). For the purpose of this discussion, the values in question are Canadian citizenship in general as represented by the Canadian citizenship oath in particular. In this sense, Kenney framed the act of wearing the niqab during the Canadian citizenship oath as an affront to Canadian citizenship.

As I have outlined above, Kenney implied this sentiment by stating that he introduced the ban in response to Members of Parliament, including Wladyslaw Lizon, citizenship court judges, and other participants in citizenship ceremonies, who complained that it was difficult to tell if niqab-wearing women were actually taking the oath because their faces were covered (Fine 2015; Kenney 2011b; Smith 2011). Additionally by stating that niqab-wearing women did not take the oath openly, Kenney also fuelled the suggestion that they might not really be reciting it. In other words, this justification of the ban alluded to concerns that niqab-wearing women were perhaps using their facial veils to hide the fact that they were merely pretending to recite the oath but not actually saying the words and thus, violating the integrity of the citizenship oath. Ultimately, these views render the act of covering the face suspect of compromising the citizenship process and disrespecting its esteemed value.

Doubt about whether niqab-wearing women could truly be witnessed taking the oath became an important contention in Ishaq’s appeal to the Federal Court of Canada. One of the key arguments that Ishaq used to defend her case was that despite the framing of the policy, neither the *Canadian Citizenship Act* nor the *Regulations* set out by the *Act* included provisions requiring officials such as Citizenship court judges and clerks to

visually confirm that candidates have taken the oath.¹⁰⁷ Therefore, she contended that seeing niqab-wearing women recite the oath was not an imperative or significant condition to granting Canadian citizenship.¹⁰⁸ Although it is a standard practice for court officers to help judges “monitor groups of about 80 new Canadians to be sure they say the oath”, this practice is not infallible (Mackrael and Perreux 2011). Indeed, Ishaq argued that watching citizenship candidates swear the oath did not prove that they were verbally taking it.¹⁰⁹ To this end, visually inspecting participants could only allow officials to confirm that their mouths were moving.¹¹⁰ In this sense, seeing should not be classified as the same thing as hearing. Given the number of people in the room during a citizenship ceremony, watching peoples’ lips is arguably not a sure way to verify if everyone is reciting the words of the oath.

Although it would seem that the premise of the ban presumes that a covered face is deceptive and deceitful while an uncovered face is open and honest, the visibility of a person’s face is not necessarily an accurate measure of these qualities. That is to say, the act of showing the face to others does not inherently signify a form of transparency or trust. For instance, a number of famous bands and singers have been known to lip-sync during music videos and even live performances. Many people remain unaware that the musicians are not really singing unless it is disclosed publically or the artists get caught in silence if there is a technical issue or a break in the music. (In)famous incidents have occurred with well-known recording artists including, Michael Jackson, Whitney Houston, New Kids on the Block, The Red Hot Chili Peppers, Beyoncé Knowles, Mariah

¹⁰⁷ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

¹⁰⁸ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at paras 25-29.

¹⁰⁹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

¹¹⁰ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

Carey, Britney Spears, and Ashlee Simpson (Unterberger 2017). In terms of a specifically Canadian context, it was revealed that almost all of the musicians who performed during the opening ceremony at the 2010 Vancouver winter Olympics were lip-syncing to pre-recorded audio (Moser 2010). These examples show that seeing a person's lips, no matter how convincing it may seem, does not guarantee that there is actually an audible sound coming out of them. Furthermore, citizenship court officials are not trained to read citizenship candidates' lips.¹¹¹

While it is certainly possible that a citizenship candidate could pretend to be taking the oath by mouthing the words,¹¹² this possibility is negated by the fact that the ceremony also requires all candidates to attest to the oath in writing. As Ishaq explained in her appeal to the Federal Court, everyone who becomes a new Canadian citizen is required to sign a declaration stating that they took the oath, and this act is binding.¹¹³ This declaration is a certificate with the text of the oath, so it is effectively a written version of the words that are recited out loud at the end of the ceremony.¹¹⁴ Thus, Ishaq maintained that completing this written declaration should be sufficient proof that she made the oath.¹¹⁵ If this step was still deemed insufficient, Ishaq offered several other suggestions that could be less intrusive and more effective at ensuring that niqab-wearing women recited the oath. Given the small number of women impacted by the policy and the short length of the oath, Ishaq contended that a female official could administer the oath to niqab-wearing women in private to be assured that they were saying the words.¹¹⁶

¹¹¹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

¹¹² My point here is not that anyone should be suspect for pretending to take the oath, but that it is incorrect to suggest that a covered face is inherently disingenuous while an uncovered face is not.

¹¹³ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

¹¹⁴ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 62.

¹¹⁵ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

¹¹⁶ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 26.

She noted that this was an accepted practice before the niqab ban was introduced.¹¹⁷ Ishaq also suggested that niqab-wearing women could sit closer to citizenship court officials or be given a microphone, so that they could be heard reciting the oath.¹¹⁸ She maintained that these options could meet the same aim of verifying the swearing of the oath, and consequently questioned why the Minister of Citizenship and Immigration would impose a more strict and invasive policy that compelled niqab-wearing women to show their faces.¹¹⁹

When reviewing Ishaq's arguments, Justice Boswell ruled that although the niqab ban did not directly contradict pre-existing provisions pertaining to the citizenship oath, a policy requiring that citizenship candidates be seen while taking the oath was indeed unnecessary.¹²⁰ He also agreed that it was sufficient for citizenship candidates to sign a certificate with the written text of the oath as an affirmation of their citizenship.¹²¹ That is to say, a signature on this document alone, rather than a visual confirmation of a candidate swearing the oath, should be the only proof needed to confirm that they had fulfilled the requirement of taking the oath.¹²² Consequently, the policy imposed by Kenney in the name of safeguarding Canadian citizenship as symbolized by the oath was both unnecessary and redundant.

Although Justice Boswell found the practice of visually confirming that niqab-wearing women were taking the Canadian citizenship oath to be "superfluous"¹²³, there was another intention of the ban that is arguably less present in the Federal Court's

¹¹⁷ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 26.

¹¹⁸ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 26.

¹¹⁹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 26.

¹²⁰ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 59.

¹²¹ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 62.

¹²² *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 62.

¹²³ *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 59.

ruling. This justification involves the expectation that niqab-wearing women show their faces to meet demands of integration and assimilation. In the following section I will consider how the act of uncovering the face has been presented as a requirement to being accepted into Canadian society. I will also make connections between the treatment of niqab-wearing women and the legacy of violence committed against Indigenous peoples in the name of assimilation.

Showing the Face as a Form of Integration

When announcing the niqab ban during the Canadian citizenship oath, Kenney described the act of taking the oath as the moment when each and every citizenship candidate “makes a commitment to the Canadian family, promises to obey the laws of our country, to respect our traditions, and to be loyal to our head of state and to our country” (Kenney 2011a). He emphasized that citizenship candidates adopt the ‘Canadian story’ when they take the oath and explained that this is why there is such a high value placed upon Canadian citizenship (Kenney 2011a). Insisting that niqab-wearing women show their faces while reciting the oath, Kenney stated, “to segregate one group of Canadians or allow them to hide their faces...precisely when they are joining our community is contrary to Canada’s commitment to openness and to social cohesion” (Kenney 2011a). He concluded by stressing that Canadian citizenship includes qualities such as “mutual responsibilities” and “a shared commitment to values that are rooted in our history” (Kenney 2011a). In this context, the act of covering the face was presented as antithetical to becoming Canadian and a rejection of the commitment required to identify as such. Thus, Kenney justified his new policy as a way of enforcing a kind of uniformity upon the title and practice of Canadian citizenship.

In this sense, the ability of niqab-wearing women to become part of ‘the Canadian family’ is predicated upon what Sara Ahmed (2014) describes as “conditional will” (127). That is to say, migrants are welcomed as citizens so long as they readily conform to the expectations of that nation. This condition involves a willingness “to participate in national culture, where participation requires an agreement with a common end or purpose” (Ahmed 2014, 128). In terms of being welcomed into ‘the Canadian family’ the ‘common end or purpose’ is for niqab-wearing women to unveil and allow citizenship court officials and other participants to look at their exposed faces. However, Ahmed (2014) explains that “requirements of participation” can only come to light when “particulars fail to meet them” (128). In this sense, the requirement that citizenship candidates recite the oath with an uncovered face was born out of the proclamation that some individuals, namely niqab-wearing women refused to make this commitment.

This response is very much in line with what Bakht (2012a) identifies as a form of opposition that presents the niqab as “a symbol of non-integration” (76). In this sense, Muslim women who wear the niqab are perceived as unwilling and unable to fit into the identity of the state (Bakht 2012a, 78). As a result, opponents of the niqab, such as Kenney, have demanded that niqab-wearing women be forced to show their faces. As such, “the figure of the unwilling migrant participates in the transformation of citizenship into a requirement, such that the nation is ‘forced to force’ the migrant to become willing” (Ahmed 2014, 129). Thus, banning the niqab during the Canadian citizenship oath, can be understood as a drastic measure aimed at mandating niqab-wearing women to submit to the nation’s will.

When examining the expectation that niqab-wearing women be compelled to show their faces to reflect dominant ideas about what it means to be Canadian, it is important to consider that many other people have been subject to state sanctioned policies aimed at forcing more ‘Canadian’ identities onto them. Given that Canadian citizenship was created as a result of colonialism, imperialism, and white supremacy, and these ties remain present in the words of the oath itself, policies that oblige niqab-wearing women to unveil should be situated within the context of state sanctioned violence committed against Indigenous peoples by this same country. In the following section I will consider how the niqab ban can be understood as an extension of Canada’s history of harming Indigenous peoples in the name of assimilation and social cohesion.

Situating the Niqab Ban within Canada’s Legacy of Genocide

As I have stated above, critical connections need to be made between the treatment of niqab-wearing women in Canada and the legacy of violence committed against Indigenous peoples. When responding to Kenney’s announcement of the ban, Whida Valiante, former Vice-President of the Canadian Islamic Congress criticized Kenney for imposing “an ideological agenda of so-called assimilation” and connected his ministerial directive to Canada’s colonial genocide of Indigenous peoples (Valiante in Raj 2011). She stated, “Assimilation doesn’t work by the way, we tried that on our native population. We said your religion is wrong, you are wrong, your language is wrong, your clothes are wrong, and we have basically annihilated their culture and cost them untold misery. And Canadians suffer with that too” (Valiante in Raj 2011). Valiante’s words are a cautionary reminder that the niqab ban exists within a context where demands of

assimilation have already informed a number of government policies resulting in serious institutionalized racism, exploitation, and abuse.

It is important to note that mandating niqab-wearing women to uncover their faces while reciting the Canadian citizenship oath is certainly not the equivalent of the mass destruction and annihilation caused by assimilation based policies such as bans on Indigenous customs and rituals including ceremonial feasts, dances, and marriage practices (Cairns 2000; Monture-Angus 1995; Truth and Reconciliation Commission of Canada 2015) and perhaps most notoriously, the implementation of the residential school system (Anderson 2001; Cairns 2000; Chansonneuve 2005; Grant 2004; Jordan-Fenton and Pokiak-Fenton 2014; Kay Dupuis and Kacer 2016; MacKenzie 2016; Miller 1996; Million 2000; Milloy 1999; Monture-Angus 1995; Sterling 1992; Stirbys 2016; Stout and Peters 2011; Truth and Reconciliation Commission of Canada 2015). However, making connections between these forms of state sanctioned violence help us recognize that these policies were all created with the same core expectation: that certain groups of people forcibly change their way of living and being so that they become more like the people who colonized this land. Consequently, it is necessary to highlight this pattern when questioning and problematizing the former Canadian federal government's response to the niqab.

Conclusion: Niqab-wearing women as (Un)assimilable Canadians

With the aim of assimilation in mind, banning the niqab during the Canadian citizenship oath can be understood as a measure that presents niqab-wearing women as refusing to integrate into society (Bakht 2012a, 76). In this sense, the act of covering the face becomes the limit of what is considered acceptable in Canada. In effect, this

demarcation reinforces who can and cannot be Canada. As Ahmed (2000) explains “the production of the nation, in such a model, requires some-body or some-where to not-be in order for it to be” (99). Perhaps opponents of the niqab need to cast niqab-wearing women as (un)Canadian in order to reaffirm whomever or whatever is or can be Canadian. That is to say, niqab-wearing women can be understood as a form of “strangers” who “fit into the nation precisely because they allow the nation to imagine itself as heterogeneous” (Ahmed 2000, 96). To this end, the niqab is necessary to define the boundaries of ‘Canadianess’. Indeed, niqab-wearing women become what Ahmed (2000) describes as the kind of “stranger strangers” who are both unassimilated and assimilated (106). These “strangers are assimilated precisely as the unassimilable and hence they allow us to face the limit” of the multicultural nation” (Ahmed 2000, 106). In other words, when former Canadian government officials tried to shun niqab-wearing women from “the Canadian family” they created a political climate where the covered face belonged in order not to belong. Thus, even those who are portrayed as unwelcome and unable to belong offer a purpose to the nation. The covered face has just as much of a place in Canada as the uncovered face.

In addition to nation-wide conceptions of citizenship, the niqab is also an important factor within current discussions about social engagement in the province of Québec. To this end, the Couillard government has adopted and given assent to *Bill 62* — a law that requires everyone giving and receiving publicly funded services to do so with an uncovered face. This legislation has been framed as a measure to promote social cohesion (Vallée 2017b). In the next chapter, I will challenge the idea that forcing niqab-wearing women to unveil is an effective way to foster social harmony.

Chapter 6: Showing the Face During Public Services to ‘Live Together in Harmony’

“Although not mentioned by name, Muslim women are clearly the target of this piece of legislation and it is they exclusively who will be denied their rightful participation in public services. The result of this denial and its chilling effect is a further marginalization of this population of women.”

Pascale Fournier and Erica See (2012, 76)

The “Naked Face” of Secular Exclusion: Bill 94 and the Privatization of Belief

“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, 12)

Muslim Cultural Politics in the Canadian Hinterlands

“...most of us can build connection across difference and fight for our beliefs if we’re willing to listen and lean in to vulnerability. Mercifully, it will take only a critical mass of people who believe in finding love and connection across difference to change everything. But if we’re not even willing to try, the value of what we’re fighting for will be profoundly diminished.”

Brené Brown (2017, 58)

Braving the Wilderness: The Quest for True Belonging and the Courage to Stand Alone

Introduction

On October 18, 2017, Philippe Couillard’s Québec Liberal government passed and gave assent to *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds*

*in certain bodies*¹²⁴ (Vallée 2017a). The law, which has been described as the first of this kind in North America (Authier 2017a; Hamilton 2017; Shingler 2017a; Valiante 2017) includes a section that requires everyone giving and receiving public services to have their faces uncovered during the delivery of the services (Authier 2017a; Hamilton 2017; Shingler 2017c; Valiante 2017). In addition to provincial government services, the legislation was amended in August 2017 to include municipal services (Canadian Press 2017; CBC News 2017a; Peritz 2017b; Hamilton 2017; Shingler 2017a), metropolitan communities (Canadian Press 2017; CBC News 2017a), and public transit authorities (Canadian Press 2017; CBC News 2017a; Hamilton 2017; Peritz 2017b; Shingler 2017a).

Just as former Prime Minister Stephen Harper, and former Federal Cabinet Ministers Jason Kenney and Chris Alexander argued that niqab-wearing women needed to show their faces while taking the Canadian citizenship oath in order to ‘join the Canadian family’ (Canadian Press 2015b; Foote 2015; Geddes 2015; Gollom 2015; Kenney 2011a; Mackrael and Perreux 2011; Payton 2011; Raj 2011; Smith 2011; Whittington and Keung 2015), Québec Minister of Justice and Attorney General Stéphanie Vallée has employed a particular refrain to justify legislation requiring niqab-wearing women to show their faces while public services are being rendered. In this context, Vallée has defended her government’s position by arguing that uncovered faces are required in the name of social cohesion (Authier 2017a; Vallée 2017b; Shingler 2017a) and ‘living together in harmony’ (Vallée 2017b; Shingler 2017a).

¹²⁴ This legislation was originally introduced as *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies*, however the title was modified during the committee stage (Vallée 2015).

In the following chapter, I examine how *Bill 62* has contributed to the idea that niqab-wearing women disrupt basic terms of social order. More specially, I show how banning the niqab during the provision of public services positions the act of showing the face as the key to harmonious social interaction. I will challenge this understanding by arguing that *Bill 62* conflicts with understandings of social cohesion that encourage values such as cooperation and access to resources for all members of society. I will also show that requiring an uncovered face in order to give and receive public services promotes a racialized and ableist ideal of social relations. However, before addressing social cohesion, ‘living together in harmony’, and the ways that the uncovered face has been tied to these concepts, I begin my intervention by situating *Bill 62* in a post 9/11 climate fueled by fear and anxiety about Islam. In order to trace this context, I briefly outline previously tabled legislation that has forged the path to *Bill 62*. I then summarize what is known about the *Act* at this time. Then I problematize Stéphanie Vallée’s inconsistent explanation of the terms of this law and the ways that it will be enforced, and summarize the legal challenge that has ensued.

The Context of *Bill 62*

In the context of Québec, *Bill 62* arises from a long-running debate on reasonable accommodation that has taken place both within the legal system and Québécois society at large.¹²⁵ Disputes about reasonable accommodation have included minority groups

¹²⁵ For more details about this debate, see:

Ahadi, Daniel. 2009. “L’Affaire Hérouxville in Context: Conflicting Narratives on Islam, Muslim Women, and Identity.” *Journal of Arab and Muslim Media Research* 2 (3):241–260.
https://doi.org/10.1386/jammr.2.3.241_1.

Beaman, Lori G. 2012. “Introduction: Exploring Reasonable Accommodation.” In *Reasonable Accommodation: Managing Religious Diversity*, edited by Lori G. Beaman, 1–12. UBC Press.

such as Sikhs¹²⁶, Orthodox Jews, and most recently, Muslims (Bouchard and Taylor 2008). Since former President of the United States George W. Bush declared a global “war on terror” in response to the attacks on the Twin Towers and the Pentagon that took place on September 11, 2001 (Guardian 2001; New York Times 2001; Washington Post 2001), Muslim citizens have become subject to heightened surveillance and discrimination (Ahadi 2009; Brown 2006; Gates 2011; Jiwani 2006; Magnet 2011; Razack 2008; Thobani 2007; Zine 2012). In recent years, this negative attention has been increasingly directed at Muslim women who wear the niqab. As such, the expectation that niqab-wearing women uncover their faces in order to give and receive publicly funded services is situated within what Wendy Brown (2010) describes as “a giant Western Islamophobic seizure.”

In Québec, this moral panic about Islam reached a pivotal point in January 2007, when the small town of Hérouxville passed a controversial code of conduct (Ahadi 2009; Mahrouse 2010; Razack 2008; Zine 2012). Despite the fact that Hérouxville has virtually no immigrant population, and likely no Muslim inhabitants, the town council felt the need to create a code outlining practices which local residents deemed unsuitable for potential newcomers, particularly in relation to women (Mahrouse 2010; Razack 2008). Prohibited practices included stoning and burning women, and covering one’s face in

Bouchard, Gérard, and Charles Taylor. 2008. “Building the Future: A Time for Reconciliation. Abridged Report.” Québec City, QC: Bibliothèque et Archives nationales du Québec.

Mahrouse, Gada. 2010. “‘Reasonable Accommodation’ in Québec: The Limits of Participation and Dialogue.” *Race & Class* 52 (1):85–96. <https://doi.org/10.1177/0306396810371768>.

Zine, Jasmin. 2012. “Introduction: Muslim Cultural Politics in the Canadian Hinterlands.” In *Islam in the Hinterlands: Muslim Cultural Politics in Canada*, edited by Jasmin Zine, 1–37. Vancouver, BC: University of British Columbia Press.

¹²⁶ *Multani v Commission scolaire Marguerite-Bourgeoys*, [2006] 1 SCR 256, 2006 SCC 6

public (Ahadi 2009; Mahrouse 2010; Razack, 2008). Hérouxville municipal councillor André Drouin publicly called on Premier Jean Charest “to declare a state of cultural emergency to protect Québec culture and examine the practice of accommodating non-Christian beliefs and practices in society” (CBC News 2007a). This incident showed that certain policy makers in Québec felt the need to establish pre-emptive measures to curtail the perceived threat of Islam.

Contributing to building fervent unrest, the last three consecutive Québec provincial governments have introduced legislation addressing the subject of reasonable accommodation on religious grounds. In each case, the legislation has included a provision addressing the concept of the uncovered face. On March 24, 2010, the Charest Liberal government announced *Bill 94: An Act to establish guidelines governing accommodation requests within the Administration and certain institutions* (CBC News 2010; Chung 2010; Fournier and See 2012; Weil 2010). This act required people employed by the public sector as well as anyone using public services to show their face while delivering and receiving services (CBC News 2010; Chung 2010; Fournier and See 2012; Weil 2010). Although *Bill 94* did not name specific groups, it was presented as a ban on the niqab (Fournier and See 2012). After a series of general consultations between spring 2010 and winter 2011, *Bill 94* was adopted in principle on February 15, 2011 based on a vote of 56 in favour, 49 against, and 2 abstentions (Assemblée nationale du Québec 2011). It was then moved to the committee stage to examine each of the proposed clauses. However, *Bill 94's* path to becoming a law ended when the Parti Québécois defeated the Liberals in the 2012 provincial election.

Although *Bill 94* did not pass, its spirit was soon revived within a new bill tabled by the Parti Québécois.¹²⁷ On September 10, 2013 Pauline Marois's government tabled *Bill 60: Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests* (CBC News 2013b; Drainville 2013). Commonly referred to as the "Charter of Values", this legislation included a section that required everyone giving and receiving public services to do so with an uncovered face (CBC News 2013b; Drainville 2013). *Bill 60* reached the public hearings stage (Janus 2014). Though this legislation soon received the same fate as *Bill 94* when the Parti Québécois was defeated in the 2014 provincial election and Phillip Couillard's Liberal Party formed the next Québec government. However, a key part of the Liberal Party's electoral campaign included a promise to reintroduce measures to address the subject of reasonable accommodation (Janus 2014; Montgomery 2017). It would not be long before the Couillard government took action on this promise.

On June 10, 2015, the Couillard government continued the legacy of legislation mandating that public services be rendered with an uncovered face by introducing what is now known as *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies* (CBC News 2015; Perreux 2015; Vallée 2015). Resurrecting similar content as the two bills that preceded it, this legislation continues a lengthy debate about the presence of the niqab in public spaces.

¹²⁷ Effectively *Bill 94* became a "zombie bill" — a term that describes "bills that have died with prorogation or an election and then risen from the dead when Parliament [or other levels of government] resume[s] anew" (Blaze Carlson 2011).

The Terms of *Bill 62*

Although *Bill 62* does not outlaw the niqab everywhere in public like the nationwide bans on facial veils in France (Arseneault 2011; Chrisafis 2011b; Erlanger 2011; Rustici 2011; Weaver 2017) and Belgium (BBC News 2011b; Jozwiak 2011; RTÉ News 2011), this legislation applies to an extensive number of publicly funded services and institutions. *Bill 62* impacts people working in areas including: government departments and agencies, organizations that are funded by the Québec provincial budget, organizations whose employees are “appointed in accordance with the [Québec] Public Service Act”, municipalities, metropolitan communities, intermunicipal boards and municipal housing bureaus, public transit authorities as well as organizations that operate shared transportation systems, school boards, general and vocational colleges, universities, health services and social services, health communication centres, and bodies made up of a majority of members appointed by the National Assembly or National Assembly committees (Vallée 2017a, 6-7).

The *Act* also applies to staff members of the National Assembly and Lieutenant-Governor, people appointed or designated by the National Assembly “and the personnel directed by them”, commissioners appointed by the Québec provincial government to lead public inquiries “and the personnel directed by them”, arbitrators appointed by the Québec provincial government or ministers, peace officers, and doctors, dentists, and midwives practicing in spaces “operated by a public institution” (Vallée 2017a, 7). In addition to people working in all the aforementioned areas who are required to carry out their duties with uncovered faces, people seeking a service from these employees must uncover their faces while they are receiving the service (Vallée 2017a, 9). However, *Bill*

62 does not specify exactly what constitutes the duration of a service provision; and I would argue that this omission is a serious problem.

At this time, the Québec Liberal government has not yet released complete guidelines detailing how the *Act* will be enforced. Consequently, many critics have argued that the expectations of this legislation are unclear (Authier 2017a; CBC News 2017a; Fidelman 2017; Hamilton 2017; Krishnan and Shingler 2017; Montgomery 2017; Shingler 2017a; Valiante 2017). What is perhaps most troubling, is that Stéphanie Vallée, the Minister responsible for the administration of this *Act*, is arguably also the main source of its confusion. Notably, Vallée has been criticized for giving inconsistent responses, especially when asked to clarify whether niqab-wearing women will be required to show their faces in order to use public transit (Authier 2017b; Hébert 2017b; Shingler 2017c; Woods 2017).

In August 2017 Vallée proposed amendments to extend *Bill 62* to municipal services (Canadian Press 2017; CBC News 2017a; Peritz 2017b; Hamilton 2017; Shingler 2017a), metropolitan communities (Canadian Press 2017; CBC News 2017a), and public transit authorities (Canadian Press 2017; CBC News 2017a; Hamilton 2017; Peritz 2017b; Shingler 2017a). When asked whether these changes would result in bus drivers refusing to let niqab-wearing women board buses unless they uncovered their faces, Vallée repeatedly refused to give a direct answer (Canadian Press 2017; CBC News 2017a; Peritz 2017b). She stated that “the objective of the bill [was] not to prevent people from taking the bus” (Canadian Press 2017), but would not comment on specific situations or explain how the legislation would be enforced (Canadian Press 2017; CBC News 2017a; Peritz 2017b).

Days before the *Act* was passed and given assent, Vallée was asked again to clarify what the law would mean for niqab-wearing women who are passengers on public transit. During an interview on CBC Montréal's Daybreak, she stated that niqab-wearing women would be required to show their faces "as long as the service is being rendered" (Montgomery 2017; Shingler 2017a). Consequently, Vallée's response was interpreted to mean that niqab-wearing women must show their faces for the duration of their ride on public buses and the Montréal subway (Montgomery 2017; Shingler 2017a; Woods 2017). However, Vallée's response soon changed.

On October 24, 2017, Vallée held a press conference to address criticism and confusion about the *Act* (Lau 2017; Shingler 2017c; Steuter-Martin 2017; Woods 2017). To this end, she shared specific directives about how the legislation would be applied (Lau 2017; Shingler 2017c; Steuter-Martin 2017; Woods 2017). According to these directives all people must uncover their faces when interacting with staff at publicly funded institutions such as hospitals and clinics (Shingler 2017c; Steuter-Martin 2017). Uncovered faces are also required when people are receiving health care services that concern identification and communication (Steuter-Martin 2017). However, niqab-wearing women would not be required to uncover their faces while sitting in waiting rooms if they were not interacting with staff (Authier 2017b; Steuter-Martin 2017; Woods 2017). Vallée also noted that niqab-wearing women would not be denied emergency services at hospitals for covering their faces (Authier 2017b; Shingler 2017c; Steuter-Martin 2017). In terms of education, students at all levels of publicly funded institutions, including colleges and universities must uncover their faces in class (Authier 2017b; Steuter-Martin 2017; Woods 2017). School board employees, employees at

publicly funded colleges and universities, as well as people working at private educational institutions that receive public grants must also uncover their faces (Steuter-Martin 2017). Additionally, people receiving services from school boards must uncover their faces (Steuter-Martin 2017).

When using public libraries, niqab-wearing women can access the stacks (Authier 2017b; Shingler 2017c; Steuter-Martin 2017; Woods 2017) and read books with their faces covered (Steuter-Martin 2017). However, they must uncover their faces when interacting with library staff (Shingler 2017c; Steuter-Martin 2017) getting a library card, and checking out books (Steuter-Martin 2017; Woods 2017). Niqab-wearing women who use publicly funded childcare are permitted to drop children off with their faces covered, but must show their faces to an employee when picking the children up (Authier 2017b; Steuter-Martin 2017; Woods 2017). People must uncover their faces when being sworn in at court and when accessing court files (Authier 2017b; Steuter-Martin 2017). A Québec correspondent from the *Toronto Star* also reported that the directives require people to uncover their faces when testifying before a judge (Woods 2017). In terms of employment, the directives specify that people working for government departments or agencies (such as government corporations like Hydro-Québec), public institutions in the health and social services network, the office of the Québec ombudsman, municipalities, municipal housing boards, transit authorities or any other organizations that operate a public transit system, early childhood centres, and publicly funded daycares must uncover their faces (Steuter-Martin 2017).

This time when the issue of public transportation was raised, Vallée told reporters that niqab-wearing women would only be required to uncover their faces if a transit

authority needed to verify their identity on a photo ID card, such as those required for discounted student and seniors fares (Authier 2017b; Fidelman 2017; Shingler 2017c; Steuter-Martin 2017). Vallée noted that after a transit employee verified their identity, niqab-wearing women would be permitted to cover their faces for the ride (Authier 2017b; Woods 2017). In this context, Vallée described interaction with a public employee and identification as the key factors to the legislation (Authier 2017b; Steuter-Martin 2017; Woods 2017). As such, niqab-wearing women “using an electronic pass without any photo identification requirements to swipe their way onto a public bus or the Montréal subway” have no obligation to unveil (Woods 2017). This position was quite a departure from the remarks that Vallée had made just a few days earlier (Authier 2017b; Shingler 2017c; Woods 2017).

Despite claims that she had contributed to confusion about her own legislation, Vallée maintained that her position remained coherent (Lau 2017). However, Vallée was arguably inconsistent once again when discussing the consequences for violating the law. Given that the *Act* does not specify consequences or penalties for refusing to receive public services with an uncovered face, Vallée was asked what would happen if a niqab-wearing woman did not comply with the legislation (Lau 2017; Steuter-Martin 2017). Her answer was that “it's the person's choice to have access to services or not” (Lau 2017). When asked to clarify whether this meant that niqab-wearing women would be kicked off public transit for refusing to show their faces to transit authority employees, Vallée responded, “if you don't get on, you don't get kicked off” (Authier 2017b; Lau 2017; Steuter-Martin 2017). Vallée’s answer suggests that bus drivers and subway officials may have to bar niqab-wearing women from boarding buses and taking the

subway if they do not uncover their faces (Authier 2017b; Lau 2017). Though, rather than explaining this comment, Vallée argued that further clarification was unnecessary and referenced general regulations that give bus drivers discretion to decide whether a person will be permitted to get on a bus (Authier 2017b; Lau 2017). Comparing the niqab to glasses, Vallée stated, “It’s normal that, if someone comes with their photo ID and large glasses, that we would ask them to take their glasses off so we can make sure their face matches the ID” (Lau 2017). Consequently, one might infer that Vallée sees the *Act* as a mere extension of transit operators’ current responsibilities.

In addition to condemnation for likening the niqab to sunglasses (Hébert 2017a; 2017b), Vallée has been criticized for changing her position on what it means to give and receive public services with an uncovered face (Authier 2017b; Hébert 2017b; Shingler 2017c). Members of the Parti Québécois and the Coalition Avenir Québec have accused Vallée of giving in to political leaders from Montréal and other parts of Canada who have criticized the legislation for being racist (Authier 2017b). According to Nathalie Roy, a Member of the Legislative Assembly representing the Coalition Avenir Québec, Vallée said that uncovered faces would be required for the entire duration of a public service during committee hearings about *Bill 62* (Shingler 2017c). Roy called the press conference “a mess” and a “comedy act”, and accused Vallée of ceding on her initial position due to backlash (Shingler 2017c). Emphasizing his embarrassment, Jean-François Lisée, leader of the Parti Québécois, accused the Couillard government of being unable to defend and enforce its own laws (Shingler 2017c). He argued that the Liberal government had “caved, and weakened the credibility of the Québec government and the Québec state” (Authier 2017b). Lisée also told reporters that when facing opposition,

Premier Couillard demonstrated that he would not apply his own party's laws (Authier 2017b).

Vallée's attempt at clarification and apparent shift in position also failed to appease opponents of the *Act*. Warda Naili, a Muslim woman from Montréal who wears the niqab, has questioned whether Vallée really believes that people "have such a short memory" (Woods 2017). Naili argued that the law is still discriminatory because it targets an extremely small group of Muslim women rather than people from all faiths (Woods 2017). Since she experiences ongoing health issues, Naili is particularly concerned about the impact the legislation will have during her visits to Québec hospitals (Woods 2017). Given that the legislation would require her to remove the niqab while being examined by a doctor, Naili said she wonders whether the physicians she sees will enforce the law or not (Woods 2017).

The Québec Solidaire has called the law "absurd and impossible to apply" and continues to question how the Liberal government can impose restrictions on the niqab, but oppose the removal of the crucifix that is hanging in the Québec National Assembly (Shingler 2017c). Québec City Mayor Régis Labeaume and former Montréal Mayor Denis Coderre both remained concerned about how the legislation will be enforced and maintain that it puts unreasonable pressure on the employees in their municipalities (Authier 2017b). Coderre expressed his doubts about the law's validity (Shingler 2017c) and stated that he did not "think the law will pass the test of the courts" (Authier 2017b). In addition to criticism from different figures and political perspectives, it would not be long before the legislation would face a legal challenge in court. In the following section I offer an outline of the case and the status of the law at this time.

Legal Challenge

On November 7, 2017, the National Council of Canadian Muslims, Warda Naili¹²⁸ — a niqab-wearing woman from Montréal, and the Canadian Civil Liberties Association filed a challenge against Section 10 of *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies* in the Québec Superior Court (Peritz 2017b; Shingler 2017d; Solyom 2017). The plaintiffs argued that the Superior Court should find Section 10, which requires everyone in Québec to give and receive public services with an uncovered face,¹²⁹ invalid for violating freedom of religion and the right to equality as guaranteed by the *Québec Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms*¹³⁰ (Keung 2017; Shingler 2017d; Solyom 2017). Given the impact that this legislation has already had on niqab-wearing women’s lives, the plaintiffs requested that the Superior Court respond to the matter with urgency by granting a stay while determining the merits of the law.¹³¹

In order to support this grave sense of urgency, the plaintiffs presented a number of arguments. Notably, they emphasized that compelling niqab-wearing women to unveil in order to receive publicly funded services imposes a significant burden on their lives. To this end, the *Act* “forces them to make a false and improper ‘choice’ between adhering

¹²⁸ This plaintiff was named Marie-Michelle Lacoste at birth, but changed her name to Warda Nailin after converting to Islam. For the purpose of this text, I will use the name Warda Nailin unless specifically referencing passages from court documents.

¹²⁹ The title of Section 10 is ‘Services with Face Uncovered’ and this part of the *Act* makes no mention of the word niqab. However, the legislation has been described and enforced as a niqab ban.

¹³⁰ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 12, 73-74.

¹³¹ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 13, 107-112.

to their beliefs and having the basic freedom to work, participate meaningfully in society, and make any number of decisions or take any number of normal actions in the course of their everyday lives.”¹³² Highlighting the fact that women have historically experienced considerable disadvantages when pursuing education, employment, and accessing social services such as healthcare, the plaintiffs argued that Section 10 of the *Act* contributes to these aspects of inequality by creating additional barriers. In this sense, the plaintiffs argue that requiring niqab-wearing women to either compromise their religious beliefs or forgo their access to services, opportunities, and full participation in Québec society imposes a specific form of hardship that Muslim men do not have to face.¹³³ In addition to being extremely detrimental to niqab-wearing women’s autonomy and social participation, the plaintiffs maintained that Section 10 severely limits their employment opportunities because this part of the legislation bars niqab-wearing women from working in any publicly funded sectors of employment.¹³⁴ The plaintiffs also emphasized that this legislation exacerbates the violence and discrimination that niqab-wearing women already experience.¹³⁵

On December 1, 2017 Québec Superior Court judge Justice Babak Barin granted a temporary stay on Section 10 of the *Act* (Canadian Press 2017; CBC News 2017b; Peritz 2017c). This suspension will remain in effect until the government releases

¹³² National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 78.

¹³³ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 87.

¹³⁴ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 88-89.

¹³⁵ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 90-91.

guidelines outlining how people may be exempted from uncovering their faces based on religious grounds as referenced by Sections 11 and 12 of the *Act*¹³⁶. More specially, Section 11 allows for the possibility that a religious accommodation may be granted, however this part of the legislation is dependent upon Section 12 which requires the Minister of Justice to “establish guidelines for dealing with requests for accommodations on religious grounds in order to support bodies in their application of section 11” (Vallée 2017a). As such, Section 11 cannot be operational until the terms of Section 12 are met.

Justice Barin’s ruling did not address the Applicants’ arguments that Section 10 of the *Act* infringes upon niqab-wearing women’s rights to freedom of religion and equality as guaranteed by the *Québec Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms*. Instead, Barin emphasized that his decision to temporarily suspend the law was based solely on the conclusion that the Application met the criteria for a stay as outlined by a test developed by the Supreme Court of Canada.¹³⁷ Based on the sworn declarations made by Marie-Michelle Lacoste and Ishaan Gardee from the National Council of Canadian Muslims, and the Affidavit from Noa Mendelsohn Aviv from the Canadian Civil Liberties Association, Barin agreed that Ms. Lacoste could face irreparable harm for being required to remove her niqab¹³⁸. As such, Ms. Lacoste faces serious harm due to Section 10 of the *Act* because this provision forces her to either compromise her religious beliefs or forfeit her eligibility to work in the

¹³⁶ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 5.

¹³⁷ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 28-29.

¹³⁸ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 38-40.

public sector and to benefit from basic government services¹³⁹. Barin recognized that this level of harm cannot be measured in monetary terms or remedied¹⁴⁰.

Additionally, after considering who would suffer greater harm from his decision to either grant or refuse the stay, Barin concluded that a law addressing the subject of religious neutrality was “not time sensitive.”¹⁴¹ Ultimately, he questioned why the government had chosen to put incomplete legislation into effect instead of adopting the *Act* with accommodation guidelines¹⁴². Given the outstanding provisions, Barin argued “no harm but the passage of time would be caused by the granting of a stay.”¹⁴³ He also noted that the issue of time remains within the government’s control, as it is up to the government to decide when Section 11 of the *Act* comes into effect and when the guidelines for accommodation requests will be released¹⁴⁴. As such, he noted that the stay would be lifted as soon as the government completed these actions¹⁴⁵.

Raising further concerns about the limitations and potential harm posed by enforcing an incomplete and unclear law, Barin suggested that giving assent to the *Act*

¹³⁹ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 40.

¹⁴⁰ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 40.

¹⁴¹ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 48.

¹⁴² National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 48.

¹⁴³ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 48.

¹⁴⁴ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 49.

¹⁴⁵ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 49.

without applying Section 11 and including the guidelines required to support accommodation requests contravenes the very purpose of the legislation. After pointing to the ambiguity and confusion created by the outstanding provisions, Justice Barin stated the following:

Certainly, such an approach is not compatible with the intention expressed in the Act. The government cannot bring into force a provision that itself considers to be in need of accommodation and then keep in suspense the accompanying accommodation provision coupled with an omission to establish its operative guidelines to address the public's requests for accommodation¹⁴⁶.

In other words, the Couillard government's initial approach to the *Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies* has actually contradicted the very nature of the law. By failing to provide the details for the kinds of accommodation requests that the *Act* is supposed to address, the Québec provincial government has already undermined the very purpose of its own policy.

Justice Barin tied up his analysis by concluding that the Québec provincial government must take initiative to ensure that it is adopting a law that serves the interest of the public by being “coherent and complete.”¹⁴⁷ He granted an interim stay on Section 10 of the *Act* until Section 11...is brought into force and is fully operational in accordance with the guidelines set out in Section 12.¹⁴⁸ When asked to comment on the

¹⁴⁶ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 55.

¹⁴⁷ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 58.

¹⁴⁸ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 5.

judgement, Québec Premier Philippe Couillard told reporters that the Ministry of Justice will review the Superior Court ruling before deciding whether to seek an appeal (CBC News 2017b). As of the time of submission of this dissertation, Section 10 continues to be suspended, as the Québec provincial government has neither released guidelines concerning accommodation requests nor challenged the stay in court. Now that I have summarized the impending yet uncertain legal status of this law, I will use the following space to highlight how requiring niqab-wearing women to show their faces in order to give and receive public services has been rationalized in the name of “living together in harmony” (Vallée 2017b). That is to say, I will address the argument that faces must be uncovered in order to promote and protect social cohesion.

Showing the Face as a Form of Social Cohesion

A few days after *Bill 62* was passed and given assent, Québec Justice Minister Stéphanie Vallée contributed a commentary to the *Montreal Gazette*. Throughout her piece Vallée (2017b) emphasized that the key aim of *Bill 62* is to promote social cohesion by establishing specific terms of conduct required for ‘living together in harmony.’ She argued that despite holding various positions about what it means to live together in harmony, the political parties represented at the National Assembly “agree that public services must be given and received with the face uncovered” (Vallée 2017b). Consequently, the Québec Liberal government defined the uncovered face as a necessary condition and a basic “common denominator” (Vallée 2017b) for interaction. As such, the *Act* formalizes a presumed consensus that the uncovered face is a necessary condition and an indispensable part of harmonious human relationships (Vallée 2017b).

Rather than a form of discrimination or repression, Vallée (2017b) tied up her piece by stressing that the *Act* should be recognized as an approach borne out of consensus and collectivity. However, Vallée's conclusion leaves me questioning how legislation that effectively limits niqab-wearing women's participation in society based on how they dress can be described as socially cohesive and harmonious. In fact, I would argue that requiring niqab-wearing women to uncover their faces in order to give and receive public services actually undermines key aspects of social cohesion. In the following sections I define the term social cohesion and situate it within the context of my research. Then I will highlight how compelling niqab-wearing women to uncover their faces serves to inhibit social cohesion rather than fostering social harmony.

Defining Social Cohesion

In a general sense, Michael Toye (2007) describes social cohesion as a large-scale concept that concerns a society's "overall state of social bonds" (2). Given this broad reach, social cohesion links different policy areas together and has been used as a model within policy discourse to address issues including "income security, neighbourhood safety, and housing" (Toye 2007, 2). Despite its prevalence within academic literature and public policy, many scholars have emphasized that there is no commonly accepted definition of social cohesion¹⁴⁹ (Beauvais and Jenson 2002; Bruhn 2009; Jenson 2010; Schiefer and van der Noll 2017; Toye 2007). According to Caroline Beauvais and Jane Jenson (2002) varying definitions of social cohesion can be better understood by examining the underlying key elements around which they are framed (2). Building upon the work of Ade Kearns and Ray Forrest (2000), Beauvais and Jenson (2002) outline the

¹⁴⁹ In addition to varying definitions, some are critical of social cohesion as a concept (Connolly 2005; Dobbernack 2014; Taylor and Foster 2015).

following five themes as different starting points used to anchor definitions of social cohesion: “1. Common values and a civic culture, 2. Social order and social control, 3. Social solidarity and reductions in wealth disparities, 4. Social networks and social capital, and 5. Territorial belonging and identity” (2). They argue that each of these elements have a significant impact on the theoretical and methodological applications of social cohesion in terms of the factors that are analyzed and measured as well as the kinds of public policy that are presented (Beauvais and Jenson 2002, 4).

In terms of my research on *Bill 62*, I am particularly interested in the conceptions of social cohesion that are centered around “common values and a civic culture” and “social order and social control” (Beauvais and Jenson 2002; Kearns and Forrest 2000). As such, I will use the following space to examine how these understandings of social cohesion inform Vallée’s defence of legislation requiring that people giving and receiving public services must do so with their faces uncovered.

Faces, Common Values and a Civic Culture, and Social Order and Social Control

When discussing “common values and a civic culture”, Kearns and Forrest (2000) describe this form of socially cohesive society as “one in which the members share common values which enable them to identify common aims and objectives, and share a common set of moral principles and codes of behaviour through which to conduct their relations with one another” (997). This facet of social cohesion can be seen in Vallée’s justification of the *Act*. In her commentary about *Bill 62*, Vallée (2017b) maintains that key ground rules must be established in order to encourage harmonious interaction. She argued that the uncovered face is a basic component that all members of the Québec National Assembly consider necessary for public services to be rendered (Vallée 2017b).

To this end, lawmakers in Québec have defined the uncovered face as a fundamental part of the relationships forged between those who give and receive social services.

In addition to social cohesion in terms of “common values and a civic culture”, the requirement of an uncovered face while giving and receiving public services has also been framed in terms of social cohesion as “social order and social control.” According to Kearns and Forrest (2000), the conception of social cohesion as “social order and control” pertains to “the absence of general conflict within society and of any serious challenge to the existing order and system” (998). This interpretation of social cohesion relates to everyday routines, obligations, necessities, and interactions (Kearns and Forrest 2000, 998). Kearns and Forrest (2000) describe this perspective as the “mundane level” of life (998). In this context, niqab-wearing women have been cast as a threat to social cohesion because the act of facial covering is seen as a disruption to social order (Ottawa Citizen Editorial Board 2017). Consequently, Vallée (2017b) has described *Bill 62* as the Liberal government’s commitment to addressing the issue of social unrest in terms of longstanding debates about everyday social interaction. Referencing her party’s 2014 electoral platform, Vallée (2017b) described *Bill 62* as a successfully achieved election promise to tackle the issues of living together in social harmony and reasonable accommodation on religious grounds. In this context, the requirement that niqab-wearing women uncover their faces in order to give and receive public services is supposedly the Liberal government’s solution to a lengthy conflict about the state of social order.

Uncovering the Face as an Affront to Social Cohesion

Although Vallée has framed the requirement that all faces be uncovered while public services are being rendered as a measure that fosters social cohesion, this narrative

is merely one interpretation of social cohesion. Contrarily, *Bill 62* can also be classified as an affront to social harmony. Drawing upon alternate understandings of social cohesion, I will counter Vallée's defense of *Bill 62* by showing that cohesive societies are actually achieved by incorporating difference, rather than by imposing policies of division and exclusion.

In a Canadian context, Dick Stanley (2003) has discussed the subject of social cohesion as a manifestation of cooperation. Extending across all levels of social activity, including relationships between neighbours, employers and employees, businesses and clients, adults and children, citizens and the state, this understanding of cohesiveness is based upon the premise that people in a society be willing to cooperate with each other so that everyone can achieve meaningful and prosperous lives (Stanley 2003, 8-9). Such a willingness to cooperate requires that people "can and do freely choose to form partnerships and have a reasonable chance of realizing them, because others are willing to cooperate as well" (Stanley 2003, 8). However, as well as willingness, this form of interaction requires that all actors have access to the resources they need in order to cooperate. In other words, cooperation must be accessible so that people are not denied opportunities based on factors such as "economic and ethnic exclusion" (Stanley 2003, 8). Additionally, cooperation requires that people are willing to share resources so that they are fairly distributed (Stanley 2003, 8).

Addressing similar themes, the level of social and political engagement within a society has also served as an important indicator of social cohesion. The Directorate General of Social Cohesion of the Council of Europe (2001) describes social cohesion as a series of values and principles with the goal of ensuring that all members of society

have equal access “to fundamental social and economic rights” (5). This approach highlights the importance of identifying barriers such as “discrimination, inequality, marginality or exclusion” (Council of Europe 2001, 5). In a practical sense, this understanding of social cohesion includes any actions that offer all citizens the opportunity to secure the resources necessary to meet their basic needs, as well as access to progress, legal rights, dignity, and social confidence (Council of Europe 2001, 5).

A lack of access to any of these aforementioned areas contravenes the Council of Europe’s Strategy for Social Cohesion (Council of Europe 2001, 5). Key parts of this strategy include guidelines about how states can apply social cohesion to “improve the quality of public services and to ensure that all citizens have real access to them” and “ensure the dignified integration of migrants and to combat all forms of racism and discrimination” (Council of Europe 2001, 6). Given the connection between public services, quality of life, and community engagement, public policy addressing social cohesion should aim to break down the conditions and barriers that interfere with access to public services. However, the demand of an uncovered face as a prerequisite to giving and receiving public services creates a new barrier that specifically impacts niqab-wearing women. Recognizing the grave impact of this form of legislation, Pascale Fournier and Erica See (2012) highlight that “[t]he extremely broad reach of Québec public funding would effectively force the niqab-wearing woman to research and plot out the few public locations where she could possibly receive treatment equal to her ‘naked faced’ sisters” (68). Consequently, I would argue that public policy that serves to restrict the ways that certain groups of people can access essential resources and participate in society should be challenged for undermining the spirit of cohesion and harmony.

Based on the components that I have outlined above, a socially cohesive society should enable niqab-wearing women to negotiate how they dress as they navigate through various relationships and forms of interaction. In this sense, the concept of willing cooperation would allow niqab-wearing women to determine if, when, and where they cover and uncover their faces. However, a law that requires niqab-wearing women to unveil in order to give and receive public services prohibits niqab-wearing women from forming and realizing partnerships on their own terms. Additionally, this legislation puts an onus on figures such as doctors, teachers, childcare workers, and bus drivers to regulate what a specific group of Muslim women can and cannot wear; infringing upon the terms of the relationship that they have developed with niqab-wearing women before the adoption of the *Act*. Given that publicly funded services such as education, healthcare, childcare, and public transportation can deeply impact a person's overall quality of life, restricting a specific group's access to these resources is an example of the kind of exclusion that undermines the spirit of willing cooperation required to foster social cohesion.

In addition to the access and distribution of resources, Stanley (2003) emphasizes that social cohesion is based upon a population's willingness to cooperate with each other throughout all social relations without the presence of coercion (9). Notably, Stanley (2003) highlights that this conception of social cohesion does not concern subjects such as shared values, conformity, and social order. He argues that social cohesion is not dependent "on social sameness, homogeneity of values or opinions, everyone conforming to the same values, beliefs or lifestyle" (Stanley 2003, 9). Indeed, these aforementioned factors may hinder and even indicate a lack of social cohesion (Stanley 2003, 9). Stanley

(2003) cautions that while concepts of shared values, conformity, and social order are often part of definitions of social cohesion, they should not be confused or equated with social cohesion. Although shared values, conformity, and social order can occur in a socially cohesive society, they are also characteristics of authoritarian states or besieged communities such as Nazi Germany, the Stalin regime, street gangs, and anti-government extremist groups (Stanley 2003, 9). These forms of government, groups or communities resemble qualities such as willing cooperation, social order, and shared values, however, such characteristics are achieved through measures of coercion and exclusion (Stanley 2003, 9). Rather than willing cooperation and engagement, authoritarian states and besieged communities create a sense of solidarity using hate or fear of a particular enemy (Stanley 2003, 10).

Given the critical differences between social cohesion and authoritarian regimes I would argue that Vallée's defence of *Bill 62* as a measure to establish basic ground rules that maintain social order is perhaps a mischaracterization of social cohesion. In this sense, ordering niqab-wearing women to show their faces during the rendering of public services should be seen as a form of state-sanctioned coercion that confuses the presumed shared values about uncovered faces with the cohesiveness of a society. While the Québec provincial government is by no means an authoritarian or besieged community, *Bill 62* specifically targets niqab-wearing women and serves as a policy of exclusion. Rather than fostering solidarity based upon a shared sense of cooperation and engagement, this legislation contributes to a larger framework of moral panic surrounding Islamic cultures. As Sheema Khan (2009) writes, "[t]he niqab has been in the news recently, often in the most unflattering terms. These new WMDs (women in Muslim

dress) seem to evoke the same fear once reserved for the other WMDs (weapons of mass destruction)” (138). Instead of a source of social harmony, *Bill 62* must be understood as a visceral response to the niqab informed by racism and Islamophobia.

Bill 62 as a Racialized and Ableist Approach to Social Relations

In addition to racism and Islamophobia, *Bill 62* interlocks with ableism to create an environment where the visibility of the face determines political participation. The requirement of an uncovered face during social interaction in the context of public services is an example of what Nussbaum (2006) identifies as an ableist application of the social contract. According to Nussbaum (2006) social contract informs who is included in making decisions about the political principles and terms of a society. To this end, many people are excluded from establishing and contributing to these terms because social contract is based upon ableist ideals of the political subject.

Nussbaum (2006) emphasizes that the concept of social contract rests on, “the common idea that some citizens ‘pay their own way’ and others do not” (4). By adopting *Bill 62*, the Québec provincial government has established the uncovered face as the currency a citizen requires to ‘pay her way’ to access publicly funded services. As such, the demand that niqab-wearing women unveil in order to give and receive public services can be understood as a form of structural ableism.¹⁵⁰ By targeting a specific group of Muslim women this legislation brings together “racism and ableism [as] normalizing processes that are interconnected and collusive” (Connor, Ferri, and Annamma 2016, 14). As a result, requiring niqab-wearing women to show their faces while public services are being rendered points to the ways that racism and ableism work in tandem to create social exclusion.

¹⁵⁰ I would like to thank Dr. Kathryn Trevenen for suggesting this conception to me.

Conclusion: *Bill 62* as a Form of Social Exclusion

As I have highlighted above, requiring an uncovered face in order to give and receive publicly funded services poses significant barriers for niqab-wearing women. Although Québec Minister of Justice and Attorney General Stéphanie Vallée has defended the *Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies* as a source of social cohesion, alternate understandings of social cohesion that emphasize values such as cooperation and access to resources show that this legislation actually poses a serious threat to cohesion and harmony. As the National Council of Canadian Muslims, Warda Naili, and the Canadian Civil Liberties Association have noted, “far from facilitating communication and social cohesion” Section 10 of this *Act* serves to “isolate some Muslim women and prevent them from participating in Québec society in myriad ways.”¹⁵¹ Thus, Vallée’s attempt to classify the uncovered face as the key to ‘living together in harmony’ should be seen as both a mischaracterization of and a detriment to the spirit of social cohesion.

¹⁵¹ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Application for Judicial Review [Declaration of Invalidity] and Application for an Interim Stay) at para 127.

Chapter 7: Looking Past Faces

“There's no strength in seeing all sides unless you can act where real measurable injustice exists.”

Joy Kogawa (1983, 37)
Obasan

“Touch comes before sight, before speech. It is the first language and the last, and it always tells the truth.”

Margaret Atwood (2001, 256)
The Blind Assassin

“Laugh and cry and tell stories. Sad stories about bodies stolen, bodies no longer here. Enraging stories about the false images, devastating lies, untold violence. Bold, brash stories about reclaiming our bodies and changing the world.”

Eli Clare (2009, 159-160)
Exile and Pride: Disability, Queerness, and Liberation

Introduction

As I reach the end of this project I would like to use some space to review the questions that I have addressed in my research and the ways that I have answered them. In this section I will summarize the main points that I have presented in previous chapters as well as the tools I have used to support these efforts. I will then emphasize the need for further research on ongoing debates about the niqab, the human face, the sense of sight, and the impact that these concepts have on different people's lives. It is my hope that my

work is merely a starting point for upcoming research that continues to challenge our steadfast attachment to faces and the act of seeing.

Review of Research Questions

My research set out to investigate the prevalent assumption that the visibility of the human face is an integral part of Western values. Consequently, my work began by asking: how and why have the human face and the act of seeing achieved such an iconic status in Western society? In Chapter 2, “Literature Review” I addressed this question by tracing the origins and etymology of the face and the sense of sight and outlining the ways that these concepts have been understood physiologically, metaphorically, socially, and culturally.

When examining the face, I considered its role as a part of the human body that includes the vital functions of breathing, eating, and drinking (Gates 2011; Synnott 1993; Talley 2014) and the location of the senses of sight, smell, hearing, and taste (Gates 2011; Synnott 1993; Talley 2014). I then discussed the face’s prevalence as a social symbol that is associated with a person’s identity and being (Editorial 2010; Talley 2014). I tied up this analysis by recognizing the face as a form of social and physical currency that can be used to evaluate a person’s sense of worth and life chances (Synnott 1990, 1993; Talley 2014). To this end, I showed that the aesthetic value of a person’s face is defined by its ability to reflect sites of identity that a society defines as attractive. Ultimately, I argued that the factors used to determine a person’s social standing and advancement are deeply informed by ideals such as whiteness (Fanon [1952] 2008; Razack 1998, 2008; Razack, Smith, and Thobani 2010; Thobani 2007), cis-genderedness (Baril 2013; Meeuf 2017), heterosexuality (Ahmed 2006; Puar 2007), ability (Bell 2010; Connor, Ferri, and

Annamma 2016; Davis 2013; Goodley 2013; Healey 2017; Kleege 2010; Marks 1999; Meekosha and Shuttleworth 2009), youth (Wolf 1990), wealth (hooks 2000; Marx and Engels [1848] 2012), and happiness (Ahmed 2010); and these standards are measured by the appearance of a person's face (Talley 2014).

After addressing the powerful status of the human face, I accounted for its connection to the sense of sight. More specifically, I argued that the perception of faces is tied to the expectation that all human faces should be visible and seen, and this demand is mediated by the importance afforded to the sense of sight. I continued to draw upon a wide range of literature to show how sight has come to hold such significance. I began by tracing how vision has been tied to reason by influential figures such as Plato ([360] 2008) who linked sight to the creation of philosophy and the path to God and truth, and Aristotle ([1933] 2014a) who conceived of sight as a vital source of knowledge and reason. Additionally I examined how Aristotle ([1926] 2014b) ranked sight as the most superior human sense followed by hearing and smell, which he set apart from taste and touch, senses that he considered subhuman and thus inferior. I then showed how positioning sight at the top of a hierarchical ranking of the senses has deeply impacted areas of life including, expectations about the ways people should receive and process information (Howes and Classen 2014), the advent of technology (Howes and Classen 2014), and the prevalence of language that connects words describing sight, seeing, and vision with understanding and knowledge (Jay 1986; Ong 1977; Synnott 1993) and words describing a lack of vision and visibility with misunderstanding and ignorance (Synnott 1993).

In the next part of my research, I built the foundation with which to answer: what kind of work is the face and the sense of sight expected to do? In Chapter 3, “Setting the Foundations of my Research Journey”, I laid out the theoretical and methodological tools that would enable me to address this question in the upcoming chapters of my dissertation. After I positioned myself within my research by reflecting on the personal experiences that have led me to this subject as well as the parts of my identity that afford me privileges, I brought a number of different theoretical paradigms together to offer me the vast framework I needed to advance discussions about the niqab in terms of dominant expectations about the human face and the sense of sight. This bricolage included interlocking analysis, Canadian critical race feminism, critical disability studies, and an area, which I described as anthropological, philosophical, and cultural views of the body and senses.

In the final part of this chapter I focused on the way I would process and examine the content of my research. Making a case for an approach that would enable me to unearth the complex roots behind the human face, the act of seeing, and the information that is expected to come from these concepts, I justified my usage of the method of genealogy. Drawing upon the work of Foucault (1972), who envisioned knowledge as “a series of infinitely proliferating branches” (Stone 2010), I argued that genealogy was the tool best suited to study the roles that the human face and vision are presumed to fulfill. Since a genealogical analysis involves an examination of concepts and ideas that are often taken for granted and assumed to be beyond the scope of analysis (Saukko 2003) I showed how this method afforded me the support needed to challenge the unquestioned value afforded to human faces, sight, and the expectation that niqab-wearing women

uncover their faces. Additionally I outlined how I would reinforce this technique with the method of etymology to trace the origins and meanings of the key terms of my research across different spaces and places.

After I set out the theoretical, methodological, and methods-based groundwork for my research, I devoted three chapters to identifying and analyzing specific assumptions about the kind of work that the face and the sense of sight is expected to do. In Chapter 4, “Justice and the Truth of the Face”, I focused on *R v. N.S.* to address the prevailing belief that a witness’s face must be uncovered and visible during cross-examination in order to ensure that the accused has a fair trial. In this part of my dissertation I challenged the position that a niqab-wearing woman could obstruct justice if she covered her face while testifying against the men who allegedly sexually assaulted her when she was a child. Highlighting sexual assault as an area of law that continues to be gendered (Johnson 2012), racialized (Anderson 2001; Bakht 2012b; Razack 1998), and heavily informed “by long-standing, deeply entrenched biases,” (Johnson 2012, 624) I problematized the demand that a niqab-wearing woman be required to remove her clothing in order to testify in a sexual assault case.

To this end, I applied academic and legal literature to critique the reliability of judging a witness’s truthfulness and credibility based on demeanour evidence (Bakht 2012b; Kaufmann et al. 2003; Qureshi 2014). Additionally, I showed that while demeanour includes many aspects of a person’s behaviour, body language, movement, gestures, and expressions (Qureshi 2014), in the context of debates about the niqab, this concept tends to be applied in unclear, incomplete, and selective ways with a heavy reliance on facial cues. As I reached the end of this chapter, I stressed that compelling a

niqab-wearing woman to unveil in court should be understood as an example of whacking. I concluded that this tactic has the potential to deter niqab-wearing women from reporting sexual violence and testifying in court.

In Chapter 5, “Showing the Face to ‘Join the Canadian Family’”, I addressed the niqab ban during the Canadian citizenship oath that was enacted by former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney. In this context, I challenged the premise that the niqab is an affront to Canadian citizenship. I critiqued Kenney’s suggestion that niqab-wearing women could be violating the integrity of the citizenship oath by pretending to recite it (Fine 2015; Kenney 2011b; Smith 2011). Drawing upon Zunera Ishaq’s legal challenge to the ban, I emphasized that neither the *Canadian Citizenship Act* nor the *Regulations* set out by the *Act* require citizenship court officials such as judges and clerks to visually confirm that candidates have taken the oath.¹⁵² I also noted that the high number of people in the room during a citizenship ceremony makes it difficult for court officers to monitor candidates during the oath (Mackrael and Perreux 2011). Thus, watching peoples’ lips is not an infallible way to confirm that everyone is actually saying the words. Additionally, to emphasize that the act of showing the face to others does not inherently signify a form of transparency or trust, I offered several examples of famous bands and singers who have been caught or admitted to lip-syncing during live performances. In other words, I showed that it is not necessarily accurate to assume that a covered face is deceptive and deceitful while an uncovered face is open and honest.

¹⁵² *Ishaq v Canada (Minister of Citizenship and Immigration)*, [2015] FC 156, at para 25.

After identifying these limitations, I argued that the underlying implication of placing so much value on the ability to see niqab-wearing women's faces during the citizenship oath was the goal of assimilation. In this sense, the ban sustained an environment where migrants are only welcomed as citizens provided that they readily conform to the expectations of the nation. As I concluded this chapter, I argued that demanding niqab-wearing women to show their faces in order to become Canadian must be situated within the continued legacy of violent policies aimed at assimilating Indigenous peoples. While mandating niqab-wearing women to uncover their faces is certainly not equitable to the destruction and genocide caused by assimilation-based policies such as bans on Indigenous rituals and the residential school system, I emphasized the need to make connections between these forms of state sanctioned violence.

Finally, in Chapter 6, "Showing the Face During Public Services to 'Live Together in Harmony'" I addressed *Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies* (Vallée 2017a). After situating this recently passed legislation within a post 9/11 context, I outlined how *Bill 62* has been shaped by its predecessors *Bill 94: An Act to establish guidelines governing accommodation requests within the Administration and certain institutions* (Weil 2010) and *Bill 60: Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests* (Drainville 2013). After contextualizing the political context that led to this *Act*, I provided an overview of what is known about the legislation at this time and highlighted the

confusion Stéphanie Vallée created when explaining the terms of the law and the ways that it will be applied.

In the next part of this chapter I summarized the legal challenge that has recently ensued. To this end, I explained the Québec Superior Court's recent decision to temporarily suspend Section 10 of the law — the part of the legislation that requires niqab-wearing women to uncover their faces in order to give and receive publicly funded services. Then I examined Vallée's (2017b) claim that *Bill 62* promotes social cohesion. More specifically, I critiqued the argument that showing the face while public services are being rendered is the key to fostering harmonious social interaction. I argued that *Bill 62* conflicts with conceptions of social cohesion that encourage values such as cooperation and access to resources for all members of society. Additionally I argued that requiring niqab-wearing women to unveil in order to give and receive public services is a form of racialized structural ableism.

Given that many of the examples I have addressed within my research will shift and change over time, I would like to take some space to emphasize why it is so important that work in this area continues. In the following section I will briefly touch upon some instances that illustrate the need for ongoing discussions about the niqab, the human face, the sense of sight, and the impact that perceptions of these concepts have on people's lives.

The Case for Continued Research on the Human Face and the Sense of Sight

As I have noted earlier on in my work, the case of *R v. N.S.* reached a definitive end when Crown attorney Michael Cantlon suddenly withdrew the sexual assault charges against the accused after concluding that there was no reasonable chance of conviction

(Clarke 2014; Hasham, 2014b). Similarly, the legal battle regarding the ban on the niqab during the Canadian citizenship oath was officially halted when current Minister of Justice and Attorney General of Canada Jody Wilson-Raybould formally announced that the Trudeau government was dropping the previous Harper government's appeal to the Supreme Court (MacCharles 2015b). While these two specific cases have been closed, debates about the presence of the niqab are still indefinitely open.

As I have noted earlier on in Chapter 6, the stay on Section 10 of *Bill 62* is temporary. This suspension will be lifted whenever the Québec provincial government releases guidelines outlining how people may be exempted from uncovering their faces based on religious grounds as referenced by Sections 11 and 12 of the *Act*¹⁵³. Notably, there will be a provincial election in Québec in fall 2018. Given the campaign promises about restrictions on the niqab that were made during the previous Canadian federal election (CBC News 2015c; Chan 2015; Kirkup 2015; MacCharles 2015a) and Québec provincial election (Janus 2014; Montgomery 2017), it is fair to speculate that the subject of the niqab will also be an issue in the upcoming Québec provincial election. Indeed, the results of this election may inform future responses to the niqab in Québec.

As legal and political disputes about the niqab continue, I encourage more work about the implications of *Bill 62*. Future discussions centered around the niqab and the visibility of the face in the context of Québec can be built upon existing academic contributions about *Bill 94* (Choudhury 2012; Conway 2012; Fournier and See 2012; Golnaraghi and Mills 2013; Hong 2011; Khelifa 2017; Leckey 2013; Selby 2014;

¹⁵³ National Council of Canadian Muslims, Marie-Michelle Lacoste, and Corporation of the Canadian Civil Liberties Association v. The Attorney General of Québec, 2017, (Judgement on Application of a Stay) at para 5.

Sharify-Funk 2011; Zine 2012) and *Bill 60* (Bakali 2015; Burchardt 2016; Dobrowolsky 2017; Flanagan 2014; Jarram 2014; Melançon 2015; Tessier and Montigny 2016).

Notably, future research about the niqab and the visibility of the face in the context of Québec has the potential to advance discussions about the intersections of racialized status and disability. Although reasonable accommodation in Québec has been primarily discussed in terms of religious grounds, it is important to recognize that the subject of reasonable accommodation is also linked to the concept of disability (Gagné 2015; Shipley and Malhotra 2015; United Nations 2006). Consequently, further work on the niqab and reasonable accommodation offers new ways to examine the relationship between disability, racism, and Islamophobia.

In addition to continued research on expectations and perceptions of covered and uncovered faces in terms of the niqab, a case can be made for future work about the face and sight that considers broader discussions about the face's role as a visual marker which determines a person's social and physical capital (Talley 2014). To this end, subsequent research should consider how perceptions of people's faces mediate their social status and life chances. Areas of interest can include the way facial aesthetics impact a person's treatment by strangers, acquaintances, friends, family members, and intimate partners as well as the relationship between perceptions of faces and education, employment, and income. These points of study have the potential to measure how inferences about people's faces affect everything from a person's relationships with others to the opportunities afforded to them, and their overall sense of social, political, and fiscal worth.

In this sense, I would argue that there is great value to exploring how facial aesthetics are informed by ideals about what it means to be a normal and successful person. As I have outlined earlier on in my work, these norms reflect sites of privilege and oppression such as racialized status, gender, sexuality, physical and cognitive ability, age, and wealth. Research devoted to the ways that these forms of identity shape which faces are considered attractive and by extension, which faces are believed to possess positive qualities such as intelligence, competence, likeability, trustworthiness (Lubin 2016) has the potential to measure the capital and cost of human faces. This kind of work is needed to clarify and evaluate exactly what is at stake when a person is viewed as having a beautiful or an ugly face.

Final Thoughts

A key aim of this dissertation was to situate Canada's position in a context where the human face and the sense of sight continue to shape normative ideas about subjects including processing information, social interaction, migration, mobility, and belonging. As debates about the niqab and the presumed importance of uncovered faces continue, I maintain that there are troubling limitations to sustaining such a deep attachment to people's faces and the concept of vision as mediated by the sense of sight.

A preoccupation with the face upholds a hierarchical politics of the body. There is a lot of cultural work expected and demanded of the face. The face is relied upon as a site of knowledge, truth, character and identity assessment, communication, judgement, and discrimination. However, the accuracy of reading the face in all these ways is contested (Bakht 2012a; Behiery 2013; Magnet 2011; Riley 2010). Indeed, we rely too much on what we think the face can tell us.

Allowing sight to maintain such importance creates an environment dependent on always seeing something or someone. But relying this heavily on sight runs the risk of closing people off to other forms of perception and communication. It also creates barriers for people who experience the world or process information differently from what is assumed to be the norm (Healey 2017; Kleege 2010; Riley 2010). As Georgina Kleege (2010) reminds us, “the average blind person knows more about what it means to be sighted than the average sighted person knows about what it means to be blind” (522). Ultimately, the cost of living in a culture that privileges faces and the act of seeing is exclusion.

The obsession and expectation to see the face should not render niqab-wearing women as unintelligible. Though these issues extend far beyond the scope of the niqab. If we move away from a fixation with sight, faces, and seeing uncovered faces we have the potential to recognize other forms of human identity and senses as we continue to learn and engage with each other. People can be so much more than their faces and what others think they can see by looking at them.

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Personal Communications

David Butt, telephone conversation with author, May 20, 2016.