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CHAPTER FIVE

Addressing the Naked and Unfolding the Veil

*Lives the man that can figure a naked Duke of Windlestraw addressing a naked House of Lords? . . . And yet why is the thing impossible?*¹

If we are to understand the reaction of civil authorities to public nudity and public face-covering, we will need to look beyond the usual analyses based on the balancing of individuals' civil rights and responsibilities. The balancing of rights provides one possible approach to resolving confrontations between individual dress codes and collective codes, but we need to look deeper if we are to appreciate the cultural causes that make such confrontations inevitable in the first place. What our inquiry will reveal is that the law demonstrates anxiety when individuals attempt to perform their own public face, through personal modes of dress and undress, in the liminal space of dress that the law takes to be a locus of its own dominion. Dress always represents order and control. When we choose to dress ourselves publicly in a particular way, we are exercising a form of self-government. We are taking control of our little state. This is most clear in the most careful and conscientious dressers, but even if our dress seems negligent we nevertheless make a state of ourselves. Even body modification through anorexia, though once attributed to excessive desire to conform to a social ideal of body type, is much better understood as a way of constituting a domain of private government in which the individual exercises 'resistance to social norms'.² We have seen that the law presents the face of civil order. Confronted with that face, the individual has three choices in cases of conflict: to conform, to contest or to compromise.

The pressure to conform is hard to resist. When women wore shoulder pads and masculine suits in the 1980s, was this really 'power-dressing' or was it

- 1 Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1833–4) (Boston: James Munroe and Co, 1836), Book I, chapter 9.
- 2 Alexandra Warwick and Dani Cavallaro, *Fashioning the Frame: Boundaries, Dress and the Body* (Oxford and New York: Berg, 1998), p.14.

actually a case of being powerless to resist social forces of conformity?³ (In this case, conformity to what was then the culturally encoded requirement that one should adopt the physical form of a man in order to gain admission into the world of business.) Quentin Bell asks some challenging questions about our seemingly docile compliance with the authority of dress and fashion:

The case against fashion is always a strong one; why is it then that it never results in an effective verdict? Why is it that both public opinion and formal regulations are invariably set at nought while sartorial custom, which consists in laws that are imposed without formal sanctions, is obeyed with wonderful docility and this despite the fact that its laws are unreasonable, arbitrary and not infrequently cruel?⁴

More questions follow: could it be that, since the dawn of civil society, the ruling authorities have observed the dress compulsion at work and have sought to harness its force in order to encourage the civil habit of obedience to law? Is this one reason why dress and law became inseparable in so many of the foundational cultural orders of human civil society?

We obey the power of dress when others wear it, and we obey it when we wear it ourselves. The authors of a survey of several field studies carried out on the influence of dress concluded that 'dress had significant effects on the behavior of others in 85.3% of studies'.⁵ This confirmed earlier studies which had shown that people wearing 'high status clothing' (such as a suit) 'were more successful in getting strangers to comply with requests than those wearing low status attire (e.g. work shirt and blue jeans)'.⁶ We are sometimes obedient to the dress code even when no others are around to compel compliance. This is why we feel embarrassed when we realize that

- 3 On the imposition of workplace dress norms on women, see, for example, Jane M. Siegel, 'Thank You, Sarah Palin, for Reminding Us: It's Not about the Clothes' *Virginia Journal of Social Policy and the Law* 17 (2009), p.144; Katharine T. Bartlett, 'Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality' *Mich Law Rev* 92 (1994), pp.2541–82; Mary Whiner, 'Gender-Specific Clothing Regulation: A Study in Patriarchy' *Harv Women's Law Jnl* 5:73 (1982).
- 4 Quentin Bell, *On Human Finery* (1947) (London: The Hogarth Press, 1976), p.24.
- 5 Kim K. P. Johnson, Jeong-Ju Yoo, Minjeong Kim and Sharron J. Lennon, 'Dress and Human Behavior: A Review and Critique' *Clothing and Textiles Research Journal* 26.1 (2008), pp.3–22, 15.
- 6 Ronald E. Bassett, Ann Q. Staton-Spicer and Jack L. Whitehead, 'Effects of Source Attire on Judgments of Credibility' *Central States Speech Journal* 30.3 (1979), pp.282–5, 285.

our flies are undone, or that we have tucked our skirt into our pants, even though nobody else has noticed. Quentin Bell observes that such dress faux pas 'are not incompatible with moral or theological teaching' and that 'the law takes no cognizance of such acts' and yet 'such behaviour will excite the strongest censure in "good society"'. This is so even where the offence occurs without witnesses and the offender is the only sufferer.⁷

There is a long-standing belief that we are obedient to the power and influence of our own dress; that the individual is fashioned by their dress even as the individual fashions their dress. Probably we have all at some time experienced the psychological shift that is induced by a change of clothing, especially where that change is from very casual to very formal clothing or from very formal to very casual. The physical constraint of a stiff collar and crisp cuffs, or the tautness of a tie, a belt and snug-fitting shoes, all combine to suit the mind to serious business.⁸ The opposite effect, of relaxing the mind, can be achieved by 'slipping into something more comfortable'. The tendency of character to conform to clothing was contemplated by Eudoxus, one of the parties to the fictional dialogue in Edmund Spenser's *View of the Present State of Ireland*:

[M]en's apparel is commonly made according to their conditions, and their conditions are oftentimes governed by their garments; for the person that is gowned, is by his gown put in mind of gravity, and also restrained from lightness, by the very unaptness of his weed . . . when Cyrus had overcome the Lydians, that were a warlike nation, and devised to bring them to a more peaceable life, he changed their apparel and music, and instead of their short warlike coat, clothed them in long garments like women . . . by which, in short space, their minds were so mollified and abated, that they forgot their former fierceness, and became most tender and effeminate. Whereby it appeareth, that there is not a little in the garment to the fashioning of the mind and conditions.⁹

7 Bell, *On Human Finery*, p.19.

8 See Paul Sweetman, 'Shop-Window Dummies? Fashion, the Body, and Emergent Socialities', in Joanne Entwistle and Elizabeth Wilson (eds), *Body Dressing* (Oxford, New York: Berg, 2001), pp.59–77, 66.

9 Edmund Spenser, *A View of the State of Ireland: Written Dialogue-Wise between Eudoxus and Ireneus* (1598, published 1633), reprinted in *The Works of Edmund Spenser* (London: Henry Washbourne, 1850), p.500. Spenser is alluding to a classical episode that is related in *Herodotus* (trans. Robin Waterfield) *Herodotus: The Histories* (Oxford University Press, 1998), p.69.

We are all incorporated into the political body by processes of conformity, including conformity to our clothes, but the military mind has appreciated better than most that clothes have the power to conform the individual to the ideals of the corps. As one military training manual puts it: 'It is good . . . to look the part, not only because of its effect on others, but because from out of the effort made to look it, one may in time come to be it.'¹⁰

Wendy Parkins acknowledges that dress has the capacity to 'reinforce existing arrangements of power', but that this also means that dress has the power to 'contest' them.¹¹ Parkins cites the example of the female legislators who in February 1999 wore denim jeans in the Italian parliament to protest against an Italian court which had decided that it is physically impossible to force non-consensual sex on a woman wearing jeans.¹² Nudity has also been used as a form of protest in political and public spaces. For example, IRA prisoners in Northern Ireland refused to wear prison uniform, preferring instead to live naked in their prison cells with only blankets for cover, in protest against the removal in 1976 of 'special category status'. Nowadays the news media frequently report street protests by topless women. In Nigeria, women (especially mothers) have traditionally employed genital exposure to their men in public as a form of curse. A revival of this tradition was threatened in 2002 when women protesting against ChevronTexaco barricaded hundreds of workers inside an oil terminal and committed to expose themselves if their demands were not met.¹³

Some forms of non-conforming dress (dress that does not conform to the majority custom) are challenging to the political State whether a challenge is intended or not. Probably very few Muslim women who wear a face-covering *niqab* in public do so deliberately intending to challenge the secular liberal States in which they live, but the majority of such States find extremely

10 *The Armed Forces Officer* Department of the Army Pamphlet No 600-2 (United States Department of Defense, 1950), p.88. (Page references are to the online version published by the US Marine Corps Association.)

11 Wendy Parkins (ed.), *Fashioning the Body Politic: Dress, Gender, Citizenship* (Oxford and New York: Berg, 2002), p.4.

12 See Alessandra Stanley, 'Ruling on Tight Jeans and Rape Sets Off Anger in Italy', *New York Times*, 16 February 1999.

13 Terisa E. Turner and Leigh S. Brownhill, *Why Women Are at War with Chevron: Nigerian Subsistence Struggles against the International Oil Industry* (New York: International Oil Working Group, 2003); Misty L. Bastion, 'The Naked and the Nude: Historically Multiple Meanings of *Oto* (Undress) in Southeastern Nigeria', in Adeline Masquelier (ed.), *Dirt, Undress and Difference: Critical Perspectives on the Body's Surface* (Bloomington and Indianapolis: Indiana University Press, 2005), pp.34-60.

concealing modes of dress to be challenging in at least some contexts, for instance in court or at border control. We will consider the Islamic ‘veil’ in depth shortly. Staying with the unclothed subject, it will be informative to look closer at the case of the ‘naked Rambler’, Stephen Gough. According to the Sexual Offences Act 2003, it is not a statutory offence to go naked in public in England, Wales and Northern Ireland unless it is done with the intention to cause ‘alarm or distress’.¹⁴ Unfortunately for Mr Gough, the preferred route of his naked walk takes him through Scotland. In Scotland, the 2003 statute has no application and a less lenient Common Law definition of indecent exposure is still applied, but that is not the crux of the problem for Mr Gough. The real problem is that breach of the peace is a criminal offence in Scots law, and, even though it has been narrowed to conduct that is ‘genuinely alarming and disturbing’ and threatens ‘serious disturbance to the community’,¹⁵ the police presume that Mr Gough’s conduct justifies bringing him to court. He then refuses to dress for the hearing and the result is that he is deemed to be in contempt of court; which is itself an imprisonable offence.¹⁶ Mr Gough’s continuing encounters with the civil authorities are very expensive for the taxpayer, and the police are for that reason, if none other, rather reluctant to arrest him. On one occasion, he was advised to modify his route so as to avoid passing a children’s play park. He refused to do so, was arrested, and he was subsequently jailed for five months.¹⁷ The upshot is that Mr Gough finds himself incarcerated for doing what he considers to be his right: to walk without clothes along a public path of his choosing.

Mr Gough expresses his philosophy in terms of ‘Freedom to Be Yourself’ (the slogan written on a white pennant that flies above his rucksack on his naked walks). He wants to live according to the mode of his choosing, and he wants to challenge social attitudes that would resist that, but arguably it is not his primary aim to challenge the State as such. The authorities nevertheless find his behaviour sufficiently challenging to justify the intervention of the power of the State against him. The Scottish authorities have been particularly strict. It is in Scotland that Mr Gough has been imprisoned

14 Sexual Offences Act 2003 s.66.

15 *Smith v. Donnelly* (Procurator Fiscal, Dumbarton) 2001 SLT 1007; 2002 JC 65 at para [17].

16 On contempt of court, see, further, below.

17 Hilary Duncanson, “‘Naked Rambler’ Stephen Gough jailed again”, *The Independent*, 13 September 2012.

for long periods as a result of his persistent nudity. This is the country in which the men take pride in a military tradition of being totally naked under their kilts. How poignant to think that a few folds of cloth would transform Stephen Gough from the epitome of a naked menace to the epitome of a nation's manhood. A close reading of the report of one of his many court hearings reveals fascinating insights about the issues as he and the courts see them.

Gough v. HM Advocate was heard alongside another matter in the Scottish High Court of Justiciary on 7 November 2007.¹⁸ The judgment of the court was delivered by Lord Gill (who has since been promoted to become head of the judiciary in Scotland). The judgment concerned Mr Gough's appeal against findings of contempt of court made against him in Edinburgh sheriff court. His lordship referred to Mr Gough's public nudity as 'incurrigible exhibitionism' and observed that he 'dresses on certain formal occasions, but these occasions do not include appearances in court' [10]. It would not be surprising if those exceptional occasions include wedding ceremonies and funerals. Such events are frequently exceptional to our dress codes, whatever they might be (even naturist brides have been known to wear a veil on their wedding day). Whenever Mr Gough appears in court, he appears naked. He is then found to be in contempt:

Contempt of court is constituted by conduct that denotes wilful defiance of, or disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself. [29]

On the occasion of the first finding of contempt, Mr Gough indicated to the sheriff, via his solicitor, that he 'understood that the court was a public place where formal proceedings were conducted' but that he nevertheless 'considered nakedness to be natural and acceptable' [19].

The second finding of contempt occurred on 19 December 2005 at Edinburgh sheriff court before Sheriff Andrew Lothian. On that occasion, the sheriff 'considered that to allow Mr Gough to appear naked would be to invite him to repeat the offences with which he was charged' [15]. The offences he was charged with were breach of the peace and breach of bail

18 [2007] HCJAC 63 (2007) WL 3389577. Parenthetical references are to paragraph numbers in the report.

conditions that had accompanied his release from prison. The species of contempt with which the High Court of Justiciary was concerned was specifically ‘contempt committed *in facie curiae* and directed at the administration of justice’ [34]. Contempt ‘*in facie curiae*’ is a most revealing description so far as it concerns our study of dress and law. In the previous chapter, we noted how the law makes a face in the world. Here we have juridical proof that confrontation results when a truly self-fashioned façade is presented in the face of the court. It seems that the courts are not only suspicious of the naked human form, but also deeply disturbed by it. In the present case, Lord Gill threw the proverbial book at Mr Gough. His lordship held that, by appearing in court naked, Mr Gough had ‘committed the crime of public indecency’, ‘committed a breach of the peace’ and ‘disrupted the administration of justice’. His lordship added for good measure that in at least one of the cases under review Mr Gough had breached ‘a bail condition that he should not appear in public in Scotland with his private parts exposed’ [77]. His lordship took the view that Mr Gough would have been perfectly free to express his belief in the right ‘to be naked at all times and in all places’ provided he did so ‘while remaining properly dressed’ [76].

It was submitted on behalf of Mr Gough that his appearance naked in court was not ‘an act calculated to offend the authority and dignity of the court’ and that it was ‘not an unjustifiable interference with the administration of justice’ [71]. Lord Gill did not agree. His lordship held that ‘the appearance of anyone in court naked, whatever crimes that may constitute, is unquestionably a contempt’ [74]. But, with respect, whenever the word ‘unquestionably’ is employed without reasoned argument, we should take it as an invitation to ask questions, and even if we agree with the judge, we should at least ask what cultural causes produce the sense that a naked appearance in court is ‘unquestionably’ contempt. The judge went on to express his own opinion on the matter in the following terms: ‘The court is entitled to enforce standards of decency and decorum in the dress and demeanour of those who appear before it, whether as witnesses, lawyers, jurors or accused’ [74]. (The French artist and judge Pierre Cavellat appreciated that nothing would shock his judicial colleagues more than to be confronted by a naked person in court, see Figure 5.1.)¹⁹ The judge

19 The image is reproduced from Ruth Herz, *The Art of Justice: The Judge’s Perspective* (Oxford: Hart, 2012). Dr Herz explains that Cavellat was sent the picture as a gift and returned it after adding the nude figure (pp.35–6).

Figure 5.1 Pierre Cavellat (untitled, undated). Three judges confronted by a naked woman in court (caprice on a copy of ‘Scandale au prétoire’ by Gaston Hoffmann).

Source: Reproduced from Ruth Herz, *The Art of Justice: The Judge’s Perspective* (Oxford: Hart Publishing Ltd, 2012), by kind permission of Ruth Herz, Hart Publishing and the family of Pierre Cavellat.

follows the usual habit of the law, according to which (to borrow a fitting phrase which Warwick and Cavallaro use in another context) ‘the unclothed body is declared indecent and dress is invested with the ethical function of policing its frontiers’.²⁰ From the law’s perspective his lordship is perfectly correct, of course, because it is in the very nature of a legal system to demand that society should assume a certain ‘decency and decorum’. What I have endeavoured to show is that it is also in the very nature of the idea of dress to achieve a certain ‘decency and decorum’ in civil society; in fact I have argued that dress, no less than law, defines civil society in terms of an order that is decent and decorous.

Stephen Gough is both admirable and pitiable. Perhaps he consciously or unconsciously perceives that dress and law are inextricably intertwined and

20 Warwick and Cavallaro, *Fashioning the Frame*, p.138.

perhaps that is the inspiration for his philosophy of public nudity. However, if he understood just how inseparable is dress from civil order, he would realize that the wall of civil society is a wall of wool that cannot be unwound by him. He cannot win. If he goes naked, the civil authorities will cover him with prison walls. Mr Gough has an ally in Diogenes, the cynic philosopher of ancient Greece. Epictetus attributes to Diogenes the saying 'To go naked is better than any robe with the purple'.²¹ It is doubtful that 'naked' meant as much (or as little) then as it does now, in terms of the precise degree of undress signified.²² What we can say is that Diogenes suffered for his principles, and like Mr Gough spent much of his life confined alone in a cell. In Mr Gough's case, solitary confinement in a prison. In the case of Diogenes, a tub on a city street. Perhaps Mr Gough should heed the following words that Philip Stanhope, the 4th Earl of Chesterfield, wrote about dress customs in one of his *Letters to His Son*:

[T]here are a thousand foolish customs of this kind, which, not being criminal, must be complied with, and even cheerfully, by men of sense. Diogenes the Cynic was a wise man for despising them, but a fool for showing it.²³

One wonders if the 'naked rambler' might have more success if he were to claim a religious basis for going unclothed in public. He certainly might in the United States, for as the US case of *Wisconsin v. Yoder* says: 'A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation . . . if it is based on purely secular considerations.'²⁴ This brings us to the question of religious dress, and in particular to the so-called Islamic veil.

Headdress worn by Muslim women comes in a great many forms, but there is little consensus across Islamic communities regarding the type of headdress, if any, which ought to be worn, and neither is there consensus as to the terms by which various forms of headdress are described. For

21 Epictetus, *Discourses* 1.24.7. (Malcolm Schofield, 'Epictetus: Socratic, Cynic, Stoic' *The Philosophical Quarterly* 54.216 [2004], pp.449–56, 455.)

22 F. Gerald Downing, *Cynics, Paul and the Pauline Churches* (1988) (London: Routledge, 1998), p.151.

23 Dublin Castle, 29 November 1745. Quoted in Bell, *On Human Finery*, p.18. (Stanhope's advice should not be followed uncritically: in another letter he advises his son to smile often, but to laugh never [Bath, 9 March 1748]).

24 *Wisconsin v. Yoder*, 406 US 205 (1972), pp.215–16.

present purposes, the most pertinent forms of headdress are face-covering attire worn by females. We will not be concerned with headdress, such as *hijab*, which cover the hair but not the face.²⁵ Within the description 'Islamic veil', the extent of facial covering ranges from those which cover the face, but leave a narrow opening at the eyes to those which cover the entire face including the area of the eyes, the eyes being covered with thin cloth, a net, a grille or some similar covering which will allow the wearer to look out while obstructing onlookers' ability to see in. The former is generally called *niqab*. The latter is sometimes called *burqa*, although *burqa* more accurately describes the full-body covering and not merely the head-covering part. Throughout the remainder of this study, and where the context permits, I will use 'Islamic veil', 'veil' or '*niqab*' as generic descriptions of face-covering attire worn by Muslim women.

Modern commentators rightly point out that none of us can judge what the wearing of a veil by an individual signifies.²⁶ Thomas Carlyle made the same point almost 200 years ago, when he wrote that '[f]rom the veil can nothing be inferred'.²⁷ For every interpretation that the veil invites, an utterly opposite interpretation is opened up. For example, the veil might be read as a strong mode of self-fashioning, or it might be read as a means of relieving oneself of the pressure to present a public face. This is how Toby Fischer-Mirkin reads it where she writes that veils 'conceal your identity and relieve you of the obligation to be yourself'.²⁸ Examples can be cited of women who wear Islamic head coverings as a means of protest, but according to one survey the majority of veil-wearing women gave the impression that they were merely following fashion.²⁹ Despite the peril of inferring motives for veil wearing, courts have sometimes presumed to judge. On an international level, the European Court of Human Rights in its 2001 decision in *Dahlab*

25 Neither will we examine those exceptional cultures in which the men, rather than the women, wear forms of 'veil' (notably the nomadic Tuareg people of the Sahara) or those cultures in which the women do not show their faces even to their husbands or to their female relatives (examples of the latter are found in the Al-Jawf region of northern Saudi Arabia). I am grateful to Bayan Al Shabani for kindly elucidating the relevant Arabic-language sources.

26 See, for example, Katherine Bullock, *Rethinking Muslim Women and the Veil*, 2nd edn (London: The International Institute of Islamic Thought, 2007); Evan Darwin Winet, 'Face-Veil Bans and Anti-Mask Laws: State Interests and the Right to Cover the Face' *Hastings Int'l & Comp L Rev* 35 (2012), p.217.

27 Carlyle, *Sartor Resartus*, Book II, chapter 1.

28 *Dress Code: Understanding the Hidden Meanings of Women's Clothes* (New York: Clarkson Potter, 1995), p.242.

29 Liela Ahmed, *A Quiet Revolution: The Veil's Resurgence, from the Middle East to America* (New Haven and London: Yale UP, 2011), p.120.

v. *Switzerland* stated that the Islamic headscarf ‘appears to be imposed on women by a precept which is laid down in the Koran and which . . . is hard to square with the principle of gender equality’.³⁰ This remains the position of that Court, as confirmed in subsequent decisions.³¹

None of us can confidently discern a person’s motives for wearing any particular kind of dress, but we should be especially cautious to attempt an interpretation in the case of Islamic dress, where individual motives will frequently be a complex mix of cultural and religious concerns. Courts should be especially cautious in their efforts to scrutinize the religious basis for veil wearing. As the US Supreme Court held in *Thomas v. Review Board of Indiana Employment Security Division*: ‘Courts are not arbiters of scriptural interpretation.’³² That case concerned a Jehova’s Witness who had been denied unemployment compensation after resigning from his work in a foundry in response to a requirement that he make military components. The court confirmed:

The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that the petitioner terminated his work because of an honest conviction that such work was forbidden by his religion.³³

Within that narrow function, the inquiry into the ‘honesty’ of a conviction is inevitably a fraught one.³⁴ It is, as lawyers phrase it, ‘a question of fact’. It might as well be called a ‘question of face’, for it is determined only on the basis of what is evident, and that is hardly an adequate basis for reaching conclusions about the depth and integrity of an individual’s religious convictions.

Although one cannot guess what an individual woman intends (if she intends anything) by wearing a veil, research into the motives of a great many veil-wearing Muslim women has apparently revealed a recurring range of

30 *Dahlab v. Switzerland* App No 42393/98, admissibility decision (2001) p.5.

31 For example, *Şahin v. Turkey* (44774/98) (2007) 44 EHRR 5 (ECHR [Grand Chamber]) and *Dogru v. France* [2008] ECHR 1579.

32 450 US 707 (1981), pp.715–16.

33 *Ibid.*, p.716.

34 Gary Watt, ‘Giving Unto Caesar: Rationality, Reciprocity, and Legal Recognition of Religion’, in Richard O’Dair and Andrew Lewis (eds), *Law and Religion* (Oxford: Oxford University Press, 2001), pp.45–63.

motives that seem to persist 'across both time and space in the post-1970s era'.³⁵ These perennial meanings can often be understood to be 'implicitly invoking a notion of justice and deliberately signaling differences from the majority'.³⁶ Perhaps we can also say in a general way that '[t]he power of dress to threaten boundaries (between self and non-self, the individual and the collective, discipline and transgression) is emphasized by items of clothing such as masks and veils'.³⁷ Liela Ahmed states that the Islamic veil repeatedly reemerges 'as a quintessential sign (among other things) of irresolvable tension and confrontation between Islam and the West'.³⁸ It might not be intended to act as such a sign: Ahmed acknowledges, quoting Macleod, that 'the idea of being Muslim has more to do with [a woman's] role as wife and mother in the family, rather than with expressions of nationalism or anti-Western feeling'.³⁹

The Islamic veil has proved most controversial in democracies, such as France, Belgium and Turkey, which are constitutionally committed to political secularism.⁴⁰ On 14 September 2010, *Le Sénat français* passed a law (by 246 votes to 1) which prohibits the wearing in public spaces of clothing which covers the face. Article 1 states in stark terms that '*Nul ne peut, dans l'espace public, porter une tenue destinée à dissimuler son visage*' ('no one is permitted, in public spaces, to wear clothing designed to cover their face'). The penalty is a 150 Euro fine for the first offence.⁴¹ The problem with the French law is that it is politically illogical to force someone to be free, and in practice the effect of such a ban must be to compel many women to remain hidden indoors who might otherwise have been free to venture out in public.⁴²

35 Ahmed, *A Quiet Revolution*, p.211.

36 Ibid.

37 Warwick and Cavallaro, *Fashioning the Frame*, p.xxi.

38 Ahmed, *A Quiet Revolution*, pp.10–11.

39 Ahmed, *A Quiet Revolution*, p.123. Quoting Arlene Elowe Macleod, *Accommodating Protest: Working Women, the New Veiling, and Change in Cairo* (New York: Columbia University Press, 1991).

40 See Alev Çınar, *Modernity, Islam, and Secularism in Turkey: Bodies, Places, and Time* (Minneapolis: University of Minnesota Press, 2005), p.59; Valorie K. Vojdik, 'Politics of the Headscarf in Turkey: Masculinities, Feminism, and the Construction of Collective Identities' *Harv J L & Gender* 33 (2010), p.661.

41 '*La loi sur le voile intégral*', 14 September 2010 (Loi No. 2010–1192, le Sénat français).

42 Flügel makes the point that the Islamic veil can operate as a sort of architectural extension to the residential arrangement whereby some Muslim women are hidden from the outside world (that arrangement is sometimes called *purdah* [Persian: 'curtain']). (See John Carl Flügel, *Psychology of Clothes* [1930] [London: The Hogarth Press, 1950], 83fn.)

Forced unveiling is as politically objectionable as forced veiling (forced veiling, which is practiced in totalitarian Islamic States such as Iran and Somalia, is prohibited in most majority Muslim States, including, for example, Bangladesh⁴³). Almost exactly one year after the French voted in favour of '*la loi sur le voile intégral*', the lower chamber of the Swiss Parliament approved a similar law (by 101 votes to 77). The motion put to the Swiss Parliament not only prohibited full-face covering in certain public places, but (most telling in terms of concern for confrontation with the face of the State) it also required anyone addressing public authorities 'to present themselves with their faces uncovered'.⁴⁴ The French law was ratified in October 2010 by *Le Conseil Constitutionnel*,⁴⁵ and it came into force, despite some public opposition, on 11 April 2011.⁴⁶ This law is in the same spirit as the 2008 decision of the French *Conseil d'Etat* in which a Muslim woman was refused French citizenship, despite being married to a French citizen, because of her failure to integrate (*défaut d'assimilation*). She was said to have adopted radical religious practices, notably the wearing of a *niqab*, which were deemed to be incompatible with the essential values of French society, in particular the principles of gender equality and *laïcité*.⁴⁷ Cases like this have generally received scholarly analysis in terms of competing human rights.⁴⁸ I wish to set the issues on a wider cultural canvas by suggesting that the Islamic veil is controversial because it occupies the regulatory space between self and society which the law takes to be the plane of its own dominion. The thin interface between the inner private being and the outer public scene is a border that the law by its nature as dress must define and control if it is to have a distinct identity and role. By wearing the veil, the religious believer is appropriating the power to regulate her own relations between her private (including her religious) life and the public, civil sphere. The law is threatened by such an assertion of regulatory authority over the precise interstitial or liminal space – the space of dress – in which the law

43 Agence France Presse, 16 September 2010.

44 Ibid., 28 September 2010.

45 '*La loi sur le voile intégral*' (Décision n° 2010–613 DC, le Conseil Constitutionnel, 7 October 2010).

46 Steven Erlanger, 'France Enforces Ban on Full-Face Veils in Public', *The New York Times*, 11 April 2011.

47 *Laïcité* is the formal political separation of religion from the secular State. See Anastasia Vakulenko, 'Gender Equality as an Essential French Value: The Case of *Mme M*' *H R L Rev* 9.1 (2009), pp.143–50.

48 For example, Tom Lewis, 'What Not to Wear: Religious Rights, the European Court, and the Margin of Appreciation' *Int'l & Comp LQ* 56.2 (2007), pp.395–414; Nicholas Gibson, 'Faith in the Courts: Religious Dress and Human Rights' *Cambridge LJ* 66.3 (2007), pp.657–97.

claims dominion. The veil thus becomes a means of (if I might mix another sartorial metaphor) throwing down the gauntlet to secular law's regulatory monopoly over the border between private and public, inner and outer. Even if there was no intention to 'throw down the gauntlet', the civil authorities sometimes take up the challenge as if the veil were a personal affront.

If some might object that the religious believer's choice is antagonistic to the secular State in which she finds herself, her defence might be that the State 'started it'. Reflecting on French and Spanish suspicion of the Islamic veil, Martha Nussbaum observes:

It gets very cold in Chicago – as, indeed, in many parts of Europe. Along the streets we walk, hats pulled down over ears and brows, scarves wound tightly around noses and mouths. No problem of either transparency or security is thought to exist, nor are we forbidden to enter public buildings so insulated. Moreover, many beloved and trusted professionals cover their faces all year round: surgeons, dentists, (American) football players, skiers and skaters. What inspires fear and mistrust in Europe, clearly, is not covering per se, but Muslim covering.⁴⁹

The French law that prohibits the wearing of the Islamic veils in public does not in fact mention Islam anywhere in the text, but this rather goes to support Professor Nussbaum's suggestion that we ought to be suspicious of the terms in which such laws are expressed. Having said that, the issue is in other respects and in other places not as 'clear' as Professor Nussbaum claims. For example, Islam was quite irrelevant when, in the aftermath of a week of riots in English cities in August 2011, British prime minister David Cameron announced that he would 'give the police the discretion to remove face coverings under any circumstances where there is reasonable suspicion that they are related to criminal activity'.⁵⁰ The source of confrontation between the veil and civil authorities really is 'covering per se', albeit that this concern is sometimes expressed in terms, such as 'security', 'identification', 'sincerity' and 'liberty', which might cause us to doubt the reliability of the justifications expressed. Civil authorities' concern with covering is not

49 Martha Nussbaum, 'Veiled Threats?', *New York Times*, 11 July 2010. See, also, Joan Wallach Scott, *The Politics of the Veil* (Princeton, NJ: Princeton University Press, 2010). I am grateful to Professor Reina Lewis for alerting me to this, and to other books that have helped inform this chapter.

50 Prime minister's statement on disorder in England on 11 August 2011. (The Criminal Justice and Public Order Act 1994 s.60AA authorizes police officers to remove items worn 'for the purpose of concealing identity'.)

trivial, or merely incidental to more overt concerns. On the contrary, I have demonstrated that dress has always been a defining concern of civil order. That this concern has not been made overt in the official reasoning of politicians, courts and other statements of civil authority should hardly surprise us. Had it been made overt, its cover would have been blown.

Here is not the place to rehearse the competing human rights that are at stake in the State supervision of veil wearing,⁵¹ not least because a debate framed in the secular language of rights predetermines, at least in general terms, the outcome of the debate. We will consider, instead, the long cultural history which shows that State prohibition of veils is nothing new and which indicates that in 'Western' societies in the not-too-distant past the wearing of veils and masks, of somewhat different design to the Islamic variety, was a personal choice which women made for their own pleasure and protection and occasionally in the face of social pressure – sometimes legal, sometimes male – to reveal themselves. In all of the examples that follow, the veil or mask not only performs a practical function such as disguise or protection from the elements, but was also, in its time, considered fashionable.

We will start in the nineteenth century and proceed backwards, a century at a time, to the fifteenth. Ironically, given what we have already seen of current official attitudes to the Islamic veil in France, it is in France in the late nineteenth century that we find some of the strongest indicators of the veil as status symbol and fashion statement. The veil was worn partly as protection from the dust thrown up by Haussmann's radical architectural reordering of the Parisian cityscape and partly as a badge of bourgeois respectability. It was, admittedly, a rather thin and revealing affair quite unlike a *niqab*, as one can see, for example, from the key female figure in Gustave Caillebotte's 1877 oil painting 'Paris Street: Rainy Day',⁵² but it gestures to the fact that the complex semiotics of female face-covering do not always lead to the implication of female oppression. Nevertheless, in some contexts that implication is irresistible. Earlier in the same century, Charles Dickens produced a deeply nuanced study of a fashionable English lady, Lady Dedlock, in his novel *Bleak House*⁵³ which was set around

51 For a summary of the European debate from a US perspective, see Jennifer M. Westerfield, 'Behind the Veil: An American Legal Perspective on the European Headscarf Debate' *Am J Comp L* 54.3 (2006), pp.637–78.

52 See, generally, M. R. Kessler, *Sheer Presence: The Veil in Manet's Paris* (Minneapolis: The University of Minnesota Press, 2006).

53 Quotations are taken from Charles Dickens, *Bleak House* (serialized 1852–3) (Harmondsworth: Penguin English Classics, 1971).

1827.⁵⁴ The first chapter of the novel, 'In Chancery', introduces the main legal theme, which is the fog or obfuscation (one might say the 'veil') of law. The second chapter introduces the socially circumscribed existence of Lady Dedlock under the title 'In Fashion', in which Dickens observes at the outset that '[b]oth the world of fashion and the Court of Chancery are things of precedent and usage'. Pertinent for present purposes is that 'the figure of the veil is repeatedly associated in *Bleak House* with Lady Dedlock'.⁵⁵ The text subtly hints at resemblance between Lady Dedlock, the terrified creature of fashion, and Mr Tulkinghorn, the terrible creature of law. Tulkinghorn lives as a legal mask; Lady Dedlock lives under a fashionable one. As she says to her daughter: 'If you hear of Lady Dedlock, brilliant, prosperous, and flattered, think of your wretched mother, conscience-stricken, underneath that mask!' (36). Tulkinghorn's 'dress is like himself' (2); Lady Dedlock's dress is a part of her: 'the traces of her dresses and her ornaments, even the mirrors accustomed to reflect them when they were a portion of herself, have a desolate and vacant air' (58).

Lady Dedlock's veil is open to a range of interpretations, many of which would regard it negatively, but it must also be acknowledged that the veil was part of the wardrobe of a fashionable lady and a useful disguise, which, even as it confined her features, freed her to walk the streets of a crowded and dangerous city.⁵⁶ That interpretation is supported by the Franco-Peruvian feminist Flora Tristan, whose knowledge of the 'Tapadas' ('covered') women of Lima led her to claim in 1837 that 'there is no place on Earth where women are more free'.⁵⁷

This capacity of the veil simultaneously to fetter the wearer and to free her evokes a related form of female facial covering that was in vogue in London

54 William S. Holdsworth, *Charles Dickens as a Legal Historian* (New Haven: YUP, 1928), p.79.

55 K. McLaughlin, 'Losing One's Place: Displacement and Domesticity in Dickens's *Bleak House*' *MLN, Comparative Literature* 108.5 (1993), pp.875–90.

56 For an argument that alternative ('male' or mixed 'male-female') clothing worn by marginal women in the period might have operated as non-verbal resistance, see Diana Crane, 'Clothing Behavior as Non-Verbal Resistance: Marginal Women and Alternative Dress in the Nineteenth Century' *Fashion Theory: The Journal of Dress, Body & Culture* 3.2 (1999), pp.241–68.

57 Flora Tristan, *Peregrinations d'une Paria (Peregrinations of a Pariah)* (Paris: L'advocat, 1838) (my translation). The *Tapadas* wore a headscarf which they held in place by hand in such a way that it covered almost the entire face, frequently leaving only one eye revealed. It has been noted, likewise, that in Egypt at the turn of the twentieth century, 'Some women of the new middle class, who began to enjoy an unprecedented degree of mobility, actually considered the veil as a form of protection as they ventured out more into public'. Yedida K. Stillman, *Arab Dress: A Short History: from the Dawn of Islam to Modern Times* (Norman A. Stillman ed.) (Leiden: Brill, 2000), p.155. Compare the experience of a female Muslim student on a US college campus who felt 'liberated' by wearing *hijab* in the period immediately following 9/11 (Ahmed, *A Quiet Revolution*, p.208).

a century before Lady Dedlock's time. In the early eighteenth century, it was a female fashion to wear a full-face velvet mask for the purpose of promenading in public parks. Christoph Heyl observes that such 'masks both obscure their wearers and attract attention at the same time'.⁵⁸ Heyl locates the veil in the regulatory or legal plane that separates the private from the public: 'protected by a mask, an element of privacy could be maintained while frequenting public spaces'.⁵⁹ The female fashion of the black mask goes even further back, to the middle of the seventeenth century. Bohemian by birth, but a naturalized Englishman, Wenceslaus Hollar (1607–77) produced numerous etchings of London's fashionable women, including one which shows a lady in the winter dress of c.1644 (Figure 5.2). Her black mask covers the upper part of her face in a style reminiscent of a Venetian carnival mask to produce an effect of concealment and disguise which is comparable to that produced by the *niqab* – with this notable difference: that the *niqab* covers the mouth.

We can be confident that it was masks of the sort depicted by Hollar that were worn by the women who reportedly interrupted the trial of Charles I in January 1649. At the close of the trial, Bradshaw announced that the King had been 'brought before the Court to make answer to a charge of treason and other high crimes exhibited against him in the name of the people of England'. Whereupon

there was a stir in one of the galleries where two masked ladies sat side by side, and one of them called out: 'Not half, not a quarter of the people of England. Oliver Cromwell is a traitor.' Colonel Axtell, who was in charge of security in the Hall, ordered his men to level their muskets at her. Some say they heard him shout 'Down with the whores.' . . . she was hustled out, and Bradshaw resumed his interrupted speech.⁶⁰

According to C. V. Wedgwood, 'the masked interrupter was Lady Fairfax, who had come, accompanied by her friend Mrs. Nelson, to relieve her conscience, and perhaps also to relieve her husband's'.⁶¹

58 Christoph Heyl, 'When They Are Veyl'd on Purpose to Be Seene: The Metamorphosis of the Mask in Seventeenth- and Eighteenth-Century England', in Entwistle and Wilson, *Body Dressing*, pp.121–42, 127.

59 Ibid., p.132.

60 Quotations are from Cicely V. Wedgwood, *The Trial of Charles I* (London: Collins, 1964), pp.154–5.

61 Ibid., p.155. (Lady Fairfax's husband, Lord Fairfax, was parliamentary commander-in-chief during the English Civil War.)

Figure 5.2 Wenceslaus Hollar, 'Winter' (etching), c.1644.

Source: Reproduced courtesy of the Thomas Fisher Rare Book Library, University of Toronto.

Another century earlier, facial coverings of various sorts were a common feature of female dress. Masks were used in revels,⁶² and formal veils were used to indicate special status, for instance that a woman had entered religious orders or taken a vow of chastity.⁶³ Attire for the brow and thin veils or nets for the face were a commonplace component of fashionable apparel, as appears, for instance, from the following dialogue in John Heywood's *The Four P's* (c.1545):

- Pardoner: I pray you tell me what causeth this:
 That women, after their arising,
 Be so long in their apparelling?
- Pedlar: Forsooth, women have many lets,
 And they be masked in many nets,
 As frontlets, fillets, partlets, and bracelets:
 And then their bonnets and their poinets.⁶⁴

The description 'lets' is highly apposite shorthand for the range of facial attire which adorned women in this period, for the word 'lets' invites two directly contrary interpretations: 'lets' in the sense of 'allows' and 'lets' in the sense of 'hinders'. The word efficiently summarizes the way in which facial coverings have consistently performed in an ambiguous fashion – at once freeing the female to participate in public life while fencing her off from it.⁶⁵ The same equivocation has been observed in the wearing of Islamic headdress today. Liela Ahmed, summarizing Macleod's research,⁶⁶ observes that to fulfil their own sense of freedom in the face of such factors as the jealous supervision of male partners, donning *hijab* (the headdress that covers the hair but not the face)

allowed women to go about their lives and keep their jobs while affirming their identities as Muslim women and presenting themselves as

62 Maria Hayward, *Rich Apparel: Clothing and Law in Henry VIII's England* (Farnham: Ashgate, 2009), p.293.

63 Ibid., pp.248–9.

64 (London: William Middleton, 1547). This extract is my own modernization of the text appearing in the first volume of *A Select Collection of Old Plays in Twelve Volumes*, 2nd edn (London: J Nichols, 1780), pp.47–98, 64.

65 The word 'let' has what Empson called the seventh type of ambiguity, that is, the ambiguity of a word which carries directly opposite meanings: William Empson, *Seven Types of Ambiguity* (London: Chatto and Windus, 1930).

66 Macleod, *Accommodating Protest*.

women who were conforming to conservative Islamic notions of women's roles.⁶⁷

Yet another century further back in time, we find that female facial concealment was already disconcerting the ruling powers to the extent of legislation. Thus a law of James II of Scotland (1430–60) laid down a stern prohibition against female face-covering in church: 'na woman cum to Kirk nor mercat with her face mussled or covered that she may nocht be kenn'd under the pain of escheat of the curchie'.⁶⁸ It is somewhat ironic that this prohibition should apply in a religious setting, for to 'take the veil' was at that time standard metonymical shorthand for a woman's entry into holy orders. No matter how far back we go, the fashion for facial covering has been a feature of the female sartorial landscape. Even in Old Testament times, it was known that veils could as easily be attention-grabbing and ostentatious as modest. When the prophet Isaiah prophesized against the 'haughty' women of Zion, his complaint concerned such features of their dress as 'veils', 'headdresses' and 'shawls' and their habit of 'flirting with their eyes' (Isaiah 3:16–23).

Returning to Europe, it was not until the twentieth and twenty-first centuries that the veil and other forms of face-covering attire finally lost their place in the wardrobe of fashionable women. Outside of religious usage, the veil is nowadays almost wholly reserved for use in wedding ceremonies. In that context, as so often, it speaks simultaneously of innocence and seduction. Throughout its long history, the veil or mask worn by females has challenged and disconcerted predominantly male authority. This alone must cast some doubt on the claim, made now by the authorities in France and elsewhere, that the veil is oppressive to women.

The courtroom is a domain of dress and a key site of confrontation with the face of the law. Among those accused of crimes there is a long tradition of dressing up to give the appearance of respectability. As far back as Tudor times, it was said that so-called Egyptians ('Gypsies') appear 'at every assize, sessions, and assembly of justices, and . . . so clothe themselves for that time, as any should deem him to be an honest husbandman'.⁶⁹ The practice is an

67 Ahmed, *A Quiet Revolution*, p.122.

68 6 March 1457. Thomas Murray, *The Laws and Acts of Parliament Made by King James The First, and His Royal Successors, Kings and Queens of Scotland* (In Two Volumes), Vol. I (Edinburgh: David Lindsey and His Co-Partners, 1682), p.79.

69 Richard H. Tawney and Eileen Power, *Tudor Economic Documents* (London: Longmans, Green & Co, 1924), II, p.345.

acknowledgement that defendants expect to be judged, not merely on the evidence of the case, but on their own evident external appearance.

The appearance in court of a veil-wearing woman calls for especially considered judgment. Natasha Bakht observes that judicial opposition to the wearing of the *niqab* in courtrooms is usually a 'knee-jerk response'.⁷⁰ A number of instances suggest that this is, indeed, true. For example, the case of a magistrate in Manchester who walked out of a hearing when the female defendant refused to remove her veil.⁷¹ The defendant, who had committed criminal damage when she was evicted from her State-owned residence, made an official complaint against the magistrate and he was subsequently given a formal reprimand and required to undergo further training.⁷² As so often happens, the knee that jerks at first instance is put back in line on appeal. The authors of 'Freedom in Dress: Legal Sanctions' note that in their sample of American cases, sanctions which at first instance were threatened or imposed for breach of various sartorial codes, were subsequently disapproved by higher-ranking judges on review or appeal on 61 per cent of occasions.⁷³ We can compare this to the case of the woman who refused to remove her headscarf when she accompanied her nephew into a municipal court in the State of Georgia in 2008. She was arrested and, after protesting, briefly jailed for contempt of court, but Georgia has since recommended that religious head coverings should be permitted in State courthouses.⁷⁴

Bakht explains that there is no justification for the instinctive negative response to the wearing of an Islamic veil in court (pointing out that a thin cloth, covering the face, does not prevent factual evidence from being submitted),⁷⁵ but what she does not seek to explain is the sense that causes

70 Natasha Bakht, 'Objection, Your Honour! Accommodating *Niqab*-Wearing Women in Courtrooms', in Ralph Grillo, Ralph Grillo, Roger Ballard, Alessandro Ferrari, André Hoekema, Marcel Maussen and Prakash Shah (eds), *Legal Practice and Cultural Diversity* (Farnham: Ashgate, 2009), pp.115–34. See, also, Natasha Bakht, 'Veiled Objections: Facing Public Opposition to the *Niqab*', in Lori Beaman (ed.), *Defining Reasonable Accommodation* (Vancouver: UBC Press, 2010), pp.70–108.

71 *The Guardian*, 29 June 2007.

72 'Veil row magistrate reprimanded', BBC News (online), 8 January 2008.

73 Pat Marie Maher and Ann C. Slocum, 'Freedom in Dress: Legal Sanctions' *Clothing and Textiles Research Journal* 5.14 (1987), p.21.

74 Laurie Goodstein, 'Georgia: Lawsuit Over Muslim Woman's Head Scarf', *New York Times*, 15 December 2010, p.A20.

75 There is a debate around the possibility that the veil might infringe an accused's ancient right to have their accuser brought before their face. See, for example, Daniel H. Pollitt, 'The Right to Confrontation: Its History and Modern Dress' *Journal of Public Law* 8 (1959), pp.381–413; Ian Dennis, 'The Right to Confront Witnesses: Meanings, Myths and Human Rights' *Crim L R* 4 (2010), p.255; Brian M. Murray, 'Confronting Religion: Veiled Muslim Witnesses and the Confrontation Clause' *Notre Dame L Rev* 85 (2010), p.1727.

Figure 5.3 Pierre Cavellat (untitled, 13 April 1992), a Muslim woman in veil emerging from the sea.

Source: Reproduced from Ruth Herz, *The Art of Justice: The Judge's Perspective* (Oxford: Hart Publishing Ltd, 2012), by kind permission of Ruth Herz, Hart Publishing and the family of Pierre Cavellat.

the knee to jerk in the first place. The relevant stimulus may be non-rational, but it might also be culturally ingrained and deeply and sincerely felt. (The French artist and judge Pierre Cavellat produced a watercolour image late on in his life which expresses his appreciation of the cultural significance of the veiled Muslim woman and which perhaps reveals a degree of personal – and perhaps juridical – unease concerning her potential to confront French cultural traditions, see Figure 5.3.)⁷⁶ In short, it may have a good deal in common with religious sensibility. It is not my purpose here to attempt to put another spin on the endlessly turning debate regarding the rights and wrongs of the Islamic veil in a secular society. My interest is in the law's cultural commitment to the fabrication of a certain idea of the civil face and

⁷⁶ See Ruth Herz, *The Art of Justice: The Judge's Perspective* (Oxford: Hart, 2012).

the force with which it seeks to fashion that face for itself and to enforce it on (and perform it for) society at large. It is the cultural commitment of the civil authorities, combined with the force of fashion, that tends to produce confrontation and conflict (knee-jerk or otherwise) when the Islamic veil is presented in *facie curia*. So far as the dull currency of justiciable rights and wrongs is concerned, it must be the case that neither side is wholly right or wholly wrong. All that is required, legally speaking, is to find a workable compromise in particular cases of conflict. The practice adopted in the New Zealand case *Police v. Razamjoo*⁷⁷ shows what can be achieved if the knee-jerk reaction is appropriately inhibited. In the case, two *niqab*-wearing female witnesses were required to remove the *niqab* but were permitted to wear headscarves covering their hair and to give evidence from behind screens so that only the male judge (Justice Lindsay Moore), counsel and female court staff were able to see their faces. A leading scholar of law and religion has called this an ‘elegant compromise’.⁷⁸ The current guidance for UK courts is equally nuanced. According to the section on ‘Religious dress’ in the *Equal Treatment Bench Book*, the current guidance, as amended by the Judicial Studies Board in February 2007, is as follows:

While there are a range of different possible approaches, depending on the circumstances of the particular case and the individual concerned, the interests of justice remain paramount. In essence, it is for the judge, in any set of circumstances, to consider what difference, if any, would be made to those interests by the *niqab* being worn. It may well be, that after consideration, there is no necessity to take any steps at all.

The guidance goes on to state that ‘[a]s with all practices, the response must be thoughtful and sensitive’. No knee-jerking here. There is, though, a most revealing paragraph in which the guidance questions whether a veil-wearing judge would be compatible with the official face of the law:

It is where the woman concerned is providing the ‘face’ of justice – as a judge, magistrate or tribunal member – that the question of the

77 [2005] DCR 408. Discussed in David Griffiths, ‘Pluralism and the Law: New Zealand Accommodates the *Burqa*’ *Otago L Rev* 11 (2006), p.281; Rex J. Ahdar, ‘Reflections on the Path of Religion-State Relations in New Zealand’ *Brigham Young University Law Review* (2006), pp.619–959.

78 Ahdar, ‘Reflections on the Path of Religion-State Relations’.

‘transparency of justice’ might be said most obviously to come into play. Is the constituency which is served by the courts entitled to see the person dispensing justice?

The guidance covers almost every conceivable category of case, from veil-wearing judges, to veiled witnesses, counsel, jury members, court staff and people in the public gallery. Cases of conflict have arisen in relation to each of these groups and will no doubt continue to do so. Examples include the magistrates in Leicester, England, who ordered a *niqab*-wearing woman to reveal her face but allowed her to give evidence behind a screen in a 2010 case that had been brought against her partner;⁷⁹ the decision of the Ontario Court of Appeal to uphold a rape victim’s right to testify in court while wearing a veil provided it does not impede a fair trial;⁸⁰ in France, the day after the veil law was ratified,⁸¹ the expulsion of a woman from the public gallery because she was wearing a face-covering veil;⁸² the Muslim woman who, on the point of being sworn in to a jury in a criminal trial in England, confirmed her preference to continue wearing her *niqab* and was therefore required by the judge to stand down.⁸³

If any location rivals the courtroom as a potential site of confrontation between the face of law and the fashioned face of an individual, it is the point of entry into the territorial jurisdiction of a nation State. The border is equivalent to the gate of the ancient polis. It is something like the skin of the State. As such, it is a defining locus for the demonstration of civil order through dress. No wonder, then, that uniformed guards police the border and that people passing through the threshold are scrutinized in every aspect of their physical appearance. Sometimes the response of the civil authorities is extreme. Liela Ahmed cites the example of a teenage girl at the security checkpoint at Baltimore airport, who reported that she ‘experienced a distinct sense of menace when . . . asked to remove her *hijab*’ (not even a veil, it should be said). She queried the request ‘and tried to explain that it was a religious symbol’, but acceded when ‘she was surrounded by military

79 Andy Bloxham, ‘Magistrates Order Pregnant Muslim to Remove Veil’, *The Telegraph*, 8 October 2010.

80 *The Queen v. NS* (2010) Court of Appeal for Ontario, Court File C50534.

81 ‘*La loi sur le voile intégral*’ (Décision n° 2010–613 DC, le Conseil Constitutionnel, 7 October 2010).

82 Agence France Presse, 8 October 2010.

83 Owen Bowcott, ‘When a Veiled Woman Had to Leave Court’, *The Guardian* (Features), 21 March 2012.

personnel carrying rifles'.⁸⁴ Such an incident might shock us, but it should not surprise us given what we now know about the place of dress in the fabrication of the façade of State. The phenomenon is not restricted to States with a Muslim minority. Algeria has a 99 per cent Muslim population, but it has imposed a ban on the wearing of Islamic veils and Islamic styles of beard for the purposes of passport photographs.⁸⁵ A cultural appreciation of the veil is essential to understanding what is at stake for the wearer when they present themselves at the international border of a State. Susan Ireland makes the point that when people 'migrate from one country to another, they are faced with the question of how to fit in and must decide which aspects of their culture of origin to keep'.⁸⁶

Dress codes are culturally contextual. If someone flees semi-naked into a public street to escape a house fire, no right-thinking person would consider that any customary code of dress has been infringed. Laws are likewise truly meaningful only within the culture that produces them.⁸⁷ We do not expect to export our national laws when we travel to foreign jurisdictions, why should we expect to export our domestic dress code? When a Saudi woman living in France asked a leading Muslim cleric how women should respond to local laws in countries that ban the veil, his ruling (*fatwa*) that they could obey such laws, confirms the culturally contextual nature of the practice.⁸⁸ If veiling had been a strict requirement of Islamic law (which most Muslim clerics agree it is not), he would have ruled that women must defy the ban or depart the country. At least one leading Islamic jurist has gone even further and has said that Muslim women should positively abide by local rules if the removal of the veil poses no threat to their well-being. In a lecture delivered in New Zealand, Dr Muhammad Tahir-ul-Qadr stated that '[f]or women living here, it's not a Koranic obligation. They should follow the law of the land'.⁸⁹

84 Ahmed, *A Quiet Revolution*, p.204 (quoting Anny Bakalian and Medhi Bozorgmehr, *Backlash 9/11 Middle Eastern and Muslim Americans Respond* [Berkeley: University of California Press, 2009], pp.145–6).

85 For an interesting global survey of controversies involving the male beard, see 'Hair, Beards and Power: Taking It on the Chin', *The Economist*, 5 August 2010.

86 Susan Ireland, 'Writing the Body in Marlène Amar's *La Femme sans tête*' *The French Review* 71.3 (1998), pp.454–67, 454.

87 Gary Watt, 'Comparison as Deep Appreciation', in P. G. Monateri (ed.), *Methods of Comparative Law* (Cheltenham: Edward Elgar, 2012), pp.82–103.

88 'Fatwa on Veil Ban', *Dominion Post*, 26 July 2010.

89 Ian Steward, 'Take Off Face Veils, Says Leading Muslim Scholar', *Fairfax NZ News*, 6 August 2011.

The challenge for the wearer of Islamic dress is an example of the challenge we all face when confronted with codes of dress and codes of law. The challenge is to respect the prescriptions and proscriptions that others place on us publicly while endeavouring to respect the pressures that are imposed on us, and the principles that we adopt for ourselves, privately. The challenge is to find a way to live with others while being able to live with ourselves. In short, the challenge is to fit in.