
UNIFORMS AND VEILS: WHAT DIFFERENCE DOES A DIFFERENCE MAKE?

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On March 15, 2004, the French government passed a law that banned the wearing of “conspicuous signs” of religious affiliation in public schools. The ban was the result of an ongoing controversy in France about the acceptability of Muslim girls wearing headscarves (*hijab* in Arabic) to public schools, but France is not the only European country to worry about girls or women in headscarves. Similar legislation has been proposed in Belgium, Holland, and Bulgaria. In this article, I would like to focus on the French controversy, since it represents what we can call an “ideal type” of the republican model for accommodating minority religious groups. It is based on a commitment to secularism, individualism, and the integration of minorities through assimilation. I would like to contrast this model with the Israeli model of a “Jewish and democratic” state. The Israeli system is based on the opposite values of non-separation between state and religion, on collectivism, and on the *millet* system for accommodating religious differences of minority groups. I propose to compare the French controversy over the headscarf to the less-known Israeli controversy over army uniforms.

On December 3, 2007, the Knesset Education Committee published its public condemnation of Professor Nizar Hassan from Sapir College in Sderot. Hassan, a filmmaker and a Palestinian citizen of Israel, was denounced for insulting an Israeli officer in uniform. The incident occurred on the eighth of November, 2007, when a film student who came to class directly from his army service appeared in Hassan’s classroom in full army uniform. Hassan asked the student to avoid coming to his classes in uniform in the future. Following the incident, a public storm erupted in which very high-ranking officers in the Israeli army participated. Lieutenant General Gabi Ashkenazi, Chief of General Staff, required explanations; General Stern, in charge of human resources for the army, required an apology; and the Knesset

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condemned Hassan. Subsequently, Sapir College suspended Hassan from teaching and appointed a hearing committee that published its report on January 31, 2008. The committee, consisting of three academics, recommended that Hassan's further employment be conditioned on an apology to the student. Subsequently, the president of Sapir College, Zeev Tzahor, wrote a letter to Hassan in which he required, in addition to an apology, that Hassan submit a statement in which he declared his commitment to honoring IDF uniforms (Israel Defense Forces). Hassan refused to apologize under such conditions. These events received broad media coverage and caused a public uproar. Hassan threatened to sue the college in the labor court. Later, Hassan reached an agreement with the college whereby he would be re-employed after one semester and compensated for the time in which he was suspended; in return, he withdraw his legal suit. The college never officially withdrew its requirement that Hassan apologize.

The debate over the headscarf in France and the uniform controversy in Israel share some basic similarities. Both dealt with the accommodation of a Muslim/Arab individual belonging to a minority group. Both involved the education system (in France, secondary schools; in Israel, higher education). They involved symbols—specifically, the wearing of certain “conspicuous” cloth particles in the public sphere. Both ignited a public storm of condemnations and identifications, as well as a heated public debate that reached the highest political body, the parliament.

These similarities notwithstanding, a basic difference remains: the diametrically opposite ways in which individuals belonging to an Islamic minority group choose to challenge the terms of citizenship offered to them by their respective political systems. In France, the school girls chose to question the ideals of individualism and secularism by showing up to school wearing the Muslim headscarf. This act challenged the republican ideal of making one's social, religious, ethnic, and other origins irrelevant in the public sphere. In Israel, a Palestinian-Muslim professor takes the opposite direction. He challenges a system that constantly labels and classifies people according to their religious, ethnic, and national origins by excluding the “mark” from his classroom. Professor Hassan requires that any “conspicuous” sign—in particular, army uniforms of any kind—be removed, in order to create a neutral space in his classroom, a space in which a dialogue between teacher and student can be conducted between individuals as equal human beings.

How can the comparison between the two controversies advance our thinking about the accommodation of religious-ethnic minorities by a democratic state? I argue that the comparison can help us go beyond an “essentialist” understanding of Islam that became dominant under the

“clash of civilizations” paradigm. I propose to develop a more contextual discussion of the terms of citizenship offered to religious and national minorities. This shift helps move the discussion from the level of the individual (personal choices, family background, religious beliefs) to an understanding of the interrelations between an individual belonging to a minority group and a political community. This comparison can shed light on the way individuals belonging to minority religious and ethnic groups fare under very different ideals of a public space (republican and ethno-democratic).¹ The comparison asks us to study the debate less abstractly (under the state-religious distinction) by infusing it with historical perspective of the power relation in postcolonial and multicultural societies. In both cases, the origins of the debate can be traced back to a history of military occupation and a subsequent resettling of part of the former occupied group within the hegemonic society under terms of formal commitment to equal citizenship, which nevertheless bestow only a second-class citizenship on its members.² To make the comparison, I conduct a discourse analysis in which I study the rhetorical moves and countermoves employed in the controversies in order to avoid a robust discussion of the terms of equal citizenship.

My first intention is to explain the controversies from the perspective of citizenship’s regimes and the structuring of the public sphere. However, I also use the comparison to investigate the gender issue that was prominent in the French controversy. Specifically, the fact that teenage girls covered their hair with headscarves (as opposed to teenage boys growing beards or wearing traditional Islamic dress) played a significant part in the public debate. It was not only the wearing of “conspicuous” religious symbol in public, but the meaning that the headscarf signified for the French public about the subordinate status of Muslim women and doubts about the possibility that these young teenagers truly chose to submit to such a status.³ In short, it was

¹ Cf. Ruti Teitel, *Militating Democracy: Comparative Constitutional Perspectives*, 29 MICH. J. INT’L L. 49, 58-62 (2007). Teitel suggests focusing on the different conceptions of a public space in the U.S. (libertarian) and in Europe (militant) in order to understand the different approach to religion-state relations.

² The postcolonial perspective had to undergo some changes in order to adequately capture some of the complexities of the Israeli-Palestinian conflict. See RONEN SHAMIR, *THE COLONIES OF LAW: COLONIALISM, ZIONISM & LAW IN EARLY MANDATE PALESTINE* (2000). For a discussion of the colonial origins of the headscarf trend in France, see JOAN W. SCOTT, *THE POLITICS OF THE VEIL* 45-89 (2007). I thank Liat Kozma for suggesting this additional perspective.

³ An example of this can be found in the Faiza Silmi case. On June 27, 2008, the French high administrative court (*conseil d’Etat*) upheld the decision to deny Silmi citizenship on the grounds that her “radical” practice of Islam was incompatible with French values, such as equality of the sexes. This decision was given mainly due to Silmi’s decision to wear the hiqab, which the court regarded as a result of her husband’s pressure. It is interesting to note that Silmi’s husband is himself a French citizen, whose citizenship was not questioned for similar

not only the republican ideal of “secularism” (*laïcité*) but its connection to the ideal of individualism (and freedom of choice) and gender equality that were at issue. Thus, it was significant that even though young Muslim women were asking to respect their dress code in public as part of the freedom of religion and expression, many French feminists opposed their struggle and supported the ban in the name of gender equality. I argue that the comparison can illuminate the “gender equality” argument in a new light. The wearing of the headscarf in France was taken as an unambiguous sign of the oppression and subordination of women in Islam, to which anyone supporting the republican ideal of equality must be opposed.

In Israel, the “covering” of the body of a man by wearing a military uniform, which can also signify hierarchy and subordination, was not understood as pertaining to issues of equality. Hassan’s criticism of army uniforms was not related in the public debate to feminists’ struggles, such as Israeli feminist struggles about the exclusion of women from combat units in the army and their exclusion from religious public spaces.⁴ What can this difference tell us about the role of gender in the debate? Is it a genuine concern, or is it just a diversion from the main issues involved in the integration of ethnic-religious minorities into the public sphere of citizenship?

In discussing the French controversy, I rely on the discussion of historian Joan Walsh-Scott in her recent book, *The Politics of the Veil*. Scott maintains that the significance of the French controversy over the Islamic headscarf cannot be explained in numbers alone since it did not involve a significant number of students.⁵ She therefore poses the

reasons. See Section du contentieux, 2^{ème} et 7^{ème} sous-sections reunites N°286798.

⁴ Feminists who engaged in both struggles (against the army and religious authorities) have claimed that while men have a central role in the Israeli public sphere, women tend to be excluded from it. The feminist struggle can therefore be characterized as an attempt to include the female body in the public sphere, by making it more neutral to gender differences. See, e.g., articles on Alice Miller, who struggled to compel the IDF air force to recruit women: Daphne Barak-Erez, *The Feminist Battle for Citizenship: Between Combat Duties and Conscientious Objection*, 13 CARDOZO J.L. & GENDER 531, 531-60 (2007); Yofi Tirosh, *Alice Through the Looking Glass: Reflections on Representations of the Female Body in the Discourse on Integrating Women in Combat Roles*, in GENDER, LAW AND FEMINISM 885 (Daphne Barak-Erez ed., 2007). As a result of this struggle, the law was changed to prohibit exclusion of women from combat units. See also the struggle of religious feminists in Israel for the right to pray at the Wailing Wall wearing traditional male clothes, such as a skullcap and phylacteries: Lea Shakkdiel, *Women of the Wall: Radical Feminism as an Opportunity for a New Discourse in Israel*, in WOMEN’S TIME, NEW STUDIES FROM ISRAEL, PART II – ISRAELI FAMILY AND COMMUNITY, SPECIAL ISSUE OF THE JOURNAL OF ISRAELI HISTORY – POLITICS, SOCIETY, CULTURE, Spring/Autumn, 2002, at 126; WOMEN OF THE WALL: CLAIMING SACRED GROUND AT JUDAISM’S HOLY SITE (Phyllis Chesler & Rivka Haut eds., 2003).

⁵ SCOTT, *supra* note 2, at 3. As Scott points out, only 14% of French Muslim women wore the *hijab* before the law had been passed. See also the case of *Dogru v. France*, 1579 Eur. Ct. H.R. 9 (2008), in which the European Court of Human Rights upheld the decision to expel a French Muslim student from her public school on the grounds that she had insisted on wearing

question, “What is it about the headscarf that makes it the focus of controversy, the sign of something intolerable?” She rejects the formal answer that presents the conflict in terms of a cultural clash between Islam and the values of French republicanism, in particular secularism, individualism, and gender equality. Scott argues that the controversy was not about the separation between state and religion and instead attributes its origins to racism, immigration problems, and France’s colonial past. According to Scott’s interpretation, the headscarf that the Muslim girls wear exposes a symbolic veil of abstract republicanism behind which unresolved problems of French citizenship are hidden. The symbolic act of wearing headscarves in public schools challenges the republican ethos of equality by demonstrating that it cannot accommodate difference, a woman who claims that the very demand to “unveil” unequally burdens her and makes the promise of equal citizenship a sham.

The symbolic element of the controversy is all the more pronounced in the Israeli context. The “uniforms” controversy erupted over the actions of an individual Arab professor. Similarly, we can ask, “What is it about the army uniforms that makes their exclusion from the public sphere a sign of something intolerable?” The search for an answer leads us to examine the problems of citizenship under the terms of a Jewish and democratic state. Following Scott, I propose to conduct a discourse analysis of the Israeli controversy over army uniforms to discover some unexpected analogies between the arguments raised in the two controversies. Both debates about covering body parts by a piece of cloth were quickly turned into debates about hypocrisy. In both debates, an inverted image of majority-minority power relations was presented. And in both debates, the individual’s claim was brushed aside and subsumed under identity-group politics. The “solution” in both cases was based on force, on the denial of the individual’s choice. These structural similarities are surprising given the very different political ideals of public sphere in France and Israel, and the diametrically opposite acts taken by the individuals who protested them. I argue that the explanation for the crisis can be found in the meaning of “subversive politics” and the refusal of representatives of the political bodies to engage in an honest political debate about problems of citizenship in relation to minority groups. In both cases, the end result was that the myth was upheld, and the protesting voices were silenced.

The individuals who ignited these debates were not engaged in grassroots politics, they did not organize demonstrations or strikes, and,

her headscarf. In the decision, it is noted that in the year spanning from 2004 to 2005, when the law was passed, a total of 639 religious signs were recorded in French public schools, and that total is less than 50% of the signs that were recorded during the year before. This means that about 1300 cases were noted in the year before the law had been passed.

in fact, they acted without any organization or group support. Their protest was symbolic. It consisted of wearing (or excluding) a symbolic piece of cloth. Their act was also subversive because it threatened to expose a myth or ethos to which their respective political communities were committed. In the French case, it was the belief that equality presupposes similarity and that, by distributing the neutral “mask of the citizen,” it can be equally enjoyed by all. In Israel, the demand of a Palestinian professor to exclude IDF uniforms challenged the dominant understanding of the IDF as a “civilian army” that functions as an important social agent of equality.

The two controversies should be read against two different conceptions of the public sphere and its relations to equality. While the French republic insists on creating a neutral public sphere as a precondition for equality, the possibility of equality in Israel is connected to guaranteeing a divide between the public and private spheres. The public sphere can be a non-neutral public space, shaped according to the symbols of the dominant Jewish group, as long as the individual rights of people belonging to minority groups are protected by law.⁶ Moreover, while the public sphere is shaped according to Jewish symbols, individuals belonging to different religious and ethnic groups are welcome to enter it with their group markers (be it a headscarf, a yarmulke, army uniforms, kafiya, etc.).⁷ In both cases, the symbolic act of the individual seems to pierce the mask of equality presented by the state. The official reaction to this symbolic challenge was to adopt further masks by redirecting the blame back to the individual, accusing him or her of radical politics and by redrawing the boundaries of freedom of speech.

I. HYPOCRISY

My analysis begins with an unexpected commonality between the

⁶ For an elaboration on the view that there is no necessary contradiction in the State's definition as both Jewish and democratic, see Ruth Gavison, *The Jews' Right to Statehood: A Defense*, AZURE, Summer 2003, at 70.

⁷ This is permitted on the condition that their appearance fits the customary tradition. See Shakdiel, *supra* note 4; WOMEN OF THE WALL, *supra* note 4. For media coverage on the group's failed legal struggle, see Efrat Weiss, *The High Court of Justice: The “Women of the Wailing Wall” Will Not Be Allowed to Pray at the Square*, YNET, June 4, 2003, <http://www.ynet.co.il/articles/0,7340,L-2545713,00.html>. A similar reaction can be detected against Jewish ultra-orthodox women who wish to wear veils that resemble the Muslim veil; they are publicly ridiculed. See, e.g., Tamar Rotem, *Behind the Veil*, HAARETZ, June 4, 2008, <http://www.haaretz.com/hasen/spages/971602.html>.

Another example of this phenomenon is the tendency of female combat soldiers to adopt the masculine army dress code and verbal style. See Orna Sasson-Levy, *Feminism and Military Gender Practices: Israeli Women Soldiers in “Masculine” Roles*, 73 SOC. INQUIRY 440 (2003).

two controversies. Both debates about covering body parts with a piece of cloth were quickly turned into debates about hypocrisy and the terms of citizenship offered to minority groups. It is the charge of hypocrisy, I claim, that can offer a key to understanding the significance that the wearing of a symbolic piece of cloth in the public domain represents.

In her analysis of the French revolution and the wave of terror that followed it, Hannah Arendt points to a puzzle, “It must seem strange that hypocrisy—one of the minor vices, we are inclined to think—should have been hated more than any other vices taken together.”⁸ Trying to answer this puzzle, Arendt offers her analysis of the relation of the public sphere to citizenship and the way in which hypocrisy undermines it. She argues that unique to the political sphere is that the “real” does not precede it, but is constituted by it, and is its product. The public sphere is a space for acting and speaking in public, and, because of the fragile status of political truths, dependent as they are on the integrity of the interplay between actor and spectator in the public sphere, hypocrisy is revealed to be so dangerous.

Hypocrisy, as Arendt notes, literally means “play acting.” Notice, however, that Arendt’s own ideal of politics consists of acting in the public domain while wearing the mask of the citizen. In fact, she explains that, through the distribution of the neutral mask of citizenship, we achieve our ideal of equality in a republic. However, the hypocrite is not the ideal actor that Arendt upholds because his mask is too complete. She explains:

Psychologically speaking one may say that the hypocrite is too ambitious; not only does he want to appear virtuous before others, he wants to convince himself. By the same token, he eliminates from the world, which he has populated with illusions and lying phantoms, the only core of integrity from which true appearances could arise again. His own incorruptible self.⁹

The ideal of “citizenship as mask” that Arendt upholds is inspired by the original Greek mask of antiquity, a mask that covers the face while allowing one’s true voice to be heard.¹⁰ Arendt arrives at the conclusion that what makes hypocrisy the “vice of vices” is that it threatens the core of the political realm, its integrity, since no genuine public debate can develop under such conditions of hiding. With the term of “speaking through the mask,” Arendt tries to offer her ideal of equality, one that accepts the need to create a public sphere in which the mask of citizenship will be equally distributed, but, at the same time,

⁸ HANNAH ARENDT, *ON REVOLUTION* 96 (1963).

⁹ *Id.* at 99.

¹⁰ HANNAH ARENDT, *ON REVOLUTION* 106-107 (1963); For elaboration, see NORMA CLAIRE MORRUZI, *SPEAKING THROUGH THE MASK: HANNAH ARENDT AND THE POLITICS OF SOCIAL IDENTITY* (2000).

respects differences and plurality.¹¹ In this way, Arendt differentiates between equality as assimilation and equality as equal respect for “difference.” In her criticism of the French requirement of assimilation as pertaining to the Jewish community, Arendt further develops her argument for relaxing the conformity required in the public sphere to allow hyphenated identities of a French-Jew to appear.¹²

When we turn to study contemporary controversies over citizenship in France and in Israel, we see how the old accusation of hypocrisy is raised again in the debate over equal citizenship. This is revealing as the occasion for this accusation of a cover-up (hypocrisy) is the symbolic act of veiling (headscarf) and the demand for “unveiling” (uniforms) respectively. We can suggest that it points to a complex relation of democratic citizenship to the concept of the mask. On the one hand, democratic citizenship promises equality, and this is to be achieved first and foremost by offering a legal mask (legal persona) to all citizens alike. On the other hand, the foundation of a democratic culture is based on transparency, one that sees lying as threatening the very foundation of public debate (hence the specter of the hypocrite). This ambivalence is reflected today in debates about the conflict of values between assimilation and multiculturalism as two ideals of the public sphere and citizenship.¹³ The wonder many have expressed about how an “innocent” piece of cloth like a headscarf can cause so much anxiety and emotion misses this dimension of the controversy. In my view, the power of the headscarf or the uniforms as a symbol is related to this unresolved tension in the heart of democratic culture between covering and transparency.

Scott’s analysis of the controversy over the Islamic headscarf is directed at exposing different layers of “hypocrisy” that shaped the debate. In particular, she raises doubts about claims that the ban defends the ideals of French universalism and gender equality. The universality entailed by the republican ideal was presented as a demand for creating a culturally homogeneous public sphere. The ban on headscarves established the intention of legislators to keep France a unified nation: secular, individualist, and culturally homogeneous.

¹¹ For elaboration, see Leora Bilsky, *Citizenship as Mask: Between the Imposter and the Refugee*, 15 *CONSTELLATIONS* 72 (2008).

¹² HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM*, ch. 9 (1958); see also SCOTT, *supra* note 2, at 75-85. Scott discusses the change that took place in French politics after WWII, in which the perception of the Jew as “unassimilable” in principle was revoked. Scott argues that the ambiguity in the demands towards Muslims that requires them to assimilate, while seeing the Islamic culture as resistant to assimilation, is reminiscent of the treatment of the Jewish problem before WWII.

¹³ Roger Brubaker, *Immigration, Citizenship, and the Nation-State in France and Germany*, in *THE CITIZENSHIP DEBATES* 131 (Gershon Shafir ed., 1998); Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25 (Amy Gutmann ed., 1992).

However, those supporting the ban vehemently denied the objection that cultural homogeneity might also be racist. For example, they ignore the fact that the legislation originated in the exclusion of *hijab* from schools and only later was it formulated in neutral language to include other religious signs. Scott dedicates a chapter to exploring the long history of French racism of which North African Muslims were the target.¹⁴ She argues that the rush to ban the headscarf was a way to avoid dealing with the more complicated problems of social and economic integration of immigration from former colonies, targeting the victims of discrimination as the cause of the problem.¹⁵

The headscarf was considered by supporters of the ban to be inimical to French custom and law because it violated the separation of church and state. In addition, it signifies the subordination of Islamic women in a republic premised on equality. However, in a chapter dedicated to exploring gender relations in France, Scott demonstrates how the ideal of an abstract individual upheld by French republicanism was hard to settle with gender equality, with the need to accommodate the difference that gender (and in particular women sexuality) makes in the public sphere. The very focus on the headscarf is interpreted by Scott as a sign of a hypocritical political discourse that avoids discussing the issues of racism, gender equality and economic and social discrimination, hiding behind the veil of a few Muslim girls.

We see then that hypocrisy played a central role in Scott's analysis of the failures of the French controversy. She argues that the main arguments in support of the ban—the republican ideals of universalism, secularism, and equality—could not withstand closer scrutiny. They were hypocritical in the sense that they were used by the supporters as “masks” to hide deeper problems of French citizenship: racism, immigration, and gender inequality. They point to the difficulty of the republican ideal of “citizenship as mask” to accommodate differences (religious, ethnic, or gender). A genuine discourse on French citizenship would have to address the assumption that equality presupposes similarity or assimilation to a dominant norm, against those who argue that it is precisely these requirements that entrench inequality and discrimination against certain groups that are deemed incapable of assimilation, as well as groups that insist to be treated as equals without hiding away their differences.

While, in France, the criticism of hypocrisy was mainly raised

¹⁴ SCOTT, *supra* note 2, at 42-89.

¹⁵ *Id.* at 85-89. Likewise, Ruti Teitel argues that behind the justification of “equality” one can find religious discrimination. “[T]he language of the proposed garb law suggests it is designed not to equalize, but rather to cover up present discrimination against millions of France’s Muslim citizens.” Ruti Teitel, *Through the Veil, Darkly: Why France’s Ban on the Wearing of Religious Symbols Is Even More Pernicious Than It Appears*, writ.news.findlaw.com/commentary/20040216_teitel.html (2004).

against the defenders of the ban, in Israel, it was first directed at the individual who triggered the debate.¹⁶ Following the public outcry over the treatment of an officer in uniform by an Arab professor, the Sapir College appointed a hearing committee on November 25, 2007, to investigate the incident and to make recommendations. The committee published its report and recommendations on the following January 31. The report begins by stating the “facts”:

The clash between professor Nizar Hassan and the student Eyal Cohen concerned the request by the lecturer from the student, who arrived directly from his military service wearing uniforms, not to appear in uniforms to future classes.¹⁷

These facts were not contested. However, their interpretation by the two parties diverged dramatically. Hassan explained to the hearing committee that his request stemmed from his commitment to the values of humanism and universalism. He explained that he wanted to meet his students in the classroom as individual human beings, not as soldiers, neither as Jews nor as Arabs. He did not mean to humiliate the student. He saw in the uniforms an expression of violence and militarism and reacted against it.

The committee dismissed Hassan’s explanation:

Even though Nizar attempted to present his behavior as motivated by pure humanistic values, the committee thinks that it was actually a result of his deep reservations about clear symbols of Israeli existence.¹⁸

Instead of humanist values, the committee saw extreme nationalism.¹⁹ The language of “cover-up” and play-acting is repeated throughout its report. The committee sees Nizar as attempting to cover himself with antimilitaristic views. The report concludes that:

Nizar abused his status and authority as a professor in order to

¹⁶ This difference can be connected to the public perception of the different “agents” involved. In France, the teenage girls were depicted as lacking “free agency” or “real choice.” Hence the very concept of hypocrisy that depends on a distinction between outside/inside, between inner motives and external explanations, cannot apply to them. Nevertheless, we can find a variation on the accusation of hypocrisy when wearing the “headscarf” is taken to represent a commitment to radical Islam. However, as Schott notes, this type of accusation contradicts the depiction of the girls as lacking meaningful agency. See SCOTT, *supra* note 2, at 124-50.

¹⁷ This quotation was translated from the original text by the author, as were all materials cited from the Israeli controversy.

¹⁸ “Report of the inquiry and hearing committee for the investigation of the complaint against the lecturer Nizar Hassan,” 3, Jan. 31, 2008, <http://college.sapir.ac.il/sapir/News/shimua.pdf>.

¹⁹ One explanation for the suspicion of the committee might be the specificity of the objection of Hassan to IDF uniforms. In an interview, Hassan was asked whether he will similarly object to the Muslim headscarf, and he said he will not. Since the Israeli public sphere is filled with religious symbols of this type, it can be argued that a true humanist should object to all of those in order to meet the “individual” as such. However, since the committee does not discuss this line of reasoning at all, and Hassan himself does not develop it, it remains a speculation.

display his views, feelings and frustrations, as a son of the Arab minority in Israel, while presenting himself [literally, *covering himself in a cloak*] as a “humanist” holding a “universalistic” world-view. In truth he adopted an aggressive position with a clear nationalistic character, symmetrical to other radical nationalistic views common in the Jewish Israeli society.

The report first takes to unveil the mask of a humanist that Hassan upholds by pointing to the underlying truth about his “nationalism.” The inquiry of the committee is presented as an act of unveiling—it pierces the mask of abstract individualism upheld by Hassan to discover behind it the frustrations of someone belonging to the “Arab minority.” In short, Hassan is presented as a hypocrite: a nationalist disguised as a humanist. It is interesting to note that with this “unveiling,” the committee is able to fit Hassan under a familiar type—the Palestinian nationalist—and adopts to itself the image of the moderate center, threatened alike by radical Jewish and Palestinian nationalists. The accusation of hypocrisy thus helps avoid dealing with the unique position and individual claim raised by Hassan, a combination of a Palestinian-humanist. Moreover, the accusation of hypocrisy avoids dealing with the central issue he raised about the non-neutrality of the public sphere of education in Israel as undermining the possibility of equality.

In an interview with *Haaretz*, Hassan conveyed his response to the committee’s report. It is the accusation of hypocrisy that enrages him the most:

First of all I am not the “son of a minority.” I am a Palestinian and proud of it. Second, how could they decide that I don’t hold humanist values, and that it is not my principled view? They did not even ask me how I would consider a Jordanian or Lebanese or French or any other soldier. The committee had no doubt that I am acting out of frustration. But how can they talk about the experience of the Arab minority in Israel when they don’t have a clue what it is? They don’t even understand Arabic.

When Hassan complains about the lack of sincerity in the committee’s investigation, he offers an alternative test that the committee could employ to find out whether he is a true humanist. Hassan implicitly invokes a different committee that is more familiar to the Israeli public, the army “conscience committee” that determines the status of conscientious objectors who refuse to serve in the IDF.²⁰ It is

²⁰ The “conscience committee” was formed in 1995 by the IDF chief of personnel. Its formal purpose was to better organize the policy for exempting individuals based on conscientious objections, which was unclear up to that point. The committee is chaired by an officer from the personnel unit and consists of a legal representative from the military attorney general unit and members of regulation and behavioral science units, as well as one civilian member, usually a philosophy professor. The committee employs the distinction, which preceded its establishment,

interesting to note the resemblance between the distinction made by the hearing committee (humanist/pacifist vs. nationalist/political) and the test applied to Israeli soldiers who refuse to serve in the Army. The Israeli army distinguishes between those who refuse to serve in the army due to humanist reasons (characterized as “pacifists”), whose refusal represents a universal principle of non-violence, and those whose reasons are political, whose refusal stems from an ideological opposition to a certain war, or to the Israeli occupation. Only the former objection is understood as “principled,” while the latter is portrayed as hypocritical, a refusal that serves as a veil over political views.²¹ By invoking this alternative test, Hassan seems to imitate the army’s distinction with a twist.²² It is imagined by a Palestinian citizen of Israel who is not trusted to be drafted to the army, and hence is excluded from the main mechanism of citizenship.²³

While the hearing committee accuses Hassan of hypocrisy, he accuses the committee of the same. It was the interpretation given by

between “pacifism” and “selective” or “political” objection. According to this distinction, “pacifists,” defined as people who object to any type of military service, are exempted from army service, while “selective objectors,” who refuse to take part in specific military actions, are not. See Hadar Aviram, *Discourse of Disobedience: Law, Political Philosophy, and Trials of Conscientious Objectors*, 9 J.L. SOC’Y 1, 9-10 (2008). For elaboration on differences between male and female conscientious objectors in Israel, see Noya Rimalt, *Equality with a Vengeance: Female Conscientious Objectors in Pursuit of a Voice and Substantive Gender Equality*, 16 COLUM. J. GENDER & L. 97 (2007).

²¹ Note, it is not that the “political” objectors hide their politics and for this are considered hypocrites. Rather, since the only valid ground for exemption is universal pacifism any attempt to get the exemption for “political” reasons is suspected as not real pacifism. For criticism of this distinction, see Leonard Hammer, *Selective Conscientious Objection and International Human Rights*, 36 ISR. L. REV. 145 (2002); Amir Paz-Fuchs & Michael Sfar, *The Fallacies of Objections to Selective Conscientious Objection*, 36 ISR. L. REV. 111 (2002)..

²² For a discussion of subversive imitations, see JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX”* (1993). The importance of such performance is that it has the potential of raising doubts over practices that structure Israeli citizenship. For example, it is only Jews who refuse their draft that can be classified as “pacifists” or “political.” Those Palestinians who are not drafted to the army in the first place are treated as a group and lack individual “voice” that can distinguish them. The insistence of Hassan that his objection to the uniforms is “humanist” thus reveals a “blind spot” in Israeli discourse of citizenship vis-à-vis Palestinians who are not drafted, presumably for their national identity. Compare to the treatment of women as conscientious objectors whose voices are missing from Israeli public sphere. Rimalt, *supra* note 20.

²³ While most Israeli Arabs do not serve in the Israeli army, they are not excluded from it in principle. According to the law that regulates the army draft, there is no formal exemption of Israeli Arabs. See Defense Service Law (combined version), 1986. As a result, some Israeli Arabs, mainly Druze and Beduins, are routinely drafted if they choose to volunteer. The fact that most Israeli Arabs do not serve in the army is the result of the Israeli government’s policy not to draft them, a policy which was originally based on its reluctance to provide them with military training. Since military service has a deep symbolic significance in Israel, this can serve as a pretext to discriminate against the Arab population in many aspects. See Yoav Peled, *Strangers in a Utopia: The Status of the Palestinian Citizens of Israel*, 3 THEORY & CRITICISM 21 (1993). For an elaboration on the consequences this policy has for the Arab population, see DAVID KRETZMER, *THE LEGAL STATUS OF ARABS IN ISRAEL* 98-107 (1990).

the committee to the wearing of army uniforms that upset him the most. The committee stated that “reserve service in Israel cannot be separated from civilian life. This is a fundamental fact that cannot be denied or repressed and it is unique to Israeli life This is a civilian army in the full sense of the word.” It is to this presentation of the IDF as an “army of civilians” not separated and inseparable from Israeli civic society that Hassan objects:

Say that you are a militaristic society that cannot live without weapons and uniforms and we’ll end the story. What do you want from me? Take me out of the game and build yourself a college in your image, a Jewish and Zionist college, with the values that the hearing committee talks about, and that a precondition for working in it will be a statement of honoring the uniforms. But stop with this double standard. It is not acceptable to me that a student will enter my classroom wearing uniforms and weapons . . . not out of feeling of frustration, as the committee explains, but out of a belief that a complete separation is needed between the two systems.

Hassan’s complaint about the “Jewish and Zionist” college echoes (in a distorted way) the self-characterization of Israel in its fundamental laws as “Jewish and democratic.”²⁴ He argues that behind the veil of democracy lies the reality of an ethnocracy.²⁵ His employment in the Sapir College serves as a fig-leaf, standing to show the democratic side, the equality enjoyed by Arab citizens in Israel. However, it is not a real commitment to democracy, since the moment he attempts to exercise his discretion as an instructor (trying to shape the space of his classroom as a neutral space free of uniforms), he is suspended, and his employment is now expressly conditioned upon his commitment to honoring the Israeli army uniforms. In other words, his action triggered a “hidden” contract, one that puts Jewish before democratic whenever the two conflict.²⁶

²⁴ Israel is defined as a “Jewish and democratic state” in its basic laws. See Basic Law: Human Dignity & Liberty, 1992, clause 1 (Isr.); Basic Law: Freedom of Occupation, 1994, clause 2 (Isr.).

²⁵ The term “ethnocracy” was first used in the Israeli context by Oren Yiftachel. Yiftachel argues that Israel should be defined as an “ethnocracy”—a regime which is neither authoritarian nor democratic, since, though it exhibits several democratic features, it facilitates a non-democratic seizure of the country by one ethnic group (the Jews). In this regime, there cannot be truly equal citizenship for those who are not part of the dominant ethnic group, i.e. the Jewish group. See Oren Yiftachel, “Ethnocracy”: *The Politics of Judaizing Israel/Palastine*, 6 CONSTELLATIONS 364, 364 (1999). Similarly, but with some difference, Samocha characterizes Israel as an “ethnic democracy”—a democratic regime, which gives individual civil and political, as well as some collective, rights to minorities, while attempting to create a homogenous nation-state, a state of and for a particular ethnic nation. In this type of regime, minorities are treated as second-class citizens, but are allowed to conduct democratic struggles to improve this status. See Sammy Smoocha, *Ethnic Democracy: Israel as an Archetype*, 2 ISR. STUD. 198, 199-200 (1998).

²⁶ For more about the conflict between “Jewish” and “democratic” as it was played out in the trial of the assassin of Prime Minister Yitzhak Rabin, Yigal Amir, see LEORA BILSKY, TRANSFORMATIVE JUSTICE: ISRAELI IDENTITY ON TRIAL 201-36 (2004).

According to Hassan, Israeli democracy is flawed in another way. Behind the presentation of the IDF as a “civilian army” lies the reality of a militaristic society. Since its inception, the Israeli army was presented as a central mechanism in achieving Israeli republicanism (“mamlachtiyut”). According to this ethos, the compulsory and nearly universal service in the army is central to the assimilation and equalizing role of the army.²⁷ The army is understood alongside the public school as a central component in the national and democratic revolution sought by the Zionist movement. Hassan challenges this understanding by advancing a critical reading of the role of the army in Israeli society. Where others see democratization, he sees militarization. The contrast between these two interpretations is particularly revealing when he demands to exclude army uniforms (that is, uniforms of reserve soldiers) from the classroom in the name of democratization.²⁸ Instead of seeing both institutions of army and education as harmonious components of a democratization project, the two are contrasted with each other. Hassan claims that only by separating the army from the system of education can democracy be achieved.²⁹ Thus, he contrasts the Israeli version of republicanism (Zionist republicanism) with a French-type republicanism that creates neutral public spaces, such as public schools. In other words, Hassan

²⁷ For elaboration on the role of the army in Israeli democracy, mainly in the country’s early years, see URI BEN-ELIEZER, *THE MAKING OF ISRAELI MILITARISM* 193-206 (1998); Uri Ben-Eliezer, “A Nation in Uniform” and War: *Israel’s First Years*, 49 *ZMANIM* 50-65 (1994); Niza Berkovitz, “Woman of Valor”: *Women and Citizenship in Israel*, 2 *ISR. SOC.* 277 (1999). For elaboration on the relationship between military service and citizenship, see MAURY D. FELD, *THE STRUCTURE OF VIOLENCE: ARMED FORCES AS SOCIAL SYSTEMS* (1977); Morris Janowitz, *Military Institutions and Citizenship in Western Societies*, 2 *ARMED FORCES & SOC’Y* 185 (1976); MORRIS JANOWITZ, *THE RECONSTRUCTION OF PATRIOTISM: EDUCATION FOR CIVIC CONSCIOUSNESS* (1983).

For a discussion of the army as an instrument of nation building and its commitment to the idea of equality, see AMOS PERLMUTTER, *THE MILITARY AND POLITICS IN MODERN TIMES: ON PROFESSIONALS, PRAETORIANS, AND REVOLUTIONARY SOLDIERS* 253-64 (1977). For examples of measures taken by the IDF to promote equality in Israeli society, see Alek D. Epstein & Michael Uritsky, *Questioning the Role of Army in Nation-Building: The Development of Critical Discourse on Civil-Military Relations in Israel*, in *CIVIL-MILITARY RELATIONS, NATION-BUILDING, AND NATIONAL IDENTITY* 169, 170-71 (Constantine P. Danopoulos, Dhirendra Vajpeyi, & Amir Bar-Or eds., 2004).

²⁸ It is interesting to compare this notion to the dispute over whether the draft of women into combat units promotes democratic values and equality. For elaboration on the dispute over women serving in combat units from this perspective, see Barak-Erez, *supra* note 4. For a critical view on the army draft’s ability to promote democratization and gender equality, see Hassan Jabareen, *Towards Critical Approaches to the Palestinian Minority: Citizenship, Nationalism and Feminism in Israeli Law*, in *ARMY, SOC’Y AND LAW* 53 (Daphne Barak-Erez ed., 2002).

²⁹ For a discussion of the different meanings of “militarism,” see Baruch Kimmerling, *Militarism in Israeli Society*, 4 *THEORY & CRITICISM* 123 (1993). Kimmerling rejects the argument, posed by several political scientists, that militarism has not developed in Israel despite the army’s central role. Kimmerling distinguishes between different types of militarism and argues that Israel is characterized by “civil militarism,” which is manifested by a penetration of the army into civil spheres such as education and politics.

attempts to show that behind the mask of a “civilian army” that seems to be harmonious with democratic ideas lie the realities of militarism, the infiltration of the army into Israeli civil society, and the subsequent stratification of power among different groups according to their relation to the army (women, ultra-religious, Palestinians, etc.).³⁰

Interestingly, Hassan refrains from complaining about discrimination against Arabs in the higher education system of Israel. For example, he does not point to the very small percentage of Arab professors teaching in Israeli universities and colleges.³¹ In fact, in the interview, Hassan argues that if he had taken upon himself the assigned role of “a son of a minority” asking for special consideration and understanding for his personal problem with IDF uniforms, there would have been no problem. Indeed, it is apparent from the report that the most difficult issue for the committee was accepting Hassan’s position at face value as a principled objection to the non-separation between army and education system in Israel.³² For this reason, the committee downplayed his views and opinions with the psychological language of “feelings” and “frustrations” of a person from the Arab minority. The committee attributed his act to his impulsive nature and refused to see Hassan as an individual acting out of a principled world view, portraying him instead as one belonging to the Arab minority (believing that his group affiliation can explain everything there is to explain about his position).³³

Against this background of non-separation between state and (Jewish) religion, we can begin to understand why a Palestinian citizen of Israel chooses to criticize the political system by upholding the French model of republicanism. Hassan attempted to shape the space of his classroom following the French republican model of abstract individualism, universalism, and humanism. In the name of ideals of the French revolution, Hassan justified his exclusion of the IDF uniforms. He explained that he wants to teach in a space free of national symbols and uniforms of any kind, to meet his students as

³⁰ For elaboration on the army as an instrument of stratification between various social groups in Israel, see GERSHON SHAFIR & YOAV PELED, *BEING ISRAELI: THE DYNAMICS OF MULTIPLE CITIZENSHIP* 101-03, 126, 143-45 (2002); YAGIL LEVI, *THE OTHER ARMY OF ISRAEL: MATERIALIST MILITARISM IN ISRAEL* (2003); Orna Sasson-Levy, *Constructing Identities at the Margins: Masculinities and Citizenship in the Israeli Army*, 43 *SOC. Q.* 357 (2002).

³¹ According to a research conducted by “Sikkuy”—The Association for the Advancement of Civic Equality in Israel—in the year 2007 Arabs constituted only 1.4% of the senior academic staff of universities in Israel and 13.8% of the senior staff of colleges. See Yaser Awad, *Representation of Arab Citizens in the High Education System* (2008) <http://www.sikkuy.org.il/docs/haskala2008.doc>.

³² Henriette Dahan-Kalev & Udi Lebel, *Generals at the School*, 11/12 *POLITICA: JOURNAL OF POLITICAL SCIENCE AND INTERNATIONAL RELATIONS* 27 (2004).

³³ Also, Hassan refuses to see the student Eyal Cohen as an individual, one who serves in the army and misses classes as a result, who hurries to class in uniforms in order not to miss another class.

equal human beings. While Muslim students in France ask to relax the enforced neutrality of the public sphere to accommodate their religious difference, Hassan asks to adopt this ideal to correct conditions of inequality. His problem stems from the fact that Israeli public space constantly labels individuals according to their social/ethnic/religious groups, not offering a universal mask of citizenship. Hassan's private ban on uniforms does not originate with the legislator or the political authorities, as is the case in France, and it is not enforced by the laws. It is the initiative of an individual lecturer, a symbolic act that tried to expose the non-separation of the various systems (education, politics, army) as a failure of Israeli democracy. For this interruption, he was disciplined and publicly condemned.

We have so far pointed to the central role that the rhetoric of hypocrisy played in both the Israeli and French controversies. I argued that it is connected to the symbolic act of using a "piece of cloth" in a subversive way by an individual belonging to a discriminated minority group. Both the act of veiling by schoolgirls (in the French case) and the demand of "unveiling" by a professor (in the Israeli case) expose the limits of the ideal of "citizenship as mask," of the failure of citizenship to ensure equality to a minority group. Instead of engaging in a frank dialogue about the terms of citizenship, both sides accuse each other of cover-up and play-acting.

II. INVERSIONS

In her analysis of the headscarf controversy, Scott refers to an interesting phenomenon—the inversion of issues. She detects this inversion in relation to the issue of sexual equality. The consensus of the French public was that the veil represents the subordination of women in Islam and their inequality. A commitment to gender equality requires, therefore, a ban on wearing the veil in public. In this way, the ban supported the values represented by French republicanism that equal citizenship requires the hiding of religious group symbols from public sphere. However, as Schott demonstrates, the support given by French feminists to the ban helped to uphold the myth of sexual equality, rather than furthering the goal of real gender equality. First, this support hid away the feminist criticism about the terms of equality afforded to French women, in particular, the inability to accommodate gender difference (feminine sexuality) in the public sphere. In fact, French feminists have long argued that "women's liberation" was falsely equated in France with "sexual liberation" and, in fact,

contributed to the sexual objectification of women.³⁴ However, during the debate on the headscarf, this criticism disappeared. The focus on the veil created an inversion. Instead of focusing on the shortcomings of the French republican model in accommodating differences in relation to women both secular and religious, the blame was turned around and focused on the minority. Islam (in its stereotypical depiction) was blamed as the sole cause for the difficulties of integrating immigrant minorities. The role of the law in denying Muslim girls access to public education and thus pushing them back to private religious schools was obscured. The Muslim minority was blamed for its exclusion and discrimination. This inversion undermined the possibility of seeing a common ground between women across religious differences—the strict requirement of assimilation to a norm that burdens those deemed “different.” The ban solidified an opposition between two cultures, depicting Islam as resistant to assimilation. By setting aside the feminist critique of French citizenship, it was easy to present the issue as an unavoidable clash between irreconcilable cultures instead of questioning the terms of the public sphere.

In the Israeli controversy, we also witness an inversion with which the discrimination of Arab citizens tends to disappear. The inversion consisted in presenting the issue of discrimination as pertaining not to the Muslim minority (for example in the universities) but to the Jewish minority, to those students who serve on army reserve. In other words, the argument was presented as a competition of victimhood between two minorities. This inversion occurs both in the Knesset committee and in the report of the hearing committee.

A. *The Knesset*

Following publications about the exclusion of a student in uniform, the Knesset Committee of Education convened on December 3, 2007. Note that this discussion took place before the College hearing committee finished its inquiry and published its findings. The Knesset Committee summoned President of Sapir College, Professor Zeev Tzahor, to answer questions about the affair. Also invited to the Knesset were representatives of the Army. Nizar Hassan, whose conduct was the subject of inquiry, was not invited. During this discussion, an inversion occurs. The main concern of the Knesset members was solely with discrimination against students serving in army reserve. The head of the committee, MK Zevulun Orlev opened the discussion by expressing his shock that, in a college that is under

³⁴ See SCOTT, *supra* note 2, at 151-75.

terrorist attacks (Sapir is located in Shderot, on the south of Israel, and suffers from daily missiles attacks from Gaza), there is a professor who expelled a student who “dared” come to class in his army uniform. Orlev argued that in a normal society an Army officer should be saluted, honored, and appreciated, instead of suffering such treatment. Another MK, Avshalom Vilan, mentioned the agreement signed between the institutions of higher education and the army in which they agreed to help students who serve on reserve. MK Alex Miller stated that he works to make this voluntary agreement into a binding law, and MK Marina Solodkin mentioned the difficulties suffered by students who miss classes because of their army service. Alex Miller saw Hassan’s words as amounting to the criminal offense of provocation. With this description the inversion is complete—the only “minority” group worth protecting is the Jewish students serving on army reserve, and the Palestinian professor who “dared” to say differently is to be denounced, condemned, and possibly indicted.³⁵ During the discussion, army representative Dani Biran explained that “it is necessary to return the pride to those serving in the Army in general and to army reserve in particular. This is a minority group that takes upon itself tasks and they should be honored.”³⁶

The Knesset discussion reveals that its members deem the only “minority” issue that arises in this context as that of soldiers serving in reserve. The act of Hassan is narrowly interpreted as discrimination against a student in uniform, and not under the larger framework of discrimination against the Arab minority in Israeli society, particularly in the field of higher education. The discussion has a strong republican component to it, focusing on the duties of the citizen as a soldier. It is interesting to see the shift that occurs in this discussion from a discourse of citizen “rights” to a discourse of soldier “honor.” The main injury to the Jewish student and to the army is articulated in terms of humiliation and dishonor.³⁷

The Knesset Committee concluded its discussion with a statement to the newspapers in which it attempted to correct the wrong done to the student, Eyal Cohen, by honoring the army and censuring the lecturer:

³⁵ Notice that, around the same time in which Hassan made his demand to the Jewish student in uniform, his colleague, a female, Jewish professor, made a similar demand to an Arab student not to come with the Islamic headscarf to class as a sign of feminine subordination. In this incident, the matter was settled internally, without creating a hearing committee, and it died out without raising any public controversy or outcry. See Tamara Traubman & Yuval Azulai, *Soldier, Improve Your Performance!* HAARETZ, Feb. 15, 2008, at 18.

³⁶ Protocol of Meeting Number 313 of the Education, Culture and Sports Committee, the 17th Knesset, 7, March 12, 2007.

³⁷ For the importance of honor discourse in Israeli culture, see Orit Kamir, *Honor and Dignity Cultures: The Case of Kavod (Honor) and Kvod Ha-Adam (Dignity) in Israeli Society and Law*, in *THE CONCEPT OF HUMAN DIGNITY IN HUMAN RIGHTS DISCOURSE* 231 (David Kretzmer & Eckart Klein eds., 2002).

(1) The committee thinks that it is advisable that state institutions, in particular institutions of higher education will be supportive and encouraging to students who serve in army reserve and in the army and the security forces in general, and create considerate learning conditions for those students who carry the burden of security of the state of Israel upon their shoulders. *It is a national a civil and a moral duty to guarantee their honor.* (2) The committee strongly condemns the behavior of Professor Nizar Hassan who refused to teach the student, Lieutenant Eyal Cohen, and dishonored him for dressing up in IDF uniforms and weapon coming back from reserve duty. . . .³⁸

While the Knesset committee rushed to condemn even before the college hearing committee concluded its inquiry, and without allowing Hassan any opportunity to present his side, a subtler inversion occurred. As noted, one of Hassan's arguments justifying his action was about the militarization of Israeli society—the non-separation of army from civil society, which undermines Israeli democracy. We saw that the college's hearing committee vehemently denied this accusation. However, during the Knesset discussion, aspects of militarization can be glimpsed. First, the army representatives are invited by the committee and given the opportunity to explain their views, while Hassan, the subject of inquiry, is not even invited. Moreover, during the discussion, the considerable economic power the army may exercise over the universities was revealed. In particular, the Army representatives and Knesset members expressed their dissatisfaction that the Hebrew university rejected a plan to create a special program for the security forces to obtain a university degree.³⁹ Ironically, in coming to condemn Hassan's act, the Knesset discussion gives substance to one of his main criticisms—it reveals that the Army enjoys a strong lobby in the Knesset and has substantial economic power to sanction universities that do not cooperate.

The inversion of majority and minority is evident also in the final report of the hearing committee. The dissent, written by Ms. Judith Morag, rejects the majority's recommendation to condemn Nizar Hassan and request an apology as a condition for his reemployment. Ms. Morag believes that an apology is not enough. The sole discrimination that concerns Morag is that alleged against Israeli students serving in reserve units. While the majority of the hearing committee sees Hassan as the son of the Arab minority, for Morag, the only relevant minorities are those students who serve in the army. Morag accuses Hassan of discriminating against students:

³⁸ Press Release, Educ., Culture, & Sports Comm. (Mar. 12, 2007) [emphasis added], available at <http://www.knesset.gov.il/spokesman/heb/PrintResult.asp?HodId=7795>.

³⁹ This program was eventually opened at the Bar-Ilan University.

In this incident, the lecturer, while abusing his authority, chose to employ a mechanism of preference and separation—he chose to prefer teaching a group of students that seemed suitable to him, and created an unlawful separation among students—discriminating against a student from Sapir College, on reserve, wearing IDF uniforms. It is important that in creating preference and separation like this, the teacher breached the rule against discrimination (teaching without discrimination on the basis of religion, nation, ethnicity, gender or any other irrelevant difference). In this incident the teacher chose not to teach a student who wears IDF uniforms since, according to his testimony, “he does not want the war to enter his classroom.” In this way the teacher discriminated a student who was called to serve his duties as a citizen, and in addition demanded that he won’t appear to class again wearing uniforms, if he wants to be involved and to receive the right of opinion.

The right of the student not to be discriminated against is presented by Morag in absolute terms, and it is never balanced in her report against the rights of the lecturer for academic freedom and freedom of expression.⁴⁰ Nor is Sapir’s decision to establish a hearing committee for the first time in Hassan’s affair seen as discriminatory in any way. It is interesting to note that, around the same time, another incident took place at Sapir College in which a Jewish lecturer asked a Muslim student not to appear in class wearing a headscarf, since it represents the inequality of women. This incident did not result in the establishment of a hearing committee nor in the suspension or firing of the lecturer.⁴¹ The report does not refer to this incident and whether it indicates that Hassan, as an Arab-Muslim professor, was suffering discrimination.

It is interesting to note the way Morag uses the phrase “unlawful separation” repeatedly, as representing the core of the discrimination. This phrasing corresponds with the perception of discrimination which was formed in the American case of *Brown v. Board of Education*, where the court rejected the formula that separate education for African-American students can be equal.⁴² The attribution of this concept of “unlawful separation” to the discrimination of a Jewish student conceals the reality in Israel, in which this type of separation, between Jews and Arabs, is in fact implemented in the education system.⁴³

⁴⁰ We first encounter the articulation of the infringement of the rights of Hassan to academic freedom and freedom of expression in a letter sent to President Zeev Tzahor by attorney Avner Pintchuk of the ACRI (Israeli association for civil right) on February, 14, 2008, in response to Tzahor’s letter.

⁴¹ Michal Grinberg, *The Lecturer Who Confronted the Reserve Soldier at Sapir College Will Face a Hearing Committee*, HAARETZ ONLINE, Nov. 22, 2007, <http://www.haaretz.co.il/hasite/spages/926677.html>.

⁴² *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

⁴³ In Israel, there are in fact “separate and unequal” education systems for Jews and Arabs. The two systems differ in their educational goals, curricula, budgets, and facilities, as well as in their students’ academic achievements. This creates a situation where only a small percentage of

The inversion of majority-minority relations is enhanced by the rhetoric employed by the dissent. The injury to the student Eyal Cohen is presented as an injury to his “*psychological security*,” and the behavior of the professor is presented as a demand for “*blind obedience*.” Thus, the inversion is completed. Hassan is portrayed as an army commander, attacking the passive and helpless student.⁴⁴

III. INDIVIDUALISM

In both controversies, we witness a failure to listen to the individual who was taken as a representative of his group. Although the debate revolved around the right of free speech and expression, the individuals were not heard, and mute symbols were presented as clear and in no need of interpretation or explanation.

We have seen that the headscarf ban in France was presented in the name of equality and secularism. The ban seems to clash with another important ideal of the French republic—the liberty of the individual, in particular freedom of religion and conscience. However, during the headscarf controversy, the ideals of equality and liberty were not seen as conflicting. On the contrary, the ban on headscarves was presented as enhancing the freedom of individual female students. How did this shift happen? Scott explains that, although the debate revolved around the meaning of the headscarf, the voices of the students who wore it were almost entirely missing from the public sphere. The meaning of

Arab students have the academic achievements which enable them to be accepted to universities. As of 2008, only 10.04% of the students at the universities in Israel were Arab. Most Arab students are educated in their own separate system, in which studies are conducted in Arabic and there is a special curriculum. However, while Arab students are required to study Hebrew, Hebrew literature, Jewish history, and even chapters of the Bible, there are only minimal parallel requirements for Jewish students. In addition, it was decided in 1950 that the appointment of school headmasters and teachers in the Arab sector would be approved by security authorities. Accordingly, the Israeli secret service supervised the Arab schools and ran, together with the police, background checks on any candidate for a teaching position in these schools. This procedure, which undermined the autonomy and the quality of the education afforded to Arab students, was cancelled only in 2005. On the separation of the two educational systems and its consequences for Arab students, see SHAFIR & PELED, *supra* note 30, at 120-25. For statistics on Arab students in the higher education system of Israel, see THE REPORT OF THE PUBLIC COMMITTEE FOR EVALUATION OF THE HIGH EDUCATION SYSTEM IN ISRAEL (2007). On the supervision of the Arab education system by the Israeli police and secret service, see HILLEL COHEN, GOOD ARABS: THE ISRAELI SECURITY SERVICES AND THE ISRAELI ARABS 168-78 (2006). For a discussion of the possibility of promoting equality through separation in the education system, see Ruth Gavison, *Can Separate Be Equal: A Test Case*, 3 DEMOCRATIC CULTURE 37 (2000).

⁴⁴ It remains unclear in what way Hassan used the term “yes commander.” Hassan claims that, in the class discussion, he explained that a film director cannot adopt the mentality of “yes commander” but has to think for himself. Traubman & Azulai, *supra* note 35. Others claim that Hassan sarcastically referred to the student in uniform with this language.

the veil was taken to be self-evident—representing the subordination and discrimination of women by Islam. It was presumed that the students were coerced or forced by their families to wear the headscarf, since, by definition, wearing the headscarf could not signify any meaningful individual choice.⁴⁵

In contrast, studies and interviews with the students that were published after the enactment of the ban reveal a multiplicity of motivations (often contradictory) for choosing to wear the Islamic headscarf. The choices of the girls, Scott argues, did not easily conform to the abstract individual presupposed by French republicanism as worthy of respect. She explains that, in order to understand the students' choices one should envision an alternative concept of the person, a relational rather than unencumbered self.⁴⁶ Seyla Benhabib also argues that it was clearly not coercion but a matter of choice, but to see this we should overcome the tendency to oppose freedom of choice with tradition.⁴⁷ Benhabib offers the term “democratic reiteration,” an act that gives new and modern meaning to a traditional custom. The girls rely on the traditional dress code of women in Islam, but in using it to challenge the terms of equality offered them by French public schools, they transformed its meaning. Both writers agree that the girls used the headscarf to express a political protest of the failure of integration and the continued discrimination experienced by young Muslims.⁴⁸ By excluding their voices from the debate, the complexity and even the contradictory meaning of their act disappeared. Their choice was understood as stemming from family and peer coercion; their politics was seen as obedience to a patriarchic tradition. And thus, the legal ban on wearing the headscarf, an act of coercion by the state

⁴⁵ SCOTT, *supra* note 2, at 124-25.

⁴⁶ The French public treated the headscarf as a piece of cloth that could be removed without impinging the core identity of the individual. In order to question this understanding, following the ban, Cennet Doganay, a Muslim girl, appeared in class with her hair shaved, explaining that the ban left her no other choice if she is to respect the Islamic religion that requires to cover the hair. This symbolic act of shaving the hair shocks by making the analogy between headscarf and hair exposing the degree of intrusiveness into the private, something that the French public preferred to ignore. *Muslim Girl Shaves Head over Ban*, news.bbc.co.uk/1/hi/world/europe/3708444.stm (2004).

⁴⁷ SEYLA BENHABIB, *THE RIGHTS OF OTHERS* 187, 193. Benhabib explains that “democratic iterations” are linguistic, legal, cultural, and political repetitions in transformation, invocations which are also revocations. They not only change established understandings but also transform what passes as the valid or established view of an authoritative precedent. *See* Seyla Benhabib, *What Is That on Your Head? Turkey's New Legislation Concerning the “Headscarf,”* RESET – DIALOGUES ON CIVILIZATIONS, Mar. 5, 2008, <http://www.resetdoc.org/EN/Benhabib-Headscarf.php> (2008).

⁴⁸ In the famous case of the Levi sisters that stood in the center of the 2003 controversy in France, a book dedicated to interviews with the two sisters clearly indicates that their act was taken in defiance of family. The girls insist that the decision to wear the veil was freely made as an aspect of a personal quest. SCOTT, *supra* note 2, at 141-42 (citing ALMA LEVY & LILA LEVY, *DES FILLES COMME LES AUTRES: AU-DELA DU FOULARD* (2004)).

on the freedom of the individual, was perceived to be not only justified but also liberating when applied to young Muslim women.

The voices of the individuals involved in the Israeli controversy were also missing or misrepresented during the public debate. It is important to note that the whole controversy began with an act of silencing. Nizar Hassan refused to allow Eyal Cohen, the student in uniform, to explain his position. He postponed the discussion until the following class, when the student arrived without his uniform. Thereafter, Nizar Hassan's voice was distorted and excluded from the Knesset discussion.⁴⁹ We have already seen that the college's hearing committee rejected his explanations that he acted out of a humanist position. Instead of trying to listen and understand this unique position of a Palestinian citizen opposed to army uniforms out of a principled commitment to humanism, the committee attributed his acts to sinister political motives, to radical nationalism. In Israel, the IDF is identified with humanism through the ethos of "purity of arms."⁵⁰ It seems that someone who excludes uniforms cannot by definition occupy the box of the humanist. Identity politics replace the need to listen to a complex position of an individual who identifies as a humanist Palestinian.

When the debate moved up to the highest political body, to the Knesset Committee of Education, the exclusion of Hassan's voice became even more apparent. The Army representatives were invited to take part in the deliberation and given ample opportunity to present their views, while Hassan, the subject of the investigation, was not even invited. Instead, only the president of Sapir College, Zeev Tzahor, was invited to present the affair and the "steps" undertaken by the college to correct the "damage." The Knesset deliberation took place before the hearing committee completed its report, and so Hassan's position, even in its second-hand transmission, is missing. The deliberation took place exclusively among the Jewish members of Knesset who seem to hold a shared view about the meaning of the incident—a clear act of dishonoring the Israeli army that must be condemned. Towards the conclusion of the session, a Palestinian member of Knesset, Ahmad Tibbi, entered, attempted to voice his objection, and asked for revision of the decision. He was stopped short because of his lateness and because he was not present during prior deliberation. The following exchange between Tibbi and the members of the committee is revealing:

Ahmad Tibbi: I cannot ask for a revision if the session has been

⁴⁹ He was interviewed by newspapers, and his views were reported, but, as I shall show, he was not given a proper "hearing" in parliament when his act was discussed and condemned.

⁵⁰ On the development of the ethos of "purity of arms" in Israel, see DAN YAHAV, *PURITY OF ARMS: ETHOS, MYTH AND REALITY 1936-1956* (2002). In 1994, IDF adopted an ethical code ("The Spirit of the IDF") that lists "purity of arms" among its main principles.

ended. Sir, say that you do not want to hear my opinion. You just want to execute him [taking him to the gallows] and that's it.

Yoel Hasson: We already executed him, leave it alone

...

Chair: Zevulun Orlev: What happened to you?

Ahmad Tibbi: . . . You are acting in a dictatorial way. Hear a different view, what can happen?

Alex Miller: A different opinion on what?

Yoel Hasson: Knesset member Tibbi, what other opinion can possibly be?

Ahmad Tibbi: Thank you.

The only Knesset member who attempted to present a different view, to represent Hassan's view, was not given this opportunity. It is indicative that the consensus is so complete that the Knesset members did not even contemplate the possibility that there can be another opinion. They preferred to talk with the convinced. With this double exclusion, of both Nizar Hassan and Ahmad Tibbi, the door was open to erase the voice of the individual Palestinian and to represent it according to the conventional understanding—that this was a nationalist act taken by a Palestinian professor whose only possible motivation was to humiliate a Jewish soldier in uniform. There was no need to debate and hear the individual involved; the meaning of his act is all too obvious.

IV. CONVERGENCES—THE BODY OF GENDER

So far, I have developed my argument in parallel lines, comparing the French and Israeli controversies. I have pointed out the similar rhetorical moves that were undertaken as ways to avoid a robust discussion of the terms of inclusion offered to minority groups and their impact on creating a second class citizenship. At this point, I would like to explore some convergences by trying to further investigate the gender politics underlying the controversies.

How can the uniforms controversy help us understand differently the gender politics that were at issue with the veil controversy? So far, we saw that the position taken by Hassan, a private imitation of the values of French republicanism, can undermine the strong dichotomy that structured the French debate according to which the Islamic culture was presented as homogeneous and as necessarily clashing with the values of republicanism. At this point, I would like to further investigate this dichotomy in terms of the conflict between two conceptions of "honor": one connected with equal respect and human

dignity, the other with social hierarchies and inequality.⁵¹ In the French affair, the veil represented female “honor” in a patriarchic culture where women are subjugated to men. The ban represented the competing culture of equal respect to human beings, men and women alike. When Nizar Hassan refused to admit uniforms to his classroom, he claimed to do it in the name of the latter value, of equal respect to the individual. Army uniforms represented for Hassan a worldview connected to “honor society” in which the value of the individual is intrinsically connected to social hierarchies, where one’s worth comes from his status, not his unique voice (a citizen dignity). The political reaction to Hassan’s disruption of the social order was the introduction of “honor” discourse to the center of stage. We have seen this in the transformation of the “rights” discourse to “honor” discourse in the Knesset. This transformation is also apparent in the letter sent to Hassan by the president of Sapir College in which he was required not only to apologize to the student, but to express his respect to the IDF uniforms.

The “discourse of honor” adopted in the Knesset in relation to the uniforms controversy stands in contrast to the “discourse of rights” upheld by the Israeli political and legal systems in relation to multicultural gender politics. One of the most condemned practices in Israel is the practice of “honor killing” of Muslim women. In this context, a clear distinction is made between an enlightened and modern Israel that is committed to the protection of the individual’s dignity and rights, and a patriarchic Islamic culture that subjugates women on the basis of their sexuality. Murder trials of “honor killings” are the sites where the clash of cultures is most vivid. In one of these trials, a woman, Jasmin Mosrati, was convicted for manslaughter and sentenced to 18 years of imprisonment. Her appeal to mitigate the harsh sentence was rejected by the court. The court, adopting the high moral grounds, wrote:

The act committed by appellant, and her deep involvement in the process of the killing of her sister, is so shocking and appalling that every mitigating circumstance shall be ignored. If there is a justified case to impose a sentence within the limits of the law, it is this case.⁵²

With these harsh words, the Israeli court dismissed Jasmin’s argument that she grew up in a patriarchic family where she was completely controlled and subjugated by the threats and terror of her

⁵¹ For elaboration, see Taylor, *supra* note 13, at 27. Taylor explains that honor in the ancient regime is intrinsically linked to inequalities and social hierarchies. In contrast, the modern notion of dignity used in a universalist and egalitarian sense, refers to the inherent “dignity of human beings” or citizen dignity, shared by everyone. According to Taylor, it is only under the modern notion of dignity that the need for recognizing the unique voice of the individual arises.

⁵² CA 4948/92 Mussarti v. State [1993] IsrSC 93(4) 188.

brother. Nizar Hassan, in a documentary film *Jasmin*,⁵³ returned to this case in order to interrogate the issue of “honor killing” and its relation to a patriarchic culture. His unconventional choice to focus on a woman who committed an act of “honor killing” (together with her brother) allows him to expose some of the contradictions entailed by the legal process.⁵⁴ On the one hand, “honor killing” exposes the terror to which women in such patriarchic societies are exposed as a way to control their sexuality and behavior.⁵⁵ On the other hand, given the degree of subordination of women to men in such a culture, how can the court convict a woman defendant for assisting in murder, a crime that presupposes a subject with free choice? Conducting various interviews with Jasmin, with an Islamic *shaykh*, with Palestinian male students, with a Palestinian intellectual and his wife, with the sister of the director (a feminist writer and activist), and with the Jewish policeman investigating the murder, Hassan is slowly able to piece together the puzzle behind the story of Jasmin’s life. Although all of the men interviewed condemn “honor killing”—it slowly becomes apparent that, at the same time, they uphold other aspects of the patriarchic culture, in particular the double standard applied to sexual freedom of women and men.⁵⁶ In short, the high moral grounds against “honor killing” of women are exposed by Hassan’s film to be hypocritical, unable to hide the contradiction between the legal norm and the social norm. Thus, the film is able to avoid recreating the dichotomy between West and East, Jews and Muslims, by showing the degree to which all uphold in one way or another components of the “honor culture.”⁵⁷ Against this background, Hassan listens to the unique voice of Jasmin (torn between love of her sister and the “code of honor” imposed by the male figures in her family), without subsuming her under the categories of “victim” or “free agent.” By the end of the film, the harsh sentence against

⁵³ JASMIN (New Israeli Foundation for Cinema & T.V. 1996).

⁵⁴ For a feminist exploration of the treatment by Israeli courts of women who kill, see Noya Rimalt, *When Women Turn Violent*, 10 PLILIM: MULTI-DISCIPLINARY J. PUB. L. SOC’Y & CULTURE 277 (2001). Nizar Hassan’s sister has also written on this topic. See Manar Hassan, *The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor*, in ISRAELI FAMILY AND COMMUNITY: WOMEN’S YIME 1 (Hannah Haveh ed., 2003).

⁵⁵ But see Hassan, *supra* note 54, at 30-33 (showing how the changing practice of “honor killing” is now directed towards feminist women who act in the public sphere).

⁵⁶ For example, university students say that they engage in sexual relations with Jewish and with strange women, but would consider a Palestinian woman seen with a strange man a prostitute. A Palestinian intellectual speaks about the need to liberate the Palestinian woman, while his wife claims that she would not ask him to participate in house chores because it would embarrass him. A Jewish police investigator attributes “honor killing” only to the Palestinian subculture, while he explains that he preferred to marry a Sephardic woman because it is known that they treat their husbands with more honor. And so forth.

⁵⁷ For a feminist reading of the film *Jasmin*, see Orit Kmir, *Feminist Constructive Deconstruction: A Model for a Feminist Approach to Law, Film and Other Disciplines*, in STUDIES IN LAW, GENDER AND FEMINISM 941 (Daphne Barak-Erez ed., 2007);

Jasmin is seen more as a mask for a society desperate to avoid its own contradictions and her betrayal of a real commitment to the equality of women from all sections of society.

Hassan's criticism of the common understanding of "honor killing" by the legal system and by male leaders of both the Jewish and Muslim communities can also point to the road not taken in the French controversy. In order to listen to the woman who seems to act upon the dictates of a patriarchic culture, one must first get to know the social context in which her action was taken. The mistakes of ignoring the voice of the individual, subsuming it under cultural stereotypes, accusing the victim, and avoiding taking responsibility for sustaining a system of two class citizens—all are apparent in the interviews conducted with the different speakers in the film. Hassan takes the risk to hear unpleasant truths about his own community and about himself in order to better understand a practice that all are quick to condemn but for which they are very slow to take responsibility. Without absolving her from legal responsibility, the film redirects the attention from the individual woman who committed the murder to the larger social context that upholds the subordination of women. Ironically, it is the prevailing "honor culture" that, at the end of the day, turned against Hassan, condemning and disciplining him.

V. EPILOGUE—THE POLITICAL REACTION

The two debates lead to one logical conclusion—the ban in France, the imposed letter of apology in Israel. The individual's protest is met by an act of force meant to end the debate. In France, the ban failed to respond to those Muslim students who claimed that the headscarf is part of their identity and cannot be set aside. As a self-proclaimed medicine against subordination and discrimination of Muslim girls, the ban achieved the contradictory result of further exclusion of these students from the public education system that is supposed to "liberate" them.⁵⁸ In Israel, the hearing committee demanded that Hassan apologize. However, this was no simple personal apology. It involved a symbolic bow to the uniforms of the Israeli army, as the letter of Prof. Tzachor, president of Sapir College indicates:

As a condition for your continued employment, you are requested to apologize to the student for hurting and disparaging him. I will ask to see the apology within a week from the day you receive this letter. In your apology, you must refer to your obligation to be respectful to

⁵⁸ For an analysis of the argument regarding the veil as an attempt by minority groups to integrate in society, one which does not threaten the unity of the political community, see Will Kymlicka, *Multicultural Citizenship*, in *THE CITIZENSHIP DEBATES: A READER* 167 (1998).

the IDF uniforms and the full right of every student to enter your classroom in uniform. I won't accept an apology that is not unequivocal. I won't accept an apology that does not refer to respecting the IDF uniform or that has any haggling political nuances . . . and obviously until the apology is received you are not permitted to lecture at the college.

Such demand is ironic given the long history of struggle by Jews as a minority group against similar demands by their societies. Every year during the Purim holiday, the story of Jewish Mordechai, who refused to bow to Evil Haman, is recounted.⁵⁹ This gesture of defiance, of refusal to bow to secular symbols of authority, accepting only the authority of God, is upheld as a national symbol in Israel. Yet, in its treatment of the Muslim minority, in a Jewish secular state, the story is reversed. In modern Israel, a Palestinian lecturer must bow to the symbols of Jewish independence and military might—to honor the uniforms of the IDF.

It might be that the book of Esther, with its central theme of covering and revelation, can also offer a more universal moral that connects the two debates. It is a story of masks, but it is also a story about the struggle between recognizing the face of the individual and the pressures to cover and to hide differences. In the book of Esther, the politics of gender and the politics of religion meet. It begins with gender politics, with the refusal of Queen Vashti to show herself in public, to be treated as a "sexual object" of admiration by the King and his friends. The King's advisers refuse to see her refusal as an individual act between Vashti and Ahasuerus and instead see it as a symbolic act of revolt, threatening the whole patriarchic system that subjugates women to their husbands.⁶⁰ Accordingly, Vashti is expelled and Esther enters. While Vashti refused to reveal her beauty in public, Esther needed a mask in order for the King to see her (only) as a beautiful woman. Mordechai, the uncle of Esther, commands her to hide her Jewish origins from the King. In order to be accepted, she has to put on a mask (to assimilate). However, contrary to his own advice to Esther, Mordechai refuses to put on a mask, to hide his religious difference. Rather, he publicly refuses to bow to Haman, as his Jewish religion dictates to him. Again, Haman does not see it as an individual

⁵⁹ For example, Yoram Hazony explains that Mordechai's refusal to bow to Haman should be understood as stemming from a long tradition of Jewish refusal to bow before idols and false Gods, as a symbol of religious faith. See YORAM HAZONY, *THE DAWN: POLITICAL TEACHINGS OF THE BOOK OF ESTHER*, 60-69 (1995).

⁶⁰ "Queen Vashti has committed an offense not only against Your Majesty but also against all the peoples in all the provinces of king Ahasuerus. For the queen's behavior will make all wives despise their husbands, as they reflect that king Ahasuerus himself ordered queen Vashti to be brought before him, but she would not come". Esther 1:16; *THE JPS BIBLE COMMENTARY: ESTHER: THE TRADITIONAL HEBREW TEXT WITH THE NEW JPS TRANSLATION* 17 (2001).

act, but attributes Mordechai's refusal to group politics. It is read by Haman as a symbolic act, attributed to the Other, to a people that refuses assimilation in principle. By hiding the face of the individual and subsuming it under religious politics, an act of genocide can be justified. Indeed, the story reveals that the logic of genocide is connected to this refusal to see the individual. It is at this time that Mordechai reverses his prior order; this time he orders his niece Esther to reveal her Jewish face to the King. Against the logic of genocide, Mordechai puts his faith in the face of the individual, in the love of the King for Esther.⁶¹ By taking off her mask, Esther risks her life, but she saves the lives of her people. Interestingly, it is not only faces and masks that play a central role in the book of Esther but also the act of remembering, as the main way to reintroduce the individual by retelling his unique story.⁶² It seems that the mask not only hides the individual face, but also flattens him, taking away the depth of his or her individual story. To see the individual is thus revealed as a complicated play between hiding and revealing, between seeing and remembering.

⁶¹ I borrow the term "face" as used by philosopher Emanuel Levinas. EMANUEL LEVINAS, *TOTALITY AND INFINITY: AN ESSAY ON EXTERIORITY* (1979).

⁶² Remembrance occurs at two central points in the narrative. First, after the king's rage subsumes, it is written that he "Remembered / Thought of Vashti." Against this individual memory, the king's advisers rush to introduce him to an endless parade of beautiful virgin women, thus erasing the memory of the individual. Esther 2:1-2, *THE JPS BIBLE COMMENTARY: ESTHER*, *supra* note 60, AT 22-23. At another important junction in the story, the king cannot fall asleep and asks to be read from his book of days. This retelling reminds him of Mordechai the man, of his loyalty that saved his life, an act for which the King remained indebted. Esther 6:1, *THE JPS BIBLE COMMENTARY: ESTHER*, *supra* note 60, at 57.