
The Star-Ledger

U.S. embraces difference more easily than France

Sunday, March 02, 2008

The good showing of Sens. Barack Obama and Hillary Clinton in the democratic primaries has sent a positive message around the world: It is indeed possible to embrace the leadership of women and racial minorities, setting aside the past. I hope they're paying attention in France. It's not that the French don't share our core values, because they do. It just that the French version of liberty, fraternity and equality sometimes propels public policy in the wrong direction.

Consider French education policy. French President Nicolas Sarkozy found himself on the hot seat recently, defending a plan to require every 10-year-old to learn the story of a French Jewish child killed in the Nazi Holocaust. Aiming at tolerance, Sarkozy was accused of cruelty, and I understand why. I recently forced my sixth-grader to watch a movie that graphically depicts Anne Frank's experience in the concentration camps. The film left her sobbing, and I wondered if my history lesson hadn't been premature.

Sarkozy was not the first French president to draw criticism for embracing an education policy designed to mold the next generation into citizens who accept ethnic and religious difference. On March 15, 2006, French President Jacques Chirac signed into law an amendment to his country's education statute, banning the wearing of conspicuous signs of religious affiliation in public schools. This meant a boy could no longer wear his yarmulke. Nor could a girl wear her hijab, the familiar Muslim headscarf that covers the hair and neck.

The main target of the French ban on religious symbols was the hijab, according to Joan Wallach Scott of the Institute for Advanced Studies in Princeton. The hijab is for many Europeans a powerful symbol of female oppression and anti-Western Islamic politics. In defense of France, one could point out that the European Court of Human Rights has held that governments are within their rights when they prohibit headwraps in schools.

Yet, from the U.S. perspective, a law against the schoolgirl's hijab violates religious freedom. There is more than one way to be a multicultural Western liberal democracy coping with Islam. And when it comes to the hijab, I believe the American way is better than the French.

In 2005, an 11-year-old Oklahoma woman named Nashala Tallah Hearn was suspended from the Muscogee School District's Benjamin Franklin Science Academy for refusing to remove her hijab. The school dress code prohibited hats, bandannas and other head coverings in the classroom. Civil rights groups protested the five-day suspension. The U.S. Justice Department Office of Civil Rights expressed an intent to intervene on behalf of a Muslim girl's right to wear the hijab to school. The school district backed down, and Nashala returned to class wearing her hijab.

Of course, U.S. schools can require uniforms and impose dress codes. But they are surely required to make exceptions to accommodate religion. In *Shermia Isaacs v. Howard County, Md.*, public school, hats and other head coverings were prohibited in the classroom, but an exception was made for the yarmulke and hijab. An eighth-grader of Jamaican ancestry, Shermia lost a 1999 court battle for the right to wear an ethnically inspired headwrap to school. The girl admitted that her multicolored headwrap was not required by her religion. The court correctly held that Shermia was free to express her ethnic pride short of flouting the head-covering rule. Head coverings not dictated by religion or cultural traditions of modesty need not receive the deference given to the hijab.

In *Goldman vs. Weinberger* (1986), the U.S. Supreme Court held that a rabbi serving in the military could be prohibited from wearing his yarmulke. In *Kelly vs. Johnson* (1976), the court upheld a police department rule against long hair. Requiring a uniform appearance is one way to encourage discipline and professionalism. The needs of schools on the one hand, and police departments and the military on the other, are sufficiently different to warrant constitutionally different approaches. Categorically banning religious headgear in schools is incompatible with due respect for the religious freedom of children and their families. A boy in khakis, a polo shirt and yarmulke, like a girl in a plaid jumper and hijab, inherently offends no legitimate state interest such as school discipline or safety.

Long ago our Supreme Court struck down education policies aimed at assimilation. In *Meyer vs. Nebraska* (1923), the Court struck down a state law prohibiting instruction in the German language in a parochial school. The 14th Amendment, the court said, "denotes not merely freedom from bodily restraint but also the

right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." In another landmark case, *Wisconsin vs. Yoder* (1972), the Supreme Court struck down convictions of members of the Old Order Amish religion who refused to send their children to school for formal education beyond the eighth grade. A Wisconsin state law mandated that children attend private or public school until the age of 16 years. The court stressed that the application of the compulsory school attendance law could very well destroy the ability of the Amish to perpetuate their unique way of life. A salient aspect of the way of life the court was unwilling to disrupt included the old-fashioned rural Amish style of dress.

If government may not constitutionally ban instruction in a minority language in a parochial school or require formal secondary education for members of a minority religious group, it arguably cannot ban the hijab, an article of clothing worn by a religious minority. Considering past Supreme Court approaches to religion and education, it is unthinkable that the hijab could be lawfully banned in U.S. schools.

From the U.S. perspective, the French hijab ban violated freedom of religion. What were the French thinking? Professor Scott argues in her book *"Politics of the Veil"* (2007) that the French hijab ban was symbolic political discourse about national identity, signaling to French immigrant minorities the need to quickly assimilate. To disallow yarmulke and hijab was a way of raising flag above faith, Scott explained.

The U.S. is "better" than France in its acceptance of the hijab in schools. But the U.S., like France, struggles with how to fully and fearlessly incorporate religious and cultural minorities into the life of the society. Last week a photograph of Barack Obama wearing a Somali elder's clothing was unearthed. The Clinton campaign called attention to the photograph, seemingly to exploit xenophobic and anti-Islamic tendencies in our society. Yet someone dug up a photo of Hillary Clinton wearing the hijab out of respect for Muslim tradition. It is reassuring that both candidates, like most Americans today, appreciate the importance of embracing difference.

Anita L. Allen, a University of Pennsylvania professor of law and philosophy, may be reached at moralistcolumn@yahoo.com.

© 2008 The Star Ledger

© 2008 NJ.com All Rights Reserved.