

Liberal multiculturalism

The Cranky Professor

The Journal, the campus newspaper at Saint Mary's, Vol. 74, No. 19, 25 February 2009

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Should a Muslim woman be able to testify in a Canadian court while wearing a veil? Bad question. Here's a better question: Should a witness be able to testify in a Canadian court while wearing a veil?

A judge in Toronto recently ordered that a complainant in a sexual assault case must testify without the veil she normally wears in public. According to the *Toronto Star*, the judge, Ontario Court Justice Norris Weisman, based his order on his view that the religious belief of the complainant, a Muslim woman, "is not that strong" and that she wears a veil as "a matter of comfort."

That this is his ground suggests that Weisman would not have ordered that the complainant show her face had her belief been strong.

Judge Weisman's reasoning is wrong-headed and dangerous. I don't mean to take issue with his conclusion. Defence counsel had claimed that allowing the complainant to be veiled while testifying would make it difficult for him to question her. Certainly that her being veiled would be unfair to the accused is an excellent reason for the judge to compel her to remove her veil.

Judge Weisman's reasoning is wrong-headed because whether the complainant is a Muslim or not, a woman or not, has nothing to do with the matter whether she should be allowed to wear a veil while testifying. His reasoning is dangerous because it promotes the ugly idea that in a multicultural society we have rights or prerogatives in virtue of our belonging to certain groups.

The matter has nothing to do with religious freedom. In a liberal society, religious freedom is not about securing special rights for certain people who belong to certain religions. It is, rather, about creating conditions in which each of us, as an individual, can worship, or not, as we please.

To secure special rights for special groups is to create a society of tribes, not a society of individuals. In such a society, tribal leaders, whether democratically elected to their positions of authority or not, get to set the rules of group membership and to represent the group politically. Our religion, or whatever it is that defines our group, becomes a matter of public interest and public record.

In a liberal society, on the other hand, we have worth and command respect in virtue of our being individual people. Judge Weisman's reasoning is dangerous because it is illiberal, because it implies that our worth and our ability to command respect flow from the groups or the communities to which we belong. For Judge Weisman, one is

entitled to have one's wish to wear a veil considered by the court not because one has expressed such a wish, but rather because one might be a member of a religious tradition in which people wear veils.

But, of course, if the witness in this case were to be allowed to wear her veil, then another witness in a similar case should be allowed to wear a veil as well. And, if others are not to wear a veil, then Muslims are not either. It's no business of the court what religion a witness professes or with what degree of severity she lives what she professes.

Now, that some Canadians are Muslim women for whom being veiled in public is important is certainly a reason to investigate the custom of compelling people to testify with one's face bare. If, that is, that custom serves no good end within a system of impartial criminal justice, or no good end within a particular hearing, then we ought to abandon it so people who want to be veiled can be veiled. But given this reasoning, anyone who wants to wear a veil is able to wear one. One does not have to prove or even affirm that one belongs to some tradition in which people wear veils. Canadians generally would have the right to testify while veiled.

The point, of course, is general. Sikhs want to carry kirpans? Well, if it is fine that a Sikh carries one, it is fine that any other Canadian carries one. Or, if only people licenced to carry one may carry one, then Sikhs must acquire licences like everyone else.

Multiculturalism in a liberal society requires us to investigate and evaluate the customs and practices of our public spaces, and to change them when they needlessly prevent people from honouring the values they hold dear. But for our society to be a liberal society as well as multicultural, whatever in our public spaces is permitted to one Canadian must be permitted to all Canadians. Unless, that is, we've had enough of liberalism and we don't care anymore whether our public spaces become bureaucratic, capricious, and authoritarian.