

Overdressed and Underexposed or Underdressed and Overexposed?

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Abstract

Judges and public policy makers have transmitted conflicting messages in relation to women's bodies and have made normative judgements about how women are to appear in public. Women who have been judged to be wearing too much are called to undress as they are seen as interfering with the rights of others or being oppressed. Women judged to be wearing too little are urged to clothe themselves to avoid being seen as inviting sexual assault or dressing like always sexually available prostitutes. Juxtaposing these two situations together, the oddness of judicial and public regulation of women's clothing becomes more starkly exposed. This paper examines the shifting nature of equality discourse and the naming of women's oppression; the near-disappearance of patriarchy as an explanatory framework; and the quagmire of women's agency. The concluding section proposes shifting the focus from differences between women's experiences to similarity in order to facilitate critical inquiry, dialogue and strategic action that might re-constitute women's equality in new ways.

Key words

Equality; agency; identity; niqab; similarity; difference

Resumen

Los jueces y los responsables políticos han transmitido mensajes contradictorios en relación a las mujeres y han hecho juicios normativos acerca de cómo las mujeres deben aparecer en público. Las mujeres que han sido criticadas por vestir en exceso son llamadas a desvestirse ya que son vistas como una interferencia en los

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derechos de otros o como oprimidas. Las mujeres juzgadas por vestir mínimamente, por su parte, son llamadas a vestirse para evitar ser vistas como una invitación al asalto sexual o como prostitutas siempre sexualmente disponibles. Yuxtaponiendo estas dos situaciones a la vez, la extravagancia de la regulación judicial y pública de la vestimenta de las mujeres se expone más crudamente. Este artículo examina la naturaleza cambiante del discurso de igualdad y el nombramiento de la opresión de las mujeres, la casi desaparición del patriarcado como un marco explicativo, y el atolladero de acción de las mujeres. En la conclusión se propone cambiar el enfoque de las diferencias entre las experiencias de las mujeres hacia la similitud con el fin de facilitar la investigación crítica, el diálogo y la acción estratégica que podrían reconstituir la igualdad de las mujeres en nuevas formas.

Palabras clave

Igualdad; agencia; identidad; niqab; semejanza; diferencia

Table of contents

1. Introduction.....	1139
2. Shifting equality discourse and the naming of women's oppression	1142
3. Patriarchy and colonialism.....	1144
4. Women's agency	1146
5. A modest proposal.....	1150
Bibliography	1151

*It must be pointed out that the complainant did not present herself to Ewanchuk or enter his trailer in a bonnet and crinolines (R. v Ewanchuk [1998] at para 4).*¹

1. Introduction

This now-famous statement was made by a Canadian judge of the Alberta Court of Appeal in 1998. The case, *R. v Ewanchuk* [1999],² involved the sexual assault of a young woman who had gone to a trailer in a mall parking lot for a job interview. The Supreme Court of Canada overturned the Court of Appeal on the issue of implied consent, and the case again made headlines when the appeal court judge stepped outside of protocol and made public comments about the decision of one of the Supreme Court Justices, Justice L'Heureux-Dubé.³ However, it is a comment by Justice McLachlin (as she then was) that is of note for our purposes: "On appeal, the idea also surfaced that if a woman is not modestly dressed, she is deemed to consent. Such stereotypical assumptions find their roots in many cultures, including our own. They no longer, however, find a place in Canadian law" (*R. v Ewanchuk* [1999] at para 103).

Despite Justice McLachlin's assertion that stereotypes (indeed, expectations and norms) about women's dress no longer have a place in Canadian law, in 2011 judicial comments once again made headlines in a Manitoba case when Justice Dewar called an accused a "clumsy Don Juan" and commented on the attire and flirtatious conduct of the female complainant as being relevant in assessing moral blameworthiness. Justice Dewar noted that: "This is a case of misread signals and inconsiderate behavior", and "I'm sure that whatever signals there were that sex was in the air were unintentional" (*R. v Rhodes* p. 76, 79).⁴ Thus, despite Justice McLachlin's confident statement that stereotypes about attire and their link to women's sexual assault have no place in the law, just over a decade later such comments were still part of judicial discourse.

Just as judges have commented on women who wear too little and the consequences of those choices, women who wear too much have also been the objects of legal scrutiny. Three recent examples illustrate: 1. Muslim women who wear the niqab have been presented as thwarting the right of an accused in a sexual assault trial to make full answer and defense (*R. v N.S.*)⁵; 2. Legislation has been proposed in the province of Quebec that would require a "naked face" in order to receive a wide range of public services which would prevent women from wearing the niqab⁶; and 3. Canada's Minister of Citizenship, Immigration and Multiculturalism recently announced that from now on, women would be unable to take the oath of citizenship while wearing the niqab.⁷ Although I begin with these Canadian examples, my goal is to draw attention to the need for explications that take a more global analysis not only of women's dress, but of regulations imposed upon women that may, at first, seem to be unrelated. While the recognition of cultural and social embeddedness of certain practices results in valuable insights, calling constellations of cases, stories and theories into the company of each other may permit the identification of similarities between them. Thus, for example,

¹ *R. v Ewanchuk* [1998] ABCA.

² *R. v Ewanchuk* [1999] 1 SCR 330.

³ See McClung, J.W. (26 February 1999) "Right of reply" *National Post*. See also Ohler, S. (27 February 1999) "Judge reiterates belief that teen wasn't assaulted: Didn't come from 'nunnery'" *National Post*.

⁴ *R. v Rhodes* [2011] MJ No 67.

⁵ *R v N.S.* [2012] SCC 72.

⁶ As Wendy Brown so perfectly puts it, women are being told to "strip or leave the public sphere." 18 November 2010 "Civilizational Delusions: Secularism, Tolerance and Equality." *Public lecture* Concordia University: Montreal, QC.

⁷ On announcing the new rule, Minister of Citizenship, Immigration and Multiculturalism Jason Kenney stated: "Starting today, any individual will have to show his or her face when taking the oath of citizenship... Allowing a group to hide their faces while they are becoming members of our community is counter to Canada's commitment to openness, equality and social cohesion". See *National Post* Staff (2011).

Robert Leckey (2013) draws into company the veil and the closet, observing that by forcing women to unveil, public evidence of their Muslim-ness is erased.

How, then, might we understand the mixed messages judges and public policy makers transmit in relation to women's bodies? When should women cover themselves? When should they strip off? Underlying the cases and examples above are normative judgements about how women are to appear in public. When women are called to strip themselves of their clothing, they have been judged to be wearing too much. The reasons for this judgement vary (interfering with the legal rights of others, women covering their faces are oppressed women, teachers cannot teach students who have their faces covered, and so on).⁸ When women are urged to clothe themselves, they have been judged to be wearing too little. The reasons for *this* judgement vary (they are inviting sexual assault, they are dressing like prostitutes, who are in turn constructed as being always sexually available, good girls do not dress that way, and so on). By positioning these two situations together—women judged to be wearing too much and women judged to be wearing too little—the oddness of judicial and public regulation of women's clothing becomes more starkly exposed (if you will pardon the pun).

In *The Order of Things*, Michel Foucault (1970) demonstrates the strange and socially constructed nature of organizational categories by drawing on Borges' discussion of a list from a Chinese encyclopedia which divides animals into:

(a) belonging to the Emperor, (b) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camelhair brush, (l) et cetera, (m) having just broken the water pitcher, (n) that from a long way off look like flies. In the wonderment of this taxonomy, the thing we apprehend in one great leap, the thing that, by means of the fable, is demonstrated as the exotic charm of another system of thought, is the limitation of our own, the stark impossibility of thinking *that*. (xvi)

A taxonomy of prohibitions and permissions related to women's bodies might generate a similarly (peculiar) list:

- Women may not cover their faces to receive public services.⁹
- Women are free (indeed expected) to expose their bodies in gentlemen's clubs.¹⁰
- Women going on dates or to bars should not be dressed/appear in the following manner: wearing makeup and high heels and tube tops without bras and jeans.¹¹
- Women are free to surgically alter their bodies and to enhance their breasts.¹²

⁸ See Bakht (2012) for a detailed discussion of objections to the niqab wearing woman.

⁹ Quebec's Bill 94 requires an exposed face to receive services from government bodies such as all government departments, all publicly funded bodies, including school boards, health and social services agencies and public institutions as well as private institutions that are under agreements that are governed by the act, childcare centers and day care centers that have subsidies under the education childcare act (Bill 94, *An Act to establish guidelines governing accommodation requests within the Administration and certain institutions*).

¹⁰ However, women in gentlemen's clubs must not touch those they are providing services for (Chapter 545, Toronto Municipal Code, Licensing, § 545–395) and they must be neat and clean (§ 545–389).

¹¹ As Justice Dewar states in his judgement "It must be acknowledged that the parties met in what can only be described as 'inviting' circumstances. At 2:30 on a summer morning two young women, one of which was dressed in a tube top without a bra and jeans and both of whom were made up and wore high heels in a parking lot outside a bar, made their intentions publicly known that they wanted to party. Then the women, in particular S.M., made the suggestion that the group should go swimming, notwithstanding that not one of them had any bathing suit" (*R. v Rhodes*, p. 72–74).

¹² Canadian figures from 2003 indicate that 85.41% of all cosmetic procedures are performed on women in Canada: "the most popular surgical procedures are liposuction at 24%, breast augmentation at 17%, and facelifts for 2%". See Mediacard Finance "Total numbers of procedures performed in Canada" *Plastic Surgery Statistics*: www.plasticsurgerystatistics.com/number_performed_canada.html, last accessed 8

- Women may not live in polygamous relationships.¹³
- Women may live in polyamorous relationships.¹⁴
- Women may engage in intercourse to provide a visual spectacle for men in swingers clubs.¹⁵
- For the purposes of terminating a pregnancy, women's access to abortion will remain largely under the control of the state.¹⁶
- For the purposes of assisting childless couples, women may not be paid to act as surrogate, but may subject themselves to life-endangering drugs and procedures.¹⁷

Like Foucault's project of assembling the order of things, in part by juxtaposing what seems to be the nonsensical, mine too is to juxtapose the contradictory or paradoxical with the hope of making sense of them, simultaneously querying and ordering the regulation of women's bodies. This paper seeks to bring some order to the judicial and policy stripping and dressing of women, affirming the (dis)order of the shifting expectation that women will button up or zip down. Or, as Wendy Brown asks: What assumptions in and about Western secularism make possible this astonishing historical moment, one in which women's clothes are the subject of legislation in twenty-first century Western liberal democracies (Brown 2012)? Following Sarah Bracke and Nadia Fadil, rather than focusing on the headscarf, which, in their words "contributes to the way this arterial practice become singled out from other practices, to be attributed a status of exceptionality" (Bracke and Fadil 2012, p. 49), the following discussion reframes the issue as part of a broader problem of women's inequality.

I propose three paths for exploration that might facilitate the querying and explication of ordering of the regulation of women's bodies. These paths may lead to some insight into how it is that women can paradoxically choose, for example, to surgically self-mutilate but not to cover their faces. In the following sections I will explore the shifting nature of equality discourse and the naming of women's oppression; the near-disappearance of patriarchy as an explanatory framework; and the quagmire of women's agency. In the concluding section I propose a modest solution based on the notion of similarity, arguing that a focus on similarity might

August 2012. Additionally, "in 2003, there were over 302,000 surgical and non-surgical cosmetic enhancements performed in Canada, which represented an increase of nearly 60,000 procedures or 24.6% from 2002". See Medicard Finance "Cosmetic Surgery Quick Facts" *Plastic Surgery Statistics*: www.plasticsurgerystatistics.com/quick_facts_03.html, last accessed 8 August 2012. See also McRobbie (2009) for a discussion of the British television show *Ten Years Younger*, in which dental and cosmetic surgery are normalized as part of the goal of helping women achieve a socially acceptable-desirable experience.

¹³ Reference re: Section 293 of the Criminal Code of Canada.

¹⁴ Reference re: Section 293 of the Criminal Code of Canada at para 1266: "There is an argument that Parliament has also drawn a distinction on the basis of marital status by criminalizing only polygamists even though polyamorists (or others in multi-party unions who do not come within the ambit of s. 293 as I have interpreted it) engage in similar conduct. Again, the distinction between the two groups is not one based on stereotypes but, rather, on harm, in particular in this scenario, harm to the institution of monogamous marriage".

¹⁵ *R. v Labaye* [2005] 3 SCR 728, [2005] SCC 80. In its discussion of harm, the Court said: "On the evidence, only those already disposed to this sort of sexual activity were allowed to participate and watch" (at para 66). Unlike the material at issue in *Butler*, which perpetuated abusive and humiliating stereotypes of women as objects of sexual gratification, there is no evidence of anti-social attitudes toward women, or for that matter, men. No one was pressured to have sex, paid for sex, or treated as a mere sexual object for the gratification of others." (at para 67).

¹⁶ Despite what many believe is easy access to abortion in Canada in the province of Prince Edward Island there is no access to abortion through publicly funded hospitals. CBC News (2011b)]. In New Brunswick a combined conservative Catholic and Protestant lobby has severely restricted abortion access to the point where one female physician has brought a complaint to the New Brunswick Human Rights Commission. See CBC News (2011a).

¹⁷ A CBC documentary, "Wanted: Egg Donor in Good Health", reported that there is little regulation to protect women who volunteer to donate eggs, a procedure with potentially life-threatening side effects. While women are not allowed to be paid for their egg donations, fertility clinics who use the eggs profit from these donations. See Motluck (2012). See also Jayaprakasan, *et al.* (2007) and Pearson (2006).

permit a deeper understanding and challenging of the taxonomy.¹⁸ Finally, I acknowledge that much of my analysis relies on a relatively heteronormative stance. Queering the discussion could lead to other important insights and analytical possibilities, such as that offered by Robert Leckey (2013) when he asks: "In its expressive function, might the law stimulate unofficial modes of governance and regulation, tacitly authorizing harassment and discrimination".¹⁹

2. Shifting equality discourse and the naming of women's oppression

Against initial hopes that law could partner with the feminist project to transmute formal equality into substantive equality, there is a sense that law has failed to achieve its potential in this regard, and that indeed it has sometimes undermined rather than enhanced women's equality. This frustration has led to a diminished reliance on law to further women's equality and justice for women, but further, has resulted in a decreased attention to the theorization of the meaning of equality both within law and in public discourse. To be sure, the law has disappointed in its interpretation of substantive equality to address the systematic disadvantages faced by women in society.²⁰ But the banishment of equality as a legal avenue seems harsh. A greater worry is that the notion of equality, especially substantive equality, is disappearing from public discourse as a response to difference. Instead, formal equality, or the notion of equality as sameness, has been re-introduced both in law and in public discourse. At this juncture it might be useful to trace some links between equality, sameness, difference and understandings of women's oppression.

Developments in how women are understood to be either the same as or different from men and the same as or different from each other have played an important role in framing how women's bodies and their choices about them are conceptualized.²¹ Both the first and second waves of feminism struggled with the reconciliation of the notions of sameness and difference. During first wave feminism, women's quest for the vote, their fight to be legally recognized as "persons" and their demand for equal access to opportunities in education were premised on the notion of women's sameness to men. However, difference thinking was not completely absent from this wave of feminism—for example, the fight for women's suffrage was in part based on the idea that women were the moral guardians of society and thus it was imperative that they participate in the political process. The second wave of feminism brought a renewed vigour to difference thinking, but also re-constituted the idea of sameness. Equality thinking vacillated between the two, at times defining equality as women's sameness to men, and at others through difference. It was this latter interpretation that produced significant results in terms of substantive equality. However, it was also difference thinking that would eventually result in feminism's paralysis and a shift into the postfeminist era.

Difference thinking led to some significant gains in women's equality and the development of substantive equality, and it also opened space for the recognition of difference between women. The realization that women's experiences were diverse led to a fine-tuning of feminism that created sensitivity to difference. That in turn was transformed into a more complex theorizing of women's difference, leading to the conceptualization of intersectionality on the one hand, and a complete abandonment of any notion of a feminist community on the other. Difference

¹⁸ I am grateful to Gurpreet Mahajan for raising the possibility of the idea of similarity in the context of diversity. See Mahajan (2010a and 2010b).

¹⁹ Katherine Franke (2010) asks: "What would it mean to undertake a self-consciously queer conception of civil rights?" (p. 319).

²⁰ For a discussion of the concept of equality as it relates to women see Beaman (2012a), Cooper (2000), Faraday, Denike and Stephenson (2009), Hunter (2008), O'Donovan and Szyszczak (1988), Scott (1988) and West (1987).

²¹ In *Delusions of Gender: How our Minds, Society, and Neurosexism Create Difference*, Cordelia Fine (2010) creatively and effectively challenges the use of neuroscience to establish gender difference. She also shatters the myth that women have achieved equality.

became the defining characteristic of feminism such that the varieties of feminisms were enormous and the ability to identify women's oppression in any systemic manner was severely compromised.

As women's oppression was unpacked, it lapsed into an unproductive comparative exercise that positioned one group of women against another. In her book *Taxing Choices* (2002), Rebecca Johnson explored the *Symes v Canada*²² decision of the Supreme Court of Canada. Johnson criticized the failure of the justice system to see the validity of Symes' claim that her childcare expenses should be tax deductible. Johnson's analysis focuses on the ways in which law imagines agency and the so-called "choice" to have children. However, despite her able and compelling analysis of women's agency, Johnson's work was criticized for taking up the cause of a white, privileged female lawyer. Difference between women became the defining analytical beginning point that positioned feminism at the far end of the sameness-difference spectrum.

Another development during this late second wave period was postmodern feminism, some of which denied the possibility of the category "woman" at all. An important narrative within postmodernity was the rejection of universal truths. This had two effects: first, the "universal" narrative of women's oppression no longer had validity as it did not attend sufficiently to the local and the specific, and thus inadequately represented women's difference and second, difference thinking was further validated as the framework within which feminism ought to operate.

Coinciding with these developments was the realization within feminist communities that equality discourse was extremely limited in achieving the sort of shifts that feminism had initially imagined. Gains were made, to be sure, but women still earn 71 cents for every dollar men earn (LEAF 2009), are disproportionately the victims of domestic violence and sexual assault, are underrepresented in corporate and public governance and so on. The vacillation between formal and substantive equality became too unpredictable, and women found that law especially could not cope with intersectional identities and claims. In order to achieve any gains, women had to highlight their difference and their individuality rather than the oppression they experienced as a group or as a community.

The next generation of women challenged the necessity for any commitment to feminism. They were, they believed, equal, which they sometimes imagined in ways that were, to say the least, peculiar to second wave feminists.²³ These postfeminists did not want to associate themselves with feminist demands or what they perceived to be unnecessary activism. Moreover, in this new era of liberated and equal women, victim language became *passé*. Women had agency, therefore they could choose not to be victimized and they were often victimizers themselves. Thus, violence against women retreated into the bland and great equalizer of "family violence" and women's oppression lost its explanatory power. Feminism and gender concerns were folded into each other, and thus feminism became something that had been moved past. The idea that feminism was no longer necessary because equality had been achieved resulted in the sidelining of queries about women's equality altogether. Structural inequality and oppression made no sense in this new postfeminist era, which largely bought into the model of the liberal, autonomous individual criticized by Johnson (2002), West (1988, 2003) and others.

Before linking this brief history of feminism with the seemingly random taxonomy of rules about women's bodies, I would like to take a brief detour through the work of Clare Hemmings who pays particular attention to the construction of narratives about feminist history. Hemmings (2011) argues that by structuring the story of feminism as one of progress, loss and return, other stories and experiences

²² *Symes v Canada* [1993] 4 SCR 695.

²³ See Angela McRobbie (2009) for a discussion of various incarnations of the post and anti-feminist positions.

disappear. Hemmings points out that this dominant narrative protects a singular version of a Western feminist past that reproduces rather than challenges its political grammar and renders it "impossible to challenge assumptions about inequality in anything other than the most banal ways" (Hemmings 2011, p. 226). Race and sexuality especially take a particular role and shape in this narrative. My desire in this paper is not to simply fold experiences into a narrative of progress, loss and return, but rather to pose broader questions about how narratives become constructed in ways that render them seemingly unable to be linked to each other at all. This requires a letting go of a singular version of feminist history.

How does this brief history of feminism, equality, sameness and difference help to shed light on the strange juxtapositions we see in the taxonomy introduced at the beginning of this paper? A return to grand narratives is counterproductive for a number of reasons including that it would potentially undo useful theories of women's difference both from men and from each other. However, it is possible that we have rested for too long at the far end of difference on the sameness-difference continuum. If the taxonomy of women's bodies is conceptually linked through conceptual frameworks like women's oppression, broader patterns may emerge. By excluding the possibility of any broad or cohesive framework, which could be offered by narratives of oppression, there is no way to relate these pieces to each other as part of the same story. What if oppression were reconstituted to make sense of women's lives? Although I will return to this idea in my conclusion, it is possible that focusing on similarity, rather than sameness or difference, might allow us to see patterns in the taxonomy.

3. Patriarchy and colonialism

Related to the death of universalism and grand theorizing is the disappearance of patriarchy as a valid narrative in understanding relations between women and men. Gerda Lerner's *The Creation of Patriarchy* (1986) stands as a classic study of patriarchy and laid the foundation for subsequent discussions. Lerner's work illuminated the profoundly embedded nature of gendered relations and the pervasiveness of gender hierarchies across societies and social institutions. Although the theorization of patriarchy grew more sophisticated under second wave feminism, it could not overcome the limitations of its breadth and simplistic renditions of it as "what men do to women". One of the greatest challenges to the validity of patriarchy as a conceptual framework was the identification of specific narratives of men's disadvantage and women's advantage: not all men were patriarchal, not all men held a privileged place in society and not all women were oppressed or suffered under patriarchal rule. Unfortunately the classic mistake of the first year sociology student (but I know a woman who makes more than her co-workers; I know a man who does more housework than his wife; and so on) of using exceptions to invalidate general patterns, combined with increasing distaste for grand narratives, sent patriarchy into the deep recesses of the conceptual tool kit. Sophisticated criticisms of patriarchy as an organizing concept emerged. Sylvia Walby's *Theorizing Patriarchy* (1990) marks the beginning of the end of patriarchy as a framework within which women's experiences were understood. In that work Walby proposed the idea of "gender regimes" and gradually hers and other alternatives deconstructed patriarchy and pronounced it analytically impotent.

The reconstitution of feminism coincided with a narrative of "arrival" (McRobbie 2009) that is folded into national imaginaries of *patrimoine* or heritage. Feminism is thus enmeshed with the project of nation and national values, such that "the equality of men and women" can be deployed by commissions, lawmakers, and policy makers as an abbreviated way to establish credibility regarding gender equality (see Bouchard & Taylor 2008). There is a long history of the state invoking

the interests of women to coincide with nation building and maintenance projects.²⁴ As Sarah Bracke and Nadia Fadil (2012) argue, the problem in question is tied to regimes of truth, whether that truth is the achievement of gender equality, or the potential for men to become sexually out of control when they are stimulated by "provocative" dress. Linking the hijab or niqab wearing woman to the nation inevitably resorts to feminism for assistance, but to a particular 1970s idealized feminism combined with a nod to grandmothers and aunts who have paid dearly for "our" freedom.²⁵

There is one notable exception to the imagined general disappearance of patriarchy and that is in relation to particular groups of racialized women who are imagined to be oppressed by the uncivilized male, mostly Muslim, Other. Postcolonial scholarship has exposed the ways that race, gender and patriarchy blend together to create a seamless narrative that constructs the (especially) Muslim woman as being in need of rescue as well as regulation. This scholarship has often pointed out the paradox of Muslim women in that they have sometimes served the male colonial fantasy with their covered-ness, preserving the mysterious world of the female Other, who exists to please, titillate, but also to be rescued and saved from herself and from the dark male Other, who has always presented a threat (see Said 1978, Yeğenoğlu 1998, Merry 2006, Song 2007, Brown 2008, Razack 2008). These authors have further noted that the patriarchy that the Other is accused of perpetrating resembles that of the colonizer toward the colonized.

The increased migration of the Other has brought a heightened concern about the need to protect Western liberal democracies from their patriarchal ways. The rhetoric of the need to affirm Canadian values, for example, has become part of the positioning of the patriarchal Other against the "value" of the equality of men and women, which is referenced as an achieved state of affairs. This achieved equality functions as an "axiom of unity" (Tsing 2005) to maintain the banishment of patriarchy as an explanatory framework from Western liberal democracies.²⁶ In other words, it does not apply to Us. Most importantly, it makes a significant contribution to the plausibility of the difference of the Other, specifically his patriarchal nature and Our civilized treatment of women.

I have challenged this divide elsewhere (Beaman 2012b), arguing that if we examine the incidence of violence against women in Canadian society, including intimate partner violence and sexual assault, the differences in pay between men and women, the disparity in division of household labour (women do more) and so on, the civilized Us begins to collapse under the weight of evidence of women's threatened physical safety and inequality. The construction of honour killing as belonging to Them (despite the pervasiveness of the language of honour among those who perpetrate violence against women in Western societies) serves to maintain the social construction of Them as violent, uncivilized and ignorant of the equality of men and women, and Us as civilized and the inventors of the equality of men and women. That we don't do "that" here and that It is not part of Our values

²⁴ This has been especially true around the issue of polygamy, both historically and in the contemporary context. The protection of women (and children, with whom women are equated) is a dominant part of the rhetoric of the establishment and the preservation of Criminal Code provisions related to polygamy. Excellent discussions of the ways in which the protection of women, racialized discourse and nation building are intertwined are found in Razack (2008). See also Denike (2013), Barringer Gordon (2001), Carter (2008) and Ertman (2010).

²⁵ Thank you to Valérie Amiraux for this observation. The submissions to the Bouchard-Taylor Commission, which I have studied in a project with Solange Lefebvre (principal investigator) entitled "Diversité culturelle et religieuse dans quatre contextes nationaux : étude comparée de la dynamique identitaire et de la régulation de la religion", frequently mentions of the sacrifices aunts and grandmothers have made in order to achieve present-day equality. Similarly, the Stasi Commission in France noted its special duty to protect women from the imposed headscarf.

²⁶ Anna Tsing (2005) observes that the process of generalization, which transforms the particular into the universal, requires "a large space of compatibility among disparate particular facts and observations" (p. 89). Axioms of unity, she argues, allow for disparate facts and observations to be reconciled to form convergences, which in turn "offer legitimacy and charisma to nascent categories" (p. 89).

is a useful fiction that works to keep narratives of patriarchy and oppression associated with Them and not with Us.

As patriarchy circles round we can begin to make sense of how it is that a woman can be required to strip and to dress at the same time. For, if the matter is one of control of women's bodies, these two extremes surely cover the bases. Instead of banishing patriarchy we might shift our attention, then, to the ways in which patriarchy's hydra-like manifestations impact different women's lives differently, but with a view to the similarity of effect. Thus it is possible that the criticism that one woman deserves to be sexually assaulted because she is wearing too little is part of the same monster that wants to rip the clothing off another woman. If it is a matter of regulating for control, the stripper, the niqab wearing woman and the sexual assault victim are comprehensible as part of the same order. We might therefore consider the possibility that "she deserved it", whether in relation to a sexual assault victim who dresses without a bra or a women who has her arm twisted out of its socket in the quiet of her own home because she prepared chicken instead of steak for dinner, is all part of the same discourse of honour that resulted in the murder of the four Shafia women in Kingston, Ontario, Canada.²⁷

4. Women's agency

Interwoven with patterns of control and the language of "deserving" are notions about women's agency—"if you choose to dress this way, you know what will happen"²⁸ or "no sane woman would choose to live in a polygamous relationship" or, as in the *R. v Labaye*²⁹ case, "Members do not pay a fee and check consent at the door; the membership fee buys access to a club where members can meet and engage in consensual activities with other individuals who have similar sexual interests. The case proceeded on the uncontested premise that all participation was on a voluntary and equal basis" (at para 67). Women are variably believed and disbelieved to have the ability to form consent. They are believed to have the capacity to consent to providing masturbatory inspiration in swingers clubs, but not to wear a veil. Their agency is imputed sometimes—women dressing in particular ways are deemed to choose to be inviting sexual advances/assault.³⁰ And, their agency is dismissed sometimes—women who say they have freely chosen to marry a man who already has a wife are not seen as being credible.

Theorizing women's agency formed a core part of second wave feminist theory and practice. Widespread access to birth control introduced a dramatic shift in reproductive control for many women. Women were increasingly present in the workplace and universities. Yet, Catherine MacKinnon (1987, 1989, 1990) argued that patriarchy was so pervasive that the idea that women ever freely consent to sexual intercourse was questionable. The pervasiveness of violence against women in intimate relationships posed challenges to theories of agency—why did women stay in such relationships? Theories of false consciousness abounded and women were divided into those who had been emancipated and those who had not. Agency became imaginable only within the realm of the emancipated.

²⁷ On June 30, 2009 the bodies of four women were found in a car submerged in a lock on the Rideau Canal. They were three sisters Zainab, 19, Sahar, 17 and Geeti, 13, and Rona Mohammad Amir, their father's first wife. On January 29, 2012 their father Mohammad Shafia, their mother Tooba Yahya and older brother Hamed Shafia were convicted with first degree murder for their deaths. The trial judge explained that "the apparent reason behind these cold-blooded, shameful murders was that the four completely innocent victims offended your completely twisted concept of honour ... that has absolutely no place in any civilized society". See Dalton (2012).

²⁸ Comments by a Toronto Police Constable, who told York University students that "Women should avoid dressing like sluts in order not to be victimized", sparked an international protest campaign known as Slut Walks, which aimed to draw attention to victim blaming in cases of sexual violence. See The Associated Press (2011).

²⁹ *R. v Labaye* [2005] 3 SCR 728, [2005] SCC 80.

³⁰ Although legally implied consent was rejected in the *R. v Ewanchuk* [1999] case, the notion that women "ask for it" is still part of the public and legal imaginary.

A more sophisticated imagining of women's agency existed among some feminist scholars, especially those who were grappling with the ways that law imagined women to exercise agency. Robin West (1988, 2003) argued that liberal and critical legal scholarship privileged autonomy and separation that were in turn linked to freedom (or the freedom to choose). West was critical of a lack of recognition of connectedness or relationality. As Johnson so succinctly put it "much contemporary legal thought reflects a profound commitment to a conception of the self as relatively autonomous and self-directing. Thus the rhetoric of choice is of central symbolic value in Western liberal society" (2002, p. 125). Law imagines women (especially when they are religious) as either choosing badly or as having no choice (Johnson 2002, Beaman 2008).

The variability in assumptions about when women exercise agency is in part dependent upon whether they associate themselves with religion. Religious women's agency is especially suspect and nowhere more so than within feminism itself. Early second wave feminism was especially critical of religion as a stronghold of patriarchy. Solutions ranged from complete abandonment of religion (as was advocated for by Mary Daly [1972]) to its renovation (as was proposed by Wendy Griffin [1995]).

In 15 years of researching religion it continues to puzzle me that women's agency is assessed depending on motivation. Religious women are assumed to be deficient in their capacity to make the decision to be religious and to decide how they will go about doing that. Paradoxically, religious women who are assessed as having agency either choose not to be religious or to be religious in ways that fit with secular ideals. Women's agency is thus peculiarly delineated: religious women are not imagined to choose to live in polygamous relationships or to abide by the gendered rules of Jewish Orthodoxy or to believe that their husbands are the heads of their households. Only the correct decision is judged to engage agency. The religious is imagined as an ideological constraint that impedes women's abilities to choose. The secular is imagined as ideologically free space, in which women's agency is unconstrained. Mayanthi L. Fernando (2010) argues that secular assumptions about freedom, authority, choice and obligation preclude public intelligibility of particular kinds of religiosity.

Agency in religious groups is further complicated by the relationships people have with each other.³¹ Thus, for example, some Muslims argue that wearing a niqab is not a religious but a cultural choice in order to, in part, distance themselves from the orthodoxy or fundamentalism they associate with this practice. It is important to recognize that religions (even of the same name) take a wide range of forms. Even the Supreme Court of Canada has recognized the ways in which religion is lived by emphasizing its subjective nature in the *Syndicat Northcrest v Amselem*³² decision, a case involving an Orthodox Jewish man who built a succah³³ on his own balcony for the festival of Succot. There was conflicting evidence about whether having one's own succah was really necessary. In the end, the Court recognized the subjectivity of religious beliefs. This is not news to scholars of religion, who have emphasized the need to theorize and study the lived aspects of religion more fully. Heelas and Woodhead (2005), McGuire (2008) and Orsi (2003, 2005) have all pointed to the ways in which religion is negotiated in daily life.

Following the recognition of the complex ways in which religion is lived, examining women's agency in the context of conservative religious traditions requires more than a summary dismissal of them as brainwashed, having false consciousness, or

³¹ The power dynamics within religious groups and the ways in which they impact women especially was part of the now famous criticism of Susan Moller Okin of multiculturalism and group rights. Okin's essay, *Is Multiculturalism Bad for Women?* (1999) prompted a series of responses that continue to this day. See also Ayelet Shachar (2001).

³² *Syndicat Northcrest v Amselem* [2004] 2 SCR 551.

³³ A succah is a structure resembling a tent. During Succot some Jews eat, sleep and live in the succah.

as being doormats. Social scientific research has consistently shown that women in conservative religious groups have a complex understanding of gender roles, women's oppression and religious demands (see Davidman 1991, Olshan and Schmidt 1994, Beaman 1999, 2008, Gallagher 2003).

Some of the same themes arise in the literature on Muslim women's agency. Nadia Fadil (2011) examines the extent to which not veiling can be understood as a technique of the production of self that is functional to shaping a liberal Muslim subject (see also Jouili 2011 for a similar argument). She highlights the complex agency of the non-veiled Muslim, but makes an important observation that has implications beyond Muslim women: "The secular regulatory ideal is not gender neutral, but draws on a particular perspective on the (female) body, which views the disclosure of certain bodily parts (such as the hair and face, the figure) as essential for achieving 'womanhood'" (p. 96). Jacobsen (2011), Jouili (2011), Mahmood (2005, 2009), Pham (2011) and Scharff (2011) each consider the complex ways in which piety, agency, and the human subject are layered and situated, and most importantly, are not captured by the "binary model of subordination and resistance" (Jacobsen 2011, p. 74).

This literature on Muslim women is important, but it might be useful to shift the focus from agency being denied to Muslim women while being allocated to Western women, to a questioning of the conditions under which agency is attributed to women in general. Conclusions that, for example, Muslim women always or never choose to wear the veil, or that it is not possible to choose to wear the veil, are not the analytical goal of this discussion. Shifting the focus to conditions and context, and then to similarity has the potential to illuminate commonalities that might invigorate a conversation about women's equality. It is impossible to map the similarities here, except to encourage a consideration of the links, for example, between the "choice" to dress in a tube top with the result of "sex being in the air" and the "choice" to wear a hijab and be removed from a soccer field. How, for example, do notions of safety enter into both contexts? What are the consequences of choice and who decides?³⁴ How is agency used to legitimate particular practices and to exclude or denigrate others? When is the subject visible, so to speak, and when does she disappear? How is it that the faceless woman in *Labaye* makes a choice to engage in sexual intercourse for the entertainment of the men present in the room, while the Muslim woman who wishes to cover her face does not choose?³⁵

The complexity of agency makes state and feminist partnerships on the issue of the niqab in Quebec, Canada and polygamy in British Columbia, Canada all the more troubling. For instance, the *Conseil du statut de la femme* says:

Pour cela, nous allons d'abord constater que, de tout temps, religion a rimé avec oppression des femmes. Les trois grandes religions monothéistes ont toujours été et continuent d'être discriminatoires à l'égard des femmes. Ensuite, nous verrons qu'à mesure que l'État s'est dissocié de la religion, les femmes ont progressé sur le chemin de l'égalité. Au Québec, la présence de l'Église catholique au cœur de la société a longtemps nui à la marche des femmes vers l'égalité. La laïcisation de la société a levé un obstacle de taille à la reconnaissance de leurs droits. (*Conseil du statut de la femme* 2011, p. 12)

³⁴ Critical Legal Studies has made important contributions to a reconsideration of agency, especially through the work of Duncan Kennedy (1993) and Janet Halley (2006), who focus on the strategic use of clothing. Their work compliments that of Lama Abu Odeh (1993) as well as Sarah Bracke and Nadia Fadil, who remind us that "a piece of clothing cannot itself be oppressive or emancipatory" (Bracke, Fadil 2012, p. 52).

³⁵ See Kennedy (2009) for a discussion of cosmetic genital surgery and female genital mutilation in the context of choice. See Pham (2011) for a comparison of the way agency is invoked for "women of cover" v. the construction of consumerism as choice. Nguyen (2011) explores the use of particular indices of "correct living" in the context of the Kabul Beauty School, arguing that they echo earlier histories of imperial statecraft. This correct way is a manifestation of a problem identified by Khandelwal (2009), that most people in the US overestimate their own agency and underestimate that of women elsewhere.

Despite statements from Fundamentalist Latter-day Saints women in Bountiful, British Columbia about their desire to live in polygamous relationships, and despite research that offers a rich description of their day-to-day lives and the ways that they exercise agency (Campbell, 2009, 2008), feminist organizations and the state have partnered to override their agency to 'free' them from the oppression they say they do not suffer.³⁶ This republican feminism (see Dot-Pouillard 2007, Beaman and Lefebvre 2013) represents a new development in the collaboration of feminist interests and the state to override religious women's decisions.³⁷

There are two limitations of the literature on agency reviewed above. First, they are not situated in relation to each other. Thus, while the 'pious Muslim woman' is imagined to exercise agency (or not) in particular ways, the Orthodox Jewish woman, the observant Sikh woman and the fundamentalist Christian woman remain isolated from each other in reflecting on the ways in which their agency is imagined by the non-pious or observant or fundamentalist. The work of Jakobsen and Pelligrini (2004, 2008) and Mahmood (2005, 2009) thus resonates with that of Davidman (1991), Gallagher (2003), Kaufman (1991), Neitz (1987), Palmer (1994) and my own research on evangelical Christian women and Latter-day Saints (1997, 2000). Why, I wonder, are we not speaking to each other to reflect more fully on the conceptualization of religious women? Certainly, each of these groups contains unique elements, but there are similarities that bear noting.

The second limitation is a narrowness that requires taking distance from the issue of women's agency specifically. Here I turn to the work of William Connolly (2011), who situates agency in what he describes as a world of becoming. Connolly moves the conversation about agency outside of the realm of the strictly human world and draws on insights from biology, for example, to challenge current conceptualizations of agency. He takes a two pronged approach, arguing that 'at some times and for some purposes you explore how other modes of agency have served as precursors to human agency as they also enter into its layered character now. At other times you focus on how multiple fields with different degrees of agency help to constitute the larger world of becoming in which we are set' (Connolly 2011, p. 32). Rejecting both individualism and holism, Connolly proposes a world without edges and conceptualizes agency as pluralistic, dynamic, relational, non-transcendental (immanent), questioning and layered.

Connolly's work expands on the points made by Talal Asad and Saba Mahmood, for example, who challenge the Western 'conceit of the self-owning individual presumed free from all forms of coercion, including those potentially entailed in religion, commerce, love, belief and comportement' (Asad *et al.* 2009, p. 13-14, see also Mahmood 2001). Connolly pushes past a simple (yet vital) recognition of the structured and relational situatedness of agency such as that argued for by Alvarez (2009), Johnson (2002) and West (1987, 1988, 2003), to a web of imminent links without a bounded framework.

Most recently Anne Phillips has done some important theorizing about agency, both in her own work and in a 2013 edited collection that brings into conversation the ideas of agency and coercion. Phillips enters into tricky terrain, arguing that a complete acceptance of agency can breed complacency, resulting in an overestimation of consent and an under-support of policies designed to protect the vulnerable. Nonetheless, in the introduction to *Gender, Agency, and Coercion*, Sumi Madhok, Phillips and Kalpana Wilson are cautious about judgements that condemn women's choices: 'But judgementalism is not the same as judgement, and it should be possible to avoid the kind of moralising that tells others what they ought to think

³⁶ To be sure, there are examples of abuse that have been reported from that community (see especially Jessop and Palmer 2008 and Palmer and Perrin 2004). The point is, however, that abuse of women (and children) exists in all communities and is certainly not unique to Bountiful.

³⁷ Republican feminism employs a model that is assimilationist, homogeneous and based on a formal notion of equality that does not account for difference.

and do without thereby losing the capacity to challenge structures of domination and power' (2013, p. 12). The roles of collectivities, both as frameworks for action and as generators of agency, as well as the reshaping of the coercion-agency binary, are key themes in the volume. Although difficult, the agency question is an important one and Madhok, Phillips and Wilson have put it back on the feminist agenda.

The question raised by this exploration is not whether women exercise agency in relation to their own bodies, but rather when is it that they are imagined to exercise agency? What are the conditions under which women are constructed as being 'free' and under what circumstances are they held to be forced or not exercising free will? Who makes those decisions and when? It is through inquiries about the construction of agency that, again, patterns can be traced through the prohibitions and prescriptions related to women's bodies.

5. A modest proposal

I am not here advocating a return to grand narratives and universal theories. Rather, it simply seems that the baby has been thrown out with the bathwater in the expunging of generalization in favour of specificities. How might the odd list of regulations introduced at the beginning make sense? What sort of narratives do they tell when brought into the presence of or juxtaposed with one another? ³⁸ This juxtaposition is intended to reorient the reader to a mode of thinking that opens space for new insight. In their book, *Foucault va au cinema* (2011), Patrice Maniglier and Dork Zabunyan reflect on the cinematographic techniques employed by Michel Foucault to refocus the reader's gaze, or, to think differently or otherwise. Maniglier and Zabunyan push their analysis beyond cinema as illustration to consider the ways in which the juxtaposition of scenes, time, height, depth, and so on change the perspective and perception of the viewer (see also Berger 1972). For those who know Foucault's *Discipline and Punish* (1979), for example, the opening scenes (and how often can we use this way of talking about academic text?) are ample illustration.

Similarly, William Connolly uses film as both illustration and to reorient the reader in his notion of a world of becoming and to explore the intersection of affect, neuroscience, and immanence. His book, *Neuropolitics: Thinking, Culture, Speed* (2002), is physically not quite 'normal' (the book is a non-standard size and the page numeration is unusual), thus one must encounter the book in a different way, not simply because of its ideas (with their sometimes cumbersome Connolly-esque language), but because of its physical peculiarity. Connolly's strategy encourages the reader to be aware of multiple registers of being, a technique that is intended to re-orient the reader and to open new interpretive possibilities. Rebecca Johnson's work on religion and sexuality also considers film and techniques of presentation, focusing on the film *Angels in America*. In the workshop setting, Johnson asks her participants to read portions of the script. That act of 'being' and 'becoming' has a transformative effect on participants, who find themselves re and dis oriented.³⁹ The modest proposal I suggest here, through the use of narrative, long views, and short clips, is an attempt to slide between what has become a rather narrow space between sameness and difference.

One mechanism for extracting a narrative from these curiosities (rules about women's bodies) is to reorient the inquiry toward a discovery of similarities. I propose a focus on similarity that exists in tension with sameness and difference

³⁸ I take inspiration from Anna Korteweg's (this volume) observation that even the most bizarre or outer limits has the power to create and shape discourse, rendering the previously invisible "sayable". While Korteweg explores this in relation to the notion of the "headrag" and the negative implications of the expansion of public discourse that ensues, I propose that this discursive power can also be positive.

³⁹ I participated in a workshop run by Rebecca Johnson at Queen's University, Kingston, Ontario, Canada entitled *Sexual Diversity and Religious Diversity* from 31 March-2 April, 2011.

with the hope of avoiding their pitfalls which have been well rehearsed by feminist theory. A quest for similarities opens the possibility of mapping temporary points of gathering which could facilitate critical inquiry, dialogue and strategic action that might re-constitute equality in new ways. The danger of this approach is obvious. Our training in bifurcated thinking goes deep, and thus lapsing back into sameness and difference remains a constant threat to similarity thinking. It is easy to revert to reified categories of Us and Them.

Richard Ford explores the dangers of difference thinking. Specifically, he asks: "What if our era is defined less by the repression of group difference than by its production?" I share Ford's worry about overplaying difference, a problem with which feminism has grappled for decades. Nonetheless, to flatten the texture of plural societies through an emphasis on sameness is equally as perilous. Moreover, the very notion of "accommodation" of difference, upon which Ford builds his argument, leaves untouched and unchecked particular formations of power relations that very much need to be disrupted.

How does the notion of similarity help to unravel the key to the peculiar taxonomy of women's bodies and their regulation? Explorations of similarity might reveal a desire for exposure of the female body for male consumption, for example. It might explicate the notion of control as being central to female bodies, rather than the notion of exposure. Rebecca Herzig (2009) argues in relation to body modification, for example, for a "more sustained and collective reflection on the array of technological, legal, economic, and ecological circumstances that enable particular decisions about body modification in the first place" (p. 252). Eliza Burke (2012) follows a similar track in her discussion of pro-anorexia websites, asking what kind of a society produces conditions in which women can only have autonomy and control over their bodies by starving themselves. Lama Abu Odeh (1993) considers the possibility of feminists "joining hands" with veiled women. In collaborative research with feminist activists in Latin America, Lynne Phillips and Sally Cole (2013) argue for and demonstrate the importance of talking, comparing, sharing and learning across boundaries and scales, including nation-states, public-private, generations and theory-practice.

The retreat to local and mid-range analyses has compromised our ability to understand the links between the disparate narratives. A return to grand theory is neither desirable nor necessary. But a focus on similarities between categories that renders more fluid the boundaries between the categories themselves could serve to re-invigorate our conversation about women's equality.

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