

How Does it Feel to be a Problem? Inclusion and Exclusion and Quebec's Bill 21

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I. Introduction

In his book, *The Souls of Black Folk*, WEB Du Bois asks a daunting question: “how does it feel to be a problem?”¹ Over a century later, the question resonates all too well with Muslim women in Quebec. In June 2019, the province enacted *An Act respecting the laicity of the state*,² or Bill 21 as it is commonly referred to in public discourse. The *Act* bars certain categories of civil servants from wearing religious symbols when performing their civic duties, while those who use public services may be required to remove their religious face cover when required for purposes of identification or for security reasons.³ Bill 21 may have been the boiling point of a long debate on *laïcité* that had been simmering for decades in the province; indeed, the government justified the necessity of the law on the basis of preserving four essential values: namely 1) the separation of state and religions; 2) the religious neutrality of the state; 3) the equality of all citizens; and 4) freedom of conscience and freedom of religion.⁴

Yet despite its purported guardianship of secularism, neutrality, and equality, Bill 21 is widely understood to be a response to the growing presence of Islam, and notably the veil, in

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1 WEB Du Bois, *The Souls of Black Folk*, ed by Brent Hayes Edwards (New York: Oxford University Press, 2007) at 7.

2 Bill 21, *An Act respecting the laicity of the State*, 1st Sess, 42nd Leg, Quebec, 2019 (assented to 16 June 2019), SQ 2019, c 12 [Bill 21].

3 *Ibid.*

4 *Ibid.*, cl 2.

the province. Political debates leading up to the enactment of the bill coincide with increasing immigration and consequently a demographic shift in the province and Canada as a whole. A steady increase in the number of individuals who identify as members of a religious minority group has transformed the country's religious landscape. Since 2003, Islam has been the second largest faith in Canada, second only to Christianity, with 3.2 percent of the country's population identifying as Muslim.⁵ Quebec is home to the second largest Muslim population in Canada: over the last decade this community has expanded by more than 140 percent in the province.⁶

As Canada's diversity continues to grow, reasonable accommodation and its accompanying discourse become the framework within which the state both accommodates minority difference and establishes the extent to which the state ought to permit minority cultural and religious practices in the public sphere. In Quebec, the delineation of the limits of tolerance through successive initiatives and tablings of bills to regulate religious dress in the public sphere reflects popular anxiety about religious minorities' so-called illiberal practices and a discomfort with the accommodation of religious difference, particularly the growing visibility of Islam.

This paper seeks to analyze Bill 21 through the frameworks of minority rights and reasonable accommodation. I problematize the "problem" of the veil, arguing that legislative de-veiling, notably Bill 21, is a symptom of a larger crisis, namely the triumph of majoritarian politics over the constitutional protection of minority rights. Worse, while such laws are the result of popular discomfort with difference, their enactment further entrenches the binaries and assumptions that fuel such populist discomfort. As such, Bill 21 provides a useful case study of the role of law in responding to popular anxieties and in shaping perceptions of difference and equality in the first place.

II. Analysis

A. Bill 21

On March 27, 2019, the Government of Quebec tabled Bill 21, officially titled *An Act respecting the laicity of the State*. The Bill was eventually passed into law by the National Assembly on June 16.⁷ The *Act* is among the most seminal in Quebec history, being the first law to proclaim Quebec a "lay State."⁸

The *Act* is not the first legislative effort to erase religious visibility in Quebec's public spaces. Back in 2010, the ruling Liberal Party introduced *An Act to establish guidelines govern-*

5 2011 National Household Survey: Data Tables (accessed 10 July 2022), No 99-010-X2011032, statcan.gc.ca, 2011032 (Ottawa: Statistics Canada, 2013).

6 Andy Riga, "Religion in Quebec: The bigger picture", *Montreal Gazette* (16 May 2019), online: <<https://montrealgazette.com/news/local-news/since-quebecs-early-days-religion-has-been-a-burning-issue>> [perma.cc/6E6B-W8FS].

7 Les Perreux "Quebec passes bill banning public servants from wearing religious symbols", *The Globe and Mail* (17 June 2019), online: <<https://www.theglobeandmail.com/canada/article-quebec-legislature-expected-to-pass-bill-21-late-sunday/>> [perma.cc/XF97-EAR9].

8 Bill 21, *supra* note 2, cl 1.

ing accommodation requests within the Administration and certain institutions, or Bill 94.⁹ The bill purported to provide a reasonable accommodation framework for persons seeking to offer or receive services with their face covered, namely women wearing the niqab or burqa.¹⁰ Yet, in effect, the bill would have largely extinguished this right from nearly every public institution, including childcare centres, school boards, and public health facilities.¹¹ Though the election of a new government brought the Bill 94 chapter to an end, public discourse on the limits of tolerance of difference lingered at the heart of Quebec politics.

In October 2017, *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies*,¹² or Bill 62, was passed into law by the National Assembly. Section 10 of Bill 62 imposes a blanket ban on face-coverings, preventing niqab- or burqa-wearing women from providing or receiving public services.¹³ The bill passed with 66 votes in favour and 51 votes against, with all but Liberal Party members rejecting the controversial legislation.¹⁴ Notably, the conservative Coalition Avenir Québec (CAQ) and separatist Parti Québécois parties opposed the bill, arguing, among other things, that it was not comprehensive enough.¹⁵ In hindsight, dissatisfaction with Bill 62 among Quebec voters and the subsequent enactment of Bill 21 beg the pressing question of whether the triumph of Bill 21 can be attributed to its prohibition of all religious symbols or of all Muslim symbols.¹⁶

B. Secularism

Much like its predecessor bills, Bill 21 appeals to notions of gender equality, secularism, and state neutrality as justification, effectively pandering to stereotypes of the oppressed Muslim woman. Concepts of state secularism and neutrality are pivotal to the construction of national identity and citizenship in debates about reasonable accommodation.¹⁷ These ideals have often been instrumentalized in campaigns against accommodation of difference. Racialized minorities, particularly Muslim women, are constructed as threats to national identity and security, and are cast aside as illegitimate citizens unless they assimilate. State policy towards minorities and the discourse of reasonable accommodation reinforce a racial *status quo* by normalizing

9 Bill 94, *An Act to establish guidelines governing accommodation requests within the Administration and certain institutions*, 1st Sess, 39th Leg, Quebec, 2010.

10 *Ibid.*

11 *Ibid*, cl 3.

12 Bill 62, *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, 1st Sess, 41st Leg, Quebec, 2017 (assented to 18 October 2017), SQ 2017, c 19 [Bill 62].

13 *Ibid*, cl 10.

14 Philip Authier, “Public Services Should Be Given and Received with an Open Face’: Couillard”, *Montreal Gazette* (20 October 2017), online: <<https://montrealgazette.com/news/quebec/despite-controversy-bill-62-on-state-neutrality-sails-into-law-in-a-badly-split-vote>> [perma.cc/DWN3-CBCJ].

15 *Ibid.*

16 See for example, Jason Magder, “A new poll shows support for Bill 21 is built on anti-Islam sentiment”, *Montreal Gazette* (30 May 2019), online: <<https://montrealgazette.com/news/local-news/a-new-poll-shows-support-for-bill-21-is-built-on-anti-islam-sentiment>> [perma.cc/4SU4-Z6VX].

17 Sirma Bilge, “Mapping Québécois Sexual Nationalism in Times of ‘Crisis of Reasonable Accommodation’” (2012) 33:3 *J Intercultural Studies* 303; Sirma Bilge, “Reading the Racial Subtext of the Québécois Accommodation Controversy: An Analytics of Racialized Governmentality” (2013) 40:1 *Politikon* 157 at 175 [Bilge, “Reading Racial Subtext”].

mainstream norms as the metric by which the limits of tolerance are assessed and dissuading close scrutiny of how the state manages diversity.

Bill 21 focuses on cultural difference to the detriment of appreciation of structural difference. Instead, notions of culture and heritage are deployed to render the majority religious faith universal in the public sphere.¹⁸ Ironically, this focus only serves to make minority religions' claims to public space even more visible — “ours” is culture, part of our heritage and values, theirs is “religion,” particularistic and foreign.¹⁹

As women's rights are set up as irreconcilable with the veil, the law portrays Muslim women as incompatible with Canadian values. In failing to consider its effects on Muslim women whose mobility, health, and educational opportunities are disproportionately affected, the supposedly egalitarian legislation betrays its own essence. Instead, it focuses on the intolerance of a religious practice to the mainstream, on what that practice might symbolize for the majority.

C. Theorizing Reasonable Accommodation

Reasonable accommodation is the framework through which the state accommodates minority rights by balancing or reconciling competing rights, such as equality and religious freedom. Informed by unequal power relations whereby a normative “we” is empowered to determine which aspects of “their” difference may be tolerated, reasonable accommodation measures minority practices against mainstream norms that, though invisible, set the limits of accommodation.²⁰

While the reasonable accommodation framework is a vital organ of the state's response to difference, the legitimizing function of the inequality it sustains has not been properly interrogated. Within the current reasonable accommodation framework, minority values and customs are measured against unquestioned mainstream norms that set the standards of liberalism and hence the limits of accommodation; difference becomes the special exception, accommodation is perceived as a gift from the majority to the minority, all while mainstream culture is normalized.²¹ It is here that the “problem” of the “Other” is cemented. Since reasonable accommodation becomes “a tool of governmental intervention to manage diversity-related conflict,” it inherently presupposes problematic social behavior ill-fitting in the mainstream and renders state intervention necessary.²²

18 Iris Marion Young, “Structural Injustice and The Politics of Difference” in Anthony Simon Laden & David Owen, eds, *Multiculturalism and Political Theory* (Cambridge: Cambridge University Press, 2007) 60 at 88.

19 Lori G Beaman, “Religious Diversity in the Public Sphere: The Canadian Case” (2017) 8:12 *Religions* 259 at 267-268; See also Lori G Beaman, “Between the Public and the Private: Governing Religious Expression” in Solange Lefebvre & Lori G Beaman, eds, *Religion in the Public Sphere: Canadian Case Studies* (Toronto: University of Toronto Press, 2014) 44 at 54-55.

20 Lori G Beaman, “‘It Was All Slightly Unreal’: What’s Wrong with Tolerance and Accommodation in the Adjudication of Religious Freedom?” (2011) 23:2 *CJWL* 442 at 445 [Beaman, “Tolerance and Accommodation”].

21 *Ibid* at 447-449. See e.g. Catharine MacKinnon, “Difference and Domination: On Sex Discrimination” in Elizabeth Hackett & Sally Haslanger, eds, *Theorizing Feminisms: A Reader* (Oxford: Oxford University Press, 2005).

22 Bilge, “Reading Racial Subtext”, *supra* note 16 at 158.

D. The Erasure of Race and Intersectionality

In public discourse, reasonable accommodation has largely been conflated with the accommodation of religious diversity,²³ effectively ignoring questions of race.²⁴ Although race plays a determinative role in popular trends regarding reasonable accommodation, the debate around it has been “largely cast as raceless.”²⁵ Rather, the debate normalizes race privilege and fails to acknowledge the power dynamics inherent in this paradigm. The language of “common values”²⁶ normalizes racial difference while erasing race. It works, in effect, to exclude racialized “Others” from the national family while maintaining the legitimacy of the discourse of reasonable accommodation. Simultaneously, it simplifies complex religious subjectivities by forcing individuals, deemed “requesters,” “to frame their religiosity as something that is well defined and ‘public.’”²⁷ This, in turn, contributes to the hypervisibility of religious difference. In this way, reasonable accommodation imposes stereotypical, essentialized understandings of minority cultures that “elude notions of equality.”²⁸

Reasonable accommodation discourse is embedded in the governmentality of equity and diversity policies; it tokenizes minority groups, rather than meaningfully engaging with minorities and challenging institutionalized racism. By centering state interests in its management of the “problem” of diversity, the discourse of reasonable accommodation fails to redistribute social, economic, and political power to minority communities. Such top-down practices of governmentality must be substituted by an intersectional anti-racist policy that crafts remedies and institutional responses from the ground up — that is, from the daily experiences of those at the intersections of multiple axes of discrimination — to create radical social justice tools that challenge racial injustice.

Racialized minority immigrant women have overlapping identities and experience discrimination along multiple axes.²⁹ An intersectional framing of the lived experience of discrimination of minority women is therefore essential to formulating an effective response to exclusion and difference that is attentive to the complexity and pixelated nature of power relationships. Such an intersectional framing offers the possibility of a counter-hegemonic political project that is linked with and rooted in struggle.³⁰ It is important to connect this effort with the everyday struggles of racialized minority women and the accommodations that go on in everyday life.³¹

23 Will Kymlicka, “The Three Lives of Multiculturalism” in Shibus Guo & Lloyd Wong, eds, *Revisiting Multiculturalism in Canada* (Toronto: Sense, 2015) 17 at 26-27.

24 Bilge, “Reading Racial Subtext”, *supra* note 17 at 159.

25 *Ibid* at 158.

26 *R v NS*, 2012 SCC 72 at para 71.

27 Amélie Barras, “Exploring the Intricacies and Dissonances of Religious Governance: The Case of Quebec and the Discourse of Request” (2016) 4:1 *Critical Research on Religion* 57 at 64.

28 Beaman, “Tolerance and Accommodation”, *supra* note 20 at 447.

29 Mari J Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 14:2 *Women’s Rts L Rep* 297; Adrien Katherine Wing & Monica Nigh Smith, “Critical Race Feminism Lifts the Veil? Muslim Women, France, and the Headscarf Ban” (2005) 39:3 *UC Davis L Rev* 743 at 748.

30 Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism, and Gender* (Toronto: Canadian Scholars’ Press, 2000) at 120.

31 Austin Sarat, “The Micropolitics of Identity-Difference: Recognition and Accommodation in Everyday Life” in Richard A Shweder, Martha Minow & Hazel Rose Markus, eds, *Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies* (New York: Russell Sage Foundation, 2002) 396 at 401.

It is imperative to counter dominant readings of reasonable accommodation, moving the focus away from minority religious practices to an analysis of how the very terms of the debate define racialized immigrant women as illegitimate citizens, how links are drawn between national belonging and proper subjects of citizenship along racialized lines, and how cultural signifiers are used “as a racializing code.”³²

We need to avoid an all or nothing choice for women between cultural identity, on one hand, and education, employment, and political participation, on the other.³³ Focusing on the redistribution of economic and political power to excluded groups, policy around minority rights and reasonable accommodation can be reformed as an anti-racist policy that challenges culturalism faced by minorities.³⁴

It is necessary to reframe reasonable accommodation to challenge the reductive analysis of minority racialized women’s needs, while also building cross-cultural coalitions.³⁵ The key is to centre marginalized communities of women in our analysis of social justice in order to challenge the epistemic privilege of mainstream society.³⁶

Seeing minority groups primarily in terms of an essentialized culture ignores other identities such as race, class, and sexual orientation. This framing cannot properly address issues of structural disadvantage and systemic racism.³⁷ The legacy of the culturalization of politics is to enable liberal democracies to enact de veiling laws, while disingenuously ignoring the roots of oppression, resulting in further economic disempowerment and political disenfranchisement of Muslim women.

In a sense, the focus on culture has resulted in epistemological violence: the deradicalization of anti-racist politics.³⁸ The instrumentalization of essentialist notions of culture and diversity within the rhetoric of reasonable accommodation has de-materialized the understanding of culture and rendered it instead a political tool. As for the language of diversity, it emerges as an instrument of governance rather than a demonstration of the state’s commitment to challenging inequalities.³⁹

Resort to reasonable accommodation of cultural difference, absent challenge to systemic inequalities and reductionist understandings of culture, such as Orientalism, leaves the roots of oppression, racism, and discrimination intact.⁴⁰ Difference is a vast and poorly explored terrain; it cannot be understood simplistically as a cultural category free of power structures and cannot be constructed as separate from structural inequality.⁴¹

32 Bilge, “Reading Racial Subtext”, *supra* note 17 at 176.

33 Maleiha Malik, “‘Progressive Multiculturalism’: Minority Women and Cultural Diversity” (2010) 17 *Intl J Minority & Group Rights* 447 at 464.

34 *Ibid* at 458.

35 Chandra Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses” (1988) 30:1 *Feminist Rev* 61; Chandra Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Delhi: Zubaan, 2006) at 231.

36 *Ibid*.

37 Bannerji, *supra* note 30 at 7.

38 *Ibid* at 33.

39 *Ibid* at 17.

40 *Ibid* at 133.

41 *Ibid* at 131.

E. Reframing Minority Rights

The origins of Bill 21 are rooted in the preoccupation with cultural difference as a major aspect of regulating minorities.⁴² Our approach to minority rights, by contrast, must transcend mere tolerance of group differences. Otherwise, it fails to acknowledge members of minority groups as equal citizens, or to adequately guarantee accommodation of group differences through “group-differentiated rights.”⁴³

As mentioned previously, the public’s engagement with questions of laicity and the regulation of religious visibility in the public sphere is largely sidetracked by gender equality concerns and the need to “liberate” women within racialized communities.⁴⁴ Certain communities are singled out as incompatible with the norms of majority culture.⁴⁵ As state policy becomes narrowly focused on which differences should be accommodated, the effect is to transform minority rights, and the related framework of reasonable accommodation, into the benevolence of mainstream society’s tolerance. The term “reasonable accommodation” itself becomes a tool for “Othering,” strengthening notions of “us” — the tolerance givers — and “them” — the tolerance beneficiaries.⁴⁶ The terms of the debate themselves, that is who gets to decide what Canadian values mean, and the limits of tolerance, are rarely questioned — further proof of the normalization of the mainstream culture as universal — and, in turn, are further entrenched.⁴⁷

Paradoxically, rather than achieving its alleged goals of greater equality, integration, and inclusion, Bill 21 functions to exclude minority racialized women as citizens, not as a result of any action by community leaders, but through actions of a liberal democratic state.⁴⁸ Reasonable accommodation focuses exclusively on the limits of tolerance, and, as such, fails to consult minority perspectives and instead reinforces racial hierarchies. In this regard, structural racism and systemic discrimination survive while the state’s policy towards minorities is legitimized.⁴⁹ Bill 21 is a case in point. The law reflects the persistence of colonial and Orientalist discourses whereby the liberal state justifies its intervention to save “native” women from their barbaric, outdated customs⁵⁰ — that is, to save them from themselves. It conflates distinct belief systems and casts them as being in conflict with liberal democratic constitutional prin-

42 Vrinda Narain, “Bill 62: Legislating Difference” (2018) 9:1 *Columbia J Race & L* 53 at 91 [Narain, “Legislating Difference”].

43 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

44 Narain, “Legislating Difference”, *supra* note 42 at 59.

45 *Ibid.*

46 Vrinda Narain, “Critical Multiculturalism” in Beverley Baines, Daphne Barak-Erez & Tsvi Kahana, eds, *Feminist Constitutionalism: Global Perspectives* (Cambridge: Cambridge University Press, 2012) 377; Vrinda Narain, “The Place of the Niqab in the Courtroom” (2015) 9:1 *Vienna J on Intl Constitutional L* 41 at 48 [Narain, “Niqab in Courtroom”].

47 Narain, “Niqab in Courtroom”, *supra* note 46 at 48-49.

48 Vrinda Narain, “Taking ‘Culture’ Out of Multiculturalism” (2014) 26:1 *CJWL* 116 at 117.

49 Narain, “Legislating Difference”, *supra* note 42 at 78.

50 See, for example, Edward W Said, *Orientalism* (New York: Vintage, 1979); Gayatri Spivak, “Can the Subaltern Speak?” in Cary Nelson & Lawrence Grossberg, eds, *Marxism and the Interpretation of Culture* (Basingstoke, UK: Macmillan Education, 1988) 271; Vrinda Narain, “Difference and Inclusion: Reframing Reasonable Accommodation” in Richard Albert, Paul Daly & Vanessa A MacDonnell, eds, *The Canadian Constitution in Transition* (Toronto: University of Toronto Press, 2019) 216 at 237 [Narain, “Difference and Inclusion”].

ciples. As a result, legislative initiatives such as Bill 21 include measures which actually limit, rather than enhance, individual rights, limitations which are portrayed as necessary to counter, in particular, gender inequality in Islam. This current approach is neither sustainable nor helpful to its supposed beneficiaries, as the dominant political discourse on religious observance and practices conflates structural problems with questions of culture. Importantly, such discourses normalize what Anne Phillips terms “a falsely homogenizing reification.”⁵¹ Within these discourses, members of a cultural group are essentialized and reduced to a monolith; dissenting voices are dismissed as unrepresentative, painting cultural communities as more distinct from the mainstream than they actually are.

Within this dominant framework of minority rights, women’s equality and freedom of religion are pitted against state secularism. Secularism is posited as a modern and liberating force for minority racialized women in sharp contrast to religious practices that condemn women to subordinated roles in society.⁵² Yet here, secularism results in greater regulation of immigrant racialized women. It becomes critical, then, to deconstruct the notion of secularism and to understand how the secular/religious binary is superimposed on the modern/pre-modern understanding of mainstream society and racialized communities, resulting in the disempowerment of women within these communities.

III. Moving Forward

The judicial challenge to Bill 21, *Hak v Attorney General of Quebec*, is ongoing.⁵³ In April 2021, the Quebec Superior Court mostly upheld the law but carved out an exemption for English school boards and members of the National Assembly. The case was then appealed to the Quebec Court of Appeal, which heard arguments in November 2022.⁵⁴ In late February 2024, the Court of Appeal delivered its long-awaited decision, where a unanimous bench upheld the constitutionality of the law and reversed the exemption for English school boards validating the use of section 33, the Notwithstanding Clause. Both sides anticipate that the issues of the case — specifically Bill 21, but also the place of minority rights in Canada more broadly — will ultimately be addressed by the Supreme Court of Canada.

A notable position taken by the Court of Appeal concerns the rejection of the application of section 28, including in connection with the use of the notwithstanding clause. The Court of Appeal advances that given that the Quebec legislature applied the notwithstanding clause to its fullest extent, the relevant rights, such as the right to freedom of religion, are neutralized so as to render the gender equality guarantee contained in section 28 moot and without any utility.⁵⁵ This argument logically favours the position that section 28 does not guarantee a

51 Anne Phillips, *Multiculturalism without Culture* (Princeton: Princeton University Press, 2007) at 14.

52 See, for example, Leti Volpp, “Feminism Versus Multiculturalism” (2001) 101:5 *Columbia L Rev* 1181; Susan Moller Okin, “Is Multiculturalism Bad for Women?” (1 October 1997), online: *Boston Review* <<https://www.bostonreview.net/forum/susan-moller-okin-multiculturalism-bad-women/>> [perma.cc/SGT4-FNWX].

53 *Hak c Québec (PG)*, 2021 QCCS 1466.

54 Jesse Feith, “Challenge to ‘fundamentally problematic’ Bill 21 begins at Quebec Court of Appeal”, *Montreal Gazette* (08 November 2022), online: <<https://montrealgazette.com/news/local-news/bill-21-quebec-court-of-appeal-will-hear-challenge-to-secularism-law-monday>> [perma.cc/B3XL-EXFN].

55 *Organisation mondiale sikhe du Canada c. Procureur général du Québec*, 2024 QCCA 254 (CanLII) at paras 493, 502-505.

standalone right to gender equality, but merely an obligation to interpret and apply the rights and guarantees of the *Charter* in a manner consistent with the principle of gender equality. It should be noted first and foremost that this position is hardly reconcilable with the history surrounding the inclusion of section 28 in the *Charter*, though such an analysis is beyond the scope of this article.⁵⁶ For the purposes of this short article, I draw a parallel between the triumph of the notwithstanding clause over section 28 and legislative supremacy. Pursuing a technical, state-centred analysis the Court of Appeal failed fully to consider democracy in all its aspects — namely the protection of minority rights — while foregrounding legislative supremacy and federalism arrangements. The decision of the Court of Appeal is out of step with the changing face of Quebec’s diversity and does not adequately acknowledge minority rights.

Bill 21 cements the “majority” versus “Others” dichotomy.⁵⁷ Importantly, the urgency of integrating critical race and intersectionality theories in purportedly egalitarian policymaking is underscored. Consider, for example, the role of mainstream feminists in the debates on Bill 21. Positioned as the “Others,” Muslim women quickly become marginalized in appeals to feminism. Simultaneously, to be included in the universal feminist project often means shedding this Other(izing) culture.⁵⁸ By adopting a stance that fails to empower Muslim women or to recognize their agency in the (mis)conception that they are enhancing Muslim women’s liberties, conservative women politicians and leaders reinforce the hegemonic state and normalize the Orientalist victim narrative that paints racialized women solely in terms of suffering at the hands of patriarchy.

The erasure of race and immigration status from the debate, compounded with the essentialization of immigrant cultures as necessarily oppressive, raises questions with regard to the possibility of universal feminism. What is certain is that the stereotyping of racialized minority women has created and perpetuated myths about their participation in social and political institutions, and, in turn, further inflamed paranoia about minority values. From an intersectionalist feminist perspective, the *status quo* has failed to engage with questions of race and neocolonialism in the protection of women’s rights. Because reasonable accommodation focuses on the limits of toleration, it ignores any consideration of minority women’s rights and instead reinforces hierarchies of race, immigration status, and class. In the process, structural racism and systemic discrimination survive, and the state’s policy towards minorities gains ample justification. Here, reasonable accommodation obscures the serious ills of structural inequality, institutionalized racism, and the construction of difference, and reifies the terms of the debate into an “us” versus “them,” “benefactor” versus “beneficiary” binary.⁵⁹ Unless we insert race into the analysis, discourse on accommodation of difference will only serve to sustain the racial *status quo*. Power hierarchies will remain intact and Muslim women will continue to be deemed a “problem.”

56 For a detailed review of the origins and history of section 28, see Kerri Anne Froc, “The Untapped Power of Section 28 of the *Canadian Charter of Rights and Freedoms*” (2015), thesis submitted to the Doctoral Program in Law of Queen’s University.

57 Beaman, “Tolerance and Accommodation”, *supra* note 19 at 443-45; Narain, “Difference and Inclusion”, *supra* note 50 at 222.

58 Volpp, *supra* note 52 at 1201.

59 Beaman, “Tolerance and Accommodation”, *supra* note 19 at 443-45.

