in required cost later on.

There is reasonable normative uncertainty about the required cost to assist the poor abroad. This makes it hard to assess the magnitude of different agents' assistance shortfalls. We cannot try to resolve these complicating issues here. We only raise them in order to indicate some limits to the account presented here for issues of global poverty and the way in which affluent people's responsibility to bear cost can increase as a consequence of their earlier failures to assist.

Finally, it has been implicit in our discussion that the holdings of the person who is in a position to assist rightfully belong to him, but it is questionable whether we can say the same thing about wealth that is in the possession of affluent people in the world today.

7. Conclusion

In this essay, we have argued that it cannot be inferred from the fact that assistance-based duties are relatively undemanding that the duties of those who have failed to assist at some earlier time are undemanding as well. Like duties based on having contributed to hardship, the duties to assist of those who have earlier failed to assist can be quite demanding indeed—and can be enforced through the proportionate use of force. We concluded by noting some of the potential implications for the requirements imposed by assistance-based duties to the poor abroad.[23]

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Liberalism and the Muslim-American Predicament

Saba Fatima

Abstract: The underlying objective of this project is to examine the ways in which the exclusionary status of Muslim Americans remains unchallenged within John Rawls's version of political liberalism. Toward this end, I argue that the stipulation of genuine belief in what is reasonably accessible to others in our society is an unreasonable expectation from minorities, given our awareness of how we are perceived by others. Second, using the work of Lisa Schwartzman, I show that Rawls's reliance on the abstraction of a closed society legitimizes the exclusion of citizens with marginal social locations. And finally, applying Charles Mills's critique of ideal theory, I argue that Rawls's idealization of a posture of civic friendship detracts from a discussion of equally significant societal values while sustaining existing social hierarchies.

Keywords: Muslim Americans; Rawls; nonideal theory; public reason; loyalty; distrust

The Torn Muslim

"I'm also troubled by, not what Senator McCain says, but what members of the party say. And it is permitted to be said such things as, 'Well, you know that Mr. Obama is a Muslim.' ... But the really right answer is, what if he is? Is there something wrong with being a Muslim in this country? The answer's no, that's not America.

...

I feel strongly about this particular point because of a picture I saw in a magazine. It was a photo essay about troops who are serving in Iraq and Afghanistan. And one picture at the tail end of this photo essay was of a mother in Arlington Cemetery, and she had her head on the headstone of her son's grave.[1] And as the picture focused in, you could see the writing on the headstone. And it gave his awards—Purple Heart, Bronze Star—showed that he died in Iraq, gave his date of birth, date of death. He was 20 years old. And then, at the very top of the headstone, it didn't have a Christian cross, it didn't have the Star of David, it had crescent and a star of the Islamic faith. And his name was Kareem Rashad Sultan Khan, and he was an American. He was born in New Jersey. He was 14 years old at the time of 9/11, and he waited until he can go serve his country, and he gave his life. Now, we have got to stop polarizing ourself [*sic*] in this way."[2]

[1]"Service," *The New Yorker*, 29 September 2008; available at http://www.newyorker.com/online/2008/09/29/slideshow_080929_platon?slide=2#slide=16 (accessed 20 June 2013).

[2]Colin Powell, "Meet the Press" transcript for 19 October 2008; available at http://www.msnbc.msn.com/id/27266223/ns/meet_the_press/t/meet-press-transcript-oct/ (accessed 20 July 2013).

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On 19 October 2008, former U.S. Secretary of State Colin Powell endorsed Barack Obama for President, and in the process stood up for Muslim Americans in a way that no high-ranking American official ever had. Powell was able to say what Muslim Americans had been thinking all along during the 2008 Presidential campaign. The example he gave to help America understand why it could not polarize itself by putting Muslims and Americans on different ends of the spectrum was also deeply poignant. He gave the example of a sacrifice of the ultimate kind: a mother giving up the life of her child, a man who died for his country.

For most Americans, the unspoken sentiment that resonated through this example was that this young soldier had his loyalties in the right place. He was not a "bad" Muslim; he was "American."[3] He was a trustworthy, loyal, decent citizen, and any suspicions about his loyalty were laid to rest with his body. It is this notion of distrusting the loyalties and belonging-ness of Muslim Americans that motivates this project.

In this paper I examine how a sense of belonging within the nonideal world interplays with liberalism's stipulation for the use of publicly accessible reasons and the ways that such a criterion sustains the exclusion of minorities from participating meaningfully in the political arena. I focus on the case of Muslims in America as an example of the ways that marginal groups are excluded.

Throughout the paper, I use the terms "we" and "our" to refer to Muslim Americans. This terminology is especially interesting when I use it to refer to American society as "our society." I do this purposefully to bring out discomfort and mental adjustment in viewing American society as the society that includes Muslim Americans as well. That is to say, American society is our (Muslim Americans') society.

Furthermore, I concentrate on the implications of a *specific* sort of experience by Muslim Americans, namely, experiences characterized by elements of political disenfranchisement and distrust. I recognize the spectrum of diversity of experiences of Muslims, and even a diversity of who qualifies as a Muslim for which end. However, I focus on this particular sort of experience not because it is universal—far from it—but rather because it resonates with many marginal groups' political involvement and because it highlights a significant way in which normative ideal theory fails to address the concerns of minorities in a meaningful way.

[3]I use the term "American" in quotes to refer to those who fall within the umbrella of civic solidarity. I use this particular term because of how it is employed to limit the boundaries and content of political participation. It is reserved for those who espouse the dominant values of patriotism, freedom, democracy, and so on, in the way that has been co-opted by the government and its agencies in implementing our foreign policy. The definitional scope of the term is negotiable, because whether a person qualifies for the moniker or not is dependent on the views that person presents in a particular circumstance. For example, while a brown man may be assumed not to belong, the same person may be upheld as a testament of the American Dream when he espouses views consistent with the idea of America's manifest destiny.

The term "meaningful participation" is employed here to indicate participation in which Muslims may remain "whole," multiplicitous, without having to constantly restrict our claims in order to partake in political conversations of our country. I engage with John Rawls's specific version of political liberalism and his idea of publicly accessible reason. I argue for three separate but interrelated claims: First, the stipulation of genuine belief in what is reasonably accessible to others in our society is an unreasonable expectation from minorities, given our awareness of how we are perceived by others. Second, Rawls's reliance on an assumption of a closed society legitimizes the exclusion of citizens with marginal social locations. And finally, Rawls's idealization of a posture of civic friendship detracts from a discussion of equally significant societal values while sustaining existing social hierarchies.

These claims are interrelated in the following way: what we, Muslim Americans, believe to be publicly accessible to other Americans is affected by our awareness of our social location, and it is precisely that social location that partially constitutes our political affinities. Such affinities inform the background culture of our society, and partly determine the scripts accepted as *public* reason. My critique here is limited, as the paper only examines a specific demand of liberalism. I do not engage with Rawls's *Political Liberalism* as a whole, nor is this paper meant to be an analysis of liberalism as a political system. Rather, my purpose here is to work from an understanding of a specific sort of Muslim-American political experience—that of distrust and disenfranchisement—and offer a critique of Rawls's demand of utilizing publicly accessible reason as adversely contributing to that experience in a nonideal framework.

The Reasons We Offer

I engage with Rawls's version of the idea of public reason as it is one of the most compelling and influential arguments for the requirement of publicly accessible reason. I find Rawls's account to be the most convincing, and the least condescending toward nonliberal societies or individuals. For Rawls, the spirit of public reason lies in his emphasis that reasons presented to others for one's political actions ought to be such that one *genuinely believes* them to be reasonably accessible to others. Public reasons are not meant to be manipulative, or prey on individuals'

inferior social position. They are offered to fellow citizens with a sense of civil friendship. I claim that the social location Muslim Americans occupy negatively affects what we, Muslim Americans, genuinely believe to be reasonably accessible to others in our society. Specifically, being aware of the stereotypes around the socially constructed perceptions of our identity affects what we believe and, consequently, what we offer as public reasons.

It has been well documented that one's behavior is more likely to conform to a negative stereotype about one's social group once self-awareness exists about that stereotype. This particular phenomenon is referred to as *stereotype threat*, where one is "at risk of confirming, as self-characteristic, a negative stereotype about one's group."[4] Claude Steele and Joshua Aronson conducted several experiments in which, when race was not emphasized, black college freshmen and sophomores performed better than or equivalent to white students. However, black students performed more poorly than white students in instances when race was perceived to be of consequence. The studies showed that the reality of discrimination need not exist in that particular situation to produce the effects of stereotype threat. The expectation alone of one's actions being viewed through the lens of stereotype is sufficient to make one vulnerable to confirming one's stereotype.[5] In the case of Muslim Americans, for example, this is often the case at airports, where those of us who occupy visible markers of "Muslim-ness" are anxious about not appearing suspicious. While Muslims do not constitute any single ethnicity or race, they are still subject to people's perception of the "typical" Muslim body, often signified by arbitrary markers such as black beards, brown faces, turbans, hijabs, or South Asian looks.[6] It is irrelevant if one is a practicing Muslim. One can be secular, atheist, Sikh, or Hindu, and still be aware of one's possession and perception of these bodily markers. How we perceive our own bodies, then, becomes molded by how we are seen by others. The awareness of one's possession and perception of these bodily markers is sufficient. Consequently, that awareness precipitates anxiety that confirms the stereotype of our having something to hide while traveling. Airport security personnel need not be scrutinizing

[4]Claude M. Steele and Joshua Aronson, "Stereotype Threat and the Intellectual Test Performance of African Americans," *Journal of Personality and Social Psychology* 69 (1995): 797-811, p. 797.

[5]Ryan P. Brown and Elizabeth C. Pinel, "Stigma on My Mind: Individual Differences in the Experience of Stereotype Threat," *Journal of Experimental Social Psychology* 39 (2003): 626-33.

[6]For a fuller discussion of the visible markers associated with the Muslim body, see Saba Fatima, "Who Counts as a Muslim? Identity, Multiplicity and Politics," *Journal of Muslim Minority Affairs* 31 (2011): 339-53.

the particular body in question, but self-awareness alone of one's stereotype associated with one's body is enough to elicit behaviors that confirm it.

Furthermore, this awareness of the expectation of one's stereotype elicits further anxiety to regulate one's own behavior in the face of that stereotype. A study in an advanced-level math class showed that when a calculus exam was indicated as being diagnostic of mathematical ability—where women were perceived as "naturally" weak—female students performed at par with the men. When the other half of the test-takers were assured that "this mathematics test has not shown any gender differences in performance or mathematics ability," the women in this group outperformed the women in the stereotype-threat group, as well as the men in either sample.[7] The study showed that stereotype threat harmed the academic performance of women for whom the situation invoked a stereotype-based expectation of poor performance in math, and the assurance of test fairness negated the stereotype threat. According to research conducted by Toni Schmader and colleagues,[8] there are three interrelated effects of stereotype threat, all of which affect the efficiency of working memory: (1) physiological stress that often arises following stereotype threat (e.g., knowledge that people view you or your testimony with suspicion); (2) performance monitoring that occurs as individuals try to regulate their behavior under stereotype threat; and (3) attempted emotional regulation as individuals try to control the affective responses that arise when threatened. Not only does the anxiety that follows the experience of stereotype threat affect one's behavior, but also the subsequent attempt to regulate both the anxiety and the behavior actually undermines focus on the task at hand.

In the case of Muslim Americans, behavior that might reflect on our perceived loyalty to the United States of America is under constant scrutiny. We are often subject to suspicion of displaced loyalty and perceived as having vastly different basic life values. The stereotype that is sometimes attached to our identity is that if a person appears to follow Islam, then simply by virtue of being Muslim one will inherently have anti-American loyalties and values. Such stereotypes attached to Muslim-American identity are akin to ones that were attached to Japanese-Americans during World War II—where there was a suspicion of displaced nationalistic loyalty—and to Communists during the Cold War—

[7]Catherine Good, Joshua Aronson, and Jayne Ann Harder, "Problems in the Pipeline: Stereotype Threat and Women's Achievement in High-Level Math Courses," *Journal of Applied Developmental Psychology* 29 (2008): 17-28.

[8]Toni Schmader, Michael Johns, and Chad Forbes, "An Integrated Process Model of Stereotype Threat Effects on Performance," *Psychological Review* 115 (2008): 336-56.

where there was a prevalence of the belief that Communists stood for values that were oppressive, with an intent to take over capitalist regimes like the United States. As such, Muslim Americans are often assumed to have their loyalties to the United States affected by their diasporic ties, and/or have their values significantly determined by their supposedly supremacist religious dogma. Polls, taken as long as a decade after 9/11, have indicated that about 40% of the American general public still perceived that Muslim Americans "support extremism" a great deal or a fair amount, and about a quarter believed that this support is on the rise.[9] Such polls reveal the underlying distrust of whose "side" others think we, Muslim Americans, are on in this "war on terrorism" and the sort of illiberal values that our religion presumably demands of us.

More importantly, Muslim Americans are aware of such perception, especially when it comes to issues concerning foreign policy and domestic terrorism laws, issues that place Muslims at the center of suspicion and distrust. The Pew Research Center's national survey report states:

> Significant numbers [of Muslim Americans] report being looked at with suspicion (28%), and being called offensive names (22%). And while 21% report being singled out by airport security, 13% say they have been singled out by other law enforcement. Overall, a 52% majority says that government anti-terrorism policies single out Muslims in the U.S. for increased surveillance and monitoring ... reports about such experiences and feelings of being subject to intense scrutiny have not changed substantially since 2007.[10]

Muslim Americans understand that at some level, our own government doesn't consider us "theirs." For example, a study by the Center for Human Rights and Global Justice at New York University highlighted that the United States government routinely uses discriminatory profiling such that Muslim activities are "being construed as dangerous terrorism-related factors to justify detention, deportation, and denial of immigration benefits. The government seems to be targeting Muslim immigrants not for any particular acts, but on the basis of unsubstantiated innuendo drawing largely on their religious and ethnic identities, political views, employment histories, and ties to their home countries."[11] Our awareness of how we are perceived by the very government that promises to protect our rights has affected how we regulate our social and political scripts in

[9]The Pew Research Center, "Muslim Americans: No Signs of Growth in Alienation or Support for Extremism" (30 August 2011), http://www.people-press.org/files/legacy-pdf/Muslim%20American%20Report%2010-02-12%20fix.pdf (accessed 25 December 2013).

[10]Ibid.

[11]Center for Human Rights and Global Justice, Asian American Legal Defense and Education Fund, *Under the Radar: Muslims Deported, Detained, and Denied on Unsubstantiated Terrorism Allegations* (New York University School of Law, 2011), p. 2.

civil society.

This awareness of our stereotype places us as subjects of distrust and disloyalty within the political domain, and limits how Muslim Americans communicate and the reasons we offer. Our own understanding of what will be perceived as reasonable by which audience shifts with our understanding of how we are perceived by that audience. Again, our perception of how we believe we are seen need not correspond to how we may be actually perceived. Simply the expectation of being seen as such (as disloyal, suspicious, and so on) is enough to adversely affect our behavior. For example, our political expressions regarding Iraqi insurgent opposition to U.S. troops or about Palestinian statehood are self-regulated in large part by how we (Muslim Americans) believe other Americans will "hear" us. In such situations, reasons cannot be offered in good faith because many Muslim Americans believe that arguments *cannot be heard* in good faith.

Elsewhere,[12] I have argued that Muslim Americans' trust in our own and others' epistemic status is adversely affected by our awareness of being suspected of "ingrown" terrorism or of even having sympathy for Muslims in "enemy" countries. In other words, Muslim Americans are painfully aware of the doubt attached to our political testimony; we know it will be dismissed as epistemically untrustworthy in virtue of the perception of values and loyalties attached to our identity. Therefore, we regulate our political expression to avoid fulfilling our stereotypes as suspect and disloyal. The intent here is not to be manipulative of our true motivations, but rather to exercise caution. The very spirit of Rawls's public reason can only be realized by citizens who already have the epistemic trust of the dominant culture. Those of us who fear retribution or social marginalization must regulate our behavior, speech, and emotions, and consequently have little possibility of fulfilling Rawls's stipulation of realistically believing our political speech as reasonably accessible by our fellow citizens. For some Muslim Americans, there is much anxiety that exists about fear of assets being frozen, being electronically and physically monitored for political activity, revocation of citizenship, extraordinary rendition, deportation, detention without representation, and so on.[13] More precisely, such fears, whether they are well-founded or

[12]See Saba Fatima, "Muslim-American Scripts," *Hypatia* 28 (2013): 341-59.

[13]The threat of the "unknown" (such as rendition, interrogation, etc.) is very real for many Muslim Americans who witness their family members struggle with immigration issues, creating "feelings of stress, anxiety, frustration, and depression that undermine their sense of identity and community solidarity." See Center for Human Rights and Global Justice, *Americans on Hold: Profiling, Citizenship, and the "War on Terror"* (New York University School of Law, 2007), p. 23; http://chrgj.org/wp-content/uploads/2012/07/AmericansonHoldReport.pdf.

based in anecdotal evidence, have created an environment for many that leads us to inhibit and regulate our political identity and behavior.

Who Belongs? The Closed Society

My second concern with Rawls's demand for public reason has to do with the employment of the method of *abstraction* for theory construction. To arrive at an uncluttered view of what justice demands, Rawls attempts to abstract from the nonideal world, and assumes a closed society for theory construction. I argue that the assumption of a closed society for the sake of abstraction is a crucial aspect of public reason, and this assumption obscures and sustains the exclusion of many Muslim Americans within the political domain.

For Rawls, keeping in mind the fact of reasonable pluralism, the way we ought to reason with one another in order to make political decisions is through public reason. One particular motivation for honoring the limits of public reason is dependent on the nature of *relationship* among democratic citizens. This relationship is formed within the basic structures of society in a well-ordered constitutional democracy in which citizens "lead a complete life."[14] Furthermore, one's social and political self is shaped by the principles and laws one lives under while living that complete life. According to Rawls, we gain an inexpressible knowledge of the society and culture in which we have been raised, and "whose history, customs and conventions we depend on to find our place in the social world."[15] In other words, not only are our own conceptions about civil society and the political domain in part molded by where we live from birth to death, but in many ways, the nature of our relationship with other citizens is affected by what to expect from those who have grown up likewise, embedded within similar conventions. Rawls goes on to acknowledge that "a closed society ... is a considerable abstraction, justified only because it allows us to focus on certain main questions free from distracting details."[16] Here I want to focus on how this abstraction is central to the main questions at hand, namely, the nature of public reason.

Lisa Schwartzman, in her discussion of Rawls's original position and reasonable pluralism, argues that the features of society that ought to be critiqued are the very features that Rawls's theory attempts to abstract from. She argues that ideal theory cannot be realistically constructed

[14]John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia University Press, 1996), p. 217.

[15]Ibid., p. 222.

[16]Ibid., p. 12.

without reference to the nonideal world; one inevitably borrows from the world one is familiar with.[17] Thus, in an attempt to abstract from crucial features of our society, the resulting theory leaves unchallenged the existing social hierarchies within our institutions that one may be unaware of because of one's privileged social location. This critique by Schwartzman of the original position is a useful tool for an analysis of the discourse on public reason. I use this critique of abstraction to argue that Rawls, while explicitly making an assumption of a closed society, leaves unchallenged the implications for individuals or groups not perceived as part of the shared culture.

Rawls abstracts away from the messy particularities of this world, and makes the assumption of a society where citizens live a complete life. Rawls's purpose of assuming a closed society is to focus on the fundamental ideas about justice and fairness, such that we can apply them to our society. In this sense, his reliance on the assumption of a closed of society is, to use Charles Mills's term, an "ideal-as-descriptive-model."[18]

I use the word "descriptive" here as Mills explains it—that is, as a description of a model that acknowledges the crucial aspects of constructing theoretical principles, but also acknowledges that *not every* detail of the actual thing is present in the model because those details are not *crucial* to the theory at hand.[19] Let me illustrate by expanding on a variation of Mills's example,[20] with the case of an aerodynamicist building an airplane model for the purpose of devising theoretical principles about the effects of air on real-life airplanes. She will be more concerned with how accurately the model plane is shaped than with ensuring that the details on the model engine are accurate. The aerodynamicist will acknowledge that the model is not meant to be true for any airplane on

[17]An important illustration of Rawls's attempt at the methodology of abstraction in theory construction is found in Schwartzman's critique of Rawls's discussion of pluralism. The central problem presented in *Political Liberalism* is to find a solution for maintaining pluralism—with the exception of extreme unreasonable comprehensive doctrines —and finding a political conception of justice. As Rawls uses the actual world as a reference for constructing his ideal theory, Schwartzman argues that Rawls legitimizes some of the comprehensive doctrines that feminists would find clearly oppressive. With the exception of extreme unreasonable views such as religious fundamentalism, most comprehensive doctrines are compatible with justice and hence ought to be included in the sphere of politics. However, in the nonideal world there are many "reasonable" comprehensive doctrines that support and promote racist and sexist perspectives. See Lisa Schwartzman, *Challenging Liberalism: Feminism as Political Critique* (University Park: Pennsylvania State University Press, 2006), p. 68.

[18]Charles Mills, "'Ideal Theory' as Ideology," *Hypatia* 20, no. 3 (2005): 165-84, p. 166.

[19]Ibid., pp. 166-67.

[20]I base my example on a similar analogy drawn by Charles Mills to illustrate how ideal theory is not useful for addressing real-world problems. See Mills, "'Ideal Theory' as Ideology."

the market because it lacks many real-life features, but that for the purpose of constructing the best, most efficient theory of aerodynamics, the model suffices. In this sense, the model airplane is descriptive of a real airplane's crucial aspects needed for construction of a theory of aerodynamics. Similarly, Rawls assumes a closed society—just as the aerodynamicist assumes a simplified engine—for the purpose of constructing a theory about how to best conduct ourselves politically, and his answer lies with public reason. It is not that Rawls aims to realize this ideal, but rather, it is an assumption he makes merely for simplicity.

Now if the specifications of the engine significantly modify the effect of the atmosphere on the plane, then it is moot to discount the heaviness, the shape, or the location of the engine for the sake of simplicity. Such is the case with assuming a closed society. The assumption of a closed society for theory construction leaves unchallenged the exclusionary status of those who are politically marginal due to their geopolitical ties. Because Rawls theorizes about a closed society, his theory offers nothing by way of how to change one's dealings with citizens who do not share one's background culture or values. Rawls acknowledges that the assumption does not apply to any citizen, because obviously it is not true for anyone to *truly* belong to a closed society. However, it in particular reinforces the exclusion of those who are not engaged in public reason because their self is not considered as possessing the necessary elements of democratic liberal values that are entailed within the idea of a closed society.

The assumption of a closed society leans heavily on the foundations of the ideal of public reason, and this is apparent in Rawls's discussion of the model of a citizen. Reasonable and rational citizens genuinely attempt to fulfill the ideal of public reason by offering other citizens reasons that can reasonably be expected to be endorsed. These citizens are ingrained with a sense of shared history, culture, customs, and values that they spend their lifetimes habituating through living a complete life within that closed society. Thus, Rawls reasons that citizens who grow up within a constitutional democracy, such as the United States,[21] have an innate knowledge of the history, customs, and democratic values of this society. In this sense, the shared background culture and values facilitate

[21]Throughout Rawls's works, it becomes clear that even as he attempts to abstract and theorize about an ideal world, he borrows heavily from the one he occupies, and regards the United States as a nearly-just country in his hierarchy of types of domestic societies. In *The Law of Peoples*, he refers to the United States as a "liberal democratic people" (John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 1999), p. 101). In "The Idea of Public Reason Revisited," Rawls cites the United States as a Western democracy that "accepts a constitutional democratic regime and its companion idea of legitimate law" (ibid., p. 132).

engaging in public reason.

Relying on this assumption of a closed society, Rawls leaves blurry margins between his ideal theory and the nonideal world where this theory is to be applied. The application of public reason legitimizes the exclusion of a citizen who is believed to not be a part of the closed society, or to not be inculcated with its values.[22] By not explicitly considering the spectrum of loyalty and plural values as significant for a descriptive account of a society, the resulting ideal theory becomes inadequate to address our disenfranchisement in the nonideal world of inter- and intra-group relationships between Muslim Americans, "Americans," and the Muslim countries to which we as Muslim Americans have diasporic ties.

It is significant to note that our view and assessment of who belongs in a collective is often arbitrary, for no identity is essentialist or static in nature. Such is the case for our perception of what it means to be an American. Those amongst us who have visible markers of being Muslim—that is, we fulfill some arbitrary criteria such as being brown, wearing a hijab or any clothing that denotes African or Middle Eastern ties, and so forth—are then deemed as not belonging. The Pew survey showed that only 33% of the general American public thinks that Muslim Americans who come to the United States want to adopt American customs.[23] And the reason we do not belong is not merely because we are perceived to be immigrants, but rather that we adhere to a religion that is seen as dictating illiberal values and imposing split loyalties.[24] One such issue that has become a symbol for our archaic oppressive views is veiling. Consequently, the extent to which we belong to the American society is measured by the degree to which we have abandoned our "native," or "backward," practices, such as the hijab. Veiling, visible and easily identifiable, was normalized within our society as a "legitimate" reason as to why the United States should

[22]Here, I want to differentiate my discussion from Marilyn Friedman's critique of Rawls, which is grounded in the criteria of who qualifies as a reasonable and rational citizen and who is relegated outside the realm of negotiation as illiberal and intolerant of others. Marilyn Friedman, "John Rawls and the Political Coercion of Unreasonable People," in Victoria Davion and Clark Wolf (eds.), *The Idea of a Political Liberalism: Essays on Rawls* (Lanham, Md.: Rowman & Littlefield, 2000), chap. 1. Unlike her, I am more concerned with perception and self-perception of segments of population that are deemed as "getting" or embodying American values in ways that dominant members of American society do.

[23]The Pew Research Center, "Muslim Americans."

[24]Falguni Sheth highlights the ways that the West regards reasonable people as those who can separate religious identity from their political self-understanding. She writes that in Rawls's writing, "the inferior group is ... substantiated by the population called 'Muslims' whose questionable ascription to religion as the grounds of their political worldview renders then a suspect group." Falguni Sheth, *Toward a Political Philosophy of Race* (Albany: State University of New York Press, 2009), p. 78.

fight in Afghanistan.[25] Thus, how we defined members of our "closed society" regulated our public discourse on our wars.

Furthermore, I argue that Rawls's assumption of a closed society is not easily remedied by replacing the descriptive with that of an "open" society,[26] because the assumption—while made for simplicity—is crucial to creating the circumstances needed to realize the ideal of public reason.

The ideal of public reason is fulfilled only when reasonable and rational citizens are willing to honor their duty of civility to each other, by explaining their political actions in terms of political values reasonably accessible to others, hence preserving the ties of civic friendship. This duty of civility is inculcated through being familiar with one's cultural and historical values (values of democracy, freedom of speech, and so on)—public values that are integral to a constitutional democracy. I address the posture of civic friendship in my next objection, but the point to note here is that for Rawls, the ideal of public reason is based on the precise public values that are considered absent in Muslim Americans and the enemy states we are perceived to have ties to and affinities for. So perhaps in ideal theory, Muslim Americans are subsumed under the umbrella of citizens who ought to aim for the ideal of public reason, but in the nonideal world Muslim Americans are not equal citizens because the values according to which a citizen is owed the duty of civility are the antithesis of the values associated with Muslim Americans. The assumption of a closed society is never true for anyone in the strictest sense; however, it is even more so for Muslim Americans in that they are considered near-devoid of the democratic and liberal values that are associated with belonging generationally to a constitutional democracy such as the United States. This affects the form of public reason that one offers to, or expects from, Muslim Americans.

[25]Leila Ahmed writes about how first ladies of the United States and Great Britain warned that what we see in Afghanistan is what the terrorists wish to impose on all of us, setting the veil not in opposition to the values we fight for, but the very (moral) justification for the war. See *A Quiet Revolution: The Veil's Resurgence, from the Middle East to America.* (New Haven, Conn.: Yale University Press, 2001). For a detailed analysis of the racialization of the hijab, see: Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, Conn.: Yale University Press, 1992); Alia Al-Saji, "The Racialization of Muslim Veils: A Philosophical Analysis," *Philosophy and Social Criticism* 36 (2010): 875-902; and Tanja Dreher and Christina Ho, "New Conversations on Gender, Race and Religion," Introduction in Tanja Dreher and Christina Ho (eds.), *Beyond the Hijab Debates* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2009).

[26]Here I build on Schwartzman, who contends that the answer cannot lie in simply including the social position of women as a relevant social position in Rawls's *original position,* as it is precisely the sort of information that Rawls brackets. Rawls identifies relevant social positions in the original position as those that would be relevant in a well-ordered society. For Schwartzman, we cannot simply introduce the category of gender into the original position, when it is the very category that many feminists argue ought to be eradicated in a well-ordered society. Thus, the features of the society that are unjust and which we ought to critique are the very features the methodology of abstraction brackets out, and leaves unchallenged in its resulting theory. Schwartzman, *Challenging Liberalism*, p. 65.

Falguni Sheth, in *Toward a Political Philosophy of Race*,[27] raises this very concern in her discussion of the justification for mutual understanding and, consequently, the mutual trust that is implicit in Rawls's writing. Rawls asserts that by declaring our different comprehensive doctrines, we affirm to others who hold different doctrines that we "also each endorse a reasonable political conception belonging to the family of reasonable such conceptions."[28] This implies that there is a shared understanding of the parameters of the public (the political conception) and the private (the comprehensive doctrine) that is an essential condition of successful public communication. But this success is already dependent on "having a shared culture of reason. If I am to trust you will treat me equally and reciprocally, then I must trust you are rational like me, reasonable like me (both of which presume some overlap between our respective worldviews and understandings)."[29] It is this very worldview to which Muslims are not considered privy. According to Sheth, the currency of liberalism is not merely the ideas conveyed through words, as is often purported, but also the tone of those words and how one reads/hears the other's message. Muslim Americans' political testimonies are then heard through our beards, hijabs, and visible adherence to Islam, and those signifiers become symbols of our incompatibility with liberal values and distinctions.

Thus, this assumption of a closed society for the sake of simplicity avoids addressing the cause of political disenfranchisement of Muslim Americans and sustains our political marginality. A more accurate description of our society ought to acknowledge that Muslim-American social and political experiences are often not shared, are often perceived as foreign and anti-American. Consequently, the resulting theory about how to conduct our political discourse would acknowledge alternative scripts that perhaps do not rely on a shared background culture or closed society.

Distrust and Civic Friendship

My final objection to Rawls's idea of public reason is his reliance on the ideal of civic friendship. For Rawls, as all citizens ought to have equal

[27]Sheth, *Toward a Political Philosophy of Race.*

[28]Rawls, *The Law of Peoples*, p. 155.

[29]Sheth, *Toward a Political Philosophy of Race*, p. 100.

share in the opportunity to exercise political power, the idea of reciprocity demands that reasonable citizens be able to justify their political decisions to others in a way that can be reasonably understood. Citizens bear a duty—out of civility, mutual respect, and a sense of civic friendship—to refer to public values and standards when making political or social arguments and decisions.[30] Furthermore, they have a duty that "involves a *willingness to listen* to others and a fairmindedness in deciding when accommodations to their views should reasonably be made."[31] In this section, I want to focus on the problematic nature of aiming for civic friendship toward a segment of the population that is distrusting and distrusted within the social and political sphere.

Schwartzman argues that certain ideals, for example, a conception of a rational and reasonable human agency, are unattainable ideals. They are not false in the sense that they have not been achieved yet (as with all ideals that one aims for), but rather that they are unachievable for most moral agents. As a consequence of assuming such ideals, when ideal theory is applied to our nonideal world, it overlooks the systemic oppression of minorities that is obscured as a result of such assumptions. The solution for Schwartzman is not that we do away with idealization within liberalism, but that we begin with a normatively truer descriptive of individuals. Once our ideal has taken into account the nonideal world, we can then begin to focus on the most informed way of achieving our said ideal. Here, I utilize this account of *idealization* to examine the experiences of distrust in Muslim-American lives. Again, as stated in the introduction, such experiences are certainly not universal; rather, they highlight a crucial flaw within ideal theory as it plays out in the lives of some Muslim Americans.

For Rawls, in order for the ideal of public reason to be fulfilled, citizens must be willing to honor the duty of civility such that they have a sense of civic friendship. Civic friendship is what an ideal citizen ought to strive toward as a political participant of society in order to achieve the ideal of public reason. In Mills's terms, it is an "ideal-as-idealized-model" of human capacity (i.e., ideal in the sense that this is how we ought to be).[32] This ideal has normative grounds, such as allowing for genuine discussion of public policy, or mutual respect for the participants, and so on.

My argument here is not that the ideal of civic friendship is unachievable or something one ought not to strive for. My claim is that when Rawls characterizes human beings as possessing or aiming for a posture

[30]Rawls, *Political Liberalism*, p. 137.
[31]Ibid., p. 217 (my emphasis).
[32]Mills, "'Ideal Theory' as Ideology," p. 167.

of civic friendship, it detracts from an honest discussion of what constitutes that shared culture and those shared values. Merely aiming for the posture of civic friendship glosses over hierarchies that place individuals at different social locations, granting the privileged the license of being master narrators of what it means to be "American."

A bare-minimum notion of civic friendship necessarily entails a degree of goodwill and mutual concern for fellow citizens. Such an ideal of human agency would not be hard to achieve toward those whom one is comfortable with, whose ideas one bears little resistance to, or with whom one shares similar values and background culture. However, in the nonideal world, there are deep political disagreements. Often in times of crisis such as natural disasters or war, societies generally coalesce toward a nationalistic sense of solidarity to address the calamity. For the United States, the events of 9/11 served as one such situation when the country overcame partisanship in order to face the common enemy.[33] Unfortunately for Muslim Americans, that "enemy" was blurred with misconceptions about Muslims at large, their political agenda, their motivations, and even their supposed inherent characteristics as practicing Muslims.

Under such perceptions, it is difficult to have goodwill and mutual concern for Muslim Americans when it comes to issues of foreign policy or national security. By not acknowledging the workings of civic friendship or the pre-conditions for its fulfillment, one may gloss over what is required for that fulfillment, and take away from "our comprehension of the actual workings of injustice in human interactions and social institutions, and thereby guaranteeing that the ideal-as-idealized-model will never be achieved."[34] For Muslim Americans, the precondition for the fulfillment of civic friendship requires a certain degree of familiarity and trust of their epistemic testimony.

Charles Mills addresses this concern in the context of race relations in the United States. For Mills, merely positing an ideal is not the best way to move toward it, as it leaves unaddressed many of the historical and structural injustices of the real world. He argues that behind Rawls's veil of ignorance, crucial knowledge that is required to address the need for

[33]Mahmood Mamdani talks about how tragedies have the potential to connect with humanity, but often that connection is only made with others considered part of the society that bore the tragedy. He writes that "never again" "lent itself to two markedly different conclusions: one was that never again should this happen to *my* people; the other that it should never again happen to *any* people. Between these two interpretations, I suggest nothing less than our common survival is at stake." It is perhaps the case that for the United States, "never again" for 9/11 has meant never again to *my* people. See Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (New York: Pantheon Press, 2004), pp. 10-11.
[34]Mills, "'Ideal Theory' as Ideology," p. 170.

rectificatory justice for African Americans in light of the United States' history of slavery and discrimination is blocked from consideration. The resulting ideal theory is inadequate. This is because, first, the question of what is required to redress past injustice is not the task of ideal theory—the task of ideal theory is to determine what is ideally required for justice in *a well-ordered society*. Second, "[r]eference to what would counterfactually, ideally have been the case may be *simply irrelevant or unhelpful*, for example because the ideal situation cannot be restored (as in the case of wrongful deaths during slavery, or the return of the Americas to Native Americans), or because we have to work with the continuing nonideal realities which Rawlsian concepts of an idealized polity or economy do little to illuminate."[35] Here, Mills highlights how ideal theory cannot address past or current realities of a nonideal unjust world.

In the case of Muslim Americans, it appears intuitively attractive to posit the ideal of civic friendship, especially considering liberalism's commitment to the value of pluralism. However, merely aiming for this ideal does not help one achieve it toward Muslim Americans. There has to be consideration of the historical and complex relationships between Muslim nation-states, entities, and bodies and the United States. An examination of the nature of relationship allows us to acknowledge the distrust of our loyalties and values. Furthermore, we have to address corresponding, and often competing, values to the ideal of civic friendship that Americans may hold dear, for example, a sense of national security, freedom of speech, or right to privacy. Merely aiming for an ideal, as Rawls does, hinders one from examining the complex relationship between citizens who are concerned about protecting the United States from ingrown terrorists and having a posture of civic friendship toward Muslim Americans. It is illuminating to consider cases of individual who may have been deemed "integrated" or considered as portrayals of what it means to be "All-American" prior to their violent acts. Before their crimes, Faisal Shahzad, Hasan Nidal, and the Tsarnaev brothers seemingly embodied the immigrant visions of the American Dream. In some sense, they had all absorbed American culture. Yet, they were not American in a very important way, a way that other (white) mass shooters are. Their acts were perceived as a testament of the legitimacy of distrust of Muslim Americans. Each of these cases created a wider fracture in the possibilities of extending the posture of civic friendship to Muslim Americans post 9/11. It is crucial then to discuss the serious—and often legitimate—reservations that other Americans may have about Muslim Americans. Conversely, any foundation of civic friendship would also

[35]Carole Pateman and Charles Mills, *Contract and Domination* (Cambridge: Polity Press, 2007), p. 114 (my emphasis).

have to acknowledge incidents such as rash arrests of Muslim Americans, indefinite detention, interrogation, deportation, spying on Muslim student groups and mosques, and so on.[36] Without examining the workings of civic friendship, its relationship with national security, our contemporary history of antagonism, and the prevalent view of Muslim Americans, setting the model of human agency as one that has a posture of civic friendship makes it harder to study the impediments in the way of maintaining such a posture toward Muslim Americans. Idealizing such a posture without a corresponding acknowledgment of reality leaves unchallenged, and consequently sustains, the absence of Muslim-American political voices in the United States.

Furthermore, the solution does not lie with simply rectifying the perceptions and stereotypes associated with Muslim Americans. While that may alleviate the situation of Muslim Americans specifically, the objections lie with the nature of theory construction and are applicable for yet other minorities who will be viewed as threats to the polity and who consequently cannot be privy to a genuine posture of civic friendship.

Conclusion: The Outsiders

Falguni Sheth argues that domination through racialization is the *intrinsic* function of liberalism and that liberalism derives its legitimacy from its control of the most vulnerable subjects of society. She argues that historically there are a series of moments of severe corruption of the promise of equal protection for all citizens even as the framework of universal rights is simultaneously put forth, and these moments are not isolated as presented, but rather continuous. I agree with Sheth only insofar as within a pluralistic liberal society there will always be a population that does not qualify as fully as the dominant class to be under the protection of the universal rights that liberalism promises its subjects. However, unlike Sheth, I do not see this as an *intrinsic* function of liberalism. Philosophers engaged in nonideal theory, like Charles Mills[37] and Lisa Schwartzman,[38] among others, would argue that assumptions embedded within liberal theory construction *do* conceal discrimination, but that does not entail doing away with liberalism itself. In a similar vein, my paper situates itself within nonideal theory, insofar as it acknowledges that any

[36]To read more about the workings of distrust of Muslim Americans and the Muslim's distrust of authorities, see Saba Fatima, "'Presence of Mind' Freedom, Religion and Gender," *Social Philosophy Today* 28 (2012): 131-46.

[37]In Pateman and Mills, *Contract and Domination*, and in Mills, "'Ideal Theory' as Ideology."

[38]Schwartzman, *Challenging Liberalism*.

possibility of being "able to realize the ideals [must begin] by ... realistically recognizing the obstacles to their acceptance and implementation."[39]

As stated initially, my aim here is not to offer a thorough critique or reconstruction of liberalism; rather, I have drawn attention to the flaws in the construction of liberal theory brought to light by the Muslim-American case. In this sense, it is not enough that we, Muslim Americans, simply wait out our turn as the outsiders, or even that we actively resist this marginal location as other outsider groups have done so historically. Rather, it is imperative that we recognize the nonideal world as our starting point for any possibility of working toward liberal values in order to create space for ourselves and other liminal groups. This paper highlights a crucial weakness of Rawls's idea of public reason in how it fails to address perception and self-perception of marginal groups (in this case, Muslim Americans) and consequently sustains the exclusion of their political testimony. I have argued here that (some) marginal populations will always have to regulate their political expression, will not be privy to a sense of belonging, and not be afforded the posture of civic friendship that public reason entails. Public reason then fails to address the very citizens whose engagement it seeks to protect, those who are on the political fringes of our society.[40]

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[39]Mills, "'Ideal Theory' as Ideology," p. 181.

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Immigration: The Argument for Legalization

Adam Omar Hosein

Abstract: Many liberal democracies have large populations of "unauthorized" migrants, who entered in contravention of immigration laws. In this paper, I will offer a new argument for allowing long-resident unauthorized migrants to transfer to "legal" status, which would allow them to live and work legally in their country of residence, without fear of deportation. I argue that legalization is required to secure the autonomy of these migrants, and that only by securing their autonomy can the state exercise authority over them legitimately. I also respond to popular objections to legalization and illustrate the distinctive policy implications of my approach.

Keywords: immigration; undocumented immigrants; irregular immigrants; amnesties; Joseph Carens; deportation; unauthorized immigrants; autonomy

1. Introduction

How should states treat people who enter their territory in violation of their immigration laws? These migrants are sometimes called "unauthorized" and sometimes "illegal," but since those terms have become so politicized I will just use the (I hope) more neutral term "unauthorized."[1] In recent years, there have been many controversies about the treatment of unauthorized migrants. In this paper I would like to consider perhaps the most controversial step: allowing them to transfer to "legal" status, which would enable them to live and work legally in the territory.

One way to defend legalization is to argue for open borders in general: the view that people should be allowed to move freely across political borders and settle where they wish.[2] If states are required to have

[1]There is a technical use of "immigrant" that means "permanent resident" and a corresponding use of "nonimmigrant" to mean "someone present in a territory on a temporary basis." Since these terms imply a particular legal status, and I want to discuss a variety of legal statuses, I am instead going to speak just of "migrants," meaning the broad category of people who move from one territory to another for any length of time. I'll use the term "long-term migrant" to refer to those who are present in a territory for a substantial time period.

[2]For a critical survey of the literature on open borders, see Shelley Wilcox, "The Open Borders Debate on Immigration," *Philosophy Compass* 4 (2009): 1-9.

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