Canada has a well-deserved reputation as a multicultural society. This reputation, moreover, is not just a self-serving Canadian myth: the 2006 Census discloses some remarkable statistics about the ethnic composition of Canada. According to the 2006 Census, Canadians reported belonging to more than 200 ethnicities as compared to the 25 ethnicities they reported in the 1901 Census. The proportion of Canadians belonging to visible minorities was 16%, or approximately 5 million (out of a total population of 34 million), as compared to 13%, or slightly less than 4 million, in 2001. That translates into a five-year growth among visible minorities of 27% compared to 5% growth for the rest of the Canadian population.

Nevertheless, the Canadian population remains largely of European ancestry: of the eleven reported ethnicities that exceed 1 million, the only non-European ethnicity that exceeds 1 million is the Chinese. Moreover, census data also supports the conclusion that over several generations, immigrants take on a “Canadian” identity, whether exclusively or with another hyphenated ethnicity.

Multiculturalism, however, is not simply an empirical reality in today’s Canada; it is also a legal commitment, explicit reference to which is made in Section 27 of the Canadian Charter of Rights and Freedoms. That provision provides that the Charter shall be interpreted in a manner to preserve and enhance “the multicultural heritage of Canadians.” Still, it would be an error to ascribe too much legal significance to Section 27. The Charter’s provision regarding multiculturalism is not a source of substantive
rights in as much as it is simply a recognition that Canada is a multicultural society, and that Canada is committed to preserving this reality against voices who would want to transform Canada into a monocultural society.

Much more important than the Charter’s reference to multiculturalism is the Charter’s commitment to individual rights as set out in the interaction between Sections 1 and 2 of the Charter. Section 2 guarantees individuals in Canada certain rights, including freedom of religion, while Section 1 permits the government to restrict those rights, but only to the extent that is demonstrably justified in a democratic society. Canadian courts have generally done a good job in ensuring that the government, whenever it enacts a policy that has the effect of restricting individual rights guaranteed by the Charter, proffers plausible reasons explaining why that restriction is demonstrably justified. In other words, Canadian courts actually hold the government’s feet to its fire, requiring it to demonstrate why the policy it is pursuing is not only rationally related to a legitimate public policy goal, but also that its policy is the most reasonably “rights-respecting” policy available to it in the circumstances.

As a result, Canadian constitutional law on individual rights represents a substantial departure from the approach taken by our neighbors to the south, the United States. In the United States, relevant constitutional law teaches that the government is free to adopt any policy that is rationally-related to a legitimate public goal, without regard to the effects adoption of that policy might have on individual rights, provided that the government did not choose that policy with the intent to discriminate. For example, if a state chooses to finance public education using tax revenues derived exclusively from local property taxes, that does not amount to a violation of the constitutionally guaranteed
protection to equal protection of the laws, even though a result of that policy will be that wealthy neighborhoods’ schools will be able to provide superior educational opportunities than schools in poorer neighborhoods. Moreover, US courts will not even require the government to explain whether they considered other financing options that would be more respectful of the right to equality. The fact that blacks disproportionately live in poor neighborhoods, moreover, is a matter of indifference to assessing the constitutional validity of this policy under US law.

Or, to take an example that might be more salient to our discussion of multiculturalism, suppose a municipality in the US establishes public swimming pools, but limits the kind of attire that can be worn in the pool to conventional bathing suits. As a consequence, Muslim women who adhere to Islamic dress rules are effectively excluded from using this public facility. Provided that there was no intent to discriminate against them when this rule was adopted, moreover, they would be unable to claim that their rights were violated. US law would allow the local authorities to make an exemption from the applicable dress rule for their benefit, but this hypothetical group of Muslim women would not be legally entitled to such an exemption.

Under Canadian law, the treatment of their claim would be more complicated. Canadian law starts from the premise that the rule at issue, even if rationally related to a permissible governmental purpose and adopted without intent to discriminate, can still violate their individual rights. Here, a court would determine that the uniform dress rule does indeed violate their right to freedom of religion because, in order to access a public service, they are being asked to compromise a sincerely-held religious belief, namely, the rules regarding how a woman should dress while in public. But, the analysis does not stop here, because Section 1 permits the government to adopt a rule that restricts
individual rights provided that the government can demonstrate that it is necessary to do so in the context of a democratic society. In our hypothetical pool case, then, the government would have to provide an explanation why it is justifiable, in the context of a democratic society, for it to prohibit a Muslim woman from wearing a burkini. Because it is unlikely the government will be able to make such a showing, Muslim women would likely prevail in their challenge.

But, there are many cases in which the government will succeed in showing that limitation of a personal right is reasonably necessary in the context of a democratic society. Such a showing is most easily proven in cases where the rights of third parties are affected. Let us imagine a Muslim with the stereotyped beliefs regarding women and female education attributed to the Taliban. He believes that it is immoral for his daughter to go to school because she should only have the education necessary to allow her to be a mother, housewife and discharge the most basic religious duties. Accordingly, he even refuses to send her to single-sex Islamic schools. Could such a parent be prosecuted under Canadian laws that mandate compulsory education? Well, the parent would succeed under the first prong, namely, showing that his right to religious freedom has been violated, in which case the government will be required to provide a good reason in defense of compulsory education that justifies limiting this parent’s religious freedom. Here, it is almost certain that the government will win, because laws mandating compulsory education are necessary in a democratic society. A democratic society is sustained and maintained through its citizens, and individuals become citizens through education and instruction in various subjects, including civics. This represents the considered minimum of what is required so that each individual can function
independently, whether from an economic perspective, by acquiring sufficient skills in order to support himself or herself, or from a political one, by acquiring sufficient knowledge of one’s rights to be a contributing member to political society.

What these example show is that the Canadian Charter of Rights and Freedoms guarantees a pluralistic society in which numerous diverse and otherwise contradictory ways of life can flourish, provided, that these different ways of life show sufficient respect to the basic needs of life in a democratic society. It recognizes that a commitment to rights and equality means that individuals should enjoy their rights equally, meaning, that the value of a right should not be determined by the exigencies of whether one is a majority or a minority, provided that society is in a position to accommodate minority demands at a reasonable cost to itself. To resent accommodations made to minorities that are consistent with the democratic nature of society, whether on assimilationist grounds, or claims that such ways of life are unworthy and undeserving of respect, is evidence of political intolerance that the Charter squarely rejects.

What do I mean, however, by the phrase “political intolerance”? The Charter prohibits the adoption of government policies that restrict individual rights in circumstances where those rights can be enjoyed consistently with the requirements of democratic society. It does not mean that I have no right to criticize such ways of life as profoundly mistaken, or less attractive than other ways of living; however, it does mean that I have no right to demand that the government adopt policies intended to restrict the ability of individuals to live in the manner that I find disagreeable, perhaps even repulsive. Moreover, a commitment to the political equality of all ways of life compatible with democracy – even if we find them personally unappealing,
incomprehensible, or immoral – also suggests that when we do exercise our rights to criticize, we do so with a certain amount of restraint and humility in recognition not only of the legal equality of our fellow citizens, but also the limits of our own understanding and the possibility that our perception of their way of life may be based on incomplete, if not biased, information.

The greatest risk to the kind of pluralism that undergirds Canadian multiculturalism continues to be irrational bias in civil society masquerading as freedom of expression. As we saw with the controversy regarding Shari’a family law arbitration in Ontario in 2005, there continues to be a risk of demagogic politics in relationship to the accommodation of Muslims. While from time to time some politicians and writers grumble and complain about multiculturalism, outside of Quebec, there has been nothing comparable to the backlash against multiculturalism that has taken place in Europe, where leading politicians, such as Angela Merkel of Germany, Nicolas Sarkozy of France and David Cameron of the United Kingdom, have denounced multiculturalism as a failure. Critics of multiculturalism accuse the policy of promoting a variety of ills, such as “separatism,” gender oppression (including “honor crimes”) and even religious hatred. These critics, however, fail to point out that nothing in the Canadian law of accommodation promotes any of these results; nor do they seem cognizant of the fact that it is not only minority communities with “exotic” ways of living that suffer from misogyny, gender-based violence, or religious fanaticism. Political attacks on multiculturalism, then, are generally no more than thinly-veiled demands on minorities to assimilate. These demands are especially outrageous, given the Charter’s flat rejection of
policies of assimilation for the sake of assimilation, at least to the extent that assimilation would infringe upon individual rights.

And while criticism of multiculturalism is often expressed in neutral terms, it is hard to avoid the impression that discomfort with multiculturalism is really a more polite way of expressing discomfort with Muslims. Alternatively, critics of multiculturalism could be exploiting pre-existing antipathy toward Islam to delegitimize the Charter’s multicultural project more broadly. Estimates suggest that approximately 3% of Canada’s population is Muslim, meaning that there are approximately 1 million Muslims in Canada. Because most Muslims came to Canada in the last 25 years by virtue of immigration, however, and because most of them are visible minorities and urban dwellers in Ontario and Quebec, their impact on the public discourse surrounding immigration and multiculturalism goes well-beyond their numbers. In the ten-year period 2001-2011, for example, the Globe and Mail published 309 articles dealing with multiculturalism and Islam, but only 104 dealing with Sikhs and 38 with Hindus.

One crucial strategy used to promote fear of Islam, immigrants, and multiculturalism is to draw attention to pathologies within minority groups, and present them as though they are normative within such groups. “Honor crimes” are exemplary in this regard: media appear to be obsessed with such crimes while failing, as a general rule, to point out that they are also considered crimes from the perspective of Islamic law. At the same time, and in complete disregard of the saying “People in glass houses shouldn’t throw stones,” the media generally fail to place so-called honor crimes in a broader social context of gender-motivated violence or domestic violence. The result is to stigmatize a minority group as having a perverse or immoral culture. Whites, by contrast, are never
made to suffer cultural guilt, even if certain crimes are statistically associated with them. In other words, if a white person kills her child, it may be either a tragedy or a gruesome crime, depending on the nature of the killer and the victim, but it will not be taken as an indictment of white people as such. By contrast, when the teenage girl Aqsa Pervez was murdered by her father in Mississauga in 2007, this was taken by mainstream press sources as indicative of a normative, if secret, practice within the Muslim community.

Claims of Muslim barbarity toward women, however, are hardly unique to contemporary critics of multiculturalism. Indeed, we find evidence of this trope as early as the 15th century. For Europeans who went to the Middle East, the ease with which Middle Eastern women obtained divorces, remarried, and were active economically was deeply unsettling. An Italian Jewish merchant from Florence who travelled to the Middle East for trade made the following observations about family life in the Middle East:

“The customs of the Muslims are diverse from all people . . . The men give marriage gifts to the women. From the day of marriage the man is only bound to give his wife food, but her clothes and all other things she requires she has to make herself. The wife is bound to pay for the food and clothes of all her sons and daughters. Therefore, the women are all harlots. When they do not wish to stay with their husbands, they go to the governor of the city, and say their husband does not give them food. They are believed, and the husband must divorce his wife. . . . All men and women and children, Jews as well as Muslims, have these customs. And these customs are usual in the whole Kingdom of the Sultan, and not in Jerusalem only. . . . They are all alike.”

Fifteen years later, a German merchant made the same observation: that women in the Middle East would complain to the judge if their husband failed to provide her
sufficient support, and the judge would flog the husband and divorce the wife, awarding her all the property she brought to the marriage.

While these observations had some basis in fact, they were gross oversimplifications of social reality and prevailing law. Nevertheless, they accurately reflect how these European travelers reacted to what they saw as the most alien features of Middle Eastern customs: the relative ease by which marriages could be dissolved, including as a result, the relative freedom of women to change their marriage partners, and thus engage in legitimate serial monogamy; the ability of married women to retain relative economic independence; and, the willingness of the law to discipline men who breached certain obligations of marriage.

The late Edward Said, in his classical work *Orientalism*, produced a general theory about western scholarship on Islamic civilization in which he argued that, despite the sophistication of many western scholars, the knowledge of the “east” that western scholars produced had, in fact, very little to do with the “east” as such, but instead, functioned as ideology: to assert the unique identity of the west, and ultimately, to justify colonial domination by the west of the east. Western depictions of the Islamic world, whether fictional, artistic, or dressed in the garb of scientific investigation, all ultimately converged in the creation of a fantasy world which, in critical respects, was the mirror opposite of the Christian west. Gender was one of those sites of inter-cultural comparison Orientalism appropriated as a domain from which to further entrench its own conceptions of superiority, largely by representing Muslims as *inferior*.

Behavioral economists would account for the power that Orientalist tropes hold over society through the “availability bias.” This bias results from the fact that people
tend to conflate the frequency of an event with the ease by which they can recall it. For example, although airplane crashes are relatively rare, but frequently result in high numbers of death, they receive a great deal of press coverage, and in particular, more coverage than the routine deaths that occur from the daily operation of automobiles. As a result, many people mistakenly believe that air transportation is more dangerous than automobile transportation, when in fact the opposite is true.

The availability bias also shapes public perceptions of Islam generally and Muslim women in particular: because there is a great deal of reporting on the abuse of Muslim women’s rights, without much reporting on the routine, and often unspectacular but productive lives of Muslim women, the public relies on the representation of Muslim women that is psychologically most available to them: that of the oppressed Muslim woman.

One such enduring stereotype is that of the submissive and silent Muslim woman, something neatly reflected in this CNN report. The narrator of this otherwise positive story on Muslim women and the role they played in the Egyptian Revolution of January 25 frames the story by saying that Muslim women have been encouraged to be silent for “thousands of years.” This statement is slightly amusing given that this is only the year 1432 of the Islamic calendar, so Islam can hardly be guilty of teaching women to be silent for “thousands” of years. And while this CNN story must be at least be recognized as being relatively positive, it does little to dispel what the Moroccan-American fiction writer Laila Lalami has described as “the burden of pity” that saddles Muslim women in the west. This “burden of pity” is so strong that it blinds us to the accomplishments of
Muslim and Arab women, who are dismissed as either exceptional, non-representative, or the products of the west, if they are not ignored completely.

Few Canadians, for example, are likely to know who Dr. Tyseer Aboulnasr is. Not only is she a highly-accomplished Muslim female engineer, she is, quite simply, a path-breaking Canadian woman: at the time she joined the University of Ottawa Faculty of Engineering, she was the only female member of that faculty, and when she became Dean of the University of Ottawa’s Faculty of Engineering, she was the only female dean of an engineering faculty in all of Canada. Instead of the image of a woman demonstrating the moves of a black-belt in taekwondo in front of the Giza Pyramids when the term “Muslim woman” is brought up as a topic for conversation, probably something more like this appears in the mind of the average Canadian.

Instead of remarkable women like Dr. Aboulnasr being taken as an “expert” on what it means to be a Muslim woman, we are presented instead with “experts” like Ayan Hirsi Ali and Irshad Manji, whose only qualifications for their star status seem to be a claim to have grown up in an extremely oppressive household, and a willingness to blame Islam for their personal tragedies, and the tragedies of all societies in which Islam plays a substantial role. Given the absence of any genuine scholarship in the work of either Ali or Manji, forgive me if I say that their prominence is largely a function of their willingness to adopt a rhetorical posture that confirms pre-existing biases rather than challenges them. Both of them, for example, argue that Islam and Islamic societies are inherently intolerant and incapable of fostering cultures of dissent. As Lalami has pointed out, one can only make such claims if one is willing to ignore the scores of
cultural and religious critics in the Arab world as well as the Islamic world who did not need exposure to, or to be rescued by, the west in order to criticize their own societies. Why is it, however, that we don’t hear about these critics or recognize them as exceptionally heroic and deserving of prominent positions in universities and think tanks? Probably because their criticisms do not confirm our biases: while they criticize certain understandings of religion or politics in their own societies, they do so while maintaining a belief in the humanity of their societies; moreover, they certainly do not reduce the problems facing their societies to bad theology: they also recognize and criticize the role of power-politics and global capital in an international system that supports tyranny in the Arab world and only reluctantly, if at all, is willing to recognize the democratic rights of the Arab peoples.

To conclude, Canadian multiculturalism is a product of the Charter’s commitment that all Canadians should enjoy certain basic rights, among them religion, equally. Such a commitment naturally manifests itself in plural and diverse ways of living. Critics of multiculturalism generally are expressing a nostalgic desire for a monoculture, in which all, or the vast majority of citizens, look alike and share the same tastes, values and pursuits. The attack on Canadian multiculturalism ignores that just as the Charter prohibits the pursuit of assimilationism as a policy, so too it limits rights claims that are inconsistent with the fundamental requirements of democracy. The stability of this approach, however, in the long-term, will depend on the extent to which individual Canadians internalize the Charter’s approach to balancing individual rights with the needs of a democratic society. Biases against Islam, and particularly, stereotypes of Muslim women, are regularly used to undermine the case for Canadian multiculturalism.
To combat this, we need to promote a cultural counter-narrative, that of the empowered Muslim woman, not the empowered ex-Muslim woman.

In that spirit, I wish to conclude my remarks by giving you an opportunity to see and hear some of the Egyptian women who participated in the January 25th Revolution. The first is Asma Mahfouz a young Egyptian woman, whose YouTube video is credited with inspiring thousands of Egyptians to demonstrate on January 25. The second is Nawal Sa’dawi, an 80-year old Egyptian physician, feminist, and socialist critic of Egyptian politics. The third is Mona Tahtawi, a young Egyptian journalist and critic of the religious right in the Arab world. The fourth is Ethar el-Katatney, an Egyptian internet journalist whose coverage of the Revolution was picked up extensively by international news outlets such as CNN. I hope that in the future, these are the images of Muslim women that are available in your mind, not that of the oppressed and uneducated, burka’-clad woman of Afghanistan.