

Veils and Vivre Ensemble: Assertive Laïcité and Islamic Dress in France

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BOSTON COLLEGE

VEILS AND *VIVRE ENSEMBLE*:

***Assertive Laïcité* and Islamic Dress in France**

A Senior Honors Thesis

Submitted to

The College of Arts and Sciences

Department of Political Science

By

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ACRONYMS:

| ABBREVIATION | FULL NAME / TRANSLATION |
|---------------------|--|
| FN | Front National (National Front) |
| UMP | Union pour un Mouvement Populaire (Union for a Popular Movement) |
| PACA | Provence-Alpes-Côte d'Azur |
| PVV | Partij voor de Vrijheid (Party for Freedom) |
| PDL | Il Popolo della Libertà (People of Freedom Party) |
| CFCM | Conseil Français du Culte Musulman (French Council of the Muslim Religion) |
| DFES | Department for Education and Skills |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| ECmHR | European Commission on Human Rights |

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CHAPTER ONE: Introduction

A Brief History of French *laïcité* and religious symbols

Religious symbols in France are routinely viewed as threats to the *laïcité* and *vivre ensemble* that characterize the ideal French Republic. However, unlike displays of religious identification such as necklaces bearing small crosses or stars of David, the presence of Muslim headcoverings in the public sphere has prompted significantly harsher criticism and increasingly restrictive measures within France. Some of the *voile*'s critics argue that such headcoverings are not only more visible, but are also indicative of a more brazen defiance of traditional republican ideals. While the perceived threat of religious symbols is far from a recent development in France, the particularly fierce reaction to the *voile* is indicative of a greater trend: the increasingly assertive interpretation and application of *laïcité* with respect to headscarves.

The object of this study is to understand why French *laïcité* is moving in this increasingly authoritarian direction as well as to understand why a full ban of the "burqa" is being considered in France at this particular moment in time. The earlier *affaires du foulard* (headscarf affairs) offer good background context for the traditional applications of this principle towards the Muslim veil, and comparing the current dispute with the 2003-2004

affair offers a number of points of assessment that are useful for understanding the ways in which the interpretation and application of *laïcité* have shifted.

The 2006-2007 veil affair in the United Kingdom also provides excellent analytical contrast that will help to situate the French affairs in a larger European context, serving as an analytical foil in many ways to the French understanding of secularism. The British case study also highlights the ideological and logistical differences between the two nations in terms of the ways in which the “problem” of the veil is framed and the solutions proposed—notably, the security lens used by the British and the human rights lens used by the French.

Understanding the evolution of the ideological orientation of French *laïcité* is not only significant for the future of headscarves in France, but also for appreciating the complexities facing “visible Islam” in Europe as a whole. The tension between policy decisions at the national level and the supranational judicial authorities of Europe, as demonstrated in this study, will be particularly significant in determining the course of future attempts to limit or ban the veil. Based on the political and legal barriers to limiting freedom of religious expression in liberal democracies, France will likely have to follow the example of the United Kingdom and incorporate security concerns into their justification of increasingly restrictive measures if they wish to continue to pursue an assertive application of *laïcité*.

Britain and France of course have extremely different citizenship models, which undoubtedly influences their individualized responses to the perceived threat of the Islamic veil. The British model is largely founded on the idea of multiculturalism, which can be defined as “the preservation of different cultures or cultural identities within a unified society, as a state or nation.”¹ This model—also often referred to as the “Anglo-Saxon” model—corresponds to the “salad bowl” analogy that many use to illustrate the formation of the American national identity.

The French, on the other hand, have traditionally adhered to a model based on universalism. This doctrine states that the preservation of particular identities in a national setting undermines the cohesion of the national society as a whole and threatens the peaceful coexistence—referred to in French as *vivre ensemble*: literally, “living together”—that a functional liberal society demands.

The ultimate fear of this model is a phenomenon known as *repli communautaire*—a phrase that refers to communities “folding in” on themselves. At its core, the universalist model believes that particularistic identities necessarily result in *communitarisme*—roughly translated as “communalism” in English. “Communalism” in this case is based on the definition: “strong allegiance to one’s own ethnic group rather than to society

¹ “Multiculturalism,” *Dictionary.com*, < <http://dictionary.reference.com/browse/multiculturalism>>.

as a whole,” although the understanding of this occurrence in the French case is not limited to ethnic identities, but all identities that should otherwise be subservient to the national one.²

It is with this backdrop in mind that France has seen the emergence of yet another national debate on the propriety of headcoverings in French society. In this most recent instance; however, the issue at hand was not the *foulard* but what has been referred to as the *voile intégral*—the *full veil*. This terminology is meant to signify veils that cover not only the hair, but also the face. While the specific distinctions between the various forms of Muslim headcoverings will be addressed in greater detail in the second chapter of this work, it is important to understand the basic differences between the terms as they play an important role in understanding a distinction between prior debates and the existing one.

To reiterate the distinction using the vocabulary of the debates, the “full veil” refers to veils that cover the face in any way—i.e. niqabs and burqas—while the “veil” or “simple veil” refers to those covering the hair. Figure 1-1 will briefly elaborate the characteristics of the individual veils with the help of corresponding graphics.

² “Communalism,” *Dictionary.com*, < <http://dictionary.reference.com/browse/communalism>>.

FIGURE 1-1: *Types of Muslim Headcoverings*

| TYPE | DESCRIPTION | IMAGE |
|----------------------|---|--|
| Hijab/Foulard | Covers the hair but does not cover the face or the body |  |
| Niqab | Covers the hair and the face but does not cover the eyes. Sometimes covers the body |  |
| Burqa | Covers the hair, face, and body. Eyes are covered with a mesh panel |  |

| | | |
|------------------------------|--|---|
| <p>Jilbab</p> | <p>Covers the entire body except for the hands and face. Worn in conjunction with a scarf to cover the hair and neck</p> |  |
| <p>Shalwar Kameez</p> | <p>Loose fitting trousers worn with a tunic</p> |  |

Understanding the *affaire du voile intégral*

As was the case in 2003, the current debate and parliamentary inquiry was preceded by a speech by Nicolas Sarkozy. On June 22, 2009, the President delivered a speech at Versailles to a joint session of Congress. His

speech quickly turned to the subject of the *burqa*, at which point his comments were repeatedly interrupted by raucous applause. He referred to the *burqa* as both a “problem of liberty” and a “problem of female dignity” that would not be welcomed:

“The burqa will not be welcomed in our French Republic...the Parliament wished to seize upon this question, it is the best way to proceed... We must not be afraid of our values, we must not be afraid to defend them.”³

On June 23, 2009, the Conference of Presidents established a parliamentary *mission d'information* (fact-finding mission) on the practice of wearing of the full veil in France.⁴ Headed by communist National Assembly deputy André Gerin, the *mission* was charged with creating a report on the practice of the wearing of the so-called *full veil*, specifically detailing the “origins of this phenomenon, its scope, and its evolution.”⁵ In addition, the *mission* was to determine the concrete consequences of this occurrence on society and to reflect on how it affects the “principles of the French

³ “*La burqa ne sera pas la bienvenue dans notre République française... Le Parlement a souhaité de saisir de cette question, c’est la meilleure façon de procéder... Nous ne devons pas avoir peur de nos valeurs, nous ne devons pas avoir peur de les défendre,*” translated from President Nicolas Sarkozy, speech before the joint Congress, June 22, 2009, Versailles,

<http://www.youtube.com/watch?v=hbzdpKi_TSY&feature=player_embedded>.

⁴ “*Mission d’information sur la pratique du port du voile intégral sur le territoire national,*” and “*Conférence des Présidents.*”

⁵ “*Mission d’information sur la pratique du port du voile intégral sur le territoire national,*” *Assemblée Nationale*, <http://www.assemblee-nationale.fr/13/dossiers/voile_integral.asp#ETAPE255661>.

Republic...and, in particular, that of liberty and of the dignity of women.”⁶

The *mission* began hearings and interviews on July 1, 2009, and deliberated for six months before releasing its recommendations in late January of 2010.

The final recommendations of the commission, released on January 26, 2010, proposed a number of concrete areas of French society in which to ban the full veil. The proposed areas focused on areas in which public services are rendered including hospitals, administrative buildings, and public transportation.⁷ The report explained that this would “force people not only to show their face at the entrance to public service [buildings] but also to keep their face uncovered for the entirety of their presence.”⁸

Although the Gerin Commission did not officially recommend a general ban of the full veil, its recommendations echo the assertive trend established in this paper. In the context of prior legal outcomes of veil affairs, as evidenced in Figure 1-2, the recommendations of this most recent commission offer a significantly more authoritarian interpretation of the tradition definition of the “public sphere.”

⁶ Ibid.

⁷ Cécilia Gabizon, “Ce que dit la mission parlementaire sur la burqa,” *Le Figaro*, January 26, 2010, < <http://www.lefigaro.fr/actualite-france/2010/01/22/01016-20100122ARTFIG00532-les-conclusions-de-la-mission-parlementaire-sur-la-burqa-.php>>.

⁸ “*Ce dispositif contraindrait les personnes non seulement à montrer leur visage à l'entrée du service public mais aussi à conserver le visage découvert tout au long de leur présence au sein du service public,*” translated from *ibid.*

FIGURE 1-2: French Veil Affairs 1989-2010

| TIMING | LOCATION | OUTCOME |
|-----------|---------------------|--|
| 1989 | Creil | <p><i>Conseil d'Etat:</i> Wearing headscarves “not in itself incompatible with the principle of laïcité”⁹</p> |
| 1993-1994 | Nantua, Grenoble | <p><i>Bayrou Directive:</i> Headmasters should ban all “ostentatious” signs from schools</p> <p><i>Conseil d'Etat:</i> Clear and consistent jurisprudence—should only expel if missing classes or provoking protests</p> |
| 2002-2004 | Lyon, all of France | <p><i>Stasi & Debré Commissions:</i> March 15, 2004 law banning “conspicuous” religious symbols in public schools</p> |
| 2009-2010 | all of France | <p><i>Gerin Commission:</i> Ban full veils in public service areas including transportation</p> <p><i>Parliament:</i> Seeking to implement as general a ban of the full veil in public as possible (Spring 2010)</p> |

⁹ John R. Bowen, *Why the French Don't Like Headscarves: Islam, the State, and Public Space* (Princeton, New Jersey: Princeton University Press, 2007), 86.

Before the law: *laïcité*

The theory of *laïcité* has been thoroughly researched and expanded in academic writings. These foundational texts, which will be reviewed in this section, serve as the theoretical basis for the deliberations of the commissions on the veil. With philosophical underpinnings dating back to the writings of Jean-Jacques Rousseau, *laïcité* can perhaps most easily be defined as a particularly French variety of secularism heavily entrenched in French social, cultural, and political ideology. Although the 1905 Law is often stated as the origin of the principle of *laïcité*, there is in fact a rich philosophical tradition that extends back to the French Revolution that influenced this important statute. In particular, the evolution of secular state education helped institutionalize the importance of neutral public spaces dedicated to the formation of a cohesive, French civic identity.

While the concept of a separation between church and state is hardly *sui generis*, the interpretation and application of this ideology is particular to the French case. The essential difference between the American understanding of secularism and France's doctrine of *laïcité*, as one recent book put it, is the difference between freedom *of* religion, and freedom *from*

religion.¹⁰ Furthermore, “it denotes the active intellectual affirmation of secular values and secular forms of reasoning, argument, and explanation.”¹¹

Laïcité is predicated upon the important distinction between the public and private spheres of society. While a French citizen is perfectly free to identify with whatever religion he or she sees fit in the private sphere, the public sphere is reserved for the sacred neutrality and universality of French citizenship, and must therefore be secular by nature. It is precisely in this public sphere that “the state sets itself the task of creating citizens who are properly prepared to participate in public life...by educating them in schools and by exemplifying what it means to be a French citizen.”¹²

Public schools have long been included in the traditional definition of the public sphere, dating back to the ideals of the French Revolution and the Jules Ferry Laws of the early 1880s, which mandated that public schools be free, compulsory, and secular.¹³ Although public elementary and secondary schools are now widely accepted as part of the public sphere, other areas of society are far less clear-cut. In an interview in late July with Yasmine Bouagga of *Nonfiction.fr*, John Bowen spoke about the difficulty of legislating

¹⁰ Jonathan Laurence and Justin Vaisse, *Integrating Islam: Political and Religious Challenges in Contemporary France*, (Washington, D.C.: Brookings Institute Press, 2006), 10.

¹¹ Anne Sa’Adah, *Contemporary France: A Democratic Education*, (USA: Rowman & Littlefield Publishers, 2003), 92.

¹² Bowen, *Headscarves*, 12.

¹³ Sa’Adah, 30.

the public sphere due to the “blurry” nature of its limits.¹⁴ When trying to determine the exact boundaries of these individual spheres, politicians and intellectuals often call upon the history of *laïcité* to clarify matters.

Laïcité, although “an ongoing process of negotiation,”¹⁵ is a firmly entrenched aspect of French political, cultural, and social philosophy thanks to a veritable corpus of French laws. In addition to the aforementioned Jules Ferry laws, the turn of the 20th century bore witness to a series of laws institutionalizing the reduction of the Church’s influence in France. A few decades later the 1901 Law of Associations sought to further diminish Church influence by requiring religious sects to obtain parliamentary permission for formation.¹⁶

Another law—the 1905 law—at once recognized freedom of religion, and prohibited the French state from “recogniz[ing]...pay[ing] the salaries of...or subsidiz[ing] any religion,” thereby further solidifying the tradition of church-state separation in French law.¹⁷ This law is considered an important foundation of the legal tradition of *laïcité*, and is frequently referenced by

¹⁴ John R. Bowen, “Pourquoi les Français veulent interdire la burqa ? : entretien avec John Bowen,” interviewed by Yasmine Bouagga, *Nonfiction.fr*, 28 July 2009, <http://www.nonfiction.fr/article-2715pourquoi_les_francais_veulent_interdire_la_burqa_entretien_avec_john_bowen.htm>.

¹⁵ Ahmet T. Kuru, *Secularism and State Policies Toward Religion*, (New York City: Cambridge University Press, 2009), 117.

¹⁶ Bowen, *Headscarves*, 23.

¹⁷ *Ibid.*

those seeking to emphasize the importance of convention and continuity in French policy.

Despite the traditional emphasis on continuity; however, there are disagreements amongst *laïcité* scholars. Ahmet Kuru's comprehensive analysis of state policies of secularization highlights two main philosophical trends within the larger scope of French *laïcité* which he terms assertive secularism and passive secularism—terms which he acknowledges to be similar to the French distinction between *laïcité de combat* (combative secularism) and *laïcité plurielle* (pluralistic secularism.)¹⁸ This typology will serve as the analytical basis of the section on the evolution of *laïcité* in Chapter 4. As Kuru summarizes, “combative secularism aims to exclude religion from the public sphere whereas passive secularism allows the public visibility of religion,” making the argument that France has historically been dominated by assertive secularism, with significant resistance on the part of passive secularists.¹⁹

An important idiosyncrasy of French politics, keenly observed by Bowen in *Why the French Don't Like Headscarves*, is the “tendency of French public figures to frame the discussion of nearly any important social issue in terms of its long-term history.”²⁰ In this sense, understanding the historical

¹⁸ Kuru, 106.

¹⁹ Ibid.

²⁰ Bowen, *Headscarves*, 5.

evolution of *laïcité*—real or perceived—is crucial to understanding the series of debates concerning headscarves.

But, of course, there are always competing views of history, as is clearly shown by a quote of Emile Poulat: “Our secularism has one history and two memories.”²¹ Kuru equates the “two memories” that Poulat spoke of with two distinct schools of interpretation of the evolution of *laïcité*. The first school, personified by sociologist and founder of *laïcité* Jean Baubérot, views it as a “gradual process.”²² However, the second school—as exemplified by Henri Pena-Ruiz—“stresses that there were several moments of back and forth, rather than continuity in the French history of secularism.”²³ While these two perspectives may appear to be irreconcilable, Kuru finds analytic usefulness in both perspectives. The evidence amassed for this study suggests that, at least with respect to the headscarf, there has been a general trend towards a stricter interpretation of *laïcité*. The veil affairs have; however, inspired two important “tipping points” in this general trend—namely, the 2003-2004 and 2009-2010 commissions on which this study will heavily focus.

As Bowen reminds us, one must avoid the analytical pitfalls of thinking of *laïcité* as a fixed, concrete political philosophy. Bowen writes:

²¹ Cited in Kuru, 136.

²² Ibid.

²³ Ibid.

“Laïcité remains one of those ‘essentially contested concepts’ that is politically useful precisely because it has no agree-on definition. Or rather it is useful for political debates because its use conveys the double illusion that everyone knows what *laïcité* means and that this meaning has long been central to French republicanism....Not only has there never been agreement on the role religion should play in public life...there is no historical actor called “laïcité”: only a series of debates, laws and multiple efforts to assert claims over public space.”²⁴

Therefore, for the analytic purposes of this paper, *laïcité* will be defined in terms of these “debates, laws, and multiple efforts” as opposed to the conflicting philosophic understandings of it. While these opposing interpretations are extremely helpful in understanding the progression of *laïcité* as it pertains to headscarves, ultimately the evidence that will illustrate this evolution must rely upon the debates and recommendations of the government commissions. These in turn will demonstrate the philosophic underpinnings of the discussion. It is this combination of examining *laïcité* in practice, as well as in theory, that will provide the best understanding of the evolution of the interpretation and application of *laïcité* with respect to headscarves through the present day.

Talal Asad writes that the public sphere is “a space of continuous debate and diverse interpretation.”²⁵ As the concept of the public sphere has evolved over time, the French state has traditionally relied upon its strong

²⁴ Bowen, *Headscarves*, 32-33.

²⁵ Talal Asad, “Reflections on Laïcité & The Public Sphere,” Keynote address at the “Beirut Conference on Public Spheres,” October 22-24, 2004.

legal tradition to specify what particular items pose a threat to the *vivre ensemble* of the Republic. According to the principle of *laïcité*, it is then the responsibility of the state to protect the public sphere from any perceived threats—thereby creating the necessity for a “*legal distinction...[that] is itself a governmental construct.*”²⁶ Prior cases concerning the wearing of headscarves clearly demonstrate what Bowen referred to as this “*manie Française*”—French obsession—with making laws.²⁷ While some may view this tendency as merely an amusing French jurisprudential eccentricity, in his book Bowen explains that laws are “relatively inexpensive, and in France sometimes provide a collective catharsis, with a hope for an eventual real change.”²⁸

It is therefore with this brief background in mind that the following chapters will seek to explore the history and modern interpretation of *laïcité* with respect to the Muslim veil. Although the current debate surrounding the *voile intégral* has not yet progressed into actual law at the time this was written, this moment in the process offers a unique chance to compare and better understand its placement in the general evolution of *laïcité vis-à-vis* headscarves.

²⁶ Asad, 4.

²⁷ Bowen, interview.

²⁸ Bowen, *Headscarves*, 98.

Layout

Chapter 2 will serve as an empirical chapter highlighting the history of headscarves in France, focusing on the court cases, public debates, and legal statutes that have surrounded them. In addition, the historical elements of this paper will be heavily based on the vast array of work already available on *laïcité* politics and prior headscarf affairs. I believe it is also important to include these resources as a literature review as they will provide an important empirical backdrop for any discussion of shifts seen during the current debate. This chapter will chronicle the major developments of the various headscarf affairs in France, beginning in 1989 but focusing on the 2003-2004 and 2009-2010 debates and commissions. This will serve as important factual background that will permit the analysis of the development of *laïcité* towards the veil in Chapter 4. An analysis of these two commissions in particular will provide grounds for comparison between the interpretations of *laïcité* during these two periods. The hearings and especially the recommendations of the commissions provide great insight into the understanding and desired application of *laïcité* of the members, and by extension, the French state.

Chapter 3 will introduce a case study on the British veil affair of 2006-2007, detailing the public debate as well as the eventual directive of the Ministry of Education. The background provided by this chapter will allow

for comparison and contrast with the French affairs, which will help place French *laïcité* in a larger context of secularism. This chapter will reveal the important differences in the framing of the issue of the veil in Great Britain, which will be further explored with respect to the French example in the next chapter.

Chapter 4 will highlight the areas of useful analysis in the British case study. The chapter will also explore a selection of public opinion polls that will help to identify the different attitudes both *about* Muslims and *of* Muslims in Great Britain and France, which in turn can help to explain the different attitudes espoused in their respective veil affairs. The chapter will next discuss the different ways in which Great Britain and France both perceive and discuss the threat of the veil, as well as the larger political and legal implications of these differences. The British case study will support the conclusion that French *laïcité* is substantially more assertive than British secularism.

Chapter 5 will summarize the conclusions made about the 2009-2010 affair with respect to the 2003-2004 affair and the British case study, highlighting the evolution in the understanding and application of *laïcité* within France herself toward a stricter interpretation of this principle. Finally, the last part of the chapter will address the role of national and supranational legal-judicial entities in the debates and their outcome and hypothesize on the future of the complicated relationship between the veil

and *laïcité* in France. The larger implications of these findings will also offer some insight into the repercussions for the future of headscarves in European communities.

The relationship between Islam and Europe, while longstanding in historical terms, is still in the process of evolving socially and politically—particularly as increasingly large segments of the populations of European nations trace their heritage to the Muslim world. The differing ways in which states deal with the challenges posed by the incorporation of a “new” religion are crucial for understanding the evolving relationship between the state and its foreign-born/foreign-origin population. As the nation host to the largest Muslim population in Europe, examining and analyzing this complex process in France is of tremendous usefulness—particularly given the growing number of European nations considering legislation against various Muslim headcoverings.

CHAPTER TWO: Empirical Chapter / Literature

Review

The *affaire du foulard*: 20 years in the making

Throughout the periods of “crisis” in France surrounding headscarves, questions about *laïcité*, the public sphere, and the prudence of new legislation as a weapon against much-feared “communalism” have resurfaced again and again, with increasing gravity and anxiety. Twenty years ago these concerns were debated in the public intellectual and political arenas before being decided by the *Conseil d’Etat*: the same is true today, though in the 2000s they have fallen under the purview of presidential and parliamentary commissions. Regardless, the tradition of the French legal-political system having the final say is firmly intact.

However, as the following sections will illustrate, the ways in which the various apparatuses of the French State have resolved the conflict have changed over time. The transition from case-by-case *Conseil d’Etat* rulings to fact-finding commissions is significant in and of itself as it represents the generalization of the “problem” of the veil in the minds of French politicians. Instead of addresses the specific, concrete threats posed by the veil in individual cases, the question became about the veil as a whole.

This transition from individual judicial solutions to nation-wide legislation further underscores the increasing assertiveness of the interpretation and application of French *laïcité*. As Chapter 4 will establish in greater depth, there are no indications that the increased severity of the French State's responses to the veil correspond in any meaningful way to an increase in the number of women wearing veils. And yet, the evolution of the state responses suggests that the threat is, then, at least *perceived* to be particularly great—a revelation that raises the question: what about these particular moments in time prompts the emergence of such controversial debates and policies targeting the veil? While the range of possible answers to this question lie mainly in Chapter 4, the work of Bowen following the 2004 law is also extremely useful.

Indeed, this is precisely one of the larger questions that Bowen seeks to answer in his book—specifically: why do certain periods of time in France's history provoke *affaires de foulard* (headscarf affairs) above others? Bowen points to the importance of political conditions in the periodic reemergence of this debate since the late 1980s.

“This part of the story is largely about politics: about how anxieties over domestic and international threats combined at certain times to produce a set of opportunities for politicians. At three such moments...the headscarf became a convenient, and prominent, symbol of external and internal dangers to France.”²⁹

²⁹ Bowen, *Headscarves*, 4.

These so-called “headscarf affairs” in France date back to 1989, when three Muslim girls were expelled from a secondary school in the town of Creil, north of Paris. The principal of the *collège* believed headscarves amounted to “an outward manifestation of submission to religious authority...[and] had no place in the classroom.”³⁰ The girls had apparently spent part of the summer with relatives in Morocco, where they started routinely wearing headscarves.³¹ Upon the return to school in the fall, they resisted removing their headscarves during gym class, at which point they were expelled.

The suggestion that their vacation time spent with family in the Maghreb was the root of their so-called radicalization highlights a couple of important dimensions of the argument for banning headscarves, which will also be present in the British case study. Namely, a relatively widespread suspicion that 1) women wearing the veil are doing so because of outside pressures—be they political, religious, familial, etc.—regardless of whether or not the girls in question claim to be doing so of their own volition; and that 2) the veil is necessarily a reference to a non-French Islam, and is therefore a mark of failed (or failing) integration. Understanding the nature of the perceived assault on republican values that the veil represents will be crucial

³⁰ Sa’Adah, 220.

³¹ Christopher Caldwell, *Reflections on the Revolution in Europe: Immigration, Islam, and the West*, (USA: Doubleday, 2009), 232.

to comprehending the state responses in both the UK and French cases, and will be elaborated upon in later chapters.

The ensuing debate quickly spread to the national level, with public intellectuals and politicians alike trading blows in a series of opinion pieces in *Le Nouvel Observateur*. The question was ultimately put to the *Conseil d'Etat* (Council of State), which ruled that these girls' wearing of the headscarves was "not in itself incompatible with the principle of *laïcité*," according to the spirit of the laws of the French Constitution and the European Convention on Human Rights.³² Despite this ruling, there were other expulsions around France, and only two of the three originally expelled girls—the two that eventually agreed to remove their headscarves—were allowed back to the school.³³

Dozens of similar cases were brought before the *Conseil d'Etat* in the early 1990s, and the Ministry of Education continued to allow the cases to be treated on an individual basis. The *Conseil* almost always ruled in favor of the individual student, with the exceptions often based on specific safety concerns in gym or chemistry classes, truancy, or proselytism.³⁴ The traditional hesitancy of the *Conseil d'Etat* to actively ban girls from wearing the veil will be a recurring theme during the aftermath of the 2009-2010

³² Ruling of the *Conseil d'Etat*, November 1989, quoted in Bowen, *Headscarves*, 86.

³³ Bowen, *Headscarves*, 86.

³⁴ *Ibid.*, 87.

Commission's recommendation. Its role will be further discussed in Chapter 5.

The debate was reignited in 1993-1994 when two separate sets of expulsions—one in Nantua and one in Grenoble—created another media frenzy. While the four students in Nantua appeared to be from devout, male-dominated families, the girl in Grenoble was a self-convert. Nonetheless, National Assembly deputy Ernest Chénrière—the ex-principal of the school in Creil who expelled the three girls in 1989—“warn[ed] that laïcité was being compromised.”³⁵ A directive by education minister Francois Bayrou mandating that headmasters “ban all ‘ostentatious’ signs from schools” only heightened the tension and increased the number of cases brought before the *Conseil d'Etat*.³⁶ The specific use of the term “ostentatious” was particularly significant as it implied a particular intention on the part of the wearer to make a statement. Though the eventual legislation in 2004 would utilize the term “conspicuous” in lieu of “ostentatious,” the wording of Bayrou’s directive set the tone for the debate through the remainder of the 1990s.

Despite some successful appeals on the part of expelled students, “by the end of the 1990s the Council had developed a clear and consistent jurisprudence on the issue: schools could expel girls if they failed to attend all their classes or if their case led to protests, but not merely for wearing

³⁵ Ibid., 88.

³⁶ “*Ostentatoire*,” translated from *ibid.*

scarves.”³⁷ By 2003; however, it would appear that a “consistent jurisprudence” was not satisfactory, and a clearer legal solution was to be proposed.

Mission d’information: One-hundred years after the 1905 law

The storm that would ultimately lead to this important shift in French jurisprudence came in 2003-2004. For the analytical purposes of this project, the *enjeux* (issues or stakes) surrounding this *affaire du foulard* are of particular importance. Bowen suggests that the elevated sensitivity to Islam post-9/11 contributed to an increased media focus on cases involving the *voile* in the early 2000s. Indeed, a 2003 study by the *Commission Nationale Consultative des Droits de l’Homme* (National Advisory Commission on Human Rights) reported, “an increasing ‘irrational fear and total rejection of Islam as a religion, lifestyle, community-building project, or culture.’”³⁸ Although often given as an easy explanation for restrictive measures vis-à-vis Islam, the link between fundamentalist terrorism and Islam in the West undeniably plays an important role in both the French and UK case studies.

³⁷ Ibid., 92.

³⁸ CNCDH 2003 report, quoted in Jonathan Laurence and Justin Vaisse, *Integrating Islam: Political and Religious Challenges in Contemporary France*, (Washington, D.C.: Brookings Institute Press, 2006), 65.

The suspension of a Muslim student in Lyon in December of 2002 prompted a battle between the high school teachers and the district superintendent, which lasted until March of 2003, when the teachers went on strike. The superintendent opposed the expulsion of the student, fearing an overruling by the *Conseil d'Etat*. A handful of the teachers; however, fervently believed that she should be excluded from the school on principle. Ministry of Education mediator Hanifa Chérifi intervened and eventually brokered a meeting between the superintendent and the teachers, thereby ending the strike.³⁹ Despite the peaceful resolution, the disproportionate media attention served to underline the irrefutable fact that “some groups of teachers were willing to disrupt the school for everyone in order to prevent the presence of a girl in a headscarf.”⁴⁰

According to Bowen, the final catalyst that provoked a legislative response came from a speech in April of 2003 by then Interior Minister Nicolas Sarkozy. Bowen writes:

“The law in question [that Sarkozy referenced in his speech] was not about schools; it concerned removing head covering for identity photos, but it drew a link between the Muslim woman in a scarf and the failure of Muslims to embrace the Republic. The link clicked with many in France. Although defending laïcité remained the ostensible reason for the debates, commissions, studies, and proposals that followed, the enthusiasm and momentum pushing all those debates

³⁹ Bowen, *Headscarves*, 92-96.

⁴⁰ *Ibid.*, 96.

forward came from the diffuse sense that the scarves were the key to a whole host of problems.”⁴¹

Finally, in the summer of 2003, two separate commissions were set up in response to the growing concern—one originating in the parliament, the other established by President Jacques Chirac. In June, Jean-Louis Debré, then Assembly Speaker, put himself at the helm of a bipartisan *mission d’information* on religious signs. A month later, President Chirac established his own commission on *laïcité* in France.⁴² The Stasi Commission, as it would come to be popularly known, was headed by Bernard Stasi and “drew its members (including two Muslims) from the school system, universities, the civil service, the National Assembly, and the private sector.”⁴³ A familiar face on the presidential commission was that of Hanifa Chérifi, the Ministry of Education’s mediator during the 1993-1994 *affaire du foulard*.⁴⁴

After months of interviews and hearings, the Debré and Stasi commissions released their findings. While the two reports differed in the scope and strictness of the types of measures they proposed, both came out in favor of a law banning religious symbols in public schools, along with numerous other proposals that would not be put into effect. The eventual recommendations of these commissions would lead to the adoption of the

⁴¹ Ibid., 99.

⁴² Ibid., 106.

⁴³ Laurence and Vaisse, 166.

⁴⁴ Kuru, 130.

March 15, 2004 law, banning “conspicuous” religious symbols from the public school system:

“In public elementary schools, junior highs, and high schools, the wearing of signs or outfits by which students *conspicuously* demonstrate a religious belonging is prohibited.”⁴⁵ [emphasis added]

The March 15, 2004 law would come to have a series of interesting reactions and consequences on a global scale in the year that followed. The views of the media as well as extremists on both sides of the issue made the events surrounding the 2003-2004 *affaire du foulard* a fascinating case study of French responses to perceived threats against the social fabric and philosophical ideal of peaceful *vivre ensemble*.

The views of the opposition

Such an explicit law limiting religious expression was bound to inspire criticism—the most extreme example being the kidnapping of two French journalists in Iraq in August of 2004. However, a number of coherent

⁴⁵ “*Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit,*” translated from Article 1 of the March 15, 2004 Law, *Legifrance*, <http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=E25912E9EB6A1781F72CCAF584A99180.tpdjo11v_2?cidTexte=JORFTEXT000000417977&categorieLien=id>.

objections to the ban were also raised in editorials, blogs, and assorted scholarly works. Interestingly enough, as Laurence and Vaisse argue, the kidnapping was actually one of the reasons that the return to school after the passing of the headscarf ban went as smoothly as it did.⁴⁶

Of course, there were a number of demonstrations and anecdotes of protest on an individual level, but the widespread violence that many had predicted did not, in fact, come to pass—a result that will also hold true in the aftermath of the UK veil debate outlined in Chapter 3. The three major demonstrations against the ban took place on December 21st, January 17th, and February 14th—all before the actual legislation was passed. Rather, they were in response to the speech by Chirac in December of 2003 calling for a proposal for “a law against signs that ‘clearly show’ a religious affiliation.”⁴⁷

Once of the most interesting arguments against law, as advanced by Joan Wallach Scott in *The Politics of the Veil*, highlighted the ideological hypocrisy of using the rationale of integration to support the ban. The idea that women might effectively be forced to leave the public school system because they were no longer allowed to wear the veil essentially made already being integrated a prerequisite to participating in a institution historically aimed at integrating.⁴⁸

⁴⁶ Laurence and Vaisse, 171.

⁴⁷ Bowen, *Headscarves*, 127.

⁴⁸ Joan Wallach Scott, *Politics of the Veil*, (Princeton: Princeton University Press, 2007.)

The media also weighed in on the ban, with *Le Monde* published what Bowen described as “a strong position...charging that such a law would ‘stigmatize, marginalize, and exclude a part of the population when the country has more than ever a need for integration.’”⁴⁹ Most interestingly; however, is the fact that this editorial included a prophecy that “some Muslim women soon would no longer be allowed to wear their scarves in the street.”⁵⁰ In light of the 2009-2010 debates, perhaps *Le Monde* was not so far off base.

The 2009 debate: A perfect storm?

Unlike the Stasi Commission, this new *mission d'information* was made up of only deputies—though they did interview a wide range of authorities on the matter of *laïcité* and the *voile intégral*. The Gerin Commission—as it will be called from now on—interviewed over 200 people, ranging from politicians to religious leaders to prominent intellectuals.⁵¹ Also like the Stasi Commission, this commission was to reflect on *laïcité*, and more specifically, to determine whether or not the full veil was incompatible with

⁴⁹ Bowen, *Headscarves*, 128.

⁵⁰ Ibid.

⁵¹ “Principales dispositions du texte,” *Assemblée Nationale*, http://www.assemblee-nationale.fr/13/dossiers/voile_integral.asp.

French republican values to a degree that would justify banning it to one extent or another.

Likewise, the events surrounding the emergence of this latest debate correspond with interesting internal and external factors. Though it was officially the June 22, 2009 speech by President Nicolas Sarkozy that served as a catalyst for the formation of the most-recent formal parliamentary investigation of the full veil and the possibility of a law banning it, his speech came less than three weeks after a speech delivered by President Barack Obama in Cairo, Egypt which chastised Western nations' attempts to constrain Muslim practices.

“It is important for Western countries to avoid impeding Muslim citizens from practicing religion as they see fit—for instance, by dictating what clothes a Muslim woman should wear. We can't disguise hostility towards any religion behind the pretense of liberalism...I reject the view of some in the West that a woman who chooses to cover her hair is somehow less equal.”⁵²

The tone of President Obama's speech stands in stark contrast to that of President Sarkozy. President Obama's respect for the veil also differs from the sentiments of many member of the current *mission d'information* including André Gerin, president of the commission, who has on more than one occasion—including in the text of the proposal he drafted and submitted

⁵² President Barack Obama, speech at Cairo University, “Remarks by the President on a New Beginning,” *The White House Office of the Press Secretary*, June 4, 2009, <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/>.

to the National Assembly in order to prompt a parliamentary inquiry—referred to such veils as “veritable walking prisons.”⁵³ Furthermore, Gerin was quoted as saying that the *voile intégral* is “the iceberg covering a black tide”⁵⁴—no doubt referring to the “growing phenomenon” of fundamentalism represented by veiled women that fellow deputy and *mission* member Jacques Myard has also warned against.⁵⁵

Other important events surrounding the hearings of the Gerin commission include a very controversial Swiss referendum banning the construction of new minarets on mosques, which was passed by a 57% majority at the end of November 2009. *The Economist* has stated that this referendum represents “the most dramatic move any nation has made to limit the visibility of Islam.”⁵⁶ Indeed, Tariq Ramadan referenced this referendum during his testimony before the current French commission on the veil as a way of warning French deputies about the admissibility of this

⁵³ “...*véritables prisons ambulantes*”, translated from “Proposition de résolution n 1725 de André Gerin pour une commission d’enquête sur le port de la burqa,” June 6, 2009, <http://www.andregerin.com/evenement_detail.pl?id_evenement=1834>.

⁵⁴ André Gerin quoted in “La burqa: un phénomène marginal en France,” *Le Figaro*, July 30, 2009, <<http://www.lefigaro.fr/actualite-france/2009/07/30/01016-20090730ARTFIG00202-la-burqa-un-phenomene-marginal-en-france-.php>>.

⁵⁵ Jacques Myard, “Le port du voile intégral en France,” vidéo de *France 3*, le 30 juillet 2009, <http://www.dailymotion.com/video/xa0mw2_le-port-du-voile-en-france-france-3_news>.

⁵⁶ “Islam and Switzerland: the return of the nativists,” *The Economist*, December 3, 2009, <http://www.economist.com/world/international/displaystory.cfm?story_id=15017128>.

nature of bans in the European Court of Justice—a valid concern that will be addressed in a Chapter 4. Of course, each country has their own unique history where state-church separation is concerned, and a restrictive law targeting Islam in one country does not necessarily translate to the same in another country. However, the climate of growing hostility towards Islam in European host countries, and the growing tendency of these nations to use legal means to control its expression places the French veil affair in very interesting context.

November of 2009 also saw the inauguration of a “great debate on French national identity,” which has raised a number of questions and polemics. In particular, President Sarkozy’s advocacy of the addition of a clause about “diversity” into the Constitution, as well as his earlier mention of the potential utility of traditionally abhorred ethnic statistics, despite more recent flip-flopping, has provoked a great deal of controversy,⁵⁷ notably because of the 1978 law prohibiting the “keeping of official racial and ethnic records...[and the collective memory of] the crimes of Vichy France.”⁵⁸ The fact that the debates surrounding the veil and French national identity coincide certainly raises the question in many minds of whether or not visible Islam is compatible with today’s conception of French identity.

⁵⁷ Philippe Bernard, “De la diversité à l’identité, le virage de Nicolas Sarkozy,” *LeMonde.fr*, January 20, 2009, <http://www.lemonde.fr/opinions/article/2010/01/20/de-la-diversite-a-l-identite-le-virage-de-nicolas-sarkozy-par-philippe-bernard_1294241_3232.html>.

⁵⁸ Laurence and Vaisse, 175.

Ulterior motives?

Given the myriad of discussions concerning identity or the place of religion in society within France within the last six months or so, some people of the more cynical persuasion believe that the conglomeration of debates about national identity, veils, ethnic statistics, and the like are mere distractions concocted to divert voters' attention away from a declining economic situation and growing unemployment in France.⁵⁹ Indeed, an editorialist at *Le Monde* wrote in an opinion piece in late January 2010: "the controversies pursued by Eric Besson and Jean-François Copé clearly take up more space in the press than the additional 450,000 unemployed persons registered in France in 2009."⁶⁰ Bernard followed this statement with a couple of powerful historical examples of a similar trend.

During the economic depression of the 1930s, France implemented a quota on foreign workers in various businesses. Again, in 1973 during the oil crises, the government as well as the Front National often spoke of replacing North African workers with Frenchmen.⁶¹ Indeed, following the March 15, 2004 law, a *Le Monde* editorial accused the government of distracting citizens from "the real 'social debates' over unemployment and the bankruptcy of

⁵⁹ Bernard.

⁶⁰ "*Les polémiques suscitées par Eric Besson et Jean-François Copé occupent nettement plus de place dans les medias que les 450.000 chômeurs supplémentaires enregistrés en France en 2009,*" translated from *ibid.*

⁶¹ *Ibid.*

Social Security.”⁶² Perhaps, as Bowen suggested, this current debate is once again the product of a perfect storm of perceived threats on the part of the French, with economic threats adding to the already-present geopolitical concerns.

It is also far from a coincidence that French regional elections were to be held mid-March 2010—nor that the last regional elections took place mid-March of 2004. A controversial New York Times editorial from January 26, 2010 admonished the French government’s exploitation of anti-Muslim xenophobia for political ends:

“With regional elections scheduled for March, Mr. Sarkozy and his allies are desperately looking for ways to deflect public anger over high unemployment. It is hard to produce jobs and far too easy to fan anti-Muslim prejudices....Muslim-bashing has been a potent vote-getter for French far-right politicians, most notably Jean-Marie Le Pen. In a clear bid to peel off some of those votes, Mr. Sarkozy’s center-right government has spent months promoting a sometimes foolish, sometimes menacing “national debate” on French identity. No political gain can justify hate-mongering.”⁶³

Despite accusations of “offensiveness” by *Le Monde*, the editorial raises a skepticism that is no doubt shared by many on both sides of the Atlantic.⁶⁴

⁶² Bowen, *Headscarves*, 128-129.

⁶³ “The Taliban Would Applaud,” *NYTimes Editorial*, January 26, 2010, < <http://www.nytimes.com/2010/01/27/opinion/27wed2.html>>.

⁶⁴ “Burqa : le “New York Times” accuse Sarkozy d’“attiser la haine,” *LeMonde.fr*, January 27, 2010, < <http://www.lemonde.fr/societe/article>

Many critics of the 2004 headscarf ban have linked the rise in popularity of the *Front National* (FN: National Front Party) with the adoption of stricter stances on integration and *laïcité* on both the right and left of the French political spectrum. Joan Wallach Scott, one of the ban's harsher critics, wrote:

"In 1989 the expulsions at Creil followed Le Pen's strong showing in the presidential election the year before; Bayrou's ministerial circular and the sixty-nine expulsions in 1994 followed the National Front's winning seats in the European parliament; and Chirac's law came shortly after he defeated Le Pen in the second round of the presidential election of 2002. In each case, the fear of Le Pen's party pushed more moderate parties father to the right."⁶⁵

Of course, this accusation is not entirely unfounded. As Scott argues, the timing of various disciplinary or legislative maneuvers seemingly aimed at Islam has coincided with the growing popularity of Jean-Marie Le Pen's anti-immigrant, nationalistic movement. While this explanation alone is clearly not sufficient to explain why the headscarf became the emblem of the "immigrant problem," it does pose an interesting question in light of the results of the 2010 regional elections in France: what does the poor showing of the *Union pour un Mouvement Populaire* (UMP: Union for a Popular

/2010/01/27/burqa-le-new-york-times-accuse-sarkozy-d-attiser-la-haine_1297660_3224.html.

⁶⁵ Scott, 39.

Movement) and the success of the Front National in several regions mean for the platform of the center-right in 2012?

Preliminary results of the second round of the regional elections on March 21, 2010 suggest that the ruling UMP took a veritable electoral beating. Parties on the left won an estimated 54.3% of votes, versus 36.1% for the right.⁶⁶ Although the UMP floundered, the Front National performed very well across the two rounds. While Le Pen gained 11.7% of the national vote in the first round on March 15th and only 9.7% in the second, his strong showing in the first round allowed him to remain on the ballot for the second round in a number of regions.⁶⁷ *Le Figaro* also reported that the Front National gained over 20% in several regions with Le Pen receiving 23.8% in PACA (Provence-Alpes-Côte d'Azur) and his daughter Marine Le Pen getting almost 22% in the Nord-Pas-de-Calais region.⁶⁸

The 2010 results were fairly in line with the results of the 2004 regional elections, again highlighting the likelihood of a continuing trend towards cooption of much of the FN rhetoric by the UMP—which indeed appears to lead toward increasing authoritarian stances on Islam. Whether

⁶⁶ Jim Jarrassé, "Large victoire de la gauche, mais pas de Grand Chelem," *Le Figaro*, March 21, 2010, <<http://www.lefigaro.fr/elections-regionales-2010/2010/03/21/01034-20100321ARTFIG00175-la-gauche-l-emporte-largement-le-fn-se-maintient-.php>>.

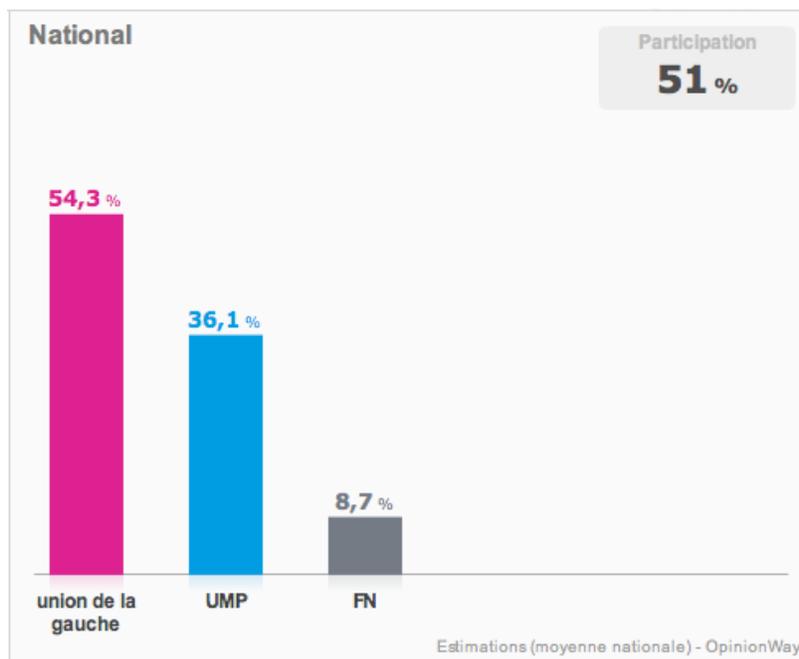
⁶⁷ "France's regional elections: First round knock-down," *The Economist*, March 15, 2010, <http://www.economist.com/world/europe/displaystory.cfm?story_id=15708873>.

⁶⁸ Jarrassé.

or not 2010-2012 will see the same degree of ideological realignment as 2004-2007 did remains to be seen.

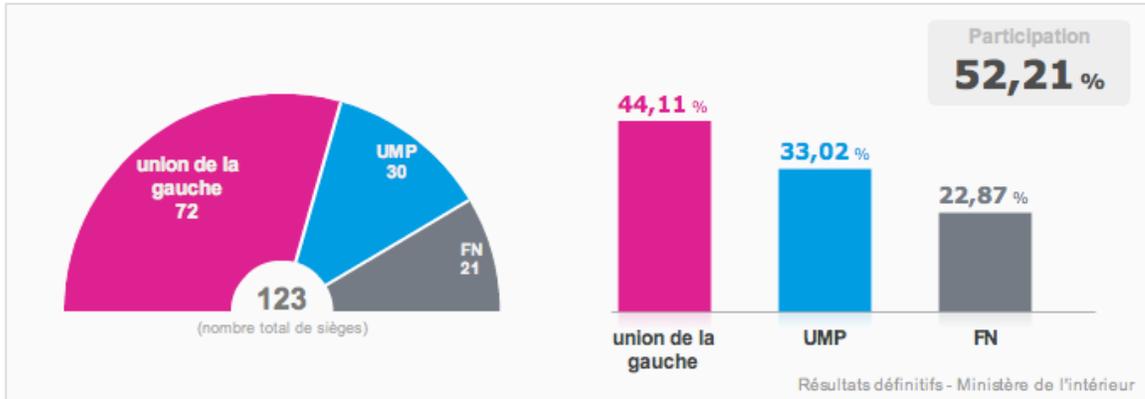
FIGURE 2-1: Results from the 2nd Round of Regional Elections (March 22, 2010)

National Results⁶⁹

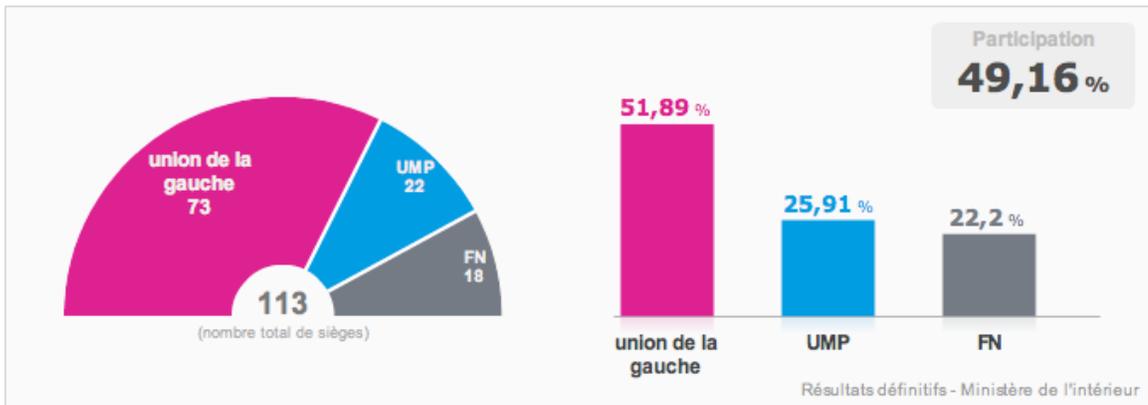


⁶⁹ "La carte des résultats," *Le Monde*, March 22, 2010, <http://www.lemonde.fr/elections-regionales/infographie/2010/03/14/la-carte-du-rapport-gauche-droite_1318393_1293905.html>.

Provence-Alpes-Côte d'Azur Results⁷⁰



Nord-Pas-de-Calais Results⁷¹



⁷⁰ "Provence-Alpes-Côte d'Azur," *Le Monde*, March 22, 2010, <<http://www.lemonde.fr/provence-alpes-cote-d-azur>>.

⁷¹ "Nord-Pas-de-Calais," *Le Monde*, March 22, 2010, <<http://www.lemonde.fr/nord-pas-de-calais>>.

Of course, votes for the FN are sometimes more accurately votes *against* the UMP, but the implications of the regional elections for the 2012 elections are a political reality. As a far-right group, the FN unquestionably represents an electoral menace for the UMP: this was true in 2002 and will still be true in 2012. If the same political development repeats itself, the UMP can be expected to continue to take a harsh stance on immigration—and by extension, French Muslims. Indeed, Bowen acknowledges this method of political calculation in Chirac’s decision to speak out in favor of a ban in December of 2003: “[Chirac] would reduce the capacity of the National Front to make electoral hay out of the issue in the spring 2004 regional election.”⁷² Whether or not veils will again be the symbol of French “Big Tent” politics remains open to debate. The answer will arguably depend more on whether or not legislators manage to pass a veil ban between now and campaigning time.

The issue of the restriction of religious symbols and indeed secularism in general is often linked with politics. It is easy to see the issue as a question of “right versus left” politics, but, Ahmet Kuru argues that political and ideological divisions are not always one and the same.

“In France, leftist parties generally defend the confinement of religion to private life, whereas rightist parties largely support the public visibility of religion. Nevertheless, French political parties, unlike their American and Turkish counterparts, have not fully represented

⁷² Bowen, *Headscarves*, 127.

the opposing sides in the debates on secularism, mainly because of their internal splits on this issue.”⁷³

The assertive secularism that he argues dominates France “has led to a coalition of two old enemies—secularist leftists and anti-immigrant conservative rightists.”⁷⁴ But even if the political ideologies of the various camps were entirely in line with Kuru’s estimation, this argument underestimates much of the political maneuvering of center-rightists that have promoted various forms of headscarf legislation or other acts perceived as “anti-Muslim.” Again, even if the arguments of Scott and others oversimplify headscarf legislation as a clear response to the rise of the FN, it remains a fact that the UMP has actively engaged in political cooption of certain FN views in order to coax its more conservative base of voters back to the “middle.”

Indeed, an article published by *Le Monde* in early April of 2010 surveyed the political landscape of the full veil in a number of European countries and found a common pattern of pressure from the parties on the far right, typically of the populist persuasion, behind government attempts to ban it. The article looked at the cases of Denmark, the Netherlands, and Italy—and while all had slightly different methods of going after the veil, the common thread was political pressure from their respective populist far-

⁷³ Kuru, 112.

⁷⁴ Kuru, 107.

right parties. In Denmark, the fragile leading coalition is beholden to the extreme right, who keeps their otherwise minority coalition in power.⁷⁵ In the Netherlands, pressure from the Party for Freedom (PVV: Partij voor de Vrijheid)—headed by controversial politician Geert Wilders—has led to proposals for general bans as well as specific bans pertaining to public schools. The fact that Mr. Wilders has put immigration and questions about Islam at the center of his party's political platform for the June 9th, 2010 legislative elections is another source of pressure on more moderate or leftist parties.⁷⁶

Finally, for Italy, the more populist Lega Nord party is viewed as pressuring the ruling center-right People of Freedom Party (PDL: Il Popolo della Libertà) to seek the explicit addition of the full veil to an existing law prohibiting the covering of one's face in public.⁷⁷ While each country's political dynamics and opinions concerning visible Islam may vary, the common trend of political pressure from far-right parties, resulting in one way or another in the co-option of stricter stances on issues pertaining to Islam and/or immigration, shows that this phenomenon is not unique to French politics. The pressure from far-right parties is a reality for many of

⁷⁵ "Plusieurs pays sont tentés de légiférer sur la pression de la droite populiste," *Le Monde*, April 2, 2010, < http://www.lemonde.fr/cgi-bin/ACHATS/acheter.cgi?offre=ARCHIVES&type_item=ART_ARCH_30J&objet_id=1119525>.

⁷⁶ Ibid.

⁷⁷ Ibid.

the ruling center-right parties or coalitions in Europe that are seeking to stay in power.

Interestingly; however, the assumed stance on the veil that the UMP is trying to co-opt from the FN may not be in line with the party's actual views on the *voile intégral*. Of course, the FN is unabashedly nationalist and xenophobic, but as Figure 2-2 shows, Jean-Marie Le Pen is not, in fact, an avid supporter of the proposed ban. *Le Figaro* summarized Le Pen's view with the following quote: "It does not seem necessary to me to make a law. The police rules suffice."⁷⁸

This revelation can in fact be seen as further proof of the UMP's efforts to woo voters from the extreme right. While the FN may be the champion of anti-immigrant rhetoric, through the 2009-2010 Commission the UMP has managed to distinguish itself as the anti-burqa party. Only time will tell if this electoral gamble will pay off for the UMP. As of the 2010 regional elections, this was not yet the case, though if the UMP does manage to steamroll an aggressive version of the ban through Parliament, it may very well work. While outright speculation is not the aim of this study, Chapter 5 will include some predictions for the future of the veil—particularly in terms of French political and legal discourse.

⁷⁸ Cécilia Gabizon, "Ce que dit la mission parlementaire sur la burqa."

FIGURE 2-2: French Political Parties and the Veil⁷⁹

Partis politiques ayant adressé une contribution à la Mission d'information parlementaire sur la burqa

UMP

« Nous pensons que condamner le voile intégral est une excellente manière de lutter contre l'islamophobie »
XAVIER BERTRAND



« Le PS n'est pas favorable à une loi de circonstance, inapplicable, qui n'aurait pas d'efficacité et pourrait s'avérer contraire aux principes constitutionnels » MARTINE AUBRY

le nouveau centre

« Nous proposons une résolution parlementaire ayant pour objet la définition du "vivre ensemble français" dans un contexte global et apaisé »
HERVÉ MORIN



PCF

« Une loi contre le port de la burqa ne ferait que stigmatiser une communauté dont les femmes seraient encore celles par qui le mal arrive »
MARIE-GEORGE BUFFET



« Il ne me semble pas nécessaire de faire une loi. Les règlements de police suffisent »
JEAN-MARIE LE PEN

L'ÉCOLOGIE Les Verts

« Cela me heurte humainement, en tant que femme et en tant que féministe. Mais comment on résout cette difficulté, je ne sais pas »
CÉCILE DUFLLOT

MOUVEMENT DÉMOCRATE

« Il y a dans l'orbite (de Nicolas Sarkozy) des gens qui rêvent qu'on se serve de ces sujets pour des bénéfices électoraux » FRANÇOIS BAYROU

Partis politiques n'ayant pas adressé de contribution à la Mission d'information parlementaire sur la burqa

⁷⁹ Ibid.

The religious perspective: Voices of Christianity, Judaism, and Islam in France

The same forces can be seen within French religious groups as well. Kuru writes: “the proban coalition [during the 2003-2004 debate] included certain pro-Catholic rightist politicians allied with assertive secularists, while the antiban coalition involved the Catholic Church and other passive secularist Catholic forces.”⁸⁰ However, during the current debate, the high authorities of Catholic Church in France have remained silent, at least officially, on the issue.

In a meeting with President Sarkozy at the *Élysée* on January 21, 2010, the archbishop of Paris, André Vingt-Trois declined to offer an official position, though admitted that as a French citizen he was “reticent about the idea that the political powers were concerning themselves with the way in which people dress, or that they should concern themselves as well with the way in which people *undress*,” making reference to various billboard advertisements around Paris featuring of scantily-clad women.⁸¹ Likewise, Gilles Bernheim, head rabbi of Paris, also declined to offer his official position, explaining that he had no more right to comment upon the religious

⁸⁰ Kuru, 129.

⁸¹ François-Xavier Maigre, “Les responsables religieux s’expriment sur le voile intégral,” *La Croix*, January 21, 2010, < <http://www.la-croix.com/Les-responsables-religieux-s-expriment-sur-le-voile-integral/article/2411786/55350>>.

prescription of the veil than an imam had to comment upon rabbinical questions.⁸²

An article in the journal *La Croix*, published the day before the recommendations of the commission were released, suggested that the general opinion of the assembled religious authorities in the meeting with President Sarkozy was unfavorable to legislative solution, though again emphasized that the Catholic and Jewish representatives would only express their opinions as citizens and not as religious leaders.⁸³

Mohammed Moussaoui—the president of the *Conseil français du culte musulman* (CFCM : French Council of the Muslim Religion)—did; however, offer the official opinion of the Council. He reiterated the CFCM’s desire to reduce the scope of the wearing of the *voile intégral*, but expressed firm reservations about any law that would ban the veil in the public domain in any kind of “general or absolute way.”⁸⁴ This position contrasts with the position of the CFCM on the *foulard* during the 2003-2004 debate. Although not officially deposed by the Stasi Commission as an entity, during the hearings of 2003, the CFCM did publicly state that the *foulard* was a “religious prescription,” meaning that it was something more than a

⁸² Ibid.

⁸³ François-Xavier Maigre, “Les religions réticentes à une loi sur le voile intégral,” *La Croix*, January 25, 2010, <<http://lacroix.com/article/index.jsp?docId=2411966&rubId=4078>>.

⁸⁴ Ibid.

recommendation and something less than a requirement.⁸⁵ This difference of opinion is no doubt due more to the significant difference between the *foulard* and the *voile intégral* from the religious perspective than to a shift in the ideological orientation of the CFCM. In both scenarios the CFCM appeared reticent about any firm legislation.

Hijabs, burqas, and niqabs, Oh my!

Indeed, there are significant and politically underdeveloped distinctions to be made among the various forms of headcoverings that drastically change how they should be interpreted, particular in terms of a debate framed around the question of “religious symbols.” Respected anthropologist and former CFCM board member Dounia Bouzar was among those deposed by the Gerin Commission. Perhaps best known for her work, *L'une voilée, l'autre pas*—which highlights the divergent perspectives of those who choose to wear the veil and those who do not—Bouzar presented a coherent typology of the three most-discussed headcoverings: the *foulard* or *hijab*, the *burqa*, and the *niqab*. In addition, an online article by the BBC provided useful images and descriptions of the various types of Islamic veils. The images of *hijabs*, *niqabs*, and *burqas* can be found below in Figure 2-3.

This Figure will be particularly useful for the purposes of this paper, as the

⁸⁵ Laurence and Vaisse, 166.

distinctions to be made between the 2003-2004 and 2009-2010 debates, as well as the British case study, depend heavily upon an understanding of the nuances of the various veils, as different arguments and levels of danger will be attached to the various veils throughout the different cases examined.

According to Bouzar, the *hijab*—a scarf that covers the hair, which the French have typically referred to as the *foulard*—is inscribed in “Muslim history...[and] does not correspond to any one discourse, to any one vision of the world.”⁸⁶ It can be worn for various reasons, ranging from a demonstration of personal faith to submission to family or neighborhood pressure. The *burqa*, in contrast, is simply a pre-Islamic, traditional article of clothing from the Pashtun tribes of Afghanistan which covers the both the hair and the face, with some type of grill covering the eyes. Bouzar explains that this type of veil has yet to be seen in the West, despite the frequent, popular use of the term.⁸⁷ Finally, Bouzar explains the evolution of the *niqab*, which like the *burqa*, started as a traditional article of clothing that later developed politico-religious significance. She emphasizes that it is the *niqab*, not the *burqa*, which is worn in Saudi Arabia and which is presumably the actual subject of the commission’s inquiry.

⁸⁶ Dounia Bouzar, “Compte rendu n° 2,” *l’Assemblée Nationale*, July 8, 2009, <http://www.assemblee-nationale.fr/13/cr-miburqa/08-09/c0809002.asp#P9_222>, 5.

⁸⁷ *Ibid.*

According to Bouzar, the *niqab* is relatively new to Islam: it “entered into the history of Islam a little more than seventy years ago, while [Islam] has existed for fourteen centuries.”⁸⁸ She also highlights the indelible connection between the *niqab* and so-called modern salafist groups. Here Bouzar makes a distinction between the groups of the 1930s who sought to return Islam to the time of the *al-Salaf al-Salih* (“pious ancestors”—origin of the term *Salafiyya*⁸⁹), and groups who originated in the 20th century in response to the declining Muslim world who have usurped this term for their political ends.⁹⁰

Like many of those interviewed by the commission, Bouzar stressed how a negative light would be cast upon any law promulgated in the name of women’s rights: “to base the debate on the question of women’s rights would be seen as another way of giving lessons to the Muslim world.”⁹¹ Instead, she expressed the increasingly popular opinion that the “problem” of the *voile intégral* should be viewed through the lens of security—an idea that highlights one of the major differences between the debates in France and Great Britain that will be explored later in Chapters 3 and 4.

⁸⁸ Ibid.

⁸⁹ Christopher M. Blanchard, “The Islamic Traditions of Wahhabism and Salafiyya,” *Congressional Research Service Report for Congress*, January 17, 2007, available from <fpc.state.gov/documents/organization/81366.pdf>.

⁹⁰ Bouzar, 5-7.

⁹¹ “...fonder le débat sur la question des droits des femmes serait vécu comme une nouvelle façon de donner des leçons au monde musulman,” *ibid.*, 9.

FIGURE 2-3: Hijabs, Niqabs, and Burqas⁹²

BBC NEWS
In graphics: Muslim veils

Hijab



Potent symbol

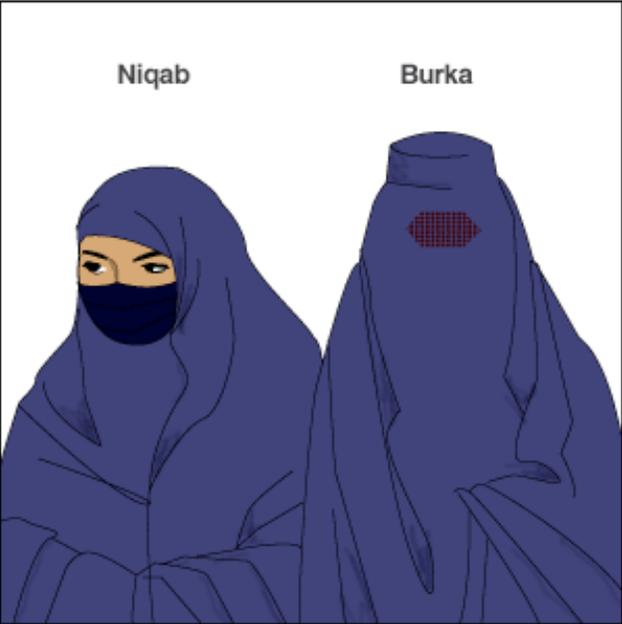
The word hijab comes from the Arabic for veil and is used to describe the headscarves worn by Muslim women.

These scarves, regarded by many Muslims as a symbol of both religion and womanhood, come in a myriad of styles and colours.

The type most commonly worn in the West is a square scarf that covers the head and neck but leaves the face clear.

BBC NEWS
In graphics: Muslim veils

Niqab **Burka**



Conservative choice

The niqab is a veil for the face that leaves the area around the eyes clear. However, it may be worn with a separate eye veil. It is worn with an accompanying headscarf.

The burka is the most concealing of all Islamic veils. It covers the entire face and body, leaving just a mesh screen to see through.

There have been attempts to ban both the niqab and burka in some European countries.

⁹² "In graphics: Muslim veils," *BBC News*, <http://news.bbc.co.uk/2/shared/spl/hi/pop_ups

CHAPTER THREE: A British Case Study

This chapter will explain the analytical usefulness of the British case study in understanding the current state of *laïcité* in France, vis-à-vis the *voile intégral*. It will also serve to provide the necessary background on the British case that will allow for the more in-depth analysis of the similarities and differences with respect to the French case in Chapter 4. The following sections will outline the origins of the polemic surrounding the *niqab* in the fall of 2006, tracing the development of the discussion through the spring of 2007 when the Ministry of Education issued a decree that would henceforth allow UK schools to enforce uniform codes, at the expense of religious expression, if they so chose.

Why care about Britain's veil affair?

Great Britain provides a particularly interesting point of comparison with the issue of *laïcité* and headcoverings in France that helps to shed light on the evolution of the headscarf debate within France herself. While the British model of citizenship falls closer to that of the United States due to its multiculturalist foundations, the 2006-2007 debate in the UK concerning *niqabs* nicely parallels both the 2003-2004 and 2009-2010 French debates.

[/05/europe_muslim_veils/html/1.stm](#)>.

There are of course numerous differences between the British and French cases that must be acknowledged—and which will be addressed in the following section. Despite these differences; however, the British case is crucial in establishing a theoretical distinction between what is perhaps more inherent to multiculturalist European state confrontations with Islam, and what is more particular to the French case. In addition to the comparison with the 2003-2004 debates, the analysis enabled by the British case study will allow for conclusions to be drawn about the understanding and application of *laïcité* in France today—as embodied by the 2009-2010 debate—as well as the possible trend in the evolution of *laïcité* that can be expected in the future.

Important difference between the British and French cases

For one, the immigrant or Muslim populations in question originate from different time periods—France’s immigration boom having occurred about a decade before Britain’s, and lasting longer. Furthermore, the regions of origin of the two countries’ Muslim populations are not the same: France’s Muslims mainly originate from the Maghreb or West Africa, while the majority of Britain’s Muslims are South Asian in origin, coming from the Kashmir region. While neither of these facts negates the analytical usefulness of the British case study, it is important to acknowledge the

possible differences in terms of integration that may stem from these chronological and regional variations.

From a more institutional standpoint, Britain's relationship with religion starkly contrasts with that of France. While France's history of secularization focuses on the reduction of the Catholic Church's influence, the English state is quite literally in the business of religion. The leadership of the Church of England is fused with leadership of the British state—a fact that no doubt influences Britain's attitude towards religion and secularism.

Another important distinction to make between the British and French cases, particularly in light of the links that numerous authors have drawn between 9/11 and the various meanings attached to the Muslim headscarf, is the different experiences that they have had with terrorism. While France successfully dealt with their own terrorist threats in the 1990s—stemming largely from the Algerian GIA—Britain's much more recent experience with terrorism no doubt influences their views on Islam. The fact that the 7/7 bombings in 2005 were the work of homegrown terrorists of Muslim origin does not help to distinguish British Islam from a more foreign menace, either.

Despite some of the differences between Britain and France in terms of their immigrant/Muslim populations, relationship with institutionalized religion, and experience of terrorism, there is still a large degree of analytical usefulness in a discussion of the British veil affair. The British case study

provides a useful foil for France's republican model of citizenship and nationality, which provides a better understanding of the perceived or declared requirements of living in each society, and the ways in which the headscarf is perceived to challenge said prerequisites. Furthermore, the British case helps to contextualize the 2009-2010 debate not only in terms of the earlier 2003-2004 affair, but also in terms of another European society dealing with issues of the integration of a Muslim community. The British case study is particularly useful when addressing questions concerning the French's choice of framing of the issue and the scope of the proposed legislation, which will be discussed in Chapter 4.

The beginnings of the veil controversy in the United Kingdom

Much like the French veil affairs, the British case began with an inflammatory remark by a political figure about the presence of veils in the public. This remark then sparked a larger debate within society, government, and the media that ended up focusing on a handful of recent court cases in the United Kingdom pertaining to the expulsion or suspension of Muslim women from either from schools or from their profession. In response to this general dilemma, the Ministry of Education came out with a directive that essentially gave schools permission to expel or suspend students for not adhering to established school uniform policies.

The details of the British case—in particular the ways in which the debate and directive framed the threat posed by the veil—offer great insight into the distinct human rights approach traditionally employed by the French State. These differences in framing of the issue of the full veil offer a useful comparison in terms of legal tensions at then national and supranational levels—particularly in terms the importance of the European Court of Human Rights and the French *Conseil d'Etat* in determining the permissibility of headscarf bans with respect to their chosen frames.

And so it begins...

The UK veil debate essentially started in October of 2006 when Member of Parliament and former Foreign Secretary Jack Straw made a series of comments in his weekly column for the *Lancashire Telegraph* concerning veiled female employees and his personal discomfort with their attire, particularly during face-to-face interactions. As an MP from Blackburn, Mr. Straw's constituency included a large proportion of Muslims relative to other geographic areas. For this reason, Mr. Straw's comments sparked more outrage amongst British Muslims than similar remarks would have perhaps otherwise warranted. Regrettably, some incidents of violence against women wearing the veil made their way to the press in the wake of

Mr. Straw's interview, calling into question for some his responsibility for inciting said violence.

An attack in Liverpool was perpetrated against a woman wearing a veil on October 7th of 2006, only one day after Mr. Straw's comments to the *Lancashire Evening Telegraph*. The BBC News Service published several quotes from a couple of Muslim community leaders. One of the men quoted—Mohammed Akbar Ali—was a former chairman of the Liverpool Islamic Institute, and saw a clear connection between Mr. Straw's comments and the subsequent attack:

"I put the blame squarely and without any hesitation on Jack Straw...he's a responsible member of the government and is in a constituency of Muslims—he should have known better than [to] make such a statement."⁹³

The same BBC article quoted the chairwoman of the Manchester Stop the War Coalition, Nahella Ashraf, who said that "the idea that after representing Muslims for 23 years, he's now come out and said that a cloth over someone's face is stopping him from interacting, is just absurd."⁹⁴ The Stop the War Coalition was among those who protested outside the Bangor Street Community Center where Mr. Straw was holding office hours the

⁹³ "Straw words 'spark veil attack'," *BBC News*, October 7, 2006, <http://news.bbc.co.uk/2/hi/uk_news/england/merseyside/5415478.stm>.

⁹⁴ *Ibid.*

Saturday after his comments were published. Although only 100 or so turned out for the protest—8,000 having apparently been expected—a man from the Blackburn Mosque Forum, Moulana Hanif, stated that the protesters were there “to demand a full apology from Mr. Straw for insulting Muslims and insulting Islam.”⁹⁵

Given the public and media reactions to Mr. Straw’s comments, one might think that he had made some rather unsavory or even bigoted comments, yet a look at the actual article published by the *Lancashire Telegraph* on October 5, 2006 reveals what *Radio Netherlands Worldwide* has described as “a moderate, non-provocative tone...intended to invite dialogue.”⁹⁶ Indeed, the few paragraphs that sparked such a heated debate were thoughtfully written, with careful consideration of their implication. Straw wrote: “I thought a lot before raising this matter a year ago, and still more before writing this. But if not me, who?”⁹⁷

In the column, Shaw shared a couple of personal anecdotes about interactions with women wearing the “full veil” and his respectful requests—

⁹⁵ Sally Henfield, “Straw heckled by angry veil women,” *Lancashire Telegraph*, October 16, 2006, <http://www.lancashiretelegraph.co.uk/news/blackburn/970864.Straw_heckled_by_angry_veil_women/>.

⁹⁶ Michel Hoebink, “Debate on the Muslim veil ignites in Britain,” *Radio Nederland Wereldomroep*, October 13, 2006, <<http://static.rnw.nl/migratie/www.radionetherlands.nl/currentaffairs/vei061013-redirected>>.

⁹⁷ Jack Straw, “I felt uneasy talking to someone I couldn’t see,” column from the *Lancashire Telegraph*, reprinted in *The Guardian*, October 6, 2006, <<http://www.guardian.co.uk/commentisfree/2006/oct/06/politics.uk>>.

always in the presence of a female staff member—that they remove it during their conversations so that he could benefit from reading their facial expressions and getting the most out of their conversation—“as opposed to a letter or phone call.”⁹⁸ Straw admitted that while he was worried about the reactions of women to his requests, that he couldn’t “recall a single occasion when the lady concerned refused to lift her veil; and most...seemed relieved.”⁹⁹ The visions painted by the column of the calm reactions of the women asked to remove their veils and the respectful discussions about veil-wearing between Mr. Straw and said women contrasts starkly with the publicized reactions of protestors and other Muslim organization spokespeople.

Clearly foreseeing backlash, Mr. Straw concluded by acknowledging the possibility that his concerns are “misplaced,” but that he feels that there is nevertheless an issue to discuss. The “issue” being the concern that the full veil, which he called “a visible statement of separation and of difference,” is a danger to positive relations between communities in British society.

⁹⁸ Ibid

⁹⁹ Ibid.

Other public figures chime in...

While the media focused on the audacity of Mr. Straw in making such claims—particularly, as was stressed again and again, as a representative of a heavily Muslim constituency—he was not alone in his position on the veil in British society. Then-Prime Minister Tony Blair came out publicly against the veil, stating that it was a “mark of separation...that makes other people from outside the community feel uncomfortable.”¹⁰⁰ Another politician, shadow home secretary David Davis, accused Muslim leaders of potentially allowing a sort of “voluntary apartheid” to come about in Britain.¹⁰¹

Novelist Salman Rushdie also publically made known his feelings about the veil—saying that that it “sucks” and that he believes it to be “a way of taking power away from women.”¹⁰² Rushdie, of course, is not only a devoutly secular Muslim, but also the controversial author of *The Satanic*

¹⁰⁰ Alan Cowell, “Behind the veil debate: the British debate over full-face veils worn by some Muslims women raises a bigger issue: how well are Muslims assimilating in Great Britain and the rest of Europe?,” *The New York Times Upfront*, reprinted on *BNET*, November 27, 2006, <http://findarticles.com/p/articles/mi_m0BUE/is_6_139/ai_n17215661/>.

¹⁰¹ “Veil row teacher sacked,” *The Guardian*, November 24, 2006, <<http://www.guardian.co.uk/education/2006/nov/24/schools.uk>>.

¹⁰² Riazat Butt, “Rushdie backs Straw in row over Muslim veils,” *The Guardian*, October 11, 2006, <<http://www.guardian.co.uk/uk/2006/oct/11/religion.immigrationpolicy>>.

Verses, which prompted the Ayatollah Khomeini to issue a *fatwa* against him in 1989, thereby landing him in protective police custody in exile.¹⁰³

Niqabs, Jilbabs, and the Courts

The years surrounding 2006 also saw a couple of highly publicized court cases involving veiled women, which contributed to the debate in Britain. Aishah Azmi, a Muslim teaching assistant, was suspended for wearing a full-face veil in the classroom and refusing to remove it in the presence of male colleagues. The school argued that her students were having difficulty understanding her lessons, particularly as a number of them were not native-speakers. Azmi fought the decision, sighting discrimination on the part of the Headfield Church of England school where she was employed, but the tribunal dismissed these charges, only awarding her damages for what it felt was “victimization” due to the poor handling of the case.¹⁰⁴

The discussion was further complicated when it emerged that Mufti Yusuf Sacha, a Muslim cleric in West Yorkshire, had issued a *fatwa* which Azmi was following, stating that the full veil was “obligatory for women to

¹⁰³ Ibid.

¹⁰⁴ Martin Wainwright, “Tribunal dismisses case of woman ordered not to teach in veil,” *The Guardian*, October 20, 2006, <<http://www.guardian.co.uk/uk/2006/oct/20/politics.schools1>>.

wear...in the presence of men who were not blood relatives.”¹⁰⁵ *The Sunday Times* report mentioned that Sacha was a follower of Tablighi Jamaat, which it characterized as a hardline group with purported links to terrorism, despite a generally moderate following.¹⁰⁶ Irrespective of suggestions of terrorist connections circulating in the British press, the implication that women such as Azmi—who claimed to have made the determination to wear the full veil of her own volition—were acting on the orders of religious or community leaders, was no doubt startling to the British public and politicians alike.

Another pertinent case involved Shabina Begum, a 15-year-old Muslim student who was expelled from her high school in 2005 for wearing a *jilbab*—a full body covering that hides the hair, but not the face. Denbigh High School, which required uniforms, felt that the *jilbab* was not appropriate and did not conform to school guidelines. Furthermore, after the school asked Begum to return home to change into the appropriate uniform, she returned with her brother and another male chaperone, which the assistant head teacher described as “unreasonable and threatening.”¹⁰⁷

¹⁰⁵ Abul Taher, “Veil teacher was obeying a fatwa,” *The Sunday Times*, October 29, 2006, <<http://www.timesonline.co.uk/tol/news/uk/article616692.ece?print=yes&randnum=1151003209000>>.

¹⁰⁶ *Ibid.*

¹⁰⁷ Chris Johnston, “Muslim girl wins battle to wear tradition dress in school,” *Times Online*, March 2, 2005, <<http://www.timesonline.co.uk/tol/news/uk/article417269.ece>>.

Begum sued the school on the grounds that they had impeded her “right to education and to manifest her religious beliefs.”¹⁰⁸ In an interesting turn of events, Cherie Booth—wife of then Prime Minister Tony Blair—represented her in court. While Begum won the initial suit in the Court of Appeals, the House of Lords ultimately ruled in favor of the school. According to the judges, the high school had been very upfront about its uniform policy and had informed parents about the specifics in advance, such that Begum could not have reasonably expected an exception.¹⁰⁹ During the trial, it was revealed that the school had “reached its policy after consulting the Department for Education and Skills, leading Muslim groups, parents and pupils.”¹¹⁰ Furthermore, given a 79% Muslim student body, the Denbigh High School had long permitted pious students to wear a *shalwar kameez* (loose pants and a tunic) along with a headscarf—items that Muslims leaders had approved as satisfying religious obligation.¹¹¹

The secretary-general of the Muslim Council of Britain—considered by many to be the most representative of Muslim organizations in the United Kingdom—voiced his opinion, stating that the Begum case was “a very

¹⁰⁸ Ibid.

¹⁰⁹ “School wins Muslim dress appeal,” *BBC News*, March 22, 2006, <http://news.bbc.co.uk/2/hi/uk_news/education/4832072.stm>.

¹¹⁰ Ibid.

¹¹¹ Johnston.

important ruling on the issue of personal freedoms.”¹¹² In addition, Mr. Sacranie referred to the fact that other schools had been more accommodating and that people like Begum who chose to wear the *jilbab* should have their religious rights respected.¹¹³ Ultimately, Begum chose to attend a different school, which allowed her to wear the *jilbab*. In a turn of events similar to that of Aishah Azmi, it surfaced that Begum’s brother and legal guardian was a purported radical with links to the extremist group Hizb ut-Tahrir. Muslim MP Khalid Mahmood described Begum as a “political football” being used by the group for their own ends.¹¹⁴ Indeed, a female representative of Hizb ut-Tahrir admitted to counseling Begum on the matter. Again, the insinuation that women were being used as political puppets by extremist groups within British society and/or being coerced by male family members did not sit well with many involved in the debate.

Public Opinion Polls

Opinion polls conducted in the Great Britain provide some insight into the actual opinions of the public—which always risk being obscured by

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Robert Mendick and Kiran Randhawa, “Muslim girl’s brother linked to radicals,” *The Evening Standard*, March 4, 2005, <<http://www.thisislondon.co.uk/news/article-17038092-muslim-girls-brother-linked-to-islam-radicals.do>>.

political rhetoric and media exaggeration, particularly during high-profile debates such as this. In October of 2006, a poll conducted by the *Daily Express*—a conservative British tabloid—found that 98% of its readers supported an eventual ban against the veil.¹¹⁵ Of course, as Christopher Caldwell points out when discussing this polling result, the *Daily Express* is hardly the most credible of sources.¹¹⁶ Nevertheless, even the suggestion that a subsection of British society felt this strongly about the veil supports Mr. Straw's assertion that there was a genuine need for public and political debate on the issue.

A far more scientific poll, conducted by Ipsos MORI on October 11, 2006, revealed that “the British public believe Muslim women have a right to wear a veil—but not in the classroom, on television or on the beat.”¹¹⁷ Figure 3-1 shows the specific breakdown of respondents to a selected variety of the questions included in the poll, highlighting how this trend played out in the data. Respondents generally agreed that police officers, television newsreaders, and teachers should not be permitted to wear the veil while performing their official duties. While the section on court cases concerning

¹¹⁵ Matthew Tempest, “Blair backs school in veil row,” *The Guardian*, October 17, 2006, <<http://www.guardian.co.uk/politics/2006/oct/17/immigrationpolicy.schools>>, cited in Caldwell, *Reflections on the Revolution in Europe*, 235.

¹¹⁶ Caldwell, 235.

¹¹⁷ “Muslim Women Wearing Veils,” *Ipsos MORI*, October 17, 2006, <<http://www.ipsosmori.com/researchpublications/researcharchive/poll.aspx?oItemId=315>>.

the veil shows that teachers wearing veils had raised concerns before, police officers and newsreaders in the UK were of course still permitted to wear religious headcoverings if they so chose. In fact, Scotland Yard has an “Islam-friendly” headcovering designed to allow women under religious obligation to conform to the police uniform.¹¹⁸

When it came to students; however, the Ipsos MORI respondents made an interesting distinction—60% of those polled agreed with the statement: “children at schools in the UK should be allowed to wear Islamic dress. For example, headscarves and other religious headgear.” This figure is particularly interesting given the eventual legal outcome of the UK veil debate, which targeted schools.

FIGURE 3-1: Ipsos MORI Public Opinion Poll (October 11, 2006)¹¹⁹

| | Strongly Agree | Agree | Neither agree nor disagree | Disagree | Strongly Disagree | Refused | Don't know |
|--|----------------|-------|----------------------------|----------|-------------------|---------|------------|
| Veils are a visible statement of separation and difference | 33 | 25 | 9 | 16 | 13 | 1 | 2 |

¹¹⁸ Christian Joppke, “Limits of Integration Policy: Britain and Her Muslims,” *American University of Paris*, 30.

¹¹⁹ Ibid.

| | | | | | | | |
|--|----|----|---|----|----|---|---|
| Muslim women should have the right to wear a veil | 44 | 33 | 6 | 7 | 9 | 1 | 1 |
| By wearing a veil Muslim women are segregating themselves | 36 | 25 | 7 | 16 | 13 | 1 | 2 |
| Children at schools in the UK should be allowed to wear Islamic dress. For example headscarves and other religious headgear | 30 | 30 | 4 | 11 | 22 | 1 | 2 |
| Television Newsreaders should be allowed to wear a veil when reading the news | 14 | 18 | 6 | 16 | 43 | 1 | 2 |
| Teachers should be allowed to wear a veil at work | 17 | 18 | 8 | 16 | 38 | 1 | 1 |
| Police women should be allowed to wear a veil at work | 14 | 15 | 7 | 16 | 45 | * | 1 |

Unlike the 2004 French law targeting schools, the British equivalent was not, strictly speaking, a law at all. Rather, the Department for Education and Skills (DFES) issued a “guidance paper” in late March of 2007 to UK schools permitting head teachers to strictly enforce uniform regulations—i.e. decide what clothing is or is not permissible in the classroom.¹²⁰ A spokesman from the DFES was quoted in Reuters: “they [the head teachers] should have regard to a range of religions and try to accommodate them where possible...but what we are saying in the guidance is that safety, security, and the ability to learn is paramount.”¹²¹

While the British veil affair did not take place in the same circumstances as the French affairs, nor did it actually result in a law, it is nonetheless tremendously helpful in situating the French affairs in a wider context. In particular, the ways in which the British debate was framed offer insight into the French debates. The importance of the emphasis on security and safety in the British example will also be useful in understanding the French affairs—and will be discussed in depth in the next chapter.

¹²⁰ “English schools get right to ban Muslim veil,” *Reuters*, March 20, 2007, <<http://www.reuters.com/article/idUSL2071360120070320>>.

¹²¹ *Ibid.*

CHAPTER FOUR: Drawing Lessons about France from the British Case Study

This chapter will focus on an analysis of the British case study with the goal of establishing a theoretical distinction between what is perhaps more inherent to multiculturalist European state confrontations with Islam, and what is more particular to the French case. This analysis, in addition to the comparison with the 2003-2004 debates, will allow for conclusions to be drawn about the understanding and application of *laïcité* in France today—as embodied by the 2009-2010 debate. These conclusions will support the assertion of this study that French *laïcité* is increasingly progressing toward a more assertive and authoritarian interpretation and application. This trend will also be useful in providing some insight into the future of Islam in France—a topic that will also be addressed in Chapter 5.

The chapter will begin by identifying several of the areas of useful analysis in the British case study. Next, an examination of public opinion polls will help to identify the different attitudes both *about* Muslims and *of* Muslims in Great Britain and France, which in turn can help to explain the different attitudes espoused in their respective veil affairs. A look at available statistics or intelligence indications about the actual preponderance of veil-wearing will highlight the fact that both countries were reacting more

to a trend than a numeric menace. This will have important implications for the different ways in which Great Britain and France both perceive and discuss the threat of the veil. Finally, the last part of the chapter will address the role of national and supranational legal-judicial entities in the debates and their outcome. Not only opinion polls, but also the general reaction and chosen legal recourse of the French case suggest that French *laïcité* is substantially more assertive than British secularism. While not a groundbreaking revelation in and of itself, the comparison of the 2003-2004 and 2009-2010 French veil affairs shows a marked evolution in the understanding and application of *laïcité* within France herself. It is this finding that lies at the heart of this study, and will be discussed in detail in this chapter.

Ultimately, this chapter will demonstrate the trajectory of French *laïcité* using the analytical benchmarks of the 2003-2004 and 2009-2010 debates. Essentially, the evidence shows that one school of secularism is progressively dominating the other, but is ultimately limited by a stubborn attachment to the gender-equality frame, which is progressively disappearing from the corpus of acceptable legal discourse for banning what would otherwise be protected as freedom of expression and/or freedom of religion across Europe. The *laïcité* typology of Ahmet Kuru and Caroline Fourest will be particularly helpful in demonstrating this trajectory. Lastly,

the chapter will explore the legal challenges that France will face as it continues to pursue as large a ban of the full veil as possible.

Areas of useful analysis

In terms of the British case's similarities to the 2003-2004 French debate, both scenarios involved schoolgirls wearing the veil, which in turn became the symbol of a larger discussion about religious expression in a given public domain (the school) and its relationship to the successes and/or failures of integration on the national level. Furthermore, the outcomes of both debates concerned only the public domain in question (the school), and did not at that point in time seek to extend any legal authority over the public space more generally.

In the 2009-2010 French debate; however, the public domain in question was not limited to public schools. Rather, the focus was initially placed on a public sphere essentially defined as all shared, non-residential areas of French society. While this was obviously not the case for the British example, the fact that the 2009-2010 debate focused on the *voile intégral* in particular highlights the analytical value of the British case study, which focused on the *niqab*—a type of *voile intégral* according to the French distinction. One of the most interesting aspects of the 2006-2007 British debate and subsequent decree by the Ministry of Education was the focus

placed upon the security dimensions of veils covering the face. This lens contrasts with the typical French focus on *laïcité* and gender equality that was present in both the 2003-2004 and 2009-2010 debates. The ideological differences in terms of civic/national identity between Britain and France likely contribute to the different framings of the issue of full veils, which will be discussed later in this chapter.

The differences in the framing of the issue of the full veil between Great Britain and France also offer a useful comparison in terms of legal permissibility at the national and supranational levels. The role and/or consultation of legal bodies such as the European Court of Human Rights and the French *Conseil d'Etat* in determining the acceptability of headscarf bans also offers some insight into the differences in chosen frames in the UK and France.

A Comparison of Public Opinion

A 2007 study on the views of British Muslims with respect to the veil highlights some of the underlying tensions of the debate as a whole in both Great Britain and, as other studies will show, in France. As Caldwell stresses, the positive correlation between youth and traditional views is overwhelmingly apparent in this survey—a fact which becomes particularly interesting given that the context of these veil debates were, until 2009,

focused exclusively on young school girls. Although many of the questions posed to the respondents indicated positive or neutral feelings towards British society or non-Muslim Brits, the responses to questions concerning veils were more conclusive. While a number of the response patterns supported the authors' conclusion that the Muslim youths in Britain are more extreme than their parents, the expression of this trend in terms of the veil is of the greatest analytical relevance to this project.

The study found that 53% of Muslims in Britain would prefer that women wear the veil; however, this statistic broke down very differently depending on the age category in question. Only 28% of respondents older than 55 agreed with this statement, while 74% of those aged 18-24 agreed.¹²² These results, also expressed below in Figure 4-1, support a trend that the survey described as “a significant rise in Islamic fundamentalism amongst the younger generation.”¹²³ Indeed, as the authors of this study asserted:

“Our research into the attitudes of Muslims in Britain showed that there is a growing religiosity amongst the younger generation of Muslims...[it] is not about following their parents' cultural tradition, but rather, their interest in religion is more politicized. There is a greater stress on asserting one's identity in the public space, for

¹²² Munira Mizra, Abi Senthilkumaran, and Zein Ja'far, *Living apart together: British Muslims and the paradox of multiculturalism*, (London: Policy Exchange, 2007)

¹²³ *Ibid*, 5.

example, by wearing the *hijab*.”¹²⁴

While the relationship between the religiosity of younger generations of Muslims in Europe and politics is hardly a new concept, it is an important dimension of the debate to keep in mind. After all, the discussions and disagreements surrounding headscarf bans, court rulings, and other legislation are, at their root, *political* ones. In France in particular, the 2009-2010 debate made repeated references to an alarming salafist trend growing among the youth in France, drawing a direct correlation between the *voile integral* and this extremist minority branch of Islam. This will be discussed in further detail later in the chapter in a broader treatment of the different framings of the veil issue in Great Britain and France, but raises interesting questions for the political ramifications of an alleged radical Islamist trend. More broadly, as second, third, and fourth generations of Muslims in both Great Britain and France grow into political maturity, the ways in which religious identity impacts political viewpoints will be crucial.

¹²⁴ Ibid.

FIGURE 4-1: *Policy Exchange Study (2007)*¹²⁵

| | BRITISH MUSLIMS: total | BRITISH MUSLIMS: older than 55 | BRITISH MUSLIMS: ages 18-24 |
|---------------------------------|-----------------------------------|---|--|
| Prefer that women wear the veil | 53% | 28% | 74% |

The Pew Global Attitudes Project also conducted a couple of polls of particular interest and utility in understanding the differences and similarities between the French and British applications of *laïcité* and secularism in terms of headcoverings—one in the Spring of 2005; the other in the Spring of 2006. The 2005 poll found a significant difference in the opinions of the British and the French on the propriety of a scarf ban. While 62% of British respondents thought that banning scarves was a bad idea, in France 78% thought that it was a good idea.¹²⁶

Perhaps not surprisingly, the study results concluded “views on the scarf ban were closely tied to overall attitudes toward Muslims, with those with negative views of Muslims far more inclined to embrace the ban than

¹²⁵ Ibid.

¹²⁶ Richard Morin and Juliana Menasce Horowitz, “Europeans Debate the Scarf and the Veil,” *Pew Global Attitudes Project*, November 20, 2006, <<http://pewresearch.org/pubs/95/europeans-debate-the-scarf-and-the-veil>>.

those with more positive views.”¹²⁷ As Figure 4-2 shows, in Great Britain the survey found that 55% of those with generally negative views of Muslims supported a scarf ban, versus only 23% of those with positive views.¹²⁸ In France; however, the support of a ban was high on both accounts: 74% of those with positive views and 86% of those with negative views in support of it.¹²⁹

FIGURE 4-2: *British and French Opinions on a Veil Ban (Pew Global Attitudes Project Survey: Spring 2005, 2006)*¹³⁰

| | BRITISH PARTICIPANTS | FRENCH PARTICIPANTS |
|--|-----------------------------|----------------------------|
| Banning the veil is a good idea | 38% | 78% |
| Generally <u>negative</u> opinions of Muslims AND support the ban | 55% | 86% |
| Generally <u>positive</u> opinions of Muslims AND support the ban | 23% | 74% |

These responses illustrate yet another dimension of difference between the British and French scenarios: the differing viewpoints on legal

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

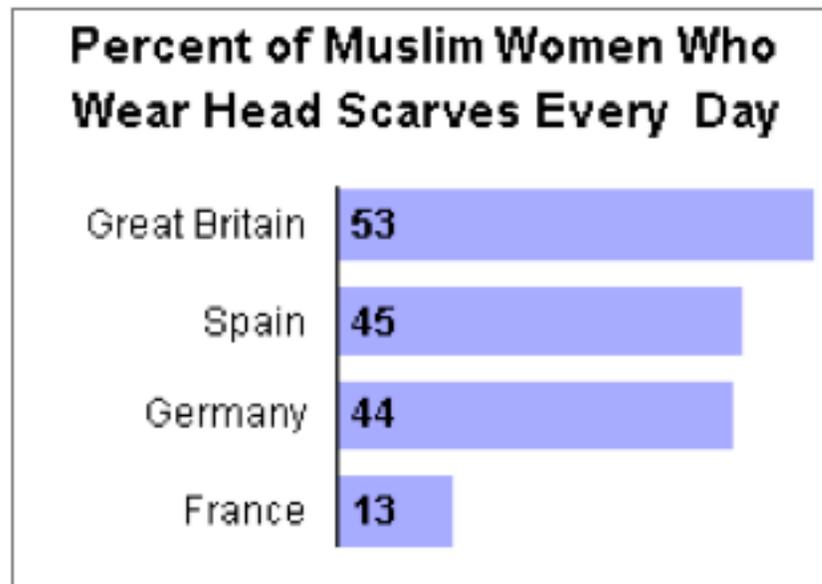
recourse in matters of religious expression. Of course, the particularities of the French legal tradition, which were discussed or referenced in several of the previous chapters, probably have some influence over the French survey participants' willingness to support a proposed veil ban. That said, the divergence in support of the ban between British and French respondents—even when general opinions of Muslims are accounted for—is nonetheless substantial. The French fondness for legal resolutions to perceived or actual social problems, while a contributing factor, is not sufficient to explain these statistical discrepancies. This begs the question: why are the French particularly threatened by the full veil?

Who's actually wearing the veil?

Given the strong response on the part of the French, one might assume that the phenomenon of veil-wearing would be significantly higher in France than in Great Britain. However, a 2006 Pew Global Attitudes Project poll that sought to identify the opinions of Muslims in Great Britain, France, Germany, and Spain found very different realities. In Great Britain, 53% of Muslims admitted to covering their heads either daily or “almost” daily: compared with 13% of French Muslims. In fact, 73% of French Muslims

claimed to “never” wear a head covering.¹³¹ As Figure 4-3 illustrates, Great Britain ranked highest among the countries polled in terms of daily veil-wearing—ahead of Spain and Germany, in addition to being a full 40% ahead of France.

FIGURE 4-3: *Percent of Muslim Women Who Wear Headscarves Every day*
*(Pew Global Attitudes Project Survey conducted April 4-May 4 2006)*¹³²



This survey highlights another important reality of the British and French debates—the fact that the response is not necessarily predicated on the actual prevalence of veil-wearing. This suggests that the British and

¹³¹ Ibid.

¹³² Ibid.

French were instead responding to a perceived trend, and attaching significance to said trend. Both the British debate and the 2009-2010 French debate implied a correlation between the preponderance of women wearing the full veil and growing fundamentalism within their respective Muslim community. Also, both debates suspected external pressures were responsible for the increase—pressures stemming from male members of the family, the religious community, or even their “Islamic culture” more generally. Both debates used examples of Muslim women suspected or proved of being intimidated or “influenced” into wearing the veil to undermine the connection between the veil and the freedom of expression of personal choice.

In the 2009-2010 debates on the full veil in France, there was a good amount of disagreement about the actual preponderance of Muslim women wearing the full veil. In late July of 2009, as the French debate was gearing up, *Le Monde* reported the figures generated by the intelligence services of the French police, which concluded that the phenomenon was “extremely marginal,” and estimated the number of women in France wearing the full veil at a meager 367—which, given an estimated Muslim population of 5 million, is indeed extremely marginal.¹³³ Some of those involved in the parliamentary fact-finding mission, already underway when these figures

¹³³ “Burqa: ‘Une loi, ce serait un gros pilon pour écraser une mouche,’” *Liberation*, July 30, 2009, < <http://www.liberation.fr/societe/0101582770-burqa-legiferer-ce-serait-sortir-un-gros-pilon-pour-eccraser-une-mouche>>.

were released, voiced their doubts as to the accuracy of the findings.

Perhaps the most vocal critic, André Gerin, called the figure “totally preposterous.”¹³⁴

In early September of 2009, *Le Figaro* published a revised estimation somewhere in the neighborhood of 2,000 women, citing a confidential report on Islam by the Ministry of the Interior.¹³⁵ Gerin again esteemed this figure “more reasonable but still underestimated.”¹³⁶ Of course, there are clear political motivations behind any commentary of these figures—and Gerin was never shy about his own position on the *voile intégral*. It remains unclear where the true number actually lies, notably because of the regulations surrounding the gathering of ethnic or religious statistics in France: it has been illegal since 1978, and out of practice since the late 19th century.¹³⁷ The truth is probably somewhere between the two extremes.

For Great Britain as well, an estimate of the actual number of women wearing the *burqa* or *niqab* is nearly impossible: sufficed to say that “the number of women wearing the niqab has increased in the past several years”

¹³⁴ “Cécilia Gabizon, “Deux mille femmes portent la burqa en France,” *Le Figaro*, September 9, 2009, < <http://www.lefigaro.fr/actualite-france/2009/09/09/01016-20090909ARTFIG00040-deux-mille-femmes-portent-la-burqa-en-france-.php>>.

¹³⁵ Ibid.

¹³⁶ “...*plus raisonnable mais toujours sous-estimée*,” translated from *ibid.*

¹³⁷ Laurence and Vaisse, 17.

from a very small percentage to a slightly less small one.¹³⁸ But again, as Gerin and other supporters of bans in both Great Britain and France have reiterated, the problem lies not with the actual number, but rather with the trend. Quoted in *Le Figaro*, Gerin has labeled this tendency as a “rise of fundamentalism in the last 15 years.”¹³⁹ It is remarks like this—in the British as well as the French cases—that demonstrate the different significances that are attached to the veil, which the next section will explore more in depth.

The alleged meanings behind the veil

Gerin’s comment at the end of the previous section explicitly draws a link between the rise in women wearing the full veil to a corresponding rise in fundamentalism in France. This is a connection that many on both sides of the English Channel have not been hesitant to make. The more interesting dimension of this alleged correlation is ways in which Great Britain and France each identify how this “fundamentalism” translates to a threat to the state and society. These understandings will in turn shed light on the ways in which the two nations frame the problem as a whole.

¹³⁸ Jane Perlez, “Muslims’ Veils Test Limits of Britain’s Tolerance,” *The New York Times*, June 22, 2007, <<http://www.nytimes.com/2007/06/22/world/Europe/22veil.html?pagewanted=1&r=1>>.

¹³⁹ “...la montée de l’intégrisme depuis quinze ans,” translated from Gabizon, “Deux mille femmes...”

Both the British and French debates centered on how the veil represented the failures of integration and a sign heralding the much-feared *repli communautaire*. As recently as January of 2010, MEP Nigel Farage, former head of the UK Independence Party and adamant proponent of a *burqa* ban in Great Britain, explained that the veil is a “symbol of an increasingly divided Britain...[where] the real worry is that we are heading towards a situation where many of our cities are ghettoized and there is even talk about Sharia law becoming part of British culture.”¹⁴⁰ This response echoes the fears of the French, to whom separate communities signal the death of healthy republicanism.

Aside from the overarching connections drawn between full veils and the breakdown of a coherent national society, many point to more concrete, identifiable problems related to increased veiling. In an article in *Le Figaro*, Mohamed Abdi—special advisor to Secretary of State for Urban Polices, former president of the feminist movement *Ni Putes, Ni Soumises*, and supporter of a *burqa* ban, Fadela Amara—mentioned the cases of headscarves in Belgium, the Netherlands, and England as a cautionary tale for France. He explains that they also initially judged the prevalence of veiling in their societies as a “marginal phenomenon,” implying that they now have widespread problems associated with headscarves, ranging from violence against women to racism to fundamentalism—the not-so-subtle

¹⁴⁰ “UKIP chief Nigel Farage calls for burka ban,” *BBC News*, January 17, 2010, < <http://news.bbc.co.uk/2/hi/8464124.stm>>.

implication being that France should curb this progression now with a ban.¹⁴¹

The implied relationship between veiling and a whole host of social ills is representative of both the British and French debates. Caldwell, when speaking of the 2003-2004 headscarf affair, wrote that the veil was made “at least in European eyes, a symbol not just of Muslim identity but also of truculent Islamism.”¹⁴² As Bowen also explains, by linking Islam—as personified by the veil—to these social and economic problems, banning the veil becomes the next logical step towards eradicating said problems. Bowen writes:

“...most of the testimony turned on problems of the poor suburbs: violence against women, challenges to authority in the schools, poverty, and, central to most of the testimony, the voile....In its very choice of persons to hear and questions to pose, the commissioners suggested...a set of causal links among the voile, Islam, violence against women, and a breakdown of order in schools.”¹⁴³

While Bowen was speaking specifically of the Stasi Commission testimony, this logic held true during the 2009-2010 debates as well. In particular, the gender-equality frame upon which the French commissions’ justification for a law would ultimately rely reinforced the assumed

¹⁴¹ “...*phénomène marginal*,” translated from *ibid.*

¹⁴² Caldwell, 233.

¹⁴³ Bowen, *Headscarves*, 115-116.

correlation between the veil and violence against women, the inferiority of women in Islam, intimidation by males in the community or family, and what Caldwell terms as a broader “danger to...Europe’s feminist order.”¹⁴⁴

Framing the issue

The meanings given to the veil in both Britain and France have contributed to the ways in which the “problem” of the veil has been framed in political as well as legal discourse. Establishing the frameworks for the British and French veil affairs will provide for an identification of any patterns in framing between the 2003-2004 and 2009-2010 French debates. Based on the changes to the French framing of the veil issue between these two affairs, with the analytical help of the British case study, conclusions can be drawn about the trajectory of French *laïcité* with respect to headscarves.

The British veil decision was largely argued in terms of security and logistics; whereas the French veil commissions’ recommendations and legal outcome(s) were framed as a human rights issue related to the constitutionally enshrined principle of republican *laïcité*. Although the gender equality discourse also was present at times in the British veil affair, the decree by the Ministry of Education only permitted schools to forbid the

¹⁴⁴ Caldwell, 234.

veil when the security, safety, or education of students were at risk. Larger in size and scope, the published reports and recommendations of the Stasi Commission in December of 2003 and the Gerin Commission in January of 2010 highlight the gender equality-based arguments and framing of both the issue of the *foulard* and of the *voile intégral*. As was mentioned before, both the British and French veil affairs have a strong tendency to link larger social issues within the Muslim communities with the symbol of the veil. Where they differ; however, is the framework that is given to justify the measures taken against this perceived societal threat.

The texts of both the Stasi Commission and the Gerin Commission give more insight into this implied link, particularly as it corresponds to gender. The Stasi report states: “the first victims of the degradation of the social situation are women.”¹⁴⁵ This section of the report, entitled *Threats to individual liberties*, continues on to suggest that people force these young girls to wear items that are “covering and asexualized,” outlining a direct link between the veil and a “resurgence of sexism” expressed through “various pressures and through verbal, psychological, or physical violence” by which young girls are victimized.¹⁴⁶ Furthermore, the report transitions into an enumeration of other forms of violence to which young Muslim girls are

¹⁴⁵ “...les premières victimes de la dégradation de la situation sociale sont les femmes,” translated from the Stasi Commission report, 46.

¹⁴⁶ “Des menaces sur les libertés individuelles...une résurgence du sexisme...diverses pression et par des violences verbales, psychologiques, ou physiques...courantes et asexuées,” translated from *ibid.*

allegedly subject, including sexual mutilation, polygamy, and forced marriages—again elaborating upon the alleged link between the problem of the veil and these types of violence.¹⁴⁷

Likewise, the Gerin Commission's recommendations were worded in terms of gender equality and human rights—though arguably to an even greater degree. Unlike the Stasi Commission whose recommendations targeted religious symbols as a whole, the Gerin Commission's recommendations were aimed at a specifically *female* religious symbol—thereby adding to the already present gender equality rhetoric. An examination of the Commission's proposals reveals a strongly gender equality oriented rhetoric. Mentions of “violence against women,” “discrimination,” “psychological violence,” “assault on the dignity of the person,” and “equality” all demonstrate the heavy focus on the gender equality framing under the Gerin Commission.

The Stasi Commission also addresses the religious-political question in a subsection of this part of the report, focusing on racist and xenophobic threats to Muslims. However, the commission stops short of actually suggesting that these racist attacks help spur religious and political extremism. Rather, it states that assumptions of “politico-religious radicalism” stem from the incorrect conflation of Islam with fundamentalism. In what is arguably an attempt to protect itself from accusations of

¹⁴⁷ Ibid., 47.

specifically targeting Islam in its recommendations, the report is careful to state that “the large majority of Muslims profess a faith and a belief that are perfectly compatible with the laws of the Republic.”¹⁴⁸

The Gerin Commission’s hearings and debates made repeated references to a growing salafist current in French society—though the actual scope or threat posed by this tendency is not definitive. By drawing an explicit link between the full veil and salafism, the Commission bolstered the argument that the veil is a threat to the public order. While this justification is limited in the Commission’s recommendations, I believe that they were laying the groundwork for a possible challenge by the European Court on Human Rights—a possibility that will be elaborated upon later in this chapter.

By repeatedly drawing such explicit connections between the veil and a myriad of gender-biased human rights violations, the Stasi and Gerin Commission reports serve to reinforce the gender equality framework that continues to limit the desired progress of the dominant form of French *laïcité*—notably demonstrated by the failure of the Gerin Commission to achieve unanimity on the desired recommendation for a full *burqa*-ban. The next section will discuss the trajectory of French *laïcité* as evidenced by the information gathered on the two commissions.

¹⁴⁸ “...la grande majorité des musulmans confesse une foi et une croyance parfaitement compatibles avec les lois de la République,” translated from *ibid.*, 48.

The trajectory of French *laïcité*

While there are indeed similarities between the events surrounding the debates of 2003-2004 and 2009-2010—particular in terms of the framing of the issue in gender-equality terms—the questions at the heart of the two commissions as well as their findings were of different natures. After careful examination of the details surrounding the 2003-2004 and 2009-2010 veil affairs in France, it is clear that although the Islamic veil was the shared target of the two commissions (albeit in different forms), the interpretations of *laïcité* and subsequent recommendations from each commission show a clear trend of increasing strictness. In order to better understand this trajectory, this section will utilize the *laïcité* typology presented by Ahmet Kuru, as well as make reference to a useful distinction made by journalist, sociologist, and *intellectuelle engagée* Caroline Fourest during her hearing before the Gerin Commission. These typologies will provide the necessary vocabulary to discuss the evolution of the understanding of *laïcité* from the Stasi Commission to the Gerin Commission, thereby illustrating where French *laïcité* stands today, as well as where it appears to be headed.

Assertive *Laïcité* vs. Passive *Laïcité*

Kuru's typology is particularly useful for understanding what are essentially two competing schools of thought within the tradition of *laïcité* in France. Different authors have labeled these two traditions in numerous ways, but Kuru names them as "assertive secularism" and "passive secularism." As was briefly explained in Chapter 1, Kuru admits that this distinction corresponds to another distinction common in France between "*laïcité de combat*" (combative secularism) and "*laïcité plurielle*" (pluralistic secularism).¹⁴⁹ For the purposes of this discussion; however, I will use a hybrid of the two distinctions, labeling the two philosophical trends within the larger scope of French *laïcité* as "assertive *laïcité*" and "passive *laïcité*." Kuru used the more generalized term "secularism" because he was using this typology for his comprehensive analysis of state policies of secularization in Turkey and the United States as well as France.

As this section is discussing the French cases in particular, the use of the term "*laïcité*" is more appropriate and will avoid confusion with the references made to "secularism" in the British case study. Aside from the alteration to the titles of the two trends, the terminology of this section will remain true to Kuru's typology.

¹⁴⁹ Kuru, 106.

Kuru explains the difference between these two schools of *laïcité* as a fundamental difference of opinion of the acceptable degrees of public visibility of religion. He writes: “combative secularism aims to exclude religion from the public sphere whereas passive secularism allows the public visibility of religion.”¹⁵⁰ In addition to making this distinction, Kuru also makes the argument that France has historically been dominated by assertive *laïcité*, with significant resistance on the part of passive secularists.¹⁵¹ Kuru’s study was intended as an examination of state policies toward religion in general, but upon closer inspection this overarching trend does also pertain to the issue of the veil in particular.

The trajectory evidenced by the Stasi and Gerin Commissions supports his assertion of the domination of assertive *laïcité*, as the interpretation of *laïcité* with respect to headscarves has become increasingly strict—or, to put it in Kuru’s terms, increasingly assertive. Furthermore, the resistance by passive secularists is particularly evident in the disagreements over the scope of an imminent ban both within the Gerin Commission itself as well as between different groups within the State. The particular resistance on the part of the *Conseil d’Etat* will be discussed further in the next section on legal matters.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

Several elements of the 2003-2004 and 2009-2010 debates and commissions demonstrate the ways in which current understandings of French *laïcité* are increasingly moving towards assertive *laïcité*. On a more general level, the fact that the Gerin Commission was even considering a full ban is incredibly significant. As was discussed in Chapters 1 and 2, the typical definition of the public space, although an ongoing debate, has been limited to areas under the direct purview of the State. Therefore, to have a commission established with the possibility of recommending a ban in areas that have always been considered as part of the private sphere—such as the streets—is a revolution in and of itself. This attempt to redefine the scope of the public sphere can be viewed as assertive *laïcité* in the sense that it is widening the boundaries within which the State can pursue the exclusion of religion.

Due to disagreement among the deputies, the Gerin Commission was ultimately unable to recommend the full ban that many of its individual members vocally supported. Despite this conclusion, again the consideration of a full ban at all tells a great deal about the state of *laïcité* today. In her hearing before the Gerin Commission, Caroline Fourest made a distinction between *laïcité française* and *laïcité autoritaire*.¹⁵² While she was arguing that the ultimate example of *laïcité autoritaire* would be a full ban of the

¹⁵² Caroline Fourest, “Compte rendu n° 12,” *l’Assemblée Nationale*, November 12, 2009, <<http://www.assemblee-nationale.fr/13/cr-miburqa/09-10/c0910012.asp>>.

“simple veil,” I strongly argue that the consideration of any kind of full ban represents a trend towards a more authoritarian or assertive *laïcité*. As many of the legal objections to the ban discussed in the next chapter will argue, the continued use of the gender equality/human rights frame to justify the general banning of the full veil is a significant more authoritarian argument for *laïcité* than an argument based on national security or threats to the public order would otherwise be. Therefore, the trajectory of *laïcité* toward stricter interpretation is evidenced not only by the mere consideration of a full ban, but the fact that this consideration was explicitly worded in terms of gender equality and *laïcité*.

The actual declared missions of each of the commissions also demonstrate their differing starting points with respect to *laïcité*. The Stasi Commission was charged with reflecting on the application of the principle of *laïcité* in the Republic, while the Gerin Commission was asked to investigate the practice of wearing the veil-full specifically and to enumerate the consequences of this phenomenon as well as determine its compatibility with French republican values and female dignity in particular. The two questions have vastly different connotations and scopes. The Stasi Commission was investigating religious symbols in general, while the Gerin Commission made absolutely no pretense to be examining anything other than a specifically Islamic symbol. As was also mentioned in the framing section, the fact that the question of “female dignity” was included in the wording of the Gerin

Commission's objective undoubtedly steers the Commission towards a gender-equality and human rights-based interpretation of the issue. The conclusions of the Stasi Commission were also based upon this framing, but the wording itself did not necessarily steer their deliberations in this direction. The shift from an underlying concern about gender equality to an outright objective centered on it is clear evidence that France is moving toward a more assertive or authoritarian *laïcité*.

CHAPTER FIVE: Legal Challenges and Conclusions

The chapter will address the role of national and supranational legal-judicial entities in the debates and their outcome and hypothesize on the future of the complicated relationship between the veil and *laïcité* in France. This chapter will also briefly summarize the conclusions made about the 2009-2010 affair with respect to the 2003-2004 affair and the British case study that support the assertion that the understanding and application of *laïcité* within France is becoming increasingly assertive and authoritarian. The larger implications of these findings will also offer some insight into the repercussions for the future of headscarves in France as well as other European communities.

Summary of findings

As the previous chapters demonstrated, this most recent veil affair has shared many of the same interior and exterior threats—real or perceived—that helped to spark the 2003-2004 affair. In particular, the addition of the domestic stresses of the financial crisis and the continued electoral threat of the extreme right have allowed to veil to once again become a symbol for social ills.

Thanks to the analytical help of the 2003-2004 French veil affair and the 2006-2007 British veil affair, the current debate was able to be placed in an appropriate national and European context. In particular, the comparison of the 2003-2004 and 2009-2010 affairs highlights the evolution from the prior understandings and application of *laïcité* vis-à-vis headscarves. The evidence clearly supports the assertion that French *laïcité* is becoming increasingly assertive and authoritarian, despite resistance on the part of passive secularists and legal challenges to the justification of the proposed ban, which will be discussed in the following section.

Legal considerations

As France continues down the path toward an increasingly strict interpretation and application of *laïcité*, a number of legal questions are bound to arise. This is also heavily due to the fact that the French debate and commission recommendations continue to rely upon the gender equality frame discussed earlier in this chapter. The judicial considerations of the French *Conseil d'Etat* and the European Court of Human Rights foreshadow the legal difficulties with which the French state will be confronted if it continues to pursue increasing strict measures in the name of *laïcité*.

The *Conseil d'Etat* has traditionally been more reserved about any kind of outright ban or uniform decision with respect to headscarves. As was

explained in Chapter 2, prior to the March 15, 2004 law, the *Conseil d'Etat* had ruled that headscarves were not inherently incompatible with the principle of *laïcité*, and continued to rule on whether or not to uphold individual school expulsions on a case-by-case basis—heavily favoring the individual school girls in their verdicts.¹⁵³

Thus it should come as little surprise that the *Conseil's* recent findings with respect to a hypothetical full ban on the veil were largely negative. A mere three days after the Gerin Commission released its recommendations, which did not support a general ban, French Prime Minister François Fillon requested that the *Conseil* come up with judicial recommendations that would allow for a proposal of law “permitting to reach a ban of the *voile integral...as large and real as possible*” for the Spring of 2010.¹⁵⁴ On March 30, 2010 the *Conseil* released its findings, which quite clearly signaled the legal impossibilities of a full ban, explaining that the court could not “find any incontestable juridical foundation” for the kind of ban desired by the parliament.¹⁵⁵

¹⁵³ Ruling of the Conseil d'Etat, 86.

¹⁵⁴ “...permettant de parvenir a une interdiction du voile intégral...la plus large et la plus effective possible,” translated from a quote by François Fillon from “Voile intégral: François Fillon veut légiférer ‘au printemps,’” *Le Monde*, March 11, 2010, < http://www.lemonde.fr/politique/article/2010/03/11/voile-integral-francois-fillon-veut-legiferer-auprintemps_1317961_823448.html>.

¹⁵⁵ “...trouver aucun fondement juridique incontestable,” translated from Stéphanie Le Bars, “Le Conseil d'Etat rejette l'interdiction général du voile intégral,” *Le Monde*, March 30, 2010, < <http://www.lemonde.fr/societe/>

The full conclusions of the *Conseil* did; however, reveal some significant recommendations for how to ban the full veil in numerous areas of society. The *Conseil's* rulings echo the findings of this study: that the gender equality and *laïcité* frame on which the issue is being argued is the main impediment to the desired scope of the ban. The *Conseil* recommended that the legislators frame the issue in terms of security and identification in order to increase their chances of success—no doubt referring to the likely objections on the grounds of a violation of the European Convention on Human Rights. While the *Conseil* did not include any explicit limits to the acceptable areas for a ban, they did mention several sectors that could necessitate identification, including: courts, polling stations, city halls, child pick-up locations from schools, places where medical benefits are distributed, and examinations—including at the university level.¹⁵⁶ While many of these areas coincide with the areas mentioned by the Gerin Commission, the *Conseil* also made reference to another series of sectors that require identification for matters of age or payment such as nightclubs, cinemas, and bars.¹⁵⁷

article/2010/03/30/voile-integral-le-conseil-d-etat-rejette-l-interdiction-generale_1326228_3224.html>.

¹⁵⁶ “...les tribunaux, les bureaux de votes, les mairies, la remise des enfant de l'école, les lieux où sont délivrées des prestations médicales ou hospitalières, le déroulement de concours ou d'examens, y compris dans les universités,” translated from *ibid*.

¹⁵⁷ *Ibid*.

In terms of the concerns for identification with respect to criminal activity, the *Conseil* mentioned the possibility of giving police prefects “special powers in all areas open to the public, from the moment that the safeguarding of the public order requires it, for example for the entrance to banks, jewelry stores or for sporting events, international conferences...” etc.¹⁵⁸ While this type of identity control would not be included in the final version of the ban, it would in theory accomplish the same kind of pressure to de-veil that the parliament is seeking to enshrine in law. The idea that this may be the ideal solution is; however, undermined by the fact that Gerin Commission report clearly states that “it seems difficult to limit this practice (wearing the full veil) without banning it.”¹⁵⁹

Given this relatively black and white statement, and the continued calls for a full veil by a large number of French deputies, amending a ban to correspond with the recommendations of the *Conseil* may be a more significant compromise than anticipated. Indeed, after the *Conseil* released its conclusions, a number of French deputies came out in continued support of a full ban. Jean-François Copé, UMP party leader in the National Assembly, voiced his opinion that although the findings of the *Conseil* are “respectable,” it is ultimately up to the politicians to determine the scope of the ban.

¹⁵⁸ “...confier au préfet un pouvoir de police spéciale susceptible d’être exercé en tout lieu ouvert au public, des lors que la sauvegarde de l’ordre public l’exige, par exemple pour l’accès aux banques, aux bijouteries ou pour des rencontres sportives, des conférences internationales...,” translated from Ibid.

¹⁵⁹ Gerin Commission report, 166.

Others, including a deputy from Hauts-de-Seine were less diplomatic in offering their perspective—Patrick Balkany explained that “the *Conseil d’Etat* has given its advise. We are not obligated to follow it.”¹⁶⁰

The implication of the European Convention on Human Rights (ECHR)—as expressed by the European Court of Human Rights (ECtHR) as well as the European Commission of Human Rights (ECmHR)—is also a key factor for determining the limits of a full ban in any European country.

Although France is one of the first European countries to pursue a full ban, there are some important precedents concerning the ECHR that help to shed some light on the legal difficulties facing any full ban advanced by the French Parliament.

In a 2007 article in the *Human Rights Law Review*, Anastasia Vakulenko analyzed several cases of Islamic dress at the European Court of Human Rights level, all of which involved the infamous Article 9 of the European Convention on Human Rights.¹⁶¹ Article 9 of the ECHR is as follows:

1. “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to...manifest his religion or belief, in worship, teaching, practice and observance.

¹⁶⁰ Cécilia Gabizon, “Burqa: l’avis du Conseil d’Etat contesté,” *Le Figaro*, March 30, 2010, < <http://www.lefigaro.fr/actualite-france/2010/03/30/01016-20100330ARTFIG00812-burqa-l-avis-du-conseil-d-etat-conteste-.php>>.

¹⁶¹ Anastasia Vakulenko, “Islamic Dress in Human Rights Jurisprudence: A Critique of Current Trends,” *Human Rights Law Review*, (2007) 7 (4), 717-739, available from < <http://hrlr.oxfordjournals.org/content/7/4/717.full>>.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."¹⁶²

In prior cases concerning the headscarf that were brought before the ECtHR, the plaintiffs were typically not favored. Many of the Court's rulings were founded on the idea that the women in question had made choices to participate in particular areas that were known to have secular restrictions. For example, in *Karaduman v Turkey* in 1993, a woman who had graduated from university was being denied documentation of her certification on the grounds that she refused to provide a photograph with her head uncovered.¹⁶³ Although the case did not actually make it to the ECtHR, her argument against the university's ruling was based on Article 9. Karaduman argued that the university was impeding her ability to manifest her religion. In rejecting her claim, the ECmHR emphasized the fact that she had chosen to attend a secular university with known rules about religious dress essentially nullified her argument. Furthermore, the Commission cited the presence of

¹⁶² Jim Murdoch, "Freedom of thought, conscience and religion: a guide to the implementation of Article 9 of the European Convention on Human Rights," *Human Rights Handbooks*, No. 9, September, 2007, available from <<http://echr.coe.int/NR/ronlyres/88B98643-09C1-4D80-ACD8-EBBB51851747/0/DG2ENHRHAND092007.pdf>>.

¹⁶³ Vakulenko, 2.

“certain religious fundamentalist currents” in Turkey as further support for the school’s refusal to provide her desired documentation.¹⁶⁴

Sahin v Turkey—another case involving Turkey and the veil—this time in 2007, was the first point at which the ECtHR acknowledged that a ban of the veil could legitimately violate Article 9. This case also concerned the ban on headscarves in universities in Turkey. And while the Court did eventually rule in favor of the Turkish ban, it did so once again by referring to the threat to public safety that the extremists posed in Turkey. The gender equality argument was also present in this case, with the Court “endors[ing] the national authorities’ view of the headscarf as antithetical to both secularism and gender equality.”¹⁶⁵

The real question; however, is: how will the ECtHR view a French full ban if there were not a security dimension to its justification? While there have been cases in the ECtHR that were successfully defended on the sole basis of constitutionally-established gender equality and religious neutrality, the cases involving both aspects appear significantly stronger. While the recommendations of the Gerin Commission remain largely founded on gender equality concerns, parts of the report do consider the possible legal challenges that could be made by the French Constitutional court or the ECtHR. The Gerin Commission report acknowledges that the “security” lens

¹⁶⁴ *Ibid.*, 3.

¹⁶⁵ *Ibid.*

would be the least risky avenue for pursuing a general ban, as the argument could be made on a number of levels: namely, the concealment of weapons, identity concerns, and adherence to modern social norms.¹⁶⁶

However, a closer look at the report's list of proposals still shows that the gender equality legal justification is the defining rhetoric of the Commission's report. The concluding paragraphs of the proposal section of the report suggest that while a number of members of the Commission were indeed in favor of banning articles of clothing that cover the face in public—Islamic or otherwise—for the sake of the public order, that there was not sufficient agreement to put forth this recommendation in the concrete list of proposals. The fact that the security question was even put forth; however, raises interesting questions for the future of French *laïcité*.

While France has, in the past, avoided referring to this type of argumentation—instead relying on the constitutionally documented principal of *laïcité*—the Commission's discussion of security concerns suggests that France is at least preparing the groundwork for an eventual ban argued on security concerns. The question then becomes: will France sacrifice its traditional references to *laïcité* and gender equality for the sake of a successful full ban of the veil? Though time will be the ultimate judge of this, the findings of this study suggest that the trend towards increasingly assertive or authoritarian *laïcité* will prompt France to ban the veil by any

¹⁶⁶ Gerin Commission Report, 178-179.

means necessary—including through a change in framing that the *Conseil d'Etat* and ECHR are essentially compelling France to adopt.

There are, of course, also other legal questions surrounding a ban that do not solely involve its framing. An article published in early February of 2010, following the recommendations of the Gerin Commission, addressed the possible legal issues of the ban. According to Yvonne Donders, Executive Director of the Amsterdam Center of International Law and Associate Professor, there are legally justified ways in which governments can restrict human rights such as freedom of religious expression.¹⁶⁷ The article mentions three specific criteria for a successful restriction of said rights:

1. “Any measure must be done by law (i.e. must pass parliamentary vote, for instance.)
2. It has to have a legitimate aim (in the base of the burqa, the question of the promotion of public security or gender equality could be raised);
3. The “proportionality test” must be met—is the measure necessary and proportionate to the aim to be achieved?”¹⁶⁸

¹⁶⁷ “The law on banning the burqa,” *Radio Netherlands Worldwide*, February 2, 2010, < <http://www.rnw.nl/international-justice/article/law-banning-burqa>>.

¹⁶⁸ *Ibid.*

Donders explains that the last criteria is often the most difficult to justify—as would certainly be the case in France. For the court cases involving Turkey, there was a justifiable fear of the formidable and numerous extremist groups within Turkish society. In France; however, as was discussed earlier, the response to the full veil hardly corresponds to the suspected number of women actually wearing it. Furthermore, the salafist current to which many opponents of the veil have made references is nowhere near as well established or documented in France as it is in Turkey. It is therefore quite possible that France’s eventual burqa ban could be among the first to reverse the trend of the ECtHR’s rulings in favor of the national authorities.

The future of the veil in Europe?

The purpose of this study is not to wildly speculate on the outcomes of similar veil debates in other European countries, and yet the emergence of several initiatives to ban the full veil in proximity to the French case suggests that there is perhaps a relationship between the two. If France manages to successfully pass a full or substantial ban on the full veil, other European countries will no doubt be emboldened to try their hand at similarly restrictive measures. Deputies in Belgium have already unanimously voted to pursue a similar ban this spring. Likewise, French Canada is seeking to

eliminate the veil from the public sphere. Similar debates are also gaining momentum in Italy, the United Kingdom, Germany, the Netherlands, as well as Spain.

Different nations undoubtedly respond to the perceived threat of “visible” Islam in different ways, notably based on their historical relationship with organized religion and processes of secularization. As the British and French cases illustrated, the ways in which the “problem” is framed are extremely significant and often signal the particular values that the State feels are in jeopardy. While the inauguration of comparable debates in much of Western Europe could suggest that the trend of increasingly authoritarian interpretation and application of *laïcité* that has been witnessed in France is a growing pattern, at the very least the increased occurrence of these national debates underscores the importance of the conclusions of this study.

The ways in which individual nations frame the threat posed by the veil—full or simple—has serious implications for the degree of severity of the policy solution they pursue, which in turn are significant when placed in the context of larger legal tensions at the national and supranational levels. The conclusions of this study suggest that if France aspires to continue down the path of increasingly assertive and authoritarian secularism, it will, at a certain point, be forced to adapt the ways in which it frames the menace of

the veil to the growing national and supranational preference for security-based arguments.

While time will be the ultimate judge, restrictive measures such as Switzerland's recent minaret ban and France's eventual ban (to one degree or another) of the full veil law will serve as a crucial litmus test for the development of a more consistent and coherent strategy for lawfully and constitutionally limiting icons of religious expression, such as the Islamic veil, in liberal, Western nations.

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