

OUTLAWING THE VEIL, BANNING THE MUSLIM? RESTRICTING RELIGIOUS FREEDOM IN FRANCE

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In the last ten years, France has increasingly limited religious expression by banning ostentatious religious symbols in public schools in 2004 and face coverings in public spaces in 2011. Both of these laws were drafted and enacted after public discussions around the management of rising religious diversity in France—most notably Islam.¹ During these debates, the French openly wondered about differences that impacted or confronted national norms while respecting national values. This included questions around the meaning of secularism—broadly translated as *laïcité*—and the limits of religious manifestation in the public sphere.

In their efforts to maintain a Republican political model, based on a strong public/private divide, the French have, by way of these laws, increasingly required minorities to comply with specific forms of public behavior. Given that some Muslims believe certain types of comportment—such as the veil—is an essential component of their religious obligation, this has required that they choose between their faith and compliance with these laws.

The cost for many has been high, as it has forced them to choose between wearing a veil or being part of French society in the most basic way; it has compromised their ability to live authentically as contributing members of society. They are, in the most practical of ways, cut off from contact. In addition, the conversations around the creation of the law have increased discrimination of Muslims and instigated questions around their ability to integrate and “be French” when many Muslims

are already French citizens. Equality, liberty, and toleration are at stake in these conversations.

I will briefly outline a few key points to show that religious freedom has been a central value in France since the late 1700s. Increasing cultural and religious diversity pressed on the limits of *laïcité*, erupting as it did in 1989 in the schools. The reaction since that time has been to relegate the manifestation of religious diversity, and the Muslim veil in particular, into the bounds of the private sphere. This has been supported, I show, by the European Court of Human Rights. But what affect does this have on French Muslims? The last section of this article shows that Muslims feel (and are) increasingly discriminated and are viewed as foreigners in need of integration. This undercuts the values of equality and liberty of the Republic.

Religious freedom in France

For centuries, French thought and legislation have protected religious freedom. It was included, for example, in some of the foundational documents of the Republic, such as the 1789 Declaration of the Rights of Man and the Citizen.² Since that time, the French have increasingly nuanced the place of religion. In the 1800s and early 1900s, this meant a sustained reflection of the influence of the Catholic Church on the religious, political, and economic life of the nation.

Thus in the 1880s, Jules Ferry proposed a set of laws that mandated that teachers had to be laypersons and that religion be left out of the curriculum (see Bowen 2007, p. 25). By these acts and others, French society gradually distanced its social and political institutions from the Church and religion more generally. This protected an individual's right to freedom of conscience while also progressively circumscribing religion to the private sphere.

The relationship between religion and social institutions would be officially enshrined in the oft-mentioned law of 1905. This law states in part:

Article 1: The Republic assures freedom of conscience. It guarantees freedom of worship, with restrictions hereafter only in the interest of public order.

Article 2: The Republic does not recognize, provide employment in or subsidy to any religion. . . (Baubérot and Dagens 2005, p. 64)

The law envisioned a detachment of state from religion by allowing private citizens to form religious associations that would serve as intermediaries between religion and the state. The idea was to separate the public and private spheres in order to protect religious freedom (among other freedoms) in a space apart while at the same time shielding common norms of equality and liberty in the Republic. The approach followed the thinking of Jean-Jacques Rousseau (1987), whereby the citizen was foremost cast along political lines when they stepped out into the public sphere. Here, it was thought, they could disengage their personal affiliations and act befitting the collective good. The central tension with this approach is when private beliefs—or identity—bleed into the public sphere.

As a final point of emphasis, in the most recent Constitution, religious freedom is addressed in article 1, which states, in part:

France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. . . .³

This prominence on religious freedom throughout the centuries has meant that there is little controversy around the freedom to practice religion in private in France. Individuals can observe religious obligations and eat, drink, and pursue ritual broadly. The controversy begins at the doorstep to the public sphere, especially for those who believe they are required to wear a headscarf in public spaces in order to meet the stipulations of their faith. This has become a point of contention in part because some believe the headscarf infringes on the definition of what it means to have a secular public sphere. This was keenly felt in public schools, which have been the beacons of secularism since the time of Ferry.

The issue around headscarves in schools began, as is well known, in 1989. At the beginning of that school year, three young women came to school wearing their headscarves. The school administrations balked at this because schools, they believed, were meant to provide a secular education and a neutral space for learning—free from personal commitments. This incident reignited a national debate around the status of *laïcité* and what role religion should play in public. The stakes were high as the terms had been long debated and fought for.

After a few years of contention around these issues, President Chirac called a Commission to investigate the status of *laïcité* in France. This Commission, called the Stasi Commission,⁴ made 26 recommendations, including the proposal to draft a law banning religious garb in public schools.

The law was passed a few months later and banned ostentatious religious symbols, including veils, in public schools across the country. Although the law was written in a generalized way in order to conform to the equality clauses, the Muslim communities observed—quite rightly from my perspective—that this was a conversation targeted at them. The few hundred schoolgirls who wore the veil would now have to choose between this religious expression and attending public school.⁵

In 2011, in a slightly different political climate, the French passed another law that directly affected Muslim women when they banned face coverings in public. For the minority of women who choose to wear the face veil along with the headscarf, this meant that they were (and are) prohibited from entering government buildings, walking down the street, taking a bus, and dropping their children off at school.

Taken together, these two laws restrict Muslim women who choose to veil from attending public schools and, if they don the face veil, being part of the public sphere. They must decide for either one or the other. At what cost, however, does this restriction of religious freedom come for those who understand the veil as an important expression of their religious identity? What happens to their understanding of religious obligation and their duo identity as French and Muslim? More generally, what is the cost to the rest of society of freedom, equality, and toleration? Before attempting to answer these questions, it is important to understand whether this type of restriction is simply the cost of living in France, or whether this is part of a wider European approach.

Religious freedom in Europe: The case of SAS v. France

The European Court of Human Rights recently had the opportunity to examine the French law banning face coverings in public. On the day the law was brought into force, a French national (born in Pakistan) brought the case to the European Court of Human Rights. Although never arrested, she held that the law “deprived her of the possibility of wearing the full face veil in public.”⁶ She argued that this was contrary to her right to religious freedom.

In a judgment handed down in July of 2014, the Court ruled in favor of the French government. They found that the face veil contravened “‘respect for the minimum requirements of life in society’ – or of ‘living together’.”⁷ They held the face is an important marker of social interaction that, if hidden, contravenes the rights of others to live in a space of socialization which makes living together easier. The wording the Court used is important here:

...the face plays an important role in social interaction. [The Court] can understand the view that individuals who are present in places open to all may not wish to see practices or attitudes developing there which would fundamentally call into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, forms an indispensable element of community life within the society in question. The Court is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by... [France] as breaching the right of others to live in a space of socialisation which makes living together easier.⁸

One may agree or disagree with France’s law and the European Court’s support of the law. One may find the face veil disagreeable, foreign, or uncomfortable. The more general question, however, is how these laws affect the Muslim population and wider conceptions of equality and liberty. What of toleration?

On the point of toleration, the Court expresses concern. Further along in the judgment they address the issue of Islamophobia directly. They “emphasise that [this action risks] contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance.”⁹ The Court is right to worry about the effects of this ruling on the discrimination of Muslims. As Farid Hafez argues in his article tracing the interconnections of anti-Semitism with Islamophobia in far right politics in Europe, Islamophobia has largely replaced anti-Semitism. He cites the 2011 European Report on Intolerance that showed that the majority of the population believes that Islam is a religion of intolerance.¹⁰

How do laws such as these affect Muslims living in France? In 2005–2006, I went to France to ask Muslims (and others) this question. I spent

the year researching and teaching English conversation in a public high school just south of Paris. While there, I had the opportunity to speak with, and befriend, a wide variety of Muslims. I asked them directly about how they were affected.

On discrimination and integration

In conversations with my Muslim friends, I took away many riches. I would like to share two reflections that were frequently mentioned by many of the people I spoke with. These everyday experiences shed light on how Muslims in France are treated and how laws that restrict religious freedom affect them.

The first thought is that the women who choose to veil are already—and this is before the passing of the law banning face veils—harassed and discriminated on the streets of France and hence made to feel less than. As Diana explained to me one day at her home over steaming mint tea, people are scared of them: they fear them, they spit at them, and they walk on the other side of the road to avoid them. She said: “When I walk down the street there are people who look at me like I’m nothing.” Her sister-in-law Stephanie, who had converted to Islam a few years before and who does not veil in public, added:

The problem [of unequal treatment] is worse for Muslims because even a very devout practicing Jew or Christian is not going to be denigrated like a Muslim. For Muslims, it’s really hard. Look at me, I was scared to tell my family that I had converted. It is as if there was a huge burden to carry and pressure to bear. Being Muslim in France is like being defiled. You are obliged to always prove to people that you have value while everyone else already does. But for them, you really don’t have value. I don’t know why it’s like that, but it is.

Many of my Muslim conversation partners echoed these views. Being Muslim in France automatically balkanizes one into a discreet category of other that is to be at once feared, in need of protection, and seen as opposed to the common norms that bind French society (see also Fernando 2014).

The act of veiling is seen as being opposed to how the public and private are divided, and how *laïcité* is currently interpreted. *Being* Muslim (in private) is not the issue, but *acting* Muslim (in public) is. It is not just,

however, the affects on the public sphere and the interpretation of *laïcité*, that is at issue in these debates. It brings up the question of integration and how well Muslims fit into French society. Is it possible to integrate Muslims if they choose different forms of public appearance? What does integration mean, for example, for Abbas, a seventeen-year-old Arab boy I met at school? Abbas' parents came to France from Algeria before he was born. Abbas initially described himself as half Algerian and half French. He explained:

My parents, they came from Algeria and they educated me in the Algerian ways, just like they were. I am of Algerian culture so I can't say that I'm totally French... No, I am French, but I'm Algerian too. I am completely French, and I'm Algerian too.

As Abbas' statement shows, identity is a complex phenomenon that is not easily framed and can change from life moment to another. At home, he may identify more with certain customs and rituals that are shaped by the culture or religion of Algeria. With his friends at school, he may highlight a different side of who he is. What does integration mean when one identifies with different aspects of being religious, cultural, and political?

What does integration mean for Mohammed, a Muslim who was born and raised in France? Mohammad was a well-loved teacher at the school who sat down to explain to me the difficulty he faces living his faith and pursuing his profession. He struggled with his roles as Muslim, Frenchman, and teacher.

I feel like I'm in a vise. Why? Because I'm a Muslim, a French Muslim and I pray five times a day... At a certain moment it's just not obvious how I can live my religion... [and be a teacher that upholds the values of] French institutions... I'm like this [acts out to show that his head is pressed in on both sides].

The problem, as Abbas and Mohammad describe it, is that one part of their identity fits uncomfortably (at best) into the public sphere. The more the veil and other religious symbols are banned, the less space there is for people of faith to live authentically as Muslims and Frenchmen. Banning the veil through the passing of the 2004 and 2011 laws has also had the effect of increasingly rendering religion a taboo subject, which is not to be discussed, Mohammad explained.

Before the veil was banned in public schools, he could address issues—such as establishing a room for prayer or the religious dimensions of local conflict—using a variety of lenses, including tradition, culture, and religion. Now that religion has been cast into the private sphere more and more, he is reluctant to have this conversation with his students. He fears the repercussions from his colleagues who see him as not upholding laic principles and his mandate as a teacher in a secular school system. This, they have told him, is his duty as a teacher and citizen and is part of integrating into the French way of life.

Yet, Mohammed was born in France and does not know any other life, but still he is an example of the type of person some see as needing to be integrated because of his strong beliefs in his cultural background, faith, and his desire to pass this on to his children. He feels like he is in a vise—a strong visual image of what is happening to him and other Muslims in France today.

As we can see from these two brief examples, identity and religious manifestation do not fit neatly into the private sphere, be it because of the veil or because humans are by nature complex intercultural beings that are constantly evolving. Those people who engage, perhaps by necessity, their complex selves in the public arena face questions as to their suitability for equal inclusion in the French public sphere. To what extent, however, does this undermine the very definition of equality and liberty that are part of the foundation of the French Republic?

Notes

1. The 2004 law was passed after a recommendation was issued by a Commission of experts (known as the Stasi Commission), which was created to study diversity in France, assembled by then-President Chirac. The 2011 law was passed after a Parliamentary Commission issued a Report on the face veil in France. The subsequent Resolution at the National Assembly was called *Attachment and Respect for Republican Values at a Time when they are Being Undermined by the Development of Radical Practices*.
2. Article 10 in that Declaration states, “no one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.” <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-October-1958.25742.html> (accessed 19 March 2015).
3. <http://www.assemblee-nationale.fr/english/index.asp> (accessed 19 March 2015).
4. See Note 1.
5. Sikhs were the second most affected religious group.
6. *SAS v France*, (GC) No. 43835/11 [2014]. Para. 10, 76, 3.

7. *SAS v France*, (GC) No. 43835/11 [2014]. Para. 121.
8. *SAS v France*, (GC) No. 43835/11 [2014]. Para. 122.
9. *SAS v France*, (GC) No. 43835/11 [2014]. Para. 149.
10. Hafez states: “Far right parties with former historical links to fascism or National Socialism have been attempting to distance themselves from their previous antisemitism by positioning themselves as pro-Israeli, while their reliance on the epistemic essence of racialization has only moved from a Jewish to a Muslim subject” (2014, p. 479, 498).

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