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**France's Renewed Reaction to the "Islamic Headscarf":
The Role of the Republican Model of Citizenship in Shaping French
Public Responses to New Social Actors**

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France's Renewed Reaction to the "Islamic Headscarf":

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Elaine R. Thomas

The French National Assembly on February 11, 2004 approved a new law prohibiting students from wearing "ostensible" religious symbols in the nation's public schools. While formally applicable to signs of all religions—headscarves, yarmulkes, and crosses "of a clearly excessive dimension" will all be banned—the law is clearly being passed mainly in response to concerns about Muslim students wearing headscarves. The proposed law was drawn, selectively, from the recommendations of a special investigatory commission appointed by Jacques Chirac in July 2003 to investigate "the application of the principle of secularism (*laïcité*) in the Republic" and led by immigration expert Bernard Stasi. The widely publicized conclusions of this Commission sought to harness *laïcité*'s broad public legitimacy to the project of developing a new shared consensus about how best to integrate France's sizable, and increasingly visible, Muslim religious minority.¹ In reality, however, the new law provoked a national public debate of rare intensity, one that has visibly divided France's leading pro-secularist organizations, political parties, and other major political groupings.²

Both the intensity of controversy surrounding the headscarf issue and the new law itself have astonished many observers outside of France, not only in the United States and Arab countries, but even within the rest of Europe.³ What accounts for the peculiar excitement

¹ France's Muslim population, Europe's largest, is estimated at approximately 5 million. Wholly reliable figures are lacking, however, since France prohibits collecting of data on religion. A 1994 survey by *Le Monde* found that 27% of Muslims in France were "believing and practicing." (Christopher Caldwell, "The Crescent and the Tricolor," *The Atlantic On-line* [November 2000], <http://www.theatlantic.com/issues/2000/11/caldwell.htm>).

² « La loi sur le voile à l'école divise le camp laïque, » *Le Monde*, Jan. 17, 2004; « Voile, croix, kippa, turban : du consensus à la confusion, » *Le Temps*, Jan. 24, 2004.

³ "Les medias arabes, unanimes, condamnent 'l'intégrisme laïque' français, » *Le Monde*, Dec. 11, 2003; Jérôme Cordelier, « Reproches ostentatoires, » *Le Point*, Jan. 2, 2004; « Les petits camarades de Ferry lui bottent les fesses, » *Libération*, Jan. 23, 2004; « Sous la laïcité, les traditions chrétiennes, » *Le Temps*



surrounding this question in France and the determination of the French government, supported by a clear majority of the French public opinion⁴ and many French intellectuals from across the political spectrum, to pass such controversial and restrictive new legislation on this issue?

In reality, this question can be seen as having two rather different faces. The first face of the question has to do with the apparent disparity between cause and effect, with the fact that (mere) headscarves have provoked such a seemingly disproportionate reaction in France. Students can readily be found wearing headscarves to school in the US, Canada, Britain, and other many countries where they generally pass almost without notice, their relative novelty and a non-Muslim majority population notwithstanding. To explain France's adoption of its surprising new law, one must therefore first explain why the headscarves issue has proven so peculiarly sensitive in France, regularly occasioned such public furor since its first emergence in 1989, and now commanded the attention of a prestigious national commission of experts. In responding to this first face of the question, an appreciation of French understandings of citizenship and *laïcité* and the particularities of French history and tradition associated with those concepts is essential.

There is also a second face of the question, however, which has to do with why, now, this law was adopted. The new law marks a break in existing French policy, and cannot be accounted for by reference to long-term continuities of French political tradition alone. In order to understand the departure marked by this law, as opposed to France's ongoing interest in the headscarf issue, one needs to look more closely at the changing social, legal, and international political context within which the Stasi Commission was appointed and how that changing context contributed to shaping its decisions. Among the most important factors that need to be noted in this regard are practical difficulties associated with earlier policy responses; an effective mobilization of public sympathy by new feminist groups organizing within the disadvantaged neighborhoods where many Muslim women in France live; concern about the rise of anti-Semitism and the spill-over of conflicts in the Middle East into French public schools; and, paradoxically, developments in international human rights law.

(Geneva), Dec. 18, 2003; Dominique Vidal, «Exception française,» *Le Monde Diplomatique*, no. 599 (Feb. 2004): 6-7.

⁴ Surveys of CSA, Ifop, and BVA found anywhere from 57% to 72% in favor. Catherine Coroller, "L'opinion publique plutôt pour un législation," *Libération*, Dec. 8, 2003.



The Peculiar Intensity of the Headscarf Issue in France

France has reacted like no other country of immigration to the presence of “Islamic” headscarves in its public schools. According official French sources, a total of 1,256 foulards were reported as being worn in France’s public schools at the start of the 2003-2004 school year. Only twenty of these cases were judged “difficult,” even by school officials themselves, and only four students were expelled.⁵ Considering that France’s Muslim population is currently estimated at 4-5 million and is predominantly young, French public reaction to the problem of students in headscarves appears strikingly disproportionate.

France’s peculiar and seemingly overblown reaction to this issue has been significantly shaped by France’s republican tradition of thinking about citizenship, its relationship to membership in social and religious groups, and most importantly secularism or *laïcité*. The terms of public “common sense” on these issues in France form a peculiar political cultural backdrop against which the headscarves issue has repeatedly emerged as a major, and fiercely debated, issue.

Citizenship and Group Membership

Among French proponents of the law, citizenship is commonly exalted as a realization of individuality. For supporters, this individuality of the citizen is further equated with emancipation of the individual as a rational agent from groups seeking control of their members through force or superstition.⁶ A telling passage of the Commission’s report, rightly highlighted by Pierre Birnbaum, thus declares:

L’État laïque, garant de la liberté de conscience, outre la liberté de culte ou d’expression, protège l’individu; il permet librement à tous de choisir, ou non, une option spirituelle ou religieuse, d’en changer ou d’y renoncer. Il s’assure qu’aucun

⁵ Philippe Bernard, “Foulard à l’école: la réalité cachée derrière les chiffres officiels, » *Le Monde*, Dec. 10, 2003.

⁶ In the words of Commission member Ghislaine Hudson, “Le fait de demander que l’école soit un milieu protégé des influences religieuses et politique, parce que c’est un lieu de formation d’esprit, ne vise pas à



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*groupe, aucune communauté ne peut imposer à quiconque une appartenance ou une identité confessionnelle, en particulière en raison de ses origines.*⁷

Many proponents of the new law point to growing numbers of girls in “Islamic veils” as evidence of sexual oppression and rising religious and traditional pressures on Muslim young women in France. Some influential French feminist critics have recently likened these pressures to those forcing women to wear the veil in Iran or other parts of the world.⁸

Among the new law’s critics, by contrast, one finds those seeking to articulate an understanding of citizenship more compatible with individuality as expressed in and through membership in particular social and religious groups. Demonstrations against the new law organized by the small, extremist *Parti des musulmans de France* (PMF) and joined at the last minute by one of France’s largest Muslim organizations, the *Union des organisations islamistes de France* (UOIF), have clearly sought to appeal to this alternative view of individuality in relation to group membership. Marches in Paris and provincial cities, which assembled 5,000-10,000 participants, featured slogans such as “*Ni frère, ni mari, le foulard on l’a choisi*” and “*le voile c’est mon choix*.”⁹ It could be argued that these demonstrations were unrepresentative of the views of France’s Muslim population. According to recent surveys, 81% of Muslim women in France never wear headscarves outdoors.¹⁰ Of 300 women from Muslim families interviewed in November, 49% actually favored a law against visible religious and political symbols in the

exclure mais à s’intégrer et donc à s’émanciper. » « Laïcité : loi nécessaire ou dangereuse, » *Le Monde*, Dec. 11, 2003.

⁷ Commission de Réflexion sur l’Application du Principe de Laïcité dans la République (2003). *Rapport au Président de la République*, p. 14.

<http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>. Here my analysis closely follows that of Pierre Birnbaum, “Une vision forte de la citoyenneté,” *Liberation*, Dec. 13, 2003.

⁸ For instance, see the widely cited pamphlet of Iranian feminist Chahdortt Djavann, *Bas les voiles!* (Paris: Gallimard, 2003).

⁹ Agence France Presse, Jan. 18, 2004; «Le demi-echec des extrémistes musulmans, » *Le Temps*, Jan. 19, 2004; «Laïcité. Ces musulmans qui disent non à la loi, » *Le Telegramme*, Jan. 18, 2004.

¹⁰ Results reported in *Elle*, Dec. 15, 2003. Also see the very diverse reactions to the proposed law on the part of Muslim women questioned in “Si c’est ça, je ne me sens plus française,” *Libération*, Dec. 18, 2003.



schools, while only 43% opposed it.¹¹ Nonetheless, the message sent by these protests attests tellingly to the savvy of even relatively “fundamentalist” Muslim groups in France in understanding, and frontally challenging, the underlying theoretical premises about citizenship, individuality and (religious) group membership shaping the positions of their republican adversaries.

Interestingly, however, the message of these new social actors actually shared significant common ground with that of their opponents. Both camps present the individual as a “choosing agent” external to, and thus capable of choosing, even its closest social, cultural, and religious ties. Neither side has championed the more communitarian position of Michael Sandel, sceptical for his part of the very possibility of the individual as an agent of choice fully external to his or her “constitutive attachments.”¹² Still, this shared ground has by no means resolved the debate given widely differing views of why, whether and at what age girls may be “freely choosing” to don their headscarves.

Laïcité, and its Explanatory Limits

The French concept of *laïcité* and the peculiar historical tradition associated with it are also undeniably key to understanding the peculiar intensity of this debate in France. The peculiar bearing of secularism as understood by many French supporters of *laïcité* on rights to freedom of public religious expression is particularly important in this regard. The liberal tradition of separation of church and state as now it now exists in the US historically developed largely to protect religion from the state, to ensure the state’s neutrality and protect each individual in his or her faith from undue state pressure or interference. Ideas of state neutrality and freedom of religion are thus key to what secularism is understood to be about in the liberal tradition.

By contrast, the French republican conception of *laïcité* developed primarily in reaction to the traditional political power of the Catholic Church. Thus, whereas Americans sought to protect religion from the state, France’s combat for *laïcité* sought to free the state from undue

¹¹ Ifop survey conducted November 21-29, 2003. Ifop, «Les femmes musulmanes en France,» <http://www.ifop.com/europe/sondages/opinionf/musulmane.asp>.

¹² Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 175-83.



religious influence. The historical circumstances that contributed to forming the notion of *laïcité* as it developed in France gave the notion of secularism a different emphasis there. That republican emphasis continues to significantly mark the instinctive reactions of the French public today to issues concerning the place of religion in the public sphere and, above all, within those institutions charged with the formation of citizens. In its report, the Stasi Commission thus clearly distinguished the meaning and entailments of *laïcité* from other (more liberal) notions of separation of church and state, explaining :

*Dans la conception française, la laïcité n'est pas un simple 'garde frontière' qui se limiterait à faire respecter la séparation entre l'État et les cultes, entre la politique et la sphère spirituelle ou religieuse. L'État permet la consolidation des valeurs communes qui fondent le lien social dans notre pays.*¹³

As presented by the Commission, this understanding of *laïcité* is in turn closely tied to the republican view of citizenship's relation to group membership. The Commission thus presented defense of *laïcité* as grounds for setting limits to citizens' expression of "difference," and even to cultural and religious identification itself. The Commission argued:

...l'exacerbation de l'identité culturelle ne saurait s'ériger en fanatisme de la différence, porteuse d'oppression et d'exclusion. Chacun doit pouvoir, dans une société laïque, prendre de la distance par rapport à la tradition. Il n'y a là aucun reniement de soi mais un mouvement individuel de liberté permettant de se définir par rapport à ses références culturelles et spirituelles sans y être assujetti.

In another particularly striking passage, just after remarking that "*la laïcité peut permettre le plein épanouissement intellectuel de la pensée islamique à l'abri des contraintes du pouvoir,*" the report continues :

Par-delà le status des cultes, l'exigence laïque demande aussi à chacun un effort sur soi. Le citoyen conquiert par la laïcité la protection de sa liberté de conscience; en contrepartie, il doit respecter l'espace public que tous peuvent partager. Revendiquer

¹³Commission, op. cit., p. 15.



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*la neutralité de l'État semble peu conciliable avec l'affichage d'un prosélytisme agressif, particulièrement dans l'espace scolaire. Accepter d'adapter l'expression publique de ses particularités confessionnelles et de mettre des bornes à l'affirmation de son identité permet la rencontre de tous dans l'espace public.*¹⁴

In contrast with this tradition, in Britain, Sweden and other European countries with recognized state churches, separation of church and state was never so clearly established. Such historical differences have no doubt also contributed to the sometimes puzzled reactions of other European states to France's recent discussions.¹⁵ As comparatively oriented scholars have rightly emphasized, these diverse historical traditions continue to play an important role in shaping political choices related to the recognition of religious differences in the public sphere. These questions are once again becoming current as Europe's Muslim population grows and becomes more settled.¹⁶

The particularities of France's historically constituted tradition of *laïcité* alone cannot explain the country's recent striking decision to legally restrict the wearing of religious signs, however. Were that the case, such legislation should already have been passed in response to France's first national controversy concerning headscarves, the "*affaire du foulard*" of 1989. In reality, however, that *affaire* led to a very different, more decentralized, case-by-case approach to addressing the issue. That approach is now being rejected in favor of a stricter, national-level rule.

Also tellingly, the present law is by no means unanimously supported by all of France's leading organizations widely known for their "pro-secular" orientation. For instance, France's *Ligue des droits de l'homme* (LDH), *Ligue de l'enseignement*, *Mouvement contre le racisme et pour l'amitié entre les peuples* (MRAP), and *Fédération des conseils de parents d'élèves* (FCPE) all opposed the measure. Thus, like French feminists, the teachers' syndicates, and France's major political parties, the *laïque* camp itself was quite divided

¹⁴ Ibid., p. 16.

¹⁵ Vidal, op cit.

¹⁶ J. Christopher Soper and Joel Fetzer, "Explaining the Accommodation of Muslim Religious Practices in France, Britain, and Germany", *French Politics* 1 (2003): 39-59.



internally by the issue.¹⁷ Also remarkably, Jean Bauberot, a leading French expert on *laïcité* serving on the Stasi Commission, abstained from endorsing that body's final recommendations. Prevailing French understandings of *laïcité* thus cannot alone account for the recent change in policy.

Why France's Approach to Headscarves is Changing

The new law actually marks a clear departure from France's existing approach to the headscarves issue. Such a decided change cannot be explained solely in terms of the French republican tradition of *laïcité*. The republican tradition has not changed since the first "*affaire du foulard*" began in 1989. Why then did the Stasi Commission opt to recommend a departure from standing policy and practice on this issue?

Answering this question requires one to look beyond French understandings of citizenship and *laïcité* and other constant features of the French republican model. To understand the departure marked by recent developments, it is also essential to look at practical considerations, social and legal developments, and changes in beliefs about the facts of the situation facing local French educational officials. These more contextual factors are essential to explaining France's new resolve to legislate against headscarves.

The Alternative, Case-by-case Approach

For the last fifteen years, French policy regarding headscarves was based on the 1989 opinion of the Conseil d'État. It is that policy which the new law replaces. In contrast to the new law against wearing religious signs, the policy framed by the 1989 Conseil d'État decision was one of qualified *laissez-faire*. The Conseil d'État had underscored students' rights to freedom of religion and religious expression, including through the wearing of religious signs. These rights could be abrogated only where overridden by other considerations. The Conseil d'État decision allowed for school officials to prevent a student from wearing her headscarf only if and where required by the schools' obligation to prohibit "*les actes de pression, de provocation, de*

¹⁷ Pierre Tevanian, « Une loi antilaïque, antiféministe et antisociale, » *Le Monde Diplomatique* no. 599 (Feb. 2004) : 8; « La loi sur le voile à l'école divise le camp laïque, » *Le Monde*, Jan. 17, 2004; « Voile,



prosélytisme, ou de propagande,” to ensure safety and security, to prevent “*toute perturbation du déroulement des activités d’enseignement, du rôle éducatif des enseignants et tout trouble apporté à l’ordre dans l’établissement,*” and to ensure that students duly followed their required courses of study.¹⁸ This policy clearly left generous room for discretion by local school officials and permitted expulsion of several students who refused to remove their head scarves. However, this approach did *not* deny students’ rights to wear headscarves on grounds of their conflicting with the principle of *laïcité*.

By contrast, what the Stasi Commission’s report initiated was a new legal delimitation of freedom of religious expression based explicitly on upholding the French tradition of *laïcité*. This marked a clear break with previous reasoning, a break that can only be explained by reference to developments in the practical, social, and legal context that contributed to shaping the Commission’s reasoning and the policy that followed from it.

Dissatisfaction with Existing Policy

In 2004, the 1989 Conseil d’État decision still had a number of supporters. Intellectuals often praised the decision for duly recognizing the inherent multiplicity of symbols’ potential meanings and effects. Some also praised it for delegating authority to the local level, and for promoting constructive negotiation and discussion between local educational authorities, parents, and students.¹⁹

Despite its long list of considerations that could, in principle, trump students’ rights to religious expression, the 1989 decision did not grant headscarf opponents very much. In practice, very few reported cases of the wearing of a headscarf could be shown to cause any of the specific

croix, kippa, turban : du consensus à la confusion, » *Le Temps*, Jan. 24, 2004.

¹⁸ Commission, op. cit., pp. 29-30; « L’avis du Conseil d’État de 1989, seule référence en matière de droit, » *Le Monde*, Dec. 10, 2003.

¹⁹ See for example Monique Canto-Sperber et Paul Ricoeur, « Une laïcité d’exclusion est le meilleur ennemi de l’égalité », *Le Monde*, Dec. 10, 2003; Anthony Giddens, « Voile islamique : la France sur la mauvaise voie, » *Le Monde*, Jan. 14, 2004. Daniel Amson, « Les raisons qui militent contre; Pourquoi légiférer sur le voile? », *Le Figaro*, Dec. 19, 2003; et les propos de philosophe Chantal Delsol rapportés dans *Le Figaro*, Dec. 23, 2003. Commission member Jean Bauberot, expert on *laïcité*, abstained from endorsing the body’s final recommendations which he judged to allow too little “space for interpretation” in contrast to the 1989 Conseil d’État approach which he favored. *Le Monde*, Dec. 11, 2003.



problems mentioned. The Conseil d'État decision kept school officials' reaction to headscarves within bounds, forcing teachers and administrators to show that particular headscarves really did pose unresolvable problems before expelling students wearing them.

Many teachers and school administrators were clearly dissatisfied with this approach. In a variety of ways, it posed practical difficulties for them. Although decision-making was delegated to the local level, schools were not allowed to pass stricter local rules of their own that simply prohibited headscarves from being worn. French courts repeatedly ruled that such blanket prohibitions, which many schools tried to pass in the interest of clarity and simplicity, were contrary to the 1989 Conseil d'État decision.²⁰ Any punishment of a student for wearing a headscarf thus had to be justified on a case-by-case basis. Some principals resented the way this requirement forced them to play the "bad cop" vis-à-vis particular students and their families. Nor did they relish having to make the highly contestable case-by-case judgment calls that the 1989 Conseil d'État ruling required.²¹ Indeed, a number of local administrators' decisions made within that framework were legally challenged, with decisions sometimes overturned in court.²²

The 1989 framework allowed expulsions of students wearing headscarves on the basis of generous loopholes. It therefore gave principals grounds for making expulsions, and also gave expelled students and their families grounds for legal recourse. Repeated lawsuits were a predictable consequence. Not surprisingly, this proved an approach with which the very school officials to whom the ruling sought to devolve greater authority were largely dissatisfied.²³

The Stasi Commission was, by its own account, particularly moved by testimony solicited from teachers and administrators. Three-quarters of the Commission's members had themselves served as professors, teachers, or school administrators. In favor of a stricter and clearer

²⁰ Rapport de la Commission Stasi, p. 30; « L'avis du Conseil d'État de 1989, seule référence en matière de droit, » *Le Monde*, Dec. 10, 2003.

²¹ See Sept. 9, 2003 testimony. Public Senat, « Louise Arvaud, Principal du collège Beaumarchais Paris 11è, » http://www.publicsenat.fr/dossiers/open_video_special_laicite.asp?video=20030909_01&player=windows&debit=bas (consulted 6/4/04.)

²² « L'avis du Conseil d'État de 1989, seule référence en matière de droit, » *Le Monde*, Dec. 10, 2003.

²³ While the syndicates within the UNSA were quite divided on whether to support the law, the syndicates representing school principals and school inspectors (SNPDEN and SIEN) voted in favor. *Le Monde*, Jan.



approach, the Commission stressed the need to support public teachers and school principals abandoned by the state in difficult local situations that they often faced great difficulty in managing on their own.²⁴ As Commission member Patrick Weil explained after the Commission's report was issued, « *Nous avons senti qu'elle [l'institution scolaire] était dépassée, qu'elle ne maîtrisait pas la situation. Cela nous a incités à agir.* »²⁵ This idea was quickly echoed by Prime Minister Jean-Pierre Raffarin who expressed hope that the law would help to « *protéger les fonctionnaires qui se sentent fragiles* ». ²⁶

Pro-Christian Prejudice Thinly Veiled?

In order to understand support for the new law beyond the circles of school administrators and members of the Commission sympathetic to their concerns, however, one needs to look at two other important reasons for widespread political dissatisfaction with the previous “qualified *laissez faire*” approach to the wearing of headscarves and other religious signs. Dissatisfaction with the existing policy and desire for a stricter and simpler legal approach to restricting headscarves extended well beyond the ranks of school directors, and it seems unlikely that a majority of the French public rallied behind the new law in the interest of helping school principals avoid legal challenges.

One might very well ask, however, whether French public support for the law was not guided, more simply, by widespread hostility toward the country's Muslim minority. It would doubtless be rather naïve to think that negative attitudes regarding Muslims and resentment against the departure from tradition that the growing public presence of a Muslim minority in France represents played no role in generating support for the new law.

Indeed, many have derided the new law as an attack on Muslim thinly disguised as an even-handed prohibition of religious signs in general.²⁷ Large crosses, as critics quickly pointed

17, 2004. A survey of French teachers later found some three-quarters of them also in support of it. See CSA survey reported in *Le Monde*, Feb. 5, 2004.

²⁴ Commission, op. cit., pp. 40-44.

²⁵ « Des 'sages' eux aussi déchirés, » *Liberation*, Dec. 13, 2003.

²⁶ cité dans *Le Monde*, Dec. 16, 2003.

²⁷ For example, see Xavier Ternisien, « La manque d'audace du rapport Stasi envers l'Islam, » *Le Monde*, Dec. 16, 2003; « Sous la laïcité, les traditions chrétiennes, » *Le Temps*, Dec. 18, 2003.



out, are not particularly in vogue, and wearing a cross is not a religious obligation. One might therefore be tempted to argue that the French were really just seeking a way to permit only typical symbols of Christian identity (such as small crosses), thus selectively protecting France's Christian minority without admitting it.

Clever though this may seem, this reading does not square very well with the actual pattern of support and opposition that developed. Catholic, Protestant, and Orthodox church officials all criticized the proposed law for being anti-religious and warned Chirac against passing it.²⁸ Nor was the law supported by the far-Right National Front, which preferred to see Christianity's privileged position in France upheld much more overtly. When the new law was proposed, FN leader Jean-Marie Le Pen denounced it as an effort to delude the public into focusing on the veil while ignoring the "real" problem: "massive immigration".²⁹ Similarly, an editorial in the FN weekly *National Hebdo* argued :

La solution de ce problème réside dans l'assimilation de ceux qui acceptent de s'assimiler et dans le retour au pays de ceux qui ne le veulent pas. Légiférer sur le voile à l'école, c'est légiférer sur l'accessoire, c'est prendre une mesure qui ne peut rien résoudre, mais seulement exacerber les conflits et se retourner contre les Français fidèles à la religion de leur père... .³⁰

The Headscarf as a Symbol of Women's Submission

Although France's new radical right FN party, which opposed the law, did not play much direct role in mobilizing public support for it, the work of new feminist groups did. To make sense of this pattern, one needs to understand how French observers have come to "read" the headscarf. Unlike political t-shirts, headscarves do not come inscribed with words specifying the messages they are intended to convey. Such messages are thus imputed to them by those who see or imagine the garment, and patterns of interpretation are culturally variable. This situation generates considerable potential for cross-cultural misunderstandings. American and French observers, for example, tend to "read" the scarf as a sign conveying very different messages.

²⁸ "Soixante femmes célèbres s'opposent au voile islamique," *Le Temps*, Dec. 9, 2003.

²⁹ Christophe Forcari, "Pour le Front National, un voile égale un vote," *Libération*, Dec. 5, 2003.



Americans often imagine a student attending class with her hair covered as someone willingly engaged in a freely chosen expression of her religious identity or cultural tradition, or as guided by personal modesty. Americans thus often imagine the headscarf as a t-shirt reading, “I believe in Allah,” or “I’m proud to be a Muslim!” Why, they wonder, would the French prohibit such declarations of piety and cultural pride?

By contrast, when the French picture such a student, they more often tend to imagine her as an unwilling victim of sexist familial or community pressures. For many French observers, a headscarf looks more like a t-shirt that says, “I’m just a girl, and I know my place,” or “Don’t hit me! I accept my submission.” Deciphering the message that way, they are more indignant at the idea of girls being forced to wear such signs.

Who is right? The available evidence fortunately allows us to go beyond such generalizations as the fact that signs have multiple meanings, or that all signs may be subject to discrepancies between the message emitted and the one received. On the basis of interviews conducted with French wearers of the clothes in question, we can fairly reach some conclusions about why they are worn and what they mean. In reality, it is fairly clear that there are *both* students in France wearing headscarves as a matter of personal religious conviction *and* those who do not want to wear headscarves but are forced to do so by familial or community pressure.³¹

It is the fact of female students being forced to wear signs read as saying, “I’m just a girl and I know my place” that particularly galls many people in France. In contrast to its position in 1989, the French Conseil d’État in early 2004 expressed its support for a law prohibiting such signs. Explaining this change of position, members of the Conseil d’État characterized sexually inegalitarian community pressures on girls as a factor marking a significant change from the situation in 1989.³²

³⁰ Quoted in Olivier Pognon, “Le parti juge que l’affaire du voile loi profite,” *Le Figaro*, Dec. 26, 2003.

³¹ See especially Françoise Gaspard et Farhad Khosrokhavar, *Le foulard et le république* (Paris: Découverte, 1995). It is unfortunately impossible on the basis of this work to put any percentages to these different possibilities; for that, a more representative study with a larger sample would be required.

³² Olivier Pognon, “Après l’avis favorable du Conseil d’État,” *Le Figaro*, Jan. 28, 2004.



It is difficult to say whether such pressures at the local level really have increased. Evidence suggesting they have is largely anecdotal. The phenomenon of *parents* pressuring their daughters to wear the foulard was also widely noted back in 1989. However, there was little or no discussion then of the role of *community* pressure and intimidation by other students, or local gang leaders, in pushing girls to dress this way. Since 1989, the terms of the French national discussion of the issue have clearly changed.

In particular, the issues of sexism and unwanted community pressures on girls to wear head coverings allegedly expressing acceptance of a subordinate and submissive social role has grown significantly. As the Commission's report noted, the 1989 Conseil d'État decision made no reference to questions of sexual equality.³³ Concerns regarding sexual equality were raised in 1989, but the issue has since assumed a much more central role in French discussion of the headscarves issue. The greater salience of such arguments in 2003-2004 reflected the effective mobilization of French public sympathy by groups representing *'les filles de banlieue'* or *'les femmes des cites'* during and just prior to the latest wave of French debate on the headscarves.

The activities of the organization *Ni putes, Ni soumises* (NPNS) and the network of local associations associated with it were especially important in this respect. On October 4, 2002, Sohane Benziane, an adolescent from the public housing projects of Vitry-sur-Seine was burned alive in a cellar, a victim of local male aggression. Reports of this horrifying incident played an important role in heightening public attention to violence against women in France's poor neighborhoods. A few weeks later, a movement calling itself "Ni putes, Ni soumises" ("Neither Whores Nor Submissives") was launched. The launching of NPNS also roughly coincided with publication of NPNS leader Samira Bellil's widely read autobiography, *Dans l'enfer des tournantes*,³⁴ a hard-hitting account years of gang rape and abuse at the hands of certain oppressive male youth of the district where she grew up. NPNS soon won considerable media attention. In its first year, the group organized numerous conferences and debates and undertook

³³ Commission, op. cit., p. 29.

³⁴ (Paris: Éditions Denoël, 2002). Bellil's book was released on October 9, just five days after the murder of Sohane Benziane. On Bellil's role in NPNS, see Mouedden op. cit.



a vast consciousness raising campaign.³⁵ In February to March 2003, NPNS mobilized 10,000-30,000 participants for a march across France ‘*contre les ghettos et pour l’égalité*’, departing (symbolically) from Vitry-sur-Seine.³⁶ NPNS leaders were then invited in March 2003 to meet with Prime Minister Jean-Pierre Raffarin, who embraced NPNS demands that congruent with the united right UMP’s own emphasis on security.³⁷ Leaders from NPNS were also invited to present their testimony to the Stasi Commission.

The message conveyed by NPNS has been highly critical of traditional Islam, machismo, and sexist family and community pressures to which many young women of France’s immigrant suburbs are subject.³⁸ Calling for a “generational struggle,” the movement has decried such pressures as impeding the emancipation of France’s “women from below.” The recent rise of this movement has drawn public attention to divisions within “immigrant” groups in France, particularly tensions between more conservative elements and feminists sharply critical of tradition.

Given this context, the French public has become acutely aware that the veil, or even the headscarf, is far from being consensually accepted within France’s Muslim population. Cases of girls forced to wear *foulards* or veils by community pressure, threats, or intimidation have been widely publicized. Just before the Stasi Commission’s report was released, the popular magazine *Elle* published an open letter by sixty well-known women, Muslim and non-Muslim, calling on Chirac to ban the veil. *Elle*’s publication of this letter also contributed rising public awareness of sharp divisions among Muslims themselves in France.

For its part, the Commission heard from not only representatives NPNS but also from several other French feminists militantly opposed to the veil, including Chahdortt Djavann, the

³⁵ Mohsin Mouedden, «Le mouvement « Ni P..., Ni Soumises’ sert-il la cause des femmes? » Jan. 9, 2004 <http://saphirnet.info/imprimer.php?id=938>, (consulted 2/23/2004); Maryelle Budry, “Ni putes, ni soumises, le mouvement féministe qui monte,” *Solidarités* no. 39 (Jan. 19, 2004) : 5, <http://www.solidarites.ch/journal/print.php?id=1223> (consulted 2/24/04).

³⁶ See Amara, Fadela, “Le Tour de France Républicain,” www.niputesnisoumises.com/html/index.htm (consulted 2/24/2004).

³⁷ Clarisse Fabre and Mathilde Mathieu, “Le gouvernement veut améliorer le quotidien des femmes d’en bas , » *Le Monde*, Mar. 10, 2003.



French-Iranian author of *Bas les voiles! (Down with the Veils!)*. By contrast, though they were the main group targeted by the Commission's recommendations, only two students actually wearing veils were invited to testify. Nor were other feminists opposed to the new prohibition granted the same attention. As one commission member later noted, an atmosphere developed that made it almost impossible to defend the right to wear headscarves without the strong risk of being taken for a "sexist" reactionary.³⁹ This pattern of organizational activity, popular mobilization and media coverage have thus played a key role in shaping French public perceptions of "the veil" and of the constraints leading some girls to wear it. While France's paternalistic response to this perceived situation may be misguided, it is not at all surprising in this context that public demands for state intervention to "save" girls from veiling have arisen.

Fighting Anti-Semitism by Fighting the Headscarf

Finally, a last important, if less initially obvious, factor behind the government's current efforts to renew and reinvigorate *laïcité* has been European and French concern about rising anti-Semitism. Members of the Stasi Commission reported being particularly shocked on the last day of hearings by the testimony of a group of 200 high school students, one of whom remarked that a Jewish student wearing a yarmulke to the student's school would be immediately "lynched." While perhaps sensational by intent, this comment was not contradicted or qualified by other students present. A school director in the 11th arrondissement of Paris and a parent's letter she read for the record also testified to an atmosphere in which Jewish students actually feared being identified lest they be physically attacked by other students.⁴⁰

This evidence culled from the Commission's own hearings was reinforced by research and findings from other sources. A draft report on anti-Semitism recently prepared for the

³⁸ For example, see Macite femmes, "Le Manifeste des femmes des quartiers," http://www.macite.net/home/article.php3?id_article=29 (consulted 2/24/04); Macite femmes, « À l'origine du mouvement, » http://www.macite.net/home/article.php3?id_article=19 (consulted 2/24/04).

³⁹ Jean Bauberot, « Les mutations actuelles de la laïcité en France au miroir de la Commission Stasi, » paper presented at 72nd Congress of Acfas, Montréal, Québec, May 10-14, 2004.

⁴⁰ Sept. 9, 2003 testimony of Louise Arvaud.



European Commission also reported abundant evidence of such problems in France.⁴¹ The report linked a recent upsurge in anti-Semitic violence, peaking in mid-2002 in France and other European countries, to resurgence of the Israel-Palestinian conflict. Its authors also attributed responsibility for many attacks to “Muslim youth”, supporting the hypothesis of a partial turn in France from an anti-Semitism originating in organized far-right groups to a new ‘*banlieue*’ variety of anti-Semitism. These aspects of the report proved highly controversial and even led to a disclaimer on the part of the European Commission. They are, however, suggestive of a new beliefs about the roots on anti-Semitism that have recently been gaining public currency in France and elsewhere. The findings of the Stasi Commission itself, reports in the media, and a recent book edited by French sociologist Emmanuel Brenner also attested to an alarming spill-over of the Israel-Palestinian conflict within French public schools where anti-Jewish insults and physical abuse of Jewish students by their peers has been reported.⁴²

One might well ask, however, how and why rising concern about anti-Semitism would translate into a new proposed legal restriction on the wearing of religious signs in the schools, especially given that “ostensible” Jewish signs are also prohibited. First, one needs to bear the numbers in mind. Estimated at 550,000-700,000, France’s Jewish population is the largest in Europe, and the third largest in the world. However, French Jews are still outnumbered by French Muslims by approximately 10 to 1. Should conflict along lines of religious identification erupt, as some evidence suggests may already be occurring in some instances, Jewish students would be the main victims. For their safety and welfare, it is therefore important to keep violent hostility between Jews and Muslims out of the French schools, something local school authorities have thus far apparently not fully succeeded in achieving.

⁴¹ Werner Bergmann and Juliane Wetzel, “Manifestations of anti-Semitism in the European Union, First Semester 2002, Synthesis Report on behalf of the European Monitoring Center on Racism and Xenophobia,” (Vienna: March 2003): 62-9.

http://www.haaretzdaily.com/hasite/images/ihd_daily/D281103/eu_anti_semitism_report.rtf. Consulted 6/4/04.

⁴² Emmanuel Brenner, ed., *Les territoires perdus de la république. Antisémitisme, racisme et sexisme en milieu scolaire* (Paris : Mille et une nuits, 2002); Thomas Fuller, « Anti-Semitism infuses scarf debate, » *International Herald Tribune*, Feb. 10, 2004.



While such concerns appear to be warranted, the prevailing terms of discussion in France encourage a (false) symbolic equation between fighting potentially violent manifestations of anti-Semitism and fighting headscarves. Stasi Commission member Alain Touraine's explanation of his ultimate support of the Commission's recommendations was particularly revealing in this respect. Touraine's support for the Commission's report surprised some because he was initially opposed to the idea of new legislation and is well-known for defending the potential positive effects of a modernizing Islam. Justifying his apparent change of position to *Le Monde*, Touraine explained :

depuis l'intifada, la France est devenue un pays communautariste... Il n'est pas juste de dire que j'ai changé d'avis, c'est profondément la France qui a changé : dans les lycées, on est juif ou on est arabe, on ne s'identifie plus par sa classe sociale ni même par les vêtements de marque que les parents ont pu vous payer, mais par le religion.⁴³

This way of framing the problem produces a symbolic equation between the problem of student rancor against Jews and the headscarf issue in several ways. First, the problem is understood as one of putting one's religious identity first, and of *division* along religious lines. This concern is captured in the notion of "communautarisme," a touchstone of recent French discussion. In the letter introducing its findings, the Stasi Commission's report also warned of "le risque d'une dérive vers le communautarisme."⁴⁴ "Communautarisme" was judged to be a danger, the sort of thing toward which one may "dérive" by virtue of the assumption that, once divided into different firmly defined groups with mutually exclusive identities, groups will be prone to conflict. The linking of this development to the spill-over of the Intifada in French public schools reinforces this association, despite the fact that one could argue that it is in this case the (external) conflict that fuels the mutually exclusive pattern of identification rather than the reverse. There is some truth in the French view, however, in that the identification of the French Jewish and Muslim

⁴³ Philippe Bernard, «Membre de la commission Stasi, Alain Touraine raconte sa conversion au principe d'une loi,» *Le Monde*, Dec. 18, 2003.

⁴⁴ Bernard Stasi, «Lettre de Mission au Président de la République,» July 3, 2003. This letter immediately precedes the main text of the Commission's report.



students with their Middle Eastern counterparts is evidently a *sina qua non* for replaying the international conflict on a reduced scale in French school yards.

How is the banning of religious signs, and particularly headscarves relevant here? There is a symbolic parallel between the two cases. Both are attempts to prevent students from bringing overt expression of religiously based identities associated with conflicts in the larger world *into the schools*. Symbolically, both are also about fighting what is seen as a dangerous entry of Oriental, Middle Eastern, or Arab issues and identities into French schools. Finally, and most problematically, banning headscarves equates to fighting violent anti-Semitism in the schools in that both are about ensuring a symbolic submission of “young Muslims” to “the law,” or about preventing “illegal, religiously-based behavior” by Muslim students in schools.

The questionable element of this parallel consists in the fact that for “the law” to be defended against the “excessive expression of Muslim religious identity” in the case of headscarves, a law must first be enacted to defend! Bizarrely, pursuing this strategy leads to the need to create a law to (staunchly) defend. No matter that, in contrast to attacks on Jewish students, the behavior strictly banned (i.e, wearing a headscarf) is not demonstrably harmful to others. For the headscarf ban to enact a symbolic solution to the problem of violent anti-Semitism, what is essential is, simply, that the law set limits to the expression of (dangerous and divisive) religious and social identities in the schools.

The proceedings of Licra’s congress in January meeting, to which Interior Minister Nicolas Sarkozy was invited, also showed this pattern of thinking. The meeting was largely devoted to highlighting anti-Semitism’s troubling recent rise in France and its changing character. Anti-Semitism, participants learned, was no longer mainly a problem coming from traditional racists on the far-right; instead it increasingly stemmed from the situation in the Middle East.⁴⁵ At this same meeting, Licra’s president, Patrick Gaubert, staked out a clear position in favor of the new rule prohibiting religious signs. Sarkozy, in turn, stressed his commitment to aggressively fighting anti-Semitism, noting a series of recent prosecutions. Also mentioning the new law, the minister stressed the need to remind everyone that the rules were the same for all;



Muslims were not above the law.⁴⁶ The influence of this pattern of reasoning helps to explain the course of recent French decision making, which in many ways follows logically from widespread implicit assumptions in France about the nature and causes of ethnic and religious conflict. This way of seeing the problem is deeply embedded in some of the key terms widely used to discuss such issues in France, terms such as “*communautarisme*.”

The European Court of Human Rights

One might well ask why the rising influence of international and European human rights law did not prevent France from passing its unusual new restrictions on the right to freedom of religious expression. In reality, the authority of the European Court of Human Rights (ECHR) did influence the Stasi Commission’s reasoning and conclusions, but not as one might have expected. The Commission was keenly aware that any new French legislation needed to be able to pass eventual scrutiny by ECHR. The Commission’s official report therefore discussed relevant precedents and how a French law prohibiting headscarves in public schools could be made to satisfy the European court’s standards. In its report, the Commission noted that the European Convention on Human Rights and Fundamental Freedoms protects religious liberty, but that this right is not absolute. Moreover, the Commission noted, the approach of ECHR to interpreting this requirement has involved « *une reconnaissance des traditions de chaque pays, sans chercher à imposer un modèle uniforme de relations entre l’Église et l’État.* »⁴⁷

Notably, one of the recent precedents identified by the Commission as relevant in this respect was the court’s February 13, 2003 decision on the case *Refah Partisi [Prosperity Party] and Others v. Turkey*. This case challenged the Turkish government’s banning of the Islamic Prosperity Party. ECHR decided in favor of the Turkish government in this case, ruling that the party’s political project posed dangers to the rights and liberties guaranteed by the Turkish constitution, including that of *laïcité*. In other words, where *laïcité* is constitutionally

⁴⁵ Note that this analysis again attests to the current political influence of the causal claims advanced in the draft report on anti-Semitism, despite the European Commission’s official disclaimers regarding those conclusions.

⁴⁶ Xavier Ternisien, “Au congrès de la Licra, » *Le Monde*, Jan. 27, 2004.

⁴⁷ Commission, op. cit., p. 21.



guaranteed—as it also is in France—ECHR was, this precedent suggested, willing to allow state measures to defend *laïcité*, even if they contravened other basic liberties.⁴⁸

Is it a coincidence that the Commission’s own recommendation of a new law banning the wearing of “ostensible” religious signs in the public schools was set forth in the context of a report on the French tradition of *laïcité* and the conditions for its continued application in France today? Awareness of the ECHR and the need to satisfy its standards thus helps explain why defense of the new law prohibiting headscarves and other religious signs centered to such an extent on reference to the principle of *laïcité*, despite the fact that France’s tradition of *laïcité* actually does not by itself account for the recent change in policy. Paradoxically, the ECHR’s influence did not lead to a more liberal policy. On the contrary, raising objections about the wearing of headscarves to a level of principle sufficient to satisfy ECHR standards took regulations restricting headscarves off the relatively pragmatic terrain that the 1989 Conseil d’État decision had insisted upon in 1989. Recognition of the authority of ECHR has thus contributed in practice to reinforcing the more inflammatory and divisive symbolic dimensions of the headscarves issue related to France’s secular republican tradition.

In short, French assumptions about the nature of citizenship and its relation to group membership and the peculiar historical tradition of *laïcité* in France are undoubtedly essential for understanding why the wearing of headscarves or other religious signs in the nation’s schools has repeatedly emerged as such a hot issue. Nonetheless, one must look beyond the republican model itself to explain why the French decided to adopt a new law. The new law marks a clear departure from previous French practice. To understand this development, one therefore has to look beyond French traditions of citizenship and *laïcité* to a series of more practical and circumstantial factors that have contributed to shaping French perceptions of the issue. Practical problems with the existing approach, the recent effective mobilization of public sympathy by feminist groups representing “*les filles des banlieus*,” concern regarding the recent rise of anti-

⁴⁸ Ibid.



Semitism in France, and recent precedents in international human rights law all must be taken into account if one wishes to understand this controversial recent change in French policy.

Conclusion

The recent French decision on headscarves is in many ways more rational than many foreign observers have assumed, but the decision is nonetheless risky. The new law aims to promote integration and bolster social consensus regarding the terms on which France's ethnic and religious minorities of postwar immigrant origin are to be integrated. However, it runs the risk of producing effects directly opposed to those intended. Whether the policy will effectively promote integration or, on the contrary, further entrench emerging divisions between "communities" depends in large part on how Muslims in France will react to the new law. An outspoken minority has, predictably, emerged in clear opposition. More surprisingly perhaps, other segments of French Muslim opinion have proven much more sympathetic to the government's strategy.

Still in question are many moderate Muslims who are not particularly committed to wearing headscarves themselves but who may see France's latest "scarf hunt" as evidence of a certain public, officially sanctioned, "islamophobia." Publicity regarding the law's purpose and rationale, beginning with the report of the Stasi Commission itself, has aimed to discourage such a reading. By contrast, some of France's more radical new Islamic organizations such as the Strasbourg-based *Parti des musulmans de France* and the *Union des organisations islamistes de France* have sought to encourage it. Will already relatively secular and moderate French Muslims be encouraged to pursue a course of continued secularization by the new law adopted in the name of *laïcité*? Or will the latest "scarf hunt" alienate such citizens and turn them toward radical organizations seeking to interpellate them as outcast victims? Will such radical organizations' followings swell, and will they gain greater sway within the French Council for the Muslim Religion (CFCM) recently constituted by the French government to represent the French "Muslim" population as a whole? Recent debates over the proposed law have already occasioned struggle between the UOIF and more quiescent elements within the CFCM. Will reception of the recent debate and the new regulations contribute to tipping the existing balance in a more radical direction?



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As self-conscious organization of France's Muslim minority proceeds and new groups claiming to represent it develop greater ability publicly to voice their perspectives and to diffuse alternative message to their existing and potential members, the French mainstream media and French intellectuals are likely to lose some of their former ability to set the terms of national debate, and thus to control the "spin" to which measures like the new ban on religious signs are subject. At the same time, other countries appear to be much more closely attuned to France's handling of its diversity issues than they were a few years ago, and they have been much quicker to comment on French decisions in this area than they were during the first headscarves debate. Paradoxically perhaps, so far neither of these changes has led to any liberalization of French policy. Instead, it has taken a somewhat more restrictive turn. Even the widely noted influence of the European Court of Human Rights does not for now prevent France from pursuing its distinctive national policy course in this area. If anything, it has pushed the most conflictual, symbolic dimensions of the issue to the forefront. These underlying domestic and international changes do, however, promise to make France's handling of its diversity issues ever more challenging.



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