

Spring 2011

Remaking French public policy: How rethinking the hijab debate brings us closer to equality

Nathan Roberson

University of Colorado Boulder

Follow this and additional works at: https://scholar.colorado.edu/honr_theses

Recommended Citation

Roberson, Nathan, "Remaking French public policy: How rethinking the hijab debate brings us closer to equality" (2011).
Undergraduate Honors Theses. 672.
https://scholar.colorado.edu/honr_theses/672

This Thesis is brought to you for free and open access by Honors Program at CU Scholar. It has been accepted for inclusion in Undergraduate Honors Theses by an authorized administrator of CU Scholar. For more information, please contact cuscholaradmin@colorado.edu.

Running Ahead: REMAKING FRENCH PUBLIC POLICY

Remaking French public policy:

How rethinking the hijab debate brings us closer to equality

By: Nathan Roberson

Spring 2011

Defense Copy

International Affairs

University of Colorado at Boulder

Vicki Hunter
International Affairs

Dayna Matthew
Wolf Law School

Beverly Weber
Germanic and Slavic Languages and Literature
(Primary Adviser)

Abstract

The current manner in which French law makers debate Islamic covering practices undermines the means of creating equality among visible minorities; especially Muslim minorities. For France, covering practices are seen to contradict the French notion of secularism known as *laïcité*. However, the current logic of *laïcité* exhibited in French legal documents, political discourse, and case law reveals a contradiction in how France manages the relationship between Church and State suggesting that France needs to rethink its logic of secularism to fulfill its goal of achieving equality. Current French legal documents talk about covering practices in a way that generalize the conditions under which a woman covers herself, assuming it is radical and under the context of patriarchal oppression. This limits the development of multi-tiered identities. The current discourse about covering practices also contains racialized undertones that exclude visible minorities from being a part of French society. Current policy has prevented the development of a “French-Muslim” identity and has resulted in the marginalization of visible minorities, especially Muslims, in the areas of politics, education, housing, and economics. The current structural limitations imposed on visible minorities reveal the need to rethink the framework of accommodation policy to fit the model of integration rather than assimilation or marginalization. Integration seeks to develop policies that ensure political, economic, and social equality while being sensitive to multi-tiered identities including religious and cultural expressions. Multi-tiered identities are important for democratic development. Given that France’s Muslim population is likely permanent, and given the rise in fear of radical Islam, it is imperative that France recognize the limitations on the current discourse around coverings practices in order to focus their resources on cultural public policy making that address the cause of the tension: unethical accommodation policy.

Table of Contents

	Page
Chapter 1: Introduction	4
Chapter 2: Understanding the Framework of the Hijab Debate: Laïcité and French Law	10
Chapter 3: Developing an Inclusive “French Identity”	25
Chapter 4: The Current Failure to Accommodate “Visible” Minorities	34
Chapter 5: Accommodation Policy Sets the Framework For Progress	41
Chapter 6: Conclusion: Beyond the Hijab	49
Works Cited	54

Chapter 1: Introduction

France has been particularly subject to the tension of finding the proper balance of diversity and homogeneity within the Republic, especially as it relates to its large Muslim population. This tension is visible in events that have received worldwide media coverage, such as the 2005 riots, the expulsion of Roma in 2010, or the controversial legislation banning various forms of religious expression. As such, continued dialogue about cultural public policy is necessary to effectively and ethically engage with visible minority populations to develop a prosperous and harmonious society. Yet, in France, and throughout the West, cultural public policy is fixated on the debate about Islamic covering practices. The discourse on covering practices regulates the place of visible minorities within society by limiting their actions. I argue that the development of inclusive French public policy that is sensitive to multi-tiered identities and that actually engages with issues of diversity rather than merely regulating it has been hindered by the often racialized and unethical discussions of covering practices. The focus on developing public policy to define the parameters of acceptability of covering practices has distracted from the need to develop and rethink the framework and treatment of visible minorities.

I begin my paper by laying out the context of the debate on coverings practices, including an analysis of French legislation such as the “headscarf ban,” the “burqa ban,” and the case of Faiza Mabchour who was denied citizenship as a result of her covering. This analysis provides unique insight about French expectations of visible minorities. This also provides the foundation of understanding how the current discourse has limited and prevented the development of policies sensitive to multi-tiered identities. In order to prove the limits of the present discourse I will show how the recent and historical discussion of visible minorities is often racialized within a framework of supposed “French identity,” that has caused social exclusion. Then, I will provide a discussion of the need to readdress the current approach to accommodation employed by France. I show how visible minorities have been marginalized in France in the spheres of politics, education, economics, and housing. This demands a re-evaluation of

public policy. I then describe some theoretical discussion of accommodation: assimilation, integration, marginalization and multiculturalism, suggesting that integration is the most sensitive to multi-tiered identities before concluding with general policy recommendations which are necessary in order to actually solve any of the discussed problems.

In regards to terminology, I use the word hijab since it is culturally appropriate with respect to Islam. Hijab literally means “modesty” and represents the vast span of Islamic covering practices, from a simple headscarf, to a full chador with a veil (known as a niqab) often referred to as a burqa. However, like veil, or headscarf, there is a large degree of misrepresentation regarding the hijab, and as such I will use “covering practices” wherever it is appropriate throughout my paper instead of hijab or veil (Moruzzi, 1994). However, the terms headscarf and burqa demand further discussion since they have now appeared in the French legal discourse. In 2004, headscarf was incorrectly used interchangeably with hijab and sometimes veil to represent any form of Islamic covering practice in the legal/popular debate around the passage of law 2004-228. This law banned any form of “ostentatious” religious practices in public schools; however it is often referred to as the “headscarf ban.” This is incorrect since a headscarf is generally just a scarf covering the hair, neck, and ears solely, whereas “veil” suggests a woman’s face is not visible, like a niqab. As of 2011, bill 2010-2520 was passed which is a “bill prohibiting the concealment of the face in public space.” This is commonly referred to as the burqa ban, which is inappropriate since a burqa is rather specific to parts of South Asia. Even so, when analyzing each respective case, I am obliged to use language already a part of the public discourse, although misrepresentation will be avoided when possible. Furthermore, all the aforementioned terms except “covering practices” often carry connotations about the acceptability of, and the conditions under which a woman is “covered.” It should also be mentioned that covering practices could technically apply to other faiths such as Judaism, Sikhs, or even certain sects of Christianity, but I am referring solely to Islam unless otherwise noted.

By multi-tiered identities I am referring to the complex nature of identity and how identity is intersectional from different modals (i.e. race, gender, age, faith, etc.), which allows for specificity of identity. Cerulo (1997) recognized that binaries of conceptualization (i.e. White and non-White) are flawed, but instead identities are made from a multi-directional flow of influence and agency. Multi-tiered likewise includes control of one's own body/sexuality. Furthermore, I use the phrase "visible minority," even though public policy often debates the parameters of "immigrant" accommodation. However the term "immigrant" is not appropriate in the present context, even though a fair amount of scholarship in France does use "immigrant" to talk about the experience of visible minorities. Many visible minorities are second or even third generation migrants with "Western" citizenship and accordingly are not "immigrants." Visibility is an issue of whether or not someone is "marked" in society and easily identifiable as a "racialized" sub-group. Also, the terms "minorities" and "Muslims" are likewise inappropriate since they are too broad and over-generalize about the populations that are affected. "Visible minority" is both the common term used in French popular culture, and I believe is the most ethical. The term "visible minority" can also be extended to other populations in France, such as South Asians (i.e. Sikhs), but this is appropriate for my purposes. Although this paper emphasizes the experience of the visible, *Muslim* minority, the theoretical groundwork can and should be extended to other visible minorities. This paper talks specifically about the Muslim experience since it has received the most attention and is the most relevant given the size of the Muslim population.

Methodology

I take an interdisciplinary approach to analyzing the discourse around the debate of Islamic covering practices in France, by drawing on the fields of law, cultural studies, and political science in order to have a more comprehensive perspective on the debate that is not limited to any one academic discipline. By discourse, I am referring to the regulated way of speaking about a topic that simultaneously "subjects" a speaker to the rules of that discipline. I first perform a qualitative analysis of

specific French laws and a case law example to analyze how the covering practices have appeared in public policy/political discourse, locating my analysis in relationship to past research about covering practices in France and Europe. Then I place the regulations on covering practices within the context of policies of accommodation of visible minorities in order to suggest an alternative policy focus, since policy provides a relatively easy form of intervention that is sustainable. My hypothesis is that the current tension surrounding coverings practices suggests the need to rethink French public policy in order to develop a framework of accommodation sensitive to the multi-tiered identities of visible minorities. I use a single case study, France, to examine the complexity of cultural public policy specific to one country. Furthermore, France has the largest Muslim population in Europe at approximately five to ten percent of the general population of roughly five million people, which means that French legislation barring head covering practices has a large effect (Wing, 2006). I hope my conclusions and observations about the French case can be used in a future comparative analysis of other countries' policies, which is beyond the scope of this paper. Given the constraints of time and resources, I have not done an exhaustive analysis of French legal documentation, but have rather selected those laws specific to Islamic coverings that have received the most attention. While I have been unable to travel to France and actually perform a study, I have been able to obtain French legal documents specific to regulations on covering practices and their legislative histories. Furthermore, there is a substantial body of secondary literature in English that allows me to build upon the theoretical arguments around covering practices and has given me a language to frame my argument. This allows me to take up an analysis of the discourse by drawing upon many disciplines to challenge the "regulated" way in which Islamic coverings are talked about to encourage a more inclusive debate around identity and public policy. Finally, I am not a fluent speaker of French, but have used available electronic translation services and confirmed all my translations with a native French student studying in Colorado.¹

¹ Although translations have been verified by Amelie Roux, all errors are the responsibility of the author.

Ethical Grounding

This paper is particularly important in its contribution to the development of cultural public policy since it challenges the framework of accommodation policy and structural forms of marginalization that need to be dealt with first to create full equality. Given that Muslim groups are likely to remain a permanent presence, it is imperative to establish a sustainable and ethical model of encountering and interacting with changing minority populations. In the post-WWII boom economy, France actively sought and opened up its frontiers to immigrants from principally former French colonies, such as Algeria. Prior to 1993, Article 23 of the French Nationality Code permitted automatic acquisition of citizenship at birth by individuals born in France of foreign parents as long as one parent was born on French territory, including former French colonies. However, “the legacy of the Algerian War, the long-term suspicion of Islam, the visible difference that 'native French' thought they saw between themselves and these new strangers” prevented the inclusion of people of immigrant heritage within society (Jerome, 2009, p. 101). Thus, the new migrants were not really considered “French” even if they were legally. This form of societal exclusion is perpetuated through the debates around covering practices. The solution to resolving the tension around covering practices is outside a simple left-right political realm, but is rather achieved by rethinking the framework of the current left/right debate on proper accommodation policy. In general, it is fair to include all ethnic and religious minorities as visible minorities. However, certain visible minorities, such as Jews, have been much more substantially integrated into society while others have not. Yet, I do not mean to discount the very real marginalization of other minority groups. I believe a return to debate about the discourse of cultural public policy will extend to all such groups.

Contributions of this paper

Within the political, popular, and even academic discourse there has been a tremendous amount of confusion of terminology to describe forms of accommodation policy. Thus, this paper will

clarify the general terms of accommodation policy including: integration, marginalization, multiculturalism, and assimilation. These terms have been used interchangeably, and this paper will show that each has very distinct meanings and implications. By applying the terms to the French case, more clarity about the meaning/use of each term will occur. Most importantly, this paper challenges the discourse of the debate including the racialized undertones, the focus on removing covering practices as a means of accommodation policy, and the lack of discussion of integration. The majority of the literature tends to focus on the legality, legitimacy, and effects of the banning of covering practices. Whereas this paper challenges the framework in which the legality, legitimacy, and effects are seen. It demonstrates how social exclusion is evident; which necessitates a re-examination of the theoretical implication of French accommodation. This will encourage critical reflection concerning how societies treat immigrants and visible minorities and challenge the recent rise of ideas to expel “immigrants” while supporting the creation of a discourse that welcomes diversity, ensures equality, is sensitive to the multi-tiered identities of individuals, and encourages democratic participation currently marginalized groups (Žižek, 2010). By reaching a conclusion about how to develop public policy sensitive to multi-tiered identities in France, the lessons should be able to be carried over into other democratic countries.

Chapter 2: Understanding the Framework of the Hijab Debate: Laïcité and French Law

In order to understand the limitations of the current debate about covering practices it is important to discuss both the background and the framework of the debate in France. I will first discuss the theoretical framework of laïcité that frames the debate. Then, I will discuss French legal documents, such as law 2004-228, the burqa ban, and the case of Faiza Mabchour before discussing other theoretical notions of secularism as it pertains to the France.

Although laïcité can be loosely translated as secularism, it is a particular idea of secularism that removes religion from the government rather than a separation of church and state. As put forth by the French Documentations office (a branch of the Prime Minister's office):

The principle of laïcité . . . rests upon two principles: the obligation of the State not to interfere with a person's convictions, and the equality of all before the law, whatever their religion. It thus implies the freedom of conscience and of religious manifestation, the freedom of churches to organize, their legal equality, their right to a place of worship, the neutrality of institutions toward religions, as well as the freedom of teaching. (DOF, 2010)

Laïcité values non-interference and equality; however, recently it has been used to promote the removal of religion. As such, covering practices are generally considered counter-cultural under the auspices of their incompatibility with laïcité. It is important to discuss laïcité as a way to understand the elevated tension of the debate, and as a means of understanding French legal documents, French identity, the discourse of accommodation of visible minorities, and to develop future public policy.

The principles and constructs of laïcité stem from the French revolution and from Enlightenment concepts. Its principles are infused within the constitution and make up one of the primary foundations of the French Republic and French identity (Westerfield, 2006). Laïcité was originally understood as a form of resistance to the Catholic Church, particularly in education, since the education system is viewed “as the path to modernity, cultural assimilation, and national unity” (Keaton, 2006, p. 178). Within such a context, it is relevant to note the original limits of the headscarf ban to just public schools. Schools are considered the principal means of creating a nation of French citizens. Laïcité has come to embody the

values of dignity and autonomy of the individual, human rights, democracy, and the rule of law. These values are considered universal in nature by France; free from cultural, historical, and political circumstance (Aggestam and Hill, 2008). Thus, laïcité is considered one of the principle means for furthering, continuing, and developing democracy in the French republic.

Despite the original application of laïcité as a means of resistance to the Catholic Church, it is important to note that its principles do not limit religion solely to the private sphere since it “was intended to establish equal protection for all people under a ‘neutral,’ non-religiously influenced state, while allowing freedom of religious expression and free thinking within state institutions” (Keaton, 2006, p. 177). Herein lays the confusion of understanding the tension around covering practices. Prohibiting religious practices that are non-threatening (at least physically and religiously), such as religious coverings, is a form of state intervention. This seems in contradiction to the idea of neutrality since it seems to suggest everyone can have their own beliefs as long as it is not visible. This fails to be sensitive to various beliefs; some of which expect an outward expression of faith. Also, it does not acknowledge the differences of outward expression. If someone got a tattoo of a cross on a visible part of their body is that too public a statement and should it be banned? Yet, it is a strict interpretation of laïcité that gives the country legal grounding for limiting covering practices: Islamic or other. Still, laïcité is a valuable aspect of democracy. Through its “neutral” stance on religion, it protects freedom of religion for the individual and grants people the right to choose, denounce, change, and modify their faith. From its principles, no group or community can impose its identity on another (CRAPL, 2003). Yet, religious freedom as protected by laïcité uncovers the paramount contradiction in the logic of the French government: adherence to secularism on some level requires that the state interfere into private matters in order to ensure equality. For France, this intervention is clear within their constitution and the enshrinement of equality which inherently limits citizens from achieving superiority. Ensuring equality demands the government not be neutral when violations of equality occur. Barbier (1995)

claimed any entity, including religious, that challenge the sovereignty of the state must be of some interest to the state. These entities can be, and often are, in some form of conflict in establishing domain over education and ethics. Thus the interest by the state mandates a form of intervention to balance this “power struggle” and to establish social order. As such, this paper encourages a re-thinking of the definition of *laïcité* in order to truly ensure equality through government intervention.

State intervention is determined by one of two logics of *laïcité* adopted. On one hand, neutrality towards religion can be understood as an equal respect for, and equal treatment of, differing religions. On the other hand, a state may adopt a stance which suggests that “religious beliefs must be *suspended*” (Keaton, 2006, p. 177). The French government assumes the latter in light of *laïcité*’s development in opposition to the Catholic Church. This logic reflects a movement towards a strict or “fundamentalist” interpretation of secularism that denies any expression of faith in public institutions, which has not always been the case (Westerfield, 2006, p. 638). This movement is however in direct contradiction with what is inscribed in the French constitution. Especially with respect to the ban on covering practices in public schools “neutralizing religious influence in the schools means denying freedom of religious expression” (Keaton, 2006, p. 177). As previously noted, legally and technically *laïcité* does not limit religious expression to the private sphere, yet the government is doing exactly that with the continual passage of bans that limit religious expression.

What is especially troubling is the apparent selective use of secularism in France. To reference the headscarf affair, Muslims have been given a “compromise” allowing them to wear bandanas in schools, as long as they do not cover their necks and are not religious in nature: essentially regarded as “fashion statements” (Poulter, 1997, p.68). Moreover, historically, especially looking at the period preceding the ban, France has had a history of selectively using *laïcité* against groups that the government perceived as threatening; including Catholics and Jews (Ewing, 2000). Meanwhile, the government continues to allow large group religious practices without interference, such as Christian

holiday observances or kosher/halal food prepared in school (Ewing, 2000, p. 45). Within such a light, *laïcité* sometimes appears more of a political weapon than a policy. This is seen in the language used by the French government as well. By saying the hijab expresses “fundamentalist” elements or displays “radical” religious practices, the government is not using secularism as a means of equalizing religion, but is in fact targeting those perceived as a threat and labeling them as such (Conseil d’Etat, 2005; National Assembly, 2003).

Furthermore, with respect to “suspending religion,” the French position is complicated by a lack of consistency between government branches. In 1989 the supreme administrative court in France, the Conseil d’Etat, issued an advisory opinion suggesting that religious dress or insignias within the public schools were not solely incompatible with secularism in schools. However, it was recognized at the time that individual bans would be acceptable if wearing “the veil” was associated with proselytizing or if other Muslim girls felt pressured to conform (Wing, 2006, p. 756). The 1989 opinion is an example of protection being implemented with equal respect for religious expression, rather than discrimination against Muslims. The court issued this opinion after three girls were suspended for wearing their headscarves in a Paris suburban middle school. After this dilemma, the court upheld that the principles of *laïcité* did not require a ban on religious dress. Pre-2004, if a woman wore a hijab it was dealt with on a case by case basis; recognizing the specificity of students.

Law No. 2004-228

Law No. 2004-228, was signed into law under President Jacques Chirac in 2004. It assumes the logic of suspension of religious expression by prohibiting students from wearing “ostentatious” or “conspicuous” religious symbols in primary and secondary public schools (National Assembly, 2004). It does not theoretically target Muslims since it affects Jewish yarmulkes, Sikh turbans, large Christian crosses, etc. and makes no explicit reference to Islam/Muslims in the actual law. However, it is commonly held that the ban’s aim was to limit the wearing of hijabs (Wing, 2006). Especially given that

the legislative history explicitly references Islam and covering practices as being a primary reason for the development of the ban. The essential reasoning behind the ban is France's historical claim to *laïcité* that justifies the removal of "conspicuous" apparel and attempts to strengthen *laïcité*.

[The law] should first restore the teaching and practice of secularism in schools. Most of our students are unfamiliar with republican principles and there is some deficiency in the implementation of these principles in schools, causing the development of communalism and all forms of violence and transgression that affect school today. (National Assembly, 2003)

Communalism is the process of creating communities that are not unified but merely regulated by the state. Communalism is considered threatening as it is presumed to divide Republican unity. Presumably, communalism can be prevented through unity in *laïcité*. From further discussion it becomes clear that the committee holds Muslim women who participate in covering practices as particularly responsible for the development of communalism since they supposedly transgress the values of *laïcité*.

With the development of communitarian ideologies and exacerbation of violence, we can only note that the Republican contract was broken [by those wearing the veil]: one by which the Republic *offered access to employment and social success as some additions* to adherence to shared values. (National Assembly, 2003 emphasis mine)

The assumption made is that by participating in covering practices Muslim women are not exhibiting Republican values and have accordingly broken the "public contract," giving the government justification for intervention and violating the supposed neutrality of *laïcité*. Furthermore, although it is never stated, this idea provides justification for marginalization, since they have "broken the contract."

This is a rather explicit form of racism by blaming visible minorities for their own marginalization.

Furthermore, one can see the inflexibility of the French government as it relates to multi-tiered identities. When the idea that a woman could be both modern and "veiled" was posed in the debate leading up to the creation of law 2004-228, the assembly quickly rejected such an identity saying it was at fault for violating *laïcité* and accordingly cultural unity. "Yes, indeed, [a Muslim woman] can be both modern and veiled, but it is precisely at the expense of culture. This is the issue" (National Assembly, 2003). According to this logic, a "veiled" woman can be modern, but not in French culture since she is

inherently not equal when wearing “the veil.” “The veil is segregationist. That’s the finding: inequality and inferiority of women” (National Assembly, 2003). This makes the overarching claims that the hijab is *always* a form of oppression, which simply cannot be proven.

Moreover, Law No. 2004-228 runs into difficulty in how it attempts to protect secularism and equality in public schools. In an explanatory memo submitted on behalf of the then prime minister Jean-Pierre Raffarin, the law is explained as being intended to ban “the symbols and clothing which when worn [are] recognized immediately by its religious affiliation” (Raffarin, 2004). This is problematic for it seems to establish precedence for limiting personal piety/expression. Although it may be relatively easy at times to identify religious clothing, one could still identify people’s religious affiliation by other “markers” (i.e. beards on Muslim men, eating halal, eating Kosher, tattoos by some groups, the cliché dress of Mormon missionaries, T-shirts with Bible verses). Then although the law was supported for its attempts to liberate women and encourage equality, it does not actually challenge issues of gender equity within Muslim code. Rather it limits particular manifestations of belief (Scott, 2007). Where does the limit stop? Moreover, there is also a difference in expectation among differing religions. Wearing a cross is often the result of a personal choice, but for those women who do practice covering it is often out of some personal commitment and personal sense of obligation (Fourneret, 2006). By specifically targeting visible minority populations, accommodation policy is reduced to mere visible unity without resolving any of the ideological differences that are likely the most divisive in society.

In Fact, Weil (2004) discovered a significant assumption made by legislators in the creation of law 2004-228. There was an underlying belief that freedom of choice to all parties affected in the headscarf debate was not possible. The supposed options were, to

[leave] the situation as it was, and thus [support] a situation that denied freedom of choice to those- the very large majority- who do not want to wear the headscarf; or . . . [endorse] a law that [removes] freedom of choice from those who do not want to wear [the hijab.] (Weil, 2004, p. 1)

The assumptions underlying these options are incorrect for several reasons. First, it is impossible to know why a woman wears the hijab. Secondly, this view limits the agency of women involved. Although women who are coerced into wearing the hijab are certainly in a precarious situation, they are not merely objects without the freedom to choose to take off the hijab. Even in such a power structure they have the agency to resist the patriarchal order if desired, especially in a country like France with its legal protections. However, law 2004-228 removes the agency of women who do choose to wear the hijab out of piety assuming it is only a result of patriarchal oppression (Mahmood, 2009). Finally, it is not the case that Islamic coverings represent a dichotomy of limiting someone's freedom or another's. It is precisely the language used in the debate around covering practices that serves as a highly counter-productive element in the development of accommodation policy sensitive to multi-tiered identities. By calling the veil (whether referring specifically to the *niqab* or other forms of covering) "segregationist" and stating that the "wearing of headscarves by young girls is very rarely a truly free choice," the assembly is making overarching generalizations that remove the agency of individual women who do freely put on the hijab (National Assembly, 2003). "If the ban is meant to solve the problem of fanaticism it errs in equating Islamic orthodoxy with extremism" (Fourneret, 2006, p. 249). This is one of the principal limitations of the discourse. The law makes unjustified assumptions about Islam that has "reduced [Islam] to a glorified dress code, a dry litany of rules and obsessions that belittles women, exempts men from their responsibilities, and offers believers no warmth, camaraderie or genuine spiritual sustenance. This is mockery of Islamic values, as outrageous as it is tragic" (White, 2004, p. 3). Moreover it limits the development of women's identities that do practice covering.

It is my opinion that whether France adopts equal respect of or suspension of all religion, law 2004-228 does not meet the standard. To explain, the law only limits "ostentatious" religious symbols, a relatively ambiguous term. For example, in 1994 former minister of education Francois Bayrou declared that Jewish kippa was unostentatious" (Freedman, 2001, p. 304). Yet now, under law 2004-

228, the kippa is ostentatious which shows there is no clear definition. Yet, if the government applies the logic of equal respect for all religions then any religious apparel that is not explicitly connected to proselytizing or oppression should be allowed even if it is explicitly associated with a particular religion. Then, if the government adopts the logic of religious suspension, no religious apparel ought to be allowed.

Law 2004-228 sparked public outcries in France and around the world, both from people claiming it was in violation of religious liberty and those who say it did not go far enough in liberating women from the oppression of men in the home or public areas other than school. There are numerous Muslims who claim the hijab is oppressive and should be prohibited, such as Fadela Amara (MMW, 2010). Amara is a French feminist, raised Muslim, and famous for her work *Neither Whore Nor Submissive*. Amara believes that the hijab symbolizes submission to men and even worked to support the ban on covering practices with Chirac. The EMFA (Maghrebians Expression of Feminism), a Muslim women's organization, supported the ban on the headscarf having torn apart a veil in protests. However, the EMFA did not support the removal of girls from school as a result of violation of the law (Freedman, 2001, p. 307). In fact, 43% of Muslim women interviewed in a study by Winter (2006) in 2004 were in favor of the ban. There are likewise plenty of Muslims who do believe Islamic coverings should be a choice, such as Marjane Sartrapi (Gaurdian, 2003). Sartrapi is an Iranian- born French graphic novelist who personally disagrees with wearing the hijab, but believes it is equally oppressive to ban coverings as it is to force a woman to cover herself. Then there are plenty of Muslims and non-Muslims alike who believe the hijab is often a genuine form of religious expression.

Almost immediately after the passage of the ban, international criticism broke out claiming that it was a violation of the fundamental right of freedom of religion. The US Commission on International Religious Freedom proposed that France was probably violating the European Convention on Human Rights by passing the ban (USCIRF, 2004). Article 9 of the Convention provides the right to manifest

one's religious beliefs. However, despite the international concern, there is strong evidence to suggest that the ECHR would uphold the French ban if it were to be appealed; especially after similar cases, such as *Leyla Sahin v. Turkey* and an appeal against the Swiss law were upheld (Mazza, 2009). In fact, the European Convention held in 2008 that the case *Dogru v. France* did not violate Article 9 of the Convention. In this case, Belgin Dogru was expelled after wearing her hijab in a PE class. The court held that the expulsion was legitimate given the health and safety concerns of wearing the hijab, despite Dogru's offer to wear a hat or baseball cap in lieu of her hijab. Although this case is slightly different since it is limited to just a PE class and not general school classes, it suggests that higher courts would support the ban (Mazza, 2009). However, other attempts at headscarf bans since *l'affaire du foulard* have been struck down by the French courts such as a proposed university ban on the veil since the terms were too vague, and also a proposed piece of legislation that sought to penalize those who violated the ban by proselytizing with their headscarves (Mazza, 2006, p. 315). Yet, there has been a migration to further restrict religious expression with the burqa ban, which does monetarily fine women for wearing the burqa.

Burqa Ban

In the summer 2010, the French parliament passed bill 2010-2520 "prohibiting the concealment of the face in public space" (National Assembly, 2010) Like law No. 2004-228, the ban does not expressly target visible Muslims, although it inherently restricts religious piety for those who wear the niqab. The ban goes into effect in the spring 2011 and establishes a punishment for women who wear the burqa in the public in the form of a fine and/or citizenship classes and a fine and/or jail for someone who is found forcing a woman to wear the "burqa" (National Assembly, 2010). Much like law 2004-228, it perpetuates the problems of how covering practices are talked about. The explanatory memo on behalf of prime minister François Fillon states, "wearing the full veil is a manifestation of a communal rejection of Republican values" and "the concealment of the face in public space is the bearer of symbolic violence

and dehumanizing” (Fillon, 2010). What is striking about this law is its extension from governmental institutions (i.e. schools) into public space and penalization, which shows the government taking on a paternalistic mentality in attempting to “defend” women from the “oppression” of male figures.

Faiza Mabchour

Apart from the actual laws restricting covering practices, the case study of Faiza Mabchour provides unique insight into how France deals not only with secularism and covering practices, but also how it expects immigrants and visible minorities to behave in society in order to be accepted. Mabchour is fluent in French, has three naturalized French children, and has been living in France since 2000 (Bell, 2008). Yet, on June 27, 2008, the French Supreme Court denied citizenship to Moroccan-born Faiza Mabchour due to her inability to assimilate into French society because she submits to her husband by covering herself (Conseil d’Etat, 2008). The court claimed that “her submissive existence is incompatible with French secular and democratic values,” disregarding the fact that submission is an Islamic virtue (regardless of gender) (Conseil d’Etat, 2008). This was a milestone in French legal history, since it was the first time an applicant has been denied citizenship based upon their religious values and lack of assimilation. This decision, like law 2004-448, reveals the assumption of the hijab as antithetical to French values and the place of racialized minorities in French society. The presumption made by the court was that Mabchour “adopted a radical practice of her religion, incompatible with the essential values of the French community, and particularly with the principle of sexual equality” (Conseil d’Etat, 2008). Although the French civil code does allow for denial of citizenship based on lack of assimilation under articles 21-4, Mabchour’s case marks the first time “radical” religious practices have been characterized as incompatible with French identity (Barbibay, 2010, p. 165; French Civil Code, 1993). Art.21-4 of the French civil code specifically states, “the government may, on the grounds of indignity or lack of assimilation other than linguistic, oppose the acquisition of French nationality” (French civil code, 1993). It is under this claim that Mabchour was denied citizenship.

However, it is believed that were Mabchour to appeal her case to the ECHR it would be overturned since France would likely fail to meet all three criteria set by the ECHR necessary to uphold a law. In principle, France could likely succeed in an appeal under the first two criteria: based upon margin of appreciation and attempting to achieve a legitimate aim as prescribed by law. However, it is highly probable that France would be unable to prove that the denial of Mabchour's citizenship is necessary within a democratic society. This is the third criterion, making it a violation of article 9 of the ECHR (Barbibay, 2010, p. 203). Regardless of an appeal process, the very decision of the court to originally deny citizenship displays the inner turmoil of the French political system in their ability to accommodate immigrants/visible minorities; especially Muslims. Mabchour has yet to receive French citizenship.

Other Ways of Understanding Secularism

The striking thing about the tension surrounding Islamic covering practices in France is its recent rise. "Muslims have existed within Europe for over half a century, but it is only within the past three decades that it has emerged as a cultural and religious phenomenon" (Cesari, 2004, p. 12). Wearing a hijab has not always caused so many problems and is only worn by a very small minority of people. Yusuf (2009) estimated that of the Muslim women in France, likely only 1/25 of them even wear a veil; roughly 100,000 people total. Then, within schools, one poll said, "91 percent of teachers . . . polled have never been confronted by a 'veiled' student in the schools where they teach, while a reported 65 percent had never seen a 'veiled' girl in their class in their career" (Keaton, 2006, p. 181).

Yet, despite how few women actually cover, "since [the] 1980s, [position on the] headscarf has become official policy of parties" (Cesari, 2004, p. 76). In June 2009, French President Nicolas Sarkozy said, "the burqa is not a sign of religion, it is a sign of subservience ... it will not be welcome on the territory of the French Republic" (BBC, 2009). It is this kind of focus and attention on covering practices that makes the discussion so politically tempting to discuss. "Despite its multiple significations, the headscarf has come to symbolize an issue relevant to all democracies: what does the freedom to

manifest one's religion mean, and how far does that freedom extend" (Westerfield, 2006, p. 638)? This tension shows that the relationship between church and state has not been resolved and needs to be continuously thought and rethought. It is rather a fear of political Islam and a misguided belief that Islam is "irredeemably and unambiguously anti-European and therefore anti-democratic" that is creating so much discussion around covering practices (Lenard, 2010, p. 308). When being a Muslim is just part of one's identity that can be European and democratic as well.

The debate about covering practices within a democratic society has been taken up by almost every group possible, including feminist, politicians, and religious scholars. Scott (2007) observed, some feminists simply take Islam as antithetical to feminism and they "rush to support a law . . . for the headscarf ban . . . that offered laïcité as the ground for gender equality," and that this is a kind of "racist benevolence" (p. 84). Yet it cannot be denied that some of the attempts at establishing justice for these Muslim women is often misguided and takes on a racist tone as suggested by Scott. For example, "if feminist concerns about the meaning of headscarves factored so heavily in French policy-making, one might then ask why headscarves were not also then banned on the streets or even in public universities during the original passage of law 2004-228" (Thomas, 2006, p. 251)? Granted, this is being done now with the burqa, but still it would be a moral imperative by the government to have passed a sweeping bill banning "ostentatious" symbols originally in 2004, or banning the burqa everywhere in 2010, if the hijab or burqa was truly just a tool of oppression.

More likely, Islam's entry into Europe is rekindling the fight against all religion by challenging the secular, democratic model (Cesari, 2004). This is not a new story given the historical tension with the Catholic Church. This would also explain the general sympathy of the Catholic Church toward protecting the right of Muslims to wear the hijab. "The disputes about the Muslims' religious rights (mosque building, veil, swimming pool, school lunch...) are exacerbated particularly because deeper religious

involvement among Muslims are perceived as threatening the western way of life” (Brouard and Tiberj, 2008, p. 6). Simply, Islam is challenging the current balance of church and state.

Another important consideration is the role secularism has in managing the relationship between church and state in Europe. In France, along with the rest of Europe, secularism was established in and throughout societies where Christianity has always had a dominant role. Whether Christianity’s relationship was institutionalized, such as in England, or not, Christianity has always been a part of the sociological context of the political development of secularism. Thus, on some level, secularisms’ development has only existed to the extent that it was acceptable within a Christian society. Within this context, it could be argued that secularism is “a defense against other forms of religious universalism, and among them mostly Islam, which are perceived and represented as antagonistic to Christianity” (Franka, 2010, p. 223). Franka (2010) suggested that it is possible that secularism is being used as a means to protect our “cults/forms of worship” (p. 223). For example, this can be seen in many ways such as how Christian holidays are observed by state run institutions. “For former president Chirac, Christian holidays do not violate the principals of secularism,” further reflecting their bound development (Scott, 2007, p. 101). However, with respect to the French case, it is important to note the limits of this argument. Given the development of *laïcité* as an opposition to the Catholic Church, Franka’s argument can be called into consideration. Yet, given France’s historically Catholic tradition, it could be assumed that the strict/fundamentalist form of secularism would not have been able to develop as it has if it were not for the bound development of European secularism and Christianity. Thus, I argue that France’s development of *laïcité* has not been a means to protect Christian cults. Rather, the compatibility of Christianity with secularism is contributing to the tension of integrating other non-Christians into the secular-fold of French society since a strict fundamentalist logic of *laïcité* is incompatible with any faith’s public expression. Simply, Christians’ consent of secularisms’

development is being challenged by non-Christian religious expression since secularism has largely never presented a threat to Christianity.

Finally, there are two other theories in relation to secularism that are worth noting in the French/European example as it relates to Islam and immigration. Roy (2006) suggested that a very real problem in accommodating Islam into the fabric of France/Europe is the lack of relationship that Islam has towards secularism. "Islam doesn't fit within the traditional tension of Europe," between a Christian Europe vs. a Secular Democratic Europe although both sides identify with Islam (Roy, 2006, p. 4). The "conservative right" appreciates Muslim values, many of the religious principles that coincide with the traditionally Christian right, and identify with the tension of religion and state. Yet Islam is not a part of "traditional white, European culture" that the far-right feels threatened of losing. Then, the "secular left" often promotes the cause of diversity, tolerance, and acceptance of "the other," but the traditional conservative nature of Islam seems in opposition to the often anti-religious ideal of the far Left. This appears particularly interesting to reconcile when it is recognized that roughly 75% of French Muslims have a positive view of secularism in general (Brouard and Tiberj, 2008, p. 21). The difficulty in classifying Muslims in the traditional debate of Europe is further complicated by the secular assumption in Europe. "One reason for [the] silence on religious questions has been a perception among social scientists, oftentimes [assuming] rather than [stating], that Western Europe is essentially secular and that issues of Church and State are no longer relevant to public policy" (Soper and Fetzer, 2007, p. 934). By taking the religious and the secular spheres to be complete opposites, the Republic is creating an enormous danger to democracy (Scott, 2007, p. 123). The adherence to secularism is supposed to create commonality. However, such a strong belief in French universalism has created the foundation for the insistence that sameness is the basis for equality, which is simply not true (Scott, 2007). Thus, a return to the very framework of discussion of secularism needs to be considered if France truly wants to avoid communalism.

Despite the ways in which secularism has been a tool of exclusion in France, it intends to provide the foundation for religious equality. Unlike the US, where religious freedom is prescribed within the constitution, France's freedom is secured under the state's supposed neutrality towards religion. However, as I have depicted, neutrality towards religion has not only been violated at times, but is also an internal contradiction. Yet, the strength of laïcité as a political and cultural philosophy in France is ever present will undeniably continue to appear in the debate over inclusion of visible minorities. As such, the debate surrounding laïcité continues to provide a clear example of the need for further clarification and development of public policy. There is a strong need to rethink the framework of secularism for one that is tolerant of religious expression and resolves the tensions of laïcité including: noninterference v. neutrality, laïcité v. conservatism, laïcité v. Islam, and Islam v. the Right/Left. The resolution of tensions within laïcité will clarify the parameters of religious expression in society, allow for a reconsideration of law 2004-228, the burqa ban, and the deciding principles of Faiza Mabchour case. It will create a more sustainable model of laïcité that does meet its intended goal of ensuring equality.

Chapter 3: Developing an Inclusive “French Identity”

Currently the debate around covering practices has limited the ability to accommodate visible minorities through the enshrinement of exclusionary identities. By developing an “imagined, French identity,” France has created a fear of the “other,” allowed for racial discrimination, excluded visible minorities’ voices from democratic debate, and ultimately marginalized visible minorities. This demands a reconsideration of “French identity” to allow for creation of multi-tiered identities.

French society possesses what Benedict Arnold (1983) refers to as an “imagined community,” which is an artificial, social construction of the nation through media, press, and capitalism. An imagined community is an enormous challenge to the traditional model of nationalism since nationalism is historically limited to fixed characteristics. Although a state can possess common character traits, albeit religion, language, history, skin tone, no state is truly a nation-state in the literal sense. Simply, any stated identity of “French-ness” is inherently based upon social constructs that are intrinsically dynamic. The claim to common characteristics among citizens is not inherently bad, and in fact is arguably necessary. Yet France cannot claim a homogenous identity given its substantial history of immigration. From the arrival of workers from nearby countries, such as Belgium and Italy, during the industrialization of the nineteenth century, to France’s extensive colonies, then historical invasions from the English centuries ago to the Nazis only decades ago, France’s global ancestry is extensive. So extensive was the immigration of earlier periods at the end of the twentieth century that one in four French citizens had a foreign-born grandparent (Silberman et al., 2007). That is why “French-ness” is theoretically based upon values such as the loyalty to the use of the French language as a means of divergence from the rest of Europe (Oakes, 2010). Legally, French citizenship is based upon the principle of *jus soli*, meaning identity is technically limited to place of birth. Likewise, secularism is of great importance to identity. However, even this is not necessarily a fair claim of identity since it was not too long ago that France was a Catholic nation. Furthermore, France is a part of the recent “attempt by the European Union (EU) to

construct a common European identity, grounded in claims that Europe is the cradle of civilization, [which] inscribes an imaginary of Europe that is exclusionary and elitist” (Lewis, 2006, p. 88). Although the construction of identity has its own inherent value, one must be careful at what expense it is done. Zemni (2002) claimed “identity is only possible in relation to an Other.” For France, Muslims are now a permanent part of the population; thus society must be wary of the politics of exclusion by making Islam the “other.” The benefit of imaginary identities is that it is inherently flexible and can accordingly be extended to others.

Yet the redevelopment of an imagined community inclusive to visible minorities is complicated by the general discourse surrounding covering practices which reveals a tension and fear of “the other.” While European migrants are generally not regarded as a problem, Muslim immigrants are. This suggests there is an element of racism and not just national pride at stake (Sillberman et al. 2007). This paper does not seek to provide a comprehensive explanation of the social constructs France has adopted to make up their imagined identity, but rather it suggests that France must be willing to re-examine its own social constructs to accommodate those visible minorities who are now a part of the social fabric. One example that France may be able to draw on to facilitate integration of visible minorities is their Jewish population, since they were likewise considered un-French despite how hard they tried to assimilate (Scott, 2007). Granted, the legacy of the Holocaust played a significant part in the welcoming of Jews in France; yet Jews were successfully integrated. As such, French notions of secularism must be readdressed to extend “French-ness.” “Muslims want France to live up to the ideals of its republican tradition and adapt to the times instead of forcing on them utopian norms that are rooted in a bygone, if not mythical, social order,” or worse completely exclude them (White, 2004, p. 2). The extension of “French-ness” is particularly important to overcome discrimination against Muslims. Discrimination is widespread in France against the Roma, Algerians, and Muslims alike, since they too are not technically a part of the French imagined community. Muslims are especially unique given their large presence. Yet

discrimination on any level is in contradiction to the French values of equality, fraternity, and liberty as inscribed in the constitution. France's strict adherence to secularism prevents proper protection of minorities against discrimination through their refusal to recognize the very existence of minorities by limiting proper monitoring, analysis, and thus prevention (Barbibay, 2010).

Barbibay (2010) mentioned other examples of racial discrimination in France such as job ads that mention the acronym BBR (Bleu, Blanc, Rouge) indicating an employer's desire to hire "ancestrally French nationals," and an experiment performed with fictional resumes that reflected discrimination against those with Arabic names. These studies clearly show how visible minorities are simply not considered equal with respect to their level of French-ness.

Although race as a mainly 'colour' issue may not be appropriated directly in situations of encounter and confrontation between mainstream (majority) groups and minority groups, race is still a decisive factor of differentiation and subjugation of the 'other' but in a new form, which called 'neo-racism' or 'differentialist racism', where cultural differences are perceived to be the insurmountable differences among people and differences which cause a 'clash of civilizations.' (Franka, 2010, p. 231-232)

"Color" is not necessarily an issue anymore given France's history of integration, but now culture/religion is the difference. Elaine Thomas (2006) talked about the increased presence of police forces in cités² that occurs. This is coupled with the simple encouragement of the cités' development which reflects discrimination. Franka (2010) considered the institutionalized discrimination against Asian cultures as inferior given the history of colonialism; drawing extensively on the example of France. Wing (2006) considered the lack of inclusion of Muslim women in the debate on the headscarf. This is a unique problem since the debate accordingly subjugates women in its own way by making an assumption that Muslim women do not have an opinion on the matter or possibly does not recognize the opinions of Muslim women since they are presumably un-French, seen through the fact that there is a significant difference in approval of the headscarf ban between different genders (Freedman, 2003). This is important to recognize since it shows the gendered debate. The debate was often to liberate

²Cités are essentially ethnic housing projects. It will be further discussed later.

women “from their patriarchal oppressions” but is ironically almost entirely dominated by men (Freedman, 2001, p. 304-305). Clearly, one change that needs to occur is the further inclusion of women in the debate about the hijab, or more importantly in my opinion, is to refocus the debate back onto accommodation of visible minorities rather than on covering practices, which runs the risk of homogenizing Muslims and reinforcing the “us/them” mentality (Savage, 2004).

Ultimately, discrimination against the “Other” is fueled by the idea of a “French-ness,” and accordingly the ban on coverings. Through the ban, France is trying to create homogenization, but is rather barring the creation of multi-tiered identities, particularly in relation to religion (Fourneret, 2006). The effort to create a homogeneous culture is merely protecting French identity and culture under differentialist racism (Franka, 2010). Social identity theory suggests that all groups in Western societies “strive to maintain or generate psychological distinctiveness which itself leads to a positive identity. To this end, dominant groups usually harden their boundaries when they consider that their positive identity is threatened” (Oakes, 2010, p. 373). This is precisely what France is doing through the headscarf ban and now the burqa ban.

Visible minorities are not necessarily seen as contributing to the diversity that makes a thriving democracy, but are rather viewed as an “enemy within,” particularly in the post 9/11 world where they are supposedly “endangering our way of life” (Aggestam and Hill, 2008, p. 107; Zemni, 2002, p. 13). The post 9/11 world is most certainly part of the reason why the Muslim presence had become tense recently. Westerfield (2010) also recognized the correlation of the rise of a fundamentalist notion of secularism with the post-9/11 time period. This is how France continues to justify their policies of assimilation, since if you can make immigrants become “French” then they are no longer a threat. This is done through the language, culinary, and other culture classes (Fourneret, 2006). This is why removing women’s covering practices have become so important since it is seen as a progress of their assimilation into French society. The laws of immigration and assimilation are supposed to “fashion the face of

France for the next 30 years” which epitomizes the general logic of Europe’s current evolution of accommodation policy. In Sarkozy’s terms, the new law is to bring about a fundamental change from ‘unwanted’ to ‘chosen’ immigration (Joppke, 2007, p. 11). This would also explain France’s insistence that Muslim imams receive training in French law and culture, whereas other religious figures, such as Catholic priests, are not obligated to attend such training. Yet, however real terrorism is in the post 9/11 world, identity politics are not the solution.

Further understanding of how the debate surrounding covering practices is racially charged can be seen through a discussion of Political Islam and French Muslims. Lenard (2010) discussed the paradigm that Muslims are anti-European and anti-democratic. This ignores the obvious fact that Muslims have existed in Europe for centuries- fully participating in democracy there and in many other democratic countries. A Muslim presence is not at all a foreign concept despite the misleading portrayal. Ahmad (2009) claimed that Islam can not only exist within a democracy, but also a secular one; however secularity is limited to a more liberal interpretation, rather than the fundamentalist French one. In fact, Ahmad (2009) even supposed that Islam promotes aspects of liberal secularism through religious commands to protect religious pluralism. Yet in France there appears to be several barriers to full inclusion of Islam into the democratic discourse.

Firstly, there is a very serious limitation imposed upon Islam as a result of the French imagined community. Politically, “there is a denial of ethnic differences, at least in the public domain, in a spirit of uniform citizenship.” Since French law does not recognize differences between peoples based on race or religion, France makes the claim that they are a country “in which there are no minorities” (Poulter, 1997, p. 45, 53). However, this attempt at a spirit of unity and France's fragile national identity does not justify legal denial of the large Muslim population. The statistical denial of minorities in France contributes to a second problem: inclusion of French Muslims into the democratic process. By publicly ignoring the presence of Muslims under the pretense of a homogenous state, while simultaneously

banning specific religious practices and promoting cultural assimilation, Muslims, among others, are marginalized. Even naturalized Muslims are often given the term “second-generation,” a term used for people who are technically French, but are considered foreign immigrants in society, since “French” indicates a level of privilege (Cesari, 200 and Keaton, 2006). Throughout the debate *laïcité* has consistently been mobilized to reinforce French exceptionalism (Göle, 2006). By perpetuating exceptionalism and limiting “French-ness” from legal French visible minorities, France runs the risk of turning covering practices into a form of oppositional identity and politicizing covering practices. A “large amount of the young Muslims [are] angry, alienated, impressionable, and [are] demanding their particular French identity” (Fourneret, 2006, p. 239). This encounter between Islam and Europe can be thought of as the attempted creation of hyphenated identities, such as French-Muslim. It is a process of reinforcement of differences, or radical multiculturalism, at the risk of mutual annihilation. Annihilation however is not a loss of identity by “French” people, but is rather a transformation of culture (Göle, 2006).

However, France is legitimately troubled by the rise in communalism, which can be a result of increased covering practices. “Muslims increasingly identify first with Islam rather than with either their family’s country of origin or the European country in which they now reside” to the point that second/third generation Muslims identify less with a French identity than their grandparents, which explains France’s attempts to limit communalism through legislation (Savage, 2004, p. 30). Yet, such attempts only reinforce communalism. The French government has, whether justifiably or not, diagnosed the recent rise of anti-Semitism in France is a result of “excessive communalism” (Thomas, 2006). Even if this is true, the fight against communalism has created a logical fallacy in supposing that by fighting covering practices, the government is fighting anti-Semitism and creating unity. However communalism is not unique. It is seen among Catholics, and other religious and political groups who see their faith as more important than nationalism. Like other religions that value modesty, it is

understandable that French-Muslims are uncomfortable with the extreme adherence to secularism or the materialism of Western capitalism. Thus the West needs to be conscious of what the expectations are of accommodating visible minorities. Muslims “are willing to integrate and respect national norms and institutions as long as they can, at the same time, maintain their distinct Islamic identity and practices” (Savage, 2004, p.31). A communalist identity is thus often the result of feelings of exclusion, although one cannot assume this is always the case (Foner, 2008). So, if there is active effort to include French-Muslims, France can likely solve both their problems of communalism and accommodation.

However, some feminist thinkers have suggested otherwise:

Elisabeth Badinter, respected professor and leading feminist, insisted that any putting on of a veil . . . was in itself an act of subordination, and therefore could not possibly be an act of political insubordination. The French Left, absolutely refused to accept that wearing hijab, be it veil or headscarf, could in any sense be understood as an assertively political act. Rather, they insisted that it was a purely religious affront to the emancipatory tradition of (French) Republican politics. (Moruzzi, 1994, p. 661)

Yet, in my personal opinion, it is impossible to independently distinguish when a woman participates in covering practices for personal piety, patriarchal oppression, political opposition, or any other reason.

In fact, counter to Badinter’s argument, there is a rich history of resistance through covering practices. In the Algerian war, the veil was sometimes specifically worn as an act of resistance solely because the occupier was so determined to “unveil” women (Scott, 2007). This is why so much focus on covering practices is not only distracting from the discourse on public policy, but is counterproductive. Law 2004-228 and the burqa ban objectify Muslim women and create a “community” where one did not necessarily exist before (Scott, 2007). Many French Muslims consider themselves exactly that, French. Through the focus on covering practices women are forced into a pre-racialized identity that is not only unjust since it limits the specificity of individual identities, but unwise since it encourages communalism. The feminist condemnation of the hijab, although with good intentions, has overly homogenized Islamic identity and often removed the agency of Muslim women in the attempt to analyze Islam (Freedman, 2001 and Zemni, 2002).

In addition to thinking of gender relations as those forms of social organization constituted around sexual difference and the binary divide between men/women or masculinities/femininities . . .we [should] conceive gender as expressive of and constituted by the range of womanhoods that exist in one side of the binary. (Lewis, 2006, p. 93)

This will allow for the creation of an inclusive idea of identity that is not limited by preconceptions of covering practice.

Many Muslims want to be a part of creating a new French identity, and many do wear the hijab for personal rather than political reasons (CNN, 2010). Muslims are not solely looking to claim their French identity but also to help re-create a unified identity that is progressive in nature. For example, in October 2004, several French tourists were taken hostage in Iraq by a group of Islamic fundamentalists. The condition for their release was that the government needed to lift the ban on the headscarf in schools. Yet Roy (2007) discussed how French Muslims were outraged at the act of foreign intervention by Islamic fundamentalists since they clearly understood such an action would not bring to fruition any positive development in a new French identity. The French government must actively engage with discourses in the country that are seeking to bring about a progressive identity that is in line with the Republican values, but not limited to historical identities. This is also why the government needs to be cautious of policies that are hostile towards Muslims, since it only encourages intolerance (Cesari, 2004). For “any systemized attack on Islam will only strengthen an identification for revolt and protest” (Roy, 2007, p. 88). By focusing control and laws on young Muslim women’s bodies, the government is running the risk of radicalizing young women who do view the hijab as an act of personal piety (Moruzzi, 1994). The headscarf ban and the burqa ban are such examples of systematic attacks on Islam that hinder rather than promote immigrant accommodation. “Liberal political theory . . . *demand*s the accommodation of group rights,” this is why there must be a re-examination of the discourse surrounding secularism and immigrant accommodation (Lenard, 2010, p. 316). Instead of marginalizing migrants, politicizing their religious practices, and excluding them from the public sphere without any

real possibility for complete assimilation, there must be a concerted effort to understand how French identity can develop to be inclusive for minorities.

Furthermore, there needs to be an increased awareness and movement away from the current manner in which covering practices are discussed. Currently, the hijab is understood in very racist terms, “whether [the hijab] connotes excessive sexuality, or denial of sexuality, whether it is worn as a sign of personal religious commitment or political opposition. The veil represents the struggle to come to terms with France’s colonial past and ethnically mixed population” (Scott, 2007, p. 89). Furthermore, gender power relations are likewise exploited in the discourse around covering practices. Simply, gender is constructed by a set of global power relations. “In asserting the superiority of French culture over patriarchal Muslim culture, many French feminist fell into the trap of ignoring their positioning as white women within a set of postcolonial power relations” (Freedam, 2001, p. 296). In fact, Winter (2006) suggested “Feminist [found] themselves defending a law passed by the right-wing government that they would otherwise be criticizing for its lack of social protection for women’s rights” (p. 282). Future discourses must not exclude women nor Muslims in the creation of either a “new homogenous” French identity that is dynamic, or in the construction of new *temporary*, hyphenated identities, sensitive and fluid to the differences of each individual. Hyphenated identities are useful as a conceptual tool, but suppose a “pure” binary, which is likewise problematic. By overcoming the “imagined identity” of “French-ness,” France can reverse the exclusion of visible minorities, overcome the racist discourse, and support the creation of a dynamic society, sensitive to the specificity of all French citizens.

Chapter 4: The Current Failure to Accommodate “Visible” Minorities

The racialized discourse on covering practice has independently failed to help visible minorities fit into society and develop multi-tiered identities. However, it is the failure of accommodation policy to set the framework for the development of multi-tiered identities that has had the most significant impact. Visible minorities have been marginalized with respect to politics, housing, economics, and education. France explicitly adheres to assimilation, seen in both the discourse on covering practices in their civil code and other laws (i.e. French Civil Code, art. 24). Even if every Muslim woman went uncovered tomorrow, France’s problems would not be solved given that coverings themselves are not threatening, but the threat derives from what Islamic coverings supposedly represent. The debate about covering practices is merely a response to, and the result of, a series of crises involving the state and political order (Grilo, 2007). These much more broad issues that affect each individual in French society show the failure of French accommodation. Yet, this is not to suggest that the debate around covering practices hasn’t been fruitful. The debate has been precisely so important since it has revealed the limitations on the metadiscourses based on political rights and the structural predispositions of liberal ideology that have often led to a position opposed to the development of multi-tiered identities (Moruzzi, 1994).

Accommodation is the way in which the state seeks to create a unified society. Despite the fact that other facets of accommodation may be much more defining. Accommodation must begin on the simplest level: political recognition. “Engagement in the political process offers a path for Muslims to achieve the goal of integrating into European society, while maintaining their distinct Islamic identity” (Savage, 2004, p. 37). However, engagement by Muslims in the political process has often been compromised by the acceptability of discrediting Muslims as “real” Europeans (Laborde, 2008). Increasingly, Europeans are becoming Muslim, either through conversion or by being raised in such a religious tradition that is simultaneously European (the French-Muslims, etc.). There are in fact some

rather simple steps that could be taken by France and other governments to begin to remedy the political exclusion of Muslims. For example, the simple recognition by governments of the existence of European-Muslim populations could have very positive effects. While governments continue to maintain very personal and often respectable reasons for refusing to collect census data based on ethnicity and religion in light of the Holocaust, there is no denying that France is a country in which there *are* minorities. In a society where 80% of Muslims have reportedly experienced some form of discrimination, the lack of recognition of minorities discredits any legal claim to defend them (Barbibay, 2010). In the European context, public recognition of the Christian religion is the norm. Whether it is through school holidays, or written into regional constitutions (such as parts of Germany), Christianity remains the dominant faith. Adherence to a religious heritage is acceptable, but “a recognized status of Islam will certainly help . . . individual[s] to pursue more effectively [his or] her religious claims’, as well as integration more generally” (Joppke, 2009, p. 19). Thus in France, where it has all but become official to make a public holiday during particularly important religious celebration of Islam, these holidays can be recognized politically. Although there is still much effort needed to continue to be inclusive of Islam and other marginalized populations into “French” society, there has been some effort made in recent years. In 2002-2003, the then Interior Minister Nicolas Sarkozy spearheaded the formation of the French Council of the Muslim Religion, similar to the Catholic and Jewish Councils that predated it. The Muslim Council was created to incorporate Muslims into a broader political body which is certainly a positive step. However, the Council has been viewed as “a self-interested means for controlling France's growing Muslim population rather than a mechanism for inclusion.” (Keaton, 2006, p. 180). As such it could simply perpetuate the racialization of French-Muslims and certainly falls into the trap of overly homogenizing Islam. Instead the government can create the tools for Islamic organizations to share their own voice. Political empowerment remains an issue of critical importance since “Islam will only cease to be foreign in the West once Muslims are able to express their criticisms of the democratic process

without being accused of disloyalty or seen as a danger” (Cesari, 2004, p. 158). This is central to multi-tiered identities since religious identity does not inherently compromise democratic loyalty.

Much of the process of continued separation of “French-ness” from the “other” that occurs to French-Muslims is closely associated to the marginalization in the formation of cités on the edges of French metropolitan cities. Like many complex social problems this process has created a viscous cycle that once entered can be rather difficult to break out of; but which is absolutely necessary to break for full integration to occur.

The choice of housing affects not only the quality and quantity of living space available to the immigrant family, but also access to business, educational, consumption and recreational opportunities, as well as opportunities for social contacts with natives. Discrimination in housing, as subtle as it may be in some communities, imposes what is essentially a tax on a key household consumption and investment good. It can serve to separate immigrant communities from those of the native population, hampering the acquisition of host-country language skills by immigrants and their children. This slows down the process of assimilation and serves to maintain a barrier between immigrants and the opportunities for employment, human capital accumulation, and professional advancement in the host country. Distorted choice of housing can also interfere in a number of ways with the progress of children in school. Inadequate space, noise and pollution, distorted choice of community, school and social environment can all have a significant impact on the scholastic performance of immigrant children and their economic prospects. (Djajic, 2003, p. 837)

This is particularly an issue of critical importance since it is estimated that roughly one-third of France’s Muslim population live in cités (Barbibay, 2010).

A report commissioned by the president acknowledges that, until recently, authorities have allowed them to ‘languish at the edges of French society.’ Amir Taheri, an Iranian journalist based in Paris, compares the situation of these people-the majority, North African Arabs-to that of African Americans in the United States. She says, ‘They lack opportunity and are mostly parked in huge Stalinist suburbs around large cities - it is almost like living in hell.’ However, with the apparent rise of Islamic fundamentalism, and particularly the risk that bitter Muslim youths might form a ready recruiting pool for militants, the government has belatedly moved to integrate the Muslim community into French society as a whole. (Fournieret, 2006, p. 240)

The government acknowledges their mistake in “warehousing Africans in an effort to prevent them from occupying public housing in the centre of Paris” (Keaton, 2006, p. 64). By initially selecting where people of immigrant heritage live, the government has contributed to the very communalism they are now attempting to fight through legislation on covering practices. Now, residents in cités often accept and

desire to live in cités as a means of creating an oppositional identity and as a means of “forting up” against the public gaze and harassment (Cesari, 2004 and Grilo, 2007). It is for these very reasons that the public and political discourse surrounding covering practices needs to be changed. France cannot afford to maintain the existence of the racialized cites. By politicizing the hijab the government continues to lay the foundation for continued oppositional identity and accordingly an increase in communalism. If integration is to occur, the removal of the threat visible minorities feel if they do not live in segregated areas needs to occur as a pre-condition to removing the tension around the hijab, rather than a result of limiting the hijab. France is beginning to recognize this problem; however, the initial marginalization has resulted in more problems.

Both the cités and the political disenfranchisement of visible minorities in France contribute to the economic barriers that exist to integration of minorities. Cités are areas greatly plagued by unemployment, sometimes as high as 40% in certain regions (Barbibay, 2010). Although the costs of unemployment are outside the scope of this paper, it is sufficient to say unemployment presents a barrier to integration and employment contributes to integration. Like the debate about covering practices, issues of economic integration are likewise racialized, both in France and Europe. In every European country the rate of unemployment is higher for Muslims than non-Muslims. Even those Muslims with equivalent diplomas are twice as likely to be unemployed; largely due to discriminatory hiring practices (Cesari, 2004). In fact, in 2004, several studies were done to examine racial discrimination in the workforce using fictitious resumes, some with Arab names, and others with French names. Those with French names were significantly more likely to generate interest from an employer. This study when compounded by marking job advertisements or real estate advertisements with the acronym BBR shows the economic barriers (Barbibay, 2010). In fact Meng and Meurs (2009) found the risk of unemployment for North African migrants to be 79% higher compared to French natives. The same study went on to show that French immigrants were likewise trapped in low-skill type jobs (if they

had one) that limited their potential for upward social mobility. “Overall, social inclusion becomes narrowly tied to the labour market rather than the nation-state at large, motivated by the image of society as a machinery of performance” (Joppke, 2007, p. 17). Thus, when potentiality for participation in the workforce becomes racialized, there is a significantly reduced opportunity for integration. By redeveloping public policy to de-stigmatize covering practices, political equality is ensured for those who participate in covering practices and economic discrimination can be greatly reduced. As mentioned, the issue is often a vicious cycle. If the marginalized are able to integrate economically there will likewise be other forms of integration as well.

Like labor markets, there is a great deal of evidence showing that Muslims are not integrated in the educational realm in comparison to other religious and ethnic minorities (Lenard, 2010). Some suggest that the “economic and social inequalities in education . . . are the real barriers to integration” (Freedman, 2004, p.22). As previously mentioned, schools play an integral role in the development of French identity. Schools are the great equalizer of French society. They are the means of bridging cultural and class differences in order to unite a fractured society (Keaton, 2006). “Schools in France are expected by the public to correct social issues that a retreating providential state has been equally incapable of addressing” (Keaton, 2006, p. 145). That is why any break down in the path of integration within the school system has dire consequences both for the individual and the society. This explains why the tremendous focus on covering practices is retarding the future functioning of a thriving democratic and equalitarian society. Only 20-25% of “immigrants” attain or exceed the general education requirements with men performing poorer than women. Among North Africans the educational distribution is moderately superior to this, especially for women. Yet 45% of men have no diploma beyond what is equated to a middle school degree (Sillberman et al. 2007). This situation is harmed by the implementation of law 2004-228. Since the headscarf ban took effect, hundreds of women have been expelled from schools for insisting on covering, while countless days of learning have

been lost among those women who did concede to stay in the classrooms after having to come to an acceptable compromise between their faith and the new law. Of those women who are expelled for continuing to cover, they are “then forced to study by correspondence, rely on volunteer Muslim tutors, or abandon their education altogether” (Soper and Fetzer, 2007, p. 935). This is not a desirable situation. Apart from those girls who are expelled for their hijab, law 2004-228 encourages parents and families to withdraw girls from school “so that they can instead attend religious schools where the veil is permitted, but where they are *not* exposed to the diversity of world views that characterise a public school classroom” (Lenard, 2010, p. 314).

By promoting the establishment of private Islamic schools or by deliberately excluding or failing to foster structures that permit the full range of Muslim sectarian groups to have a voice in the dialogue and by prompting a search for channels and associations outside of the state’s purview or direction, devoid of attachments to Europe, European governments further segregate Muslim communities, limiting the possibilities for engagement with the broader society. (Savage, 2004, p. 42)

In such a light, it appears rather self-evident that law 2004-228 once more does very little if anything to actually challenge patriarchal Muslim codes when they do exist. Those women who are forced to put on the hijab by a relative are not spared by law 2004-228, but are rather further subjected to increased familial and social pressure as they are forced to transfer to new schools, study by correspondence, or give up their education altogether. The attempt to maintain “a narrowly defined national culture in multicultural classrooms and societies . . . through schooling” is purely a mechanism for franco-conformity that in fact does nothing to increase conformity, but instead encourages radical communalism (Keaton, 2006, p. 108).

Within the school system, there continues to be further connections to other areas of marginality that visible minorities feel. It is no coincidence that the majority of EP³ schools are in cités, sometimes as high as 60% (Keaton, 2006). Yet, despite the unpromising signs of education for the

³ EP schools are “high priority” schools, which are schools that are not performing well and are generally underfunded and understaffed.

marginalized in France there are some signs of effort and change. Within the last several years there has been effort among institutions of higher education to reach out to students from disenfranchised backgrounds. Some of the highest respected universities have begun reserving places for students from ZEP zones, which are zones with EP schools. The system resembles elements of the United States' affirmative action program, and unfortunately has some of the same problems. There is enormous pressure for students from ZEP zones to perform well, even though they may not have received an adequate education compared to other students, and there exists a certain level of stigmatization among such students. Yet, the effort is certainly beneficial for those students who do receive a highly respected degree and accordingly possess a high level of social capital. However, given how recent the movement is, effects from these programs are still inconclusive.

The barriers to integration are numerous and daunting. Yet integration remains the only stream of cultural public policy that is both anti-racist and sensitive to multi-tiered identities. Assimilation has resulted in the marginalization of visible minorities. That is why political ideology must reposition its focus on accommodation policy and bring to fruition legitimate equality, rather than remain stagnant in the historic, European, ideological debate about secularism vs. Christianity. Throughout the apex of the debate surrounding covering practices in the early 2000s and even sometimes today, the only party that has had a clear position on issues of accommodation has been the extreme right parties, such as the Front National (Freedman, 2001). This is a problem for political variance. The problems of accommodating visible minorities extends well beyond the boundaries of a traditional left-right debate, and accordingly demands a concerted effort by society to rethink how accommodation is talked about in order to develop equality and move beyond the failures of assimilation.

Chapter 5: Accommodation Policy Sets the Framework for Development of Multi-Tiered Identities

Accommodation refers to the pragmatic concern of how immigrants/minorities “fit” into society since they become a part of the voting electorate, become community representatives, and ultimately come to represent the country within the international realm. Whether the state chooses to accept it or not, in most cases visible minorities are not “going anywhere,” they are indefinitely a part of French society. “The future of France, and perhaps all of Europe, may very much depend on whether or not the tensions can be resolved between the Muslim community and the majority of citizens” (Wing, 2006, p. 753). As Muslims are the largest non-Christian religious minority, France’s future as a nation depends on young Muslims to embody the French constitutional slogan: *liberté, égalité, fraternité*. Thus, states need to be selective in their choice of accommodation policies between assimilation, marginalization, and integration since they set the framework for multi-tiered identities, with integration being the most sensitive to human complexity.

Currently, accommodation policy centers around three distinct models: assimilation, marginalization, and integration. For the sake of clarity, I use the definitions set forth by Lenard (2010) whereas integration refers “to the legal, social, and economic access possessed by new immigrants” or visible minorities, and assimilation refers to “conformity to the pre-existing cultural norms . . . of a dominant social group” (p.310). Conventionally, “assimilation is a term used to refer to conformity to the pre-existing cultural norms – political norms included- of a dominant social group” (Lenard, 2010, p. 310). Finally, marginalization refers to the process of exclusion of minorities from the public sphere. However, marginalization is largely considered incompatible within a democratic society, particularly in one like France which trumpets the values of equality. Marginalization theoretically pushes immigrants to the peripheries of society, encouraging their removal, and is a blatant resistance to any influence of the “other.” I suggest that marginalization is ubiquitous both in its traditional sense of immigrant

exclusion and also in the “marginalization-lite” form of multiculturalism since it ignores issues of cultural diversity, although it doesn’t necessarily push minorities to the edges.

France explicitly uses assimilation within its society (i.e. Civil Code, Faiza Mabchour). The headscarf ban and burqa ban are merely an extension of such logic. The demand for the removal of all “ostentatious” religious symbols reflects how the country is “seeking to be completely devoid of religious insignia, [and] pushing for the homogenization of their population” (Fournieret, 2006, p. 237). However, this model is particularly unsustainable given the demographics of those women who do choose to participate in covering practices. Freedman (2001) found that not only was the decision to cover an autonomous decision, but was often put on by women who were considered to be “the most integrated” into society and often in opposition from family and friends. As such, it does not seem likely that the “typical” arguments against covering practices apply to the newest generation of women.

One of the largest problems with assimilation is that it requires visible minorities to surrender their distinctive identities to blend with the dominant social culture, rather than encouraging the development of multi-tiered identities (Poulter, 1997). While the goals of assimilation are respectable since they seek to maintain and develop a unified culture, the process by which it seeks to accommodate immigrants into the host society is not justifiable. Individuals and groups are entitled both by international law, European law, and even French law to freedom of religion, thought, and expression. Lenard (2010) and Poulter (1997) both supposed that a strict policy of assimilation is unjustified and is a violation of international human rights. Freedman (2004) suggested that the new focus on secularism is a form of evidence of the renewal of assimilation as a primary policy objective and as a removal of the *droit à la différence* (right to difference). Granted, the government cannot make endless concessions to a minority groups while maintaining equality under the rule of law. But there is a distinct difference between regulating threatening practices and non-threatening practices. Even if covering practices could be proven to be a threat by encouraging communalism, it is still not appropriate

for government regulation, just as it would be inappropriate for the government to insist the Catholic Church be “equal” by extending the sacraments to non-Catholics. Communalism is not inherently threatening. Finally, there is legitimacy in promoting assimilation in order to help migrants/visible minorities “fit into” society to maintain social cohesion, prevent marginalization, and help break the cycle of disadvantage and discrimination. However, as we have already seen, assimilation to help visible minorities “fit in” has merely resulted in extreme levels of social exclusion in politics, economics, housing, and education.

As such, one must think critically about to what extent these altruistic motives for assimilating immigrants reflects underlying prejudice and intolerance. Should visible minorities really be forced to “blend into” society in order to have equal access to jobs, education, and housing? Can visible minorities ever truly become “just like” the rest of society, thus preventing divisiveness? I argue no. These are idealistic goals that are unattainable, and have not even been implemented among the “original” French population. Divisiveness always exists whether it is political, classist, etc. Making visible minorities conform to a dominate culture merely justifies what prejudices that exist rather than creating cohesion. This is why cultural assimilation is collapsing in France, which further explains the rise in tension around coverings (Keaton, 2006). For example, the French government issued the Statsi report, looking at Islamic covering practices, and found assimilation to be a prerequisite to education, not the outcome, which compromises equality by further excluding visible minorities (Scott, 2007). This is a tremendous problem, since one’s quality of life should not depend on how well they blend into society. Furthermore, assimilation makes the claim that “the security of immigrants in terms of their protection from racist attack can only be guaranteed by their assimilation” (Freedman, 2004, p. 16). Such a claim is atrocious and unacceptable within a democracy. As such, careful re-consideration of France’s framework of accommodation policy is needed. Obviously the process of both integration and assimilation is a “two-way street,” that requires effort by both the state/society and the individual (Lenard, 2010, p. 311). In

France though, it appears that the state has forgotten that it requires effort on behalf of the French government to make concessions, and instead the government seems to be forcing immigrants to conform before it will reach out their hand to immigrants (Fourneret, 2006).

While assimilation remains relatively unique to France among Western societies, there is always overlap between the various models employed by countries, and marginalization remains a model of accommodation. Žižek (2010), talked about the rise of the far right, anti-immigrant parties in both the United States and Europe that employ marginalization in their political discourse. Aggestam and Hill (2008) described how the exclusion in Western societies often simply takes the form of treating migrants as nothing more than guest workers; who are beneficial when there is industrial demand, but a burden to be expelled during times of economic hardship. One can see tendencies of the traditionalist model of marginalization employed in France. For example, in the fall of 2010, France began of process of expulsion of Roma migrants. Žižek (2010) credited this rise to the failure of the political/ideological left to engage in a genuine discourse surrounding immigrant accommodation, but whatever the origins may be, it is unacceptable within a democratic society.

Yet in most circumstances, marginalization is limited to political discourse of the far-right, rather than actually implemented into policy. However, there is a form of “marginalization-lite” employed by many Western societies through multiculturalism. Multiculturalism was originally developed with the good intentions of facilitating accommodation and as a form of eliminating racism in society. However, I argue that multiculturalism is rather simply the best form of marginalization, since in practice it simply allows for cultures to co-exist without ever having to interact and solve the barriers of cultural division. Over time multiculturalism has come to mean the “institutionalization of differences with ‘autonomous cultural discourses and separated international identities’” (Cesari, 2004, p. 14). This is what German Chancellor Angel Merkel was referring too in her speech that received so much criticism in the fall 2010. Merkel proclaimed that “multiculturalism has failed,” and I agree with her that it has. Countries such as

the UK, Germany, and the United States have used multiculturalism, claiming to break down the barriers of racism, but have simply ignored visible minorities within their societies; who effectively become marginalized. Žižek (1997) stated it as follows:

Multiculturalism is a racism which empties its own position of all positive content (the multiculturalist is not a direct racist, he doesn't oppose the Other or the particular values of his own culture), but nonetheless retains this position as the privileged empty point of universality from which one is able to appreciate (and depreciate) properly other particular cultures—the multiculturalist's respect for the Other's specificity is the very form of asserting one's own superiority.

Instead of merely respecting others' specificity from a difference, society ought to engage with differences to develop new identities. In such a light, France's model of assimilation is at least respected for their willingness to engage with the question of accommodation. Multiculturalism is supposed to be successful due to its tolerance of the "Other." However, Scott (2007) pointed out how tolerance necessarily implies distaste for those who are tolerated. Those who are different should not simply be tolerated, but rather embraced for their differences as a means to learn and as an asset.

Multiculturalism [can be] criticized for transgressing the principles of liberal democracy; for essentialism; for treating cultures as static, finite and bounded ethnolinguistic blocs; for privileging patriarchy and disempowering women; for allowing a concern with 'culture' to override traditional social issues (contrasted to pluralism) (Grilo, 2007, p. 985).

Among multiculturalist societies, one can see "low levels of skill and education, and their persistent socio-economic marginalization, even into the second and third immigrant generations" (Joppke, 2009, p. 108). Thus, multiculturalism has failed, since it merely keeps minorities on the margins of societies. Granted, in some circumstances minorities have the opportunity to take advantage of resources such as education, but simply do not as a result of differences in values or preferences. The United States is all too familiar with this occurrence in the form of oppositional identity; which seeks to validate one's social group by setting itself opposed to certain values of the dominant social group, such as education. But, although visible minorities are likewise accountable for failing to properly enter into a host society, the structural problems with the current form of multiculturalism is inexcusable.

Ultimately, integration remains the only viable model of accommodation that neither violates the rights of individuals and groups, nor marginalizes them. “Integration means neither assimilation nor a society composed of . . . separate enclaves . . . moreover, integration implies continual interaction, engagement and civic participation” (Grilo, 2007, p. 989). Visible minorities must have equal access to social, economic, and political resources when compared to others. So far, Western societies have either used the models of assimilation or marginalization, without a genuine consideration for how to accommodate visible minorities, but have rather selected the policy that was most self-serving at the time (Roy, 2007). As it presently stands, both assimilation, and marginalization in the form of multiculturalism are in trouble for similar reasons in that both models claim an intrinsic link between culture and religion (Roy, 2007, p. xi). This false assumption prevents the development of multi-tiered identities. What has happened in the French example is that covering practices are considered a threat to culture due to their connection with religion, when in fact this link between the two is not inherently present. A woman can participate in covering practices, thus practicing religion, while simultaneously fully participating in/creating a new culture without the threat of one imposing on the other. Likewise, a “white” French person can convert to Islam and their French identity not be put into question. More concretely we can see this misconception when considering another religious group: Sikhs. “The Sikh turban was initially determined to be cultural not religious, unlike the headscarf. This has changed since the passage of law no. 2004-228 and Sikh students are now subject to expulsion too for their head covering” (Keaton, 2006, p. 182). This shows the flaw Roy (2007) talked about in relation to the culturalization of religion. The change with respect to Sikhs did not occur until the tension around the Islamic headscarf flared up with a renewed emphasis on assimilation. What has happened is that in the protection of secularism and defense of assimilation, the French model has made overarching generalizations that limit the freedoms of minorities, even when they were not originally even regarded as an affront to secularism. Cesari (2009) went so far as to suggest that “sustained and broad based

integration of immigrants into their host society is likely to reduce the threat of homegrown terrorism” (p. 61). In an age where terrorist attacks seem to be ubiquitous, using integration to alleviate the threat can only help.

However, there are limitations to how a state can seek to employ integration. Principally, state institutions have the capacity to integrate visible minorities, but the state cannot seek to make ideological demands (Roy, 2007). This in theory should not be a problem for the French state since the adherence to secularism demands state neutrality in regards to religion, and in fact most Western states have some principle similar to this. However, state neutrality ought not to go so far that it simply ignores cultural and religious minorities. “Instead, cultural accommodations and legal concessions can help to integrate Muslims into European society, without requiring them to sacrifice all their cultural and legal autonomy” (Fourneret, 2006, p. 248). Since sacrificing culture denies one’s specificity of identity. One model of creating integration draws upon the precepts of multiculturalism. Spivak (1999) said that integration can take the form of radical multiculturalism, where a deep concerted effort is put forth to actually talk about differences between cultures and religions. This then allows for the creation of a discourse that is inclusive and progressive.

Integration has a sociological as well as a cognitive dimension. We are concerned not simply with whether immigrants measure up according to standard socio-economic indices; we are equally concerned with whether immigrants *feel* integrated, that is, whether they believe they are accorded respect as equal and full members of the community. (Laborde, 2008, p. 211)

Although creating a society where immigrants do in fact measure up to non-immigrants in regards to education and jobs is important, this type of model is merely a temporary solution, since there will always been cultural shifts among the dominant and minority groups. Thus, a foundation for continued dialogue about differences provides a clear solution to having a static model while simultaneously respecting differences. In fact, for Islam, there are already such models in place. Roy (2007) talked extensively about the use of Salafism and Sufism as a means of shattering the cultural reference of Islam

towards the Middle East, which could be used in France, and is in fact needed to break the cultural-religious assumption often made.

Radical multiculturalism and integration in general have enormous benefits for those societies that choose to employ them. Underlying much of the tension surrounding covering practices in France is a general fear of the destabilization of society. Particularly within the post 9/11 world with the threat of terrorism there is an ever increasing need to reduce the threat that visible minorities have in society. “Recognition of a cultural arbitrary and its symbolic effects is the first step toward delegitimizing the violence that ranks one way of being above all others in ethnically diverse societies” (Keaton, 2006, p. 99). This is what must be done for the sake of security, and this type of model must also be done for the sake of being an inclusive society that welcomes diversity and respects human rights. By identifying the causes of social disparities and inequalities there is a tangible means of creating social public policy that corrects for such inequality and works for full integration while respecting people’s multi-tiered identities.

Chapter 6: Conclusion: Beyond the Hijab

The headscarf ban, the burqa ban, and the ruling in the case of Faiza Mabchour have been substantially misguided since they failed to acknowledge the underlying framework of accommodation. Assimilation has resulted in policies that merely attempt to regulate the place of visible minorities. However, the debate has provided numerous lessons that can contribute to a consolidated and ethical argument promoting full integration of peoples. France ought to apply integration as a policy and reform their laws accordingly. This is necessary in order to develop public policy that is sensitive to multi-tiered identities. By embracing multi-tiered identities, France can encourage democratic participation in order to resolve the tension that has surrounded the debate around Islamic covering practices.

In order to foster an inclusive democracy, there must be a change to current legislation in order to redevelop public policy that reflects integration of visible minorities. First, and arguably most importantly, France needs to develop specific and objective criteria defining the contours of the assimilation clause of Article 21-4 of the French Civil Code, since the Civil Code is the foundation for all legislation. These criteria ought not to reflect the traditional notions of assimilation that inherently limit diversity, but instead integration. Keeping in line with international and EU laws and with *laïcité*, “assimilation” as defined by the Civil Code ought to reflect freedom of religion. By clearly defining the contours of Art. 21-4, France can focus on ensuring economic, political, and social equality, rather than regulating cultural/religious practice. This inevitably means that France needs to repeal law 2004-228, and the burqa ban. These laws rather specifically limit peoples’ religious expression and have a complicated history of racisms underlying them. However given their popularity this will be difficult to do, but is necessary to protect France’s visible minority population. Concerning protection, there is an evident need to develop a means to implement and monitor discrimination. France already has the framework of anti-discrimination set up under the philosophy of *laïcité*. France ought to recognize the contradiction in attempting to assume the logic of neutrality of government. Instead, France should use

active government intervention to provide the alternative logic of *laïcité*: equal respect for all religions. The development of French secularism has been a difficult process and France ought not to allow the corruption of *laïcité* by letting it become a political tool for exclusion of visible minorities. Instead, the current logic of *laïcité* can be rethought to protect equality. This will allow for government intervention to repeal the bans on all religious coverings. Whereas *laïcité* was originally a way to escape the oppression of the Catholic Church, it can now be a way to escape the oppression visible minorities experience by being banned from expressing their multi-tiered identities.

The decision to pursue a model of accommodation sensitive to multi-tiered identities is not merely as simple as deciding that integration is the best policy. The notion of “French” identity is deeply ingrained within society and is further strengthened by the discourse of covering practices that has occurred. It will take time to overcome the stigma against visible minorities. It will also take a concerted political effort given the popularity of conservative political parties that take explicitly hard positions against immigration and see themselves as defending “French” culture. Then, as terrorist attacks across the Western world continue as a result of radical Islam, the willingness to include visible minorities is further compromised. But as I have described, continuing to exclude visible minorities only encourages the development of communalism and legitimizes the oppositional identities of radical Islam. That is why *laïcité* ought to be used to support the development of new policies sensitive to multi-tiered identities. But rather than allowing a continuation towards a strict, fundamentalist logic of *laïcité*, progressive thinkers must instead claim to the values of equality and acceptance of diversity inherent in *laïcité*.

By re-thinking the current laws and public policy to reflect integrationist practices France will inherently be granting equality to multi-tiered identities. This is important both as a means of encouraging/embracing diversity and as a means to liberate those that have suffered under the model of assimilation. It is important that France pursue anti-racist policies rather than allow current racist

discussions to continue. This is especially true for some feminist theorists. The current debate has “exposed a previously unquestioned universalist base of French feminism . . . which ignore[ed] the multiple and [multi-tiered] nature of women’s identity in contemporary France” (Freedman, 2001, p. 295). This is likewise true for other frameworks as well, such as far-right political parties and even French law that have homogenized Muslims and other visible minorities. Muslim women who cover themselves are not simple pawns used by terrorist organizations, nor are they merely oppressed women to be pitied. Such racist stereotyping of Muslim women retards the development a comprehensive policy of integration and presents barriers to developing an antiracist strategy sensitive to multi-tiered identities. In fact, by insisting that any time a woman wears the hijab she is the victim of patriarchal oppression, society is merely isolating itself from an antiracist discourse. This is particularly worrisome within a democracy. “A true feminist antiracist strategy will examine the specificity of immigrant Muslim’s positions. Only when feminists persuade teachers to include Muslims girls in their lessons, whether they [wear a hijab] or not, will a successful feminist antiracist strategy be achieved” (Freedman, 2001, p. 308). However an anti-racist discourse is not limited to just feminist theory, but should rather be taken on by all policy makers/theorists. An anti-racist discourse must fight for a system of education and a system of integration that creates space for the development of multi-modal identities of gender, faith, nationality, etc. The recognition of multi-tiered identities is critical to maintaining a level of ethical debate for the general societal function. Thus, legislation, case law, and public/political discourse that frame the debate around Islamic coverings, or any other religious/cultural issue, in a manner that ignores the specificity of identity needs to be re-shaped and re-thought in order to recognize the diversity within society and to ensure equality. Assuming the burqa is a “radical religious practice” and equating Islamic coverings with submission to a patriarch compromises, rather than protects, equality since it inherently limits individual identity. Even if coverings are worn in submission to another, this likewise does not necessarily mean the values of equality have been violated, since the vary act of

submission implies agency on behalf of the submitter. Of course if a woman is found to be coerced into covering herself, this is intolerable and is included within a framework promoting equality and protecting individual multi-tiered identities. Finally, a new discourse must be ever watchful for how the change in demographics can and will contribute and challenge notions of modernity. As such, leaders, academics, and theorists cannot merely revert to former ideas for security. Muslims are a unique population in Europe since they do not fit into the traditional debate about the secular versus the religious-right. The mass influx of Muslims into European society brings faith back into the public realm and challenges secular humanism. However it behooves society to rethink notions of secularity and the relationship between church and state rather than blindly oppose it. Europe is not simply losing Enlightenment values amid the flood of “people of faith,” rather Enlightenment values are being rethought and strengthened to recognize the diversity of our world (Fourneret, 2006). By changing the discourse around covering practices to one that empowers women (and men) and focuses on issues of integration, France can continue the legacy of democracy as inclusive and welcoming to all peoples of unique backgrounds and beliefs.

It is the lessons about democratic participation that are particularly important within a global context. As France develops public policy sensitive to multi-tiered identities, they set a precedent for the evolution of democracies to continue to be inclusive and respectful. Leaders must be ever wary of the domestic and international pressures that seek to exclude voices from democratic debates about cultural public policy.

[The West] accuses cultures and religions of ‘the other’ of being undemocratic, uncivilized and uncommitted to ideals of freedom and democracy, but fails to recognize its contributions to structural inequalities and experiences of subordination of ‘the other’, fails to recognize its hypocrisy while blaming and reproaching violence of ‘the other’ without acknowledging being violent itself, and fails to recognize legitimate claims for identity of difference, which is a challenge and a need for [the Western world’s] self-reflection and self-criticism. (Franka, 2010, p. 229)

Difference is not acceptable grounds for exclusion of voices in a democratic debate. However, the current racialized manner of discussing covering practices does marginalize and exclude visible minority participation by accusing them of being “radical” and compromising culture. Whether the fear is of Islamic fundamentalism or whether one is acting within a patriarchal society, the voices of Muslims and women cannot be excluded from the debate and development of an integrationist policy. Visible minorities, Muslims, and peoples of all backgrounds must be encouraged, not discouraged, from democratic participation. Democratic participation begins with the recognition of ethnic and religious minorities, which inherently requires an extension of French identity to ethnic and religious minorities in the process. That is the benefit of the nation as an “imagined community,” it allows for the dynamic creation of identities that can be inclusive (just as it can be exclusive) (Arnold, 1984).

In order to move beyond the tensions of covering practices, society must be cautious of any engagement in a discourse of fear that equates all forms of Muslims practices, including covering practices, with militant radicalism. Perpetuating such a discourse one only legitimizes the radical religious practices as a counter-culture. By reflecting on the current debate and instead seeking to engage in a debate about integration from an empathetic framework, France and the rest of the world can continue to empower the marginalized in society and grant them agency. Integrationists seek to encourage democratic participation by protecting equality and defending multi-tiered identities, which must likewise be reflected in law. Society must include visible minorities into a discussion of changing modernity that learns from and celebrates the diversity of those from opposing backgrounds, including those who wear Islamic (or other) coverings.

Works Cited

- Aggestem, L. and Hill, C. (2008). The challenge of multiculturalism in European foreign policy. *International Affairs*. 84(1), 97-114.
- Ahmad, Dr. N. (2009). The modern concept of secularism and Islamic jurisprudence: A comparative analysis. *Annual Survey of International and Comparative Law*. 15, 75-105.
- Arnold, B. (1983). *Imagined Communities*. Verso: New York.
- Barbibay, Y. (2010). Note: Citizenship privilege or the right to religious freedom. *Cordozo Journal of International and Comparative Law*. 18, 159-198.
- Barbier, M. (1995). *La Laïcité*. Paris: L'Harmattan.
- BBC news. (2009). "Sarkozy Speaks Out Against Burka." <http://news.bbc.co.uk/2/hi/8112821.stm>
- Bell, S. (2008). Burka-wearing woman denied citizenship for being submissive. *Scotsman*. July 12, 2008, available at <http://news.scotsman.com/latestnews/Burkawearing-woman-denied-citizenship-for.4282205.jp>
- Bloemraad, I. Korteweg, A. and Yurdakul, G. (2008). Citizenship and immigration: Multiculturalism, assimilation, and the challenges to the nation-state. *Annual Review of Sociology*. 34, 153-179.
- Brouard, S and Tiberj, V. (2008). Is the "Muslim question" a religious problem in western democracies? Diversity and polarization among French Muslims. Princeton University.
- Cesari, J. (2004). *When Islam and Democracy Meet*. New York: Palgrave Macmillan.
- Cesari, J. (2009). *Muslims in the West after 9/11: Religion, Politics and Law*. New York: Routledge.
- Cerulo, K. (1997). Identity construction: New issues, new direction. *Annual Review of Sociology*. 23, 385-409.
- CNN. (2010). Muslim women who wear the hijab and niqab explain their choice. <http://religion.blogs.cnn.com/2010/08/23/muslim-women-who-wear-the-hijab-and-niqab-explain-their-choice/>. Accessed 12 March 2011.
- Coulter, Dr. G. (2010). Editorial: Under Sarkozy's veil. *International Journal of Baudrillard Studies*. 7(2).
- Council d'Etat. (2005). Ruling N 286798. http://www.aidh.org/Actualite/Act_2008/Images/Arret_Cons_Etat.pdf
- (CRAPL) Commission de Réflexion sur l'Application du Principe de Laïcité dans la République. (2003). See 13 December 2003, *Libération*, p. 14.
- Djajic, S. (2003). Assimilation of immigrants: Implications for human capital accumulation of the second generation. *Journal of Population Economics*. 16, 831-845.

- (DOF) Vie-publique.fr, Découverte des institutions: Quelle laïcité aujourd'hui? [Pub lic-life.fr, Discovery of Institutions: What is laïcité today?], available at http://www.Vie-publique.fr/decouverte_instit/citoyen/citoyen_3_l_0_q2.htm.
- (ECHR) European Convention for the Protection of Human Rights and Fundamental Freedoms. (1953). <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>
- Ewing, K. P. (2000). Legislating religious freedom: Muslim challenges to the relationship between “Church” and “State” in Germany and France. *Daedalus*. 129(4), 31-54.
- Foner, N. (2008). Immigrant religion in the U.S. and Western Europe: Bridge or barrier to inclusion? *International Migration Review*. 42(2), 360-392.
- Fourneret, J. (2006). France: Banning legal pluralism by passing a law. *Hastings International and Comparative Law Review*. 29(2), 233-249.
- Franka, A. (2010). Rethinking European past and future legacies. *Journal of Contemporary European Studies*. 18(2), 229-239.
- Freedman, J. (2004). Secularism as a Barrier to Integration? The French Dilemma. *International Migration*. 43(3), 5-28.
- French Civil Code. Art. 21-4.
- Gaurdian. (2003). Veiled Threat. <http://www.guardian.co.uk/world/2003/dec/12/gender.uk>. Accessed 12 March, 2011.
- Göle, Nilüfer. (2006). Islam Resetting the European Agenda. *Public Culture*. 18(1), 11-14.
- Grilo, R. (2007). An excess of alterity? Debating difference in a multicultural society. *Ethnic and Racial Studies*. 30(6), 979-998.
- Haarscher, G. (2010). Secularism, the veil and “reasonable interlocutors”: Why France is not that wrong. *Penn State International Law Review*. 28, 367-380.
- Jerome, A. (2009). Why the French Don't Like Headscarves: Islam, the State, and Public Space. 5(1), 100-102.
- Joppke, C. (2007). Beyond national models: Civic integration policies for immigrants in Western Europe. *Western European Politics*. 30(1), 1-33.
- Joppke, C. (2009). *Veil: Mirror of Identity*. Cambridge: Polity Press.
- Keaton, T. (2006). *Muslim girls and the other France*. Bloomington: Indiana University Press.
- Laborde, C. (2008). *Critical republicanism: The hijab controversy and political philosophy*. Oxford University Press.

- Lenard, P. (2010). What can multicultural theory tell us about integrating Muslims in Europe? *Political Studies Review*. 8, 308-321.
- Lewis, G. (2006). Imaginaries of Europe: Technologies of gender, economies of power. *European Journal of Women's Studies*. 13(2), 87-102. University of Lancaster.
- Mahmood, S. (2009). Pieties and gender. "Agency, performativity, and the feminist Subject." Edited by Sjørup, L and Christensen, H. Brill. The Netherlands.
- Mazza, O. (2009). The right to wear headscarves and other religious symbols in French, Turkish, and American schools: How the government draws a veil on free expression of faith. *Journal of Catholic Legal Studies*. 48, 303-343.
- Meng, X. and Meurs, D. (2009). Inter-marriage, language, and economic assimilation process. A case study of France. *International Journal of Manpower*. 30(1/2), 127-144.
- Ministry of Youth, National Education and Research. (2004). *Explanatory Memorandum on the Bill on the principle of secularism in schools, colleges, and public high schools* (N. 1378). Paris: France.
- (MMW) Muslim Media Watch. (2010). Politics as usual: France gets riled up about a candidate's headscarf. <http://muslimahmediawatch.org/2010/02/politicsasusual/>. Accessed 12 March 2011.
- Moruzzi, C. (1994). A Problem with headscarves: Contemporary complexities of political and social identity. *Political Theory*. 22(4), 652-672.
- National Assembly. (2003). *National Assembly Report 1 (Application of Rule 46)*. Paris: France. http://www.assemblee-nationale.fr/12/dossiers/laicite_CR.asp#CR1
- National Assembly. (2004). *Bill on the principle of secularism in schools, colleges, and public high schools* (N. 1378 Law 2004-228). Paris: France. <http://www.assemblee-nationale.fr/12/projets/pl1378.asp>
- National Assembly. (2010). *Ban on the concealment of the face in public space* (N.2520). Paris: France. <http://www.assemblee-nationale.fr/13/projets/pl2520.asp>
- Oakes, L. (2010). Multilingualism in Europe: An effective French identity strategy? *Journal of Multilingual and Multicultural Development*. 23:5, 371-387.
- Poulter, S. (1997). Muslim headscarves in school: Contrasting legal approaches in England and France. *Oxford Journal of Legal Studies*. 17(1), 43-74.
- Roy, O. (2007). *Secularism confronts Islam*. New York: Columbia University Press.
- Savage, T. (2004). Europe and Islam: Crescent waxing, cultures clashing. *The Washington Quarterly*. 27(3): 25-50.
- Scott, J. (2007). *The Politics of the Veil*. Princeton University Press. Princeton.

- Silberman, R; Alba, R; Fournier, I. (2007). Segmented assimilation in France? Discrimination in the labour market against the second generation. *Ethnic and Racial Studies*. 30(1), 1-27.
- Soper, J. and Fetzer, J. (2007). Religious institutions, church-state history, and Muslim mobilization in Britain, France, and Germany. *Journal of Ethnic and Migration Studies*. 33(6), 933-944.
- Spivak, G. C. (1999). *A critique of postcolonial reason*. Cambridge: Harvard University Press.
- Thomas, E. (2006) Keeping identity at a distance: Explaining France's new legal restrictions on the Islamic headscarf. *Ethnic and Racial Studies* 29(2), 237-259.
- (USCIRF) U.S. Commission on International Religious Freedom. Press Release: France: Proposed Bill May Violate Freedom of Religion. Issued Feb. 3, 2004.
http://www.uscirf.gov/index.php?option=com_content&task=view&id=318&Itemid=51
- Weil, P. (2004). A nation in diversity: France, Muslims, and the headscarf. *OpenDemocracy*.
http://www.opendemocracy.net/faith-europe_islam/article_1811.jsp
- Westerfield, J. M. (2006). Behind the veil: An american legal perspective on the european headscarf debate. *The American Journal of Comparative Law*. 53(3), 637-678.
- White, S. (2004). Hijab hysteria: France and its Muslims. *OpenDemocracy*.
http://www.opendemocracy.net/faith-europe_islam/article_1820.jsp
- Wing, A. K. and Smith, M. N. (2006). Critical race feminism lifts the veil?: Muslim women, France, and the headscarf ban. *U.C. Davis Law Review*. 39, 743-785.
- Winter, B. (2006). Secularism aboard the Titanic: Feminists and the debate over the hijab in France. *Feminist Studies*. 32(2): 279-300.
- Yusuf, H. (2009). Sarkozy's burka bashing exploits women's bodies for anti-Islamic politics. Global Sisterhood Network (December): <http://www.global-sisterhood-network.org/content/view/2317/59/>
- Žižek, S. (1997). Multiculturalism, Or, the Cultural Logic of Multinational Capitalism. *New Left Review*.
- Žižek, S. (2010). *Living in the End Times*. New York.