

Debating *Laicite*, Republicanism, and Religious Liberty:
The History and Significance of the Headscarf Debate in France (1989-2004)

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I. Introduction:

In 2004, France enacted a law banning Muslim girls from wearing headscarves in its public schools. Defended on the grounds of *laïcité* (secularism) and republicanism, the law encompassed a wider debate over secularism and religious freedom in France.

Necessary to understanding the debate is the context in which it developed – that is, the history of Church and State relations especially with reference to French public education, the 1989 headscarf affair, which highlighted the modern-day tension between secularism and religious liberty in public schools, and the 2003 Stasi Commission. Called by Jacques Chirac in 2003, the Stasi Commission was supposed to reexamine the principle of *laïcité* in light of the increasing religious and cultural diversity in France.

Recommending a ban on religious insignia in public schools, among other things, the Stasi Report was influential to the passage of the 2004 law. While the Stasi Commission and the state invoked *laïcité* and republicanism to defend the 2004 ban, I argue that such a contravention of religious liberty requires that the state meet a high burden of proof.

Regarding its claims about the ban, the state must indeed demonstrate conclusively that the legislation is consistent with prior state policy of neutrality regarding religion, is proportional and necessary given actual circumstances, and that it will accomplish its purported and extensive aims of integration and gender equality. In all three areas, the state's arguments fall short, rendering weak its defense of the ban and call for restricting individuals' religious liberty.

II. History of Church and State in France

The principle of *laicite* has a long and entrenched history in France, dating back to the Revolution. While the actual term “*laicite*” first appeared in 1870,¹ secularism is an important part of French jurisprudence that has been “enshrined in French law since the fall of the Ancien Regime.”² The Revolution was a “repudiation of the notion of the divine right of the king.” Seeking to disentangle the state from all associations with the Catholic Church, the National Assembly revoked clergy privileges, stopped collecting tithes for the Church, and assumed former Church property.³ In terms of its ideological significance and influence, *laicite* is equal to the other noteworthy doctrines established during the Revolution, which became central foundations of French national identity. “Laicite,” Jane Freedman claims has a “key place in French national identity. It is a principle, closely connected with Republican universalism and the doctrine of *liberte, egalite, fraternite*, expanded at the time of the French Revolution.”⁴ In addition to stripping the Church of its privileges and affirming secularism, the Revolution also marked advances in religious freedom and conscience for individuals. The 1789 Rights of Man and Citizen established the principle of religious liberty as a legal right of all French citizens so far as its expression did not threaten “public order.” Article 10 declared: “No

1. O’Brien, Robert. “The Stasi Report: The Report on the Reflection on the Application of the Principle of Secularity in the Republic.” Buffalo: William S. Hein & Co., Inc, 2005, 8.

2. Ibid., 9.

3. Idem.

4. Freedman “Secularism as a Barrier to Integration? The French Dilemma.” Oxford: International Migration 42 (3) 2004, 10.

one should be harassed because of his opinions, even religious opinions, as long as their manifestation does not disrupt public order established by law.”⁵

Education constituted the center of the state’s secularization and efforts at integration and promoting a sense collective national identity among its citizens. Schools were one of the most charged battlegrounds between the Church and the secular government. “*Laïcité* grew out of the Jacobin tradition and the long and hard-fought quest to purge the government and French public schools of Catholic influence.”⁶ Traditionally the Jesuits had exercised significant influence and a “stronghold” in education.⁷ From the Revolution onward, however, the state sought to wrest control of the education system away from Roman Catholicism and the Jesuits.⁸ In the 1880s through the *lois laïques* (1881, 1882, 1886), the French government made secular education the law. Jules Ferry, the Prime Minister and Minister of Education from 1879 to 1885, was the architect of this process of *laicization*.⁹ The fact that supporters of anticlericalism gained parliamentary power in 1881 and similarly pushed for legislation transforming aided Ferry in his efforts. The 1882 “Ferry Law” *laicized* public education,¹⁰ requiring that a secular education be provided to all students.¹¹ Describing the specific provisions of the law, Jean Bauberot of the Stasi Commission explained, most importantly, it “stripped clergy of their right to

5. O’Brien, “The Stasi Report: The Report on the Reflection on the Application of the Principle of Secularity in the Republic.” 9.

8. *Ibid.*, 308.

6. Akan, “Laïcité and multiculturalism: the Stasi Report in context.” *The British Journal of Sociology* 60 (2) 2009,5.

7. Killian, “From a Community of Believers to an Islam of the Heart: ‘Conspicuous’ Symbols, Muslim Practices, and the Privatization of Religion in France.” *University of California, Irvine, Sociology of Religion* 68 (3) 2007, 306.

9. Akan, “Laïcité and multiculturalism: the Stasi Report in context,” 5.

10. Fetzer and Soper, *70 Muslims and the State in Britain, France, and Germany*. Cambridge: Cambridge University Press, 2005, 70.

11. Akan, “Laïcité and multiculturalism: the Stasi Report in context,” 7.

“inspect” public schools and fire those teachers who displeased them.” Nonetheless the 1882 law still required public schools to close one day per week for students to have the option of attended catechism classes.¹²

The state’s secularization of French schools was closely related to its goals of national integration and promoting a certain conception of citizenship. As Riva Kastoryano explains, “the idea of *laicite* is inseparable from the ‘indoctrination’ implemented by the public schools under the Third Republic.”¹³ The school was supposed to embody and promote republican ideals of integration. Expounding on this French model of integration in terms of education, Kastoryano asserts:

“The French Republic idea of nation places education at the centre of a project of integration; through a uniform, secular education children are brought up to be equal citizens. School has always been conceived as the prime site of integration. State schools have always played a role in the creation of a national identity which aims to detach individuals from their particular community or group and to assimilate them to the vast community which is the French nation.”¹⁴

Sebastian Poulter further explains that *laicite* strongly correlates to the French model of integration. The French approach toward integration stresses a conception of citizenship, based on republican values and social cohesion, while it relegates religion to a separate sphere:

“The principle of secularity (*laicite*) is applied with particular fervour in France because the notion of modern citizenship as a status quite separate from distinctive ethnic identities and religious differences has become firmly entrenched in the public mind ever since the days of the Revolution, as a corollary of the classical republican principles of equality and fraternity. Ethnic, religious,

12. Fetzer and Soper, *Muslims and the State in Britain, France, and Germany*, 70.

13. Kastoryano, “French Secularism and Islam: France’s Headscarf Affair.” In *Multiculturalism, Muslims and Citizenship: A European Approach*. Edited by Tarif Modood, Anna Triandafyllidou, and Ricard Zapata-Barrero. London: Routledge, 2006, 61.

14. Freedman, “Secularism as a Barrier to Integration? The French Dilemma,” 10-11.

and cultural distinctions are generally relegated to the domain of private life and are excluded from the public arena.”¹⁵

Initiated during the French Revolution and implemented into the education system a century later, *laicization* was brought to fruition in 1905 with the Law of Separation Concerning Church and State. Part of the 1905 Constitution, the Law marked the formal separation between Church and State. On December 1905, France passed the Article 2 of the law stating: “The Republic does not recognize, does not pay nor subsidize any faith [culte].”¹⁶ In addition to not paying the salaries of church officials, Melanie Adrian explains land held by Catholic and Lutheran churches would remain in their possession without state subsidy.¹⁷ At the same time, the Law stated: “services of chaplaincy and intended to ensure the free exercise of the worships in the public establishments, such as elementary schools, middle schools, high school, hospices, asylums and prisons, can be entered in the budgets.”¹⁸ Thus the French state, while not directly sponsoring religion, was affirming its commitment to protecting the free exercise of religion. Freedom of religion was also part of the Constitution of 1905 and reaffirmed in the Constitutions of 1946 and 1958. As Melanie Adrian explains, freedom of religion is guaranteed in France “under national as well as international agreements.” Specifically Article 1 of the Constitution states: “the Republic guarantees liberty of conscience and the free exercise of religion limited only by restriction in the interests of the public order.”¹⁹

15. Poulter, “Muslim Headscarves in School: Contrasting Legal Approaches in England and France.” Oxford: Oxford University Press 17 (1) Spring 1998, 50.

16. Akan, “Laïcité and multiculturalism: the Stasi Report in context,” 7.

17. Adrian, “Laïcité Unveiled: A Case Study in Human Rights, Religion, and Culture in France.” *Human Rights Review*: 8 (1) October-December 2006, 105-106.

18. Akan, “Laïcité and multiculturalism: the Stasi Report in context,” 7.

19. Adrian, “Laïcité Unveiled: A Case Study in Human Rights, Religion, and Culture in France,” 105.

To distinguish French secularism from other variants, some scholars have denoted *laicite* as “positive secularism.” In France, “religion and religious symbols are simply not permitted in public institutions.”²⁰ There are varying interpretations of what this means, especially as it regards the headscarf. Sebastian Poulter asserts that: “on the one hand, it can be viewed as passive neutrality of non-intervention by the state in the private religious domain, coupled with a principle of non-discrimination in the public sphere.”²¹ However, advocates of a strict interpretation of *laicite* view it:

“As a more active secularism, in terms of which the nation is promoted as a fundamentally political society fiercely independent of any religious authority but one in which the values of the State can be utilized through the concept of l’ordre public to justify the interference where necessary with some religious organizations.”²²

An even more expansive understanding of the extent of the state’s interference is needed in the context of this debate over *laicite* and religious liberty. The state’s interference is not limited to the affairs of religious organizations in the public sphere, which pose an obvious threat to *laicite*. As becomes evident through the 1989 headscarf affair and the 2004 ban, the state – in the name of protecting the secularity of the public sphere and maintaining “public order” – has increasingly taken action to prohibit individuals from expressing, or displayed through their dress, a religious belief.

III. Changing French Society, Changing Conception of *Laicite*?

Lacaite was originally developed as law when the two forces at work were the state and the Catholic Church, and when French society was disproportionately Catholic.

20. Killian, “From a Community of Believers to an Islam of the Heart: ‘Conspicuous Symbols, Muslim Practices, and the Privatization of Religion in France,’” 108.

21. Poulter, “Muslim Headscarves in School: Contrasting Legal Approaches in England and France,” 50.

22. *Idem*.

However, of particular concern to this paper is how and whether *laicite* has responded to developments in French society, notably the increasing presence of immigrant communities and the corresponding growth in religious and cultural diversity. As Jane Freedman argues, “Secularism is one of the key values of French Republicanism,” but has been challenged particularly in the education system²³ by the establishment of a large settled population of Muslim immigrants in France.²⁴ One of the main obstacles “perceived in the integration of Muslim immigrants in France” is the ostensible “clash between Islam and the secular values of the Republic.” The headscarf debate in secular schools, which has often taken a polemical form, most clearly illustrates the French state’s concerns about preserving national identity and Republican values in “the face of the new multi-racial France.”²⁵

Immigration of Arab and North African migrants began post-WWII. While initially in the 1970s there was support somewhat for cultural pluralism and tolerance, beginning in the 1980s integration and assimilation along the strict republican model gained increasing support.²⁶ The 1991 report of the commission set up by President Mitterand to explore the issues of immigration and integration indicates this model:

“The French conception of integration should obey a logic of equality and not a logic of minorities. The principles of identity and equality which go back to the Revolution and the Declaration of the Rights of Man and Citizen impregnate out conception, thus founded on the equality of individuals before the law, whatever their origin, race or religion ... to the exclusion of an institutional recognition of minorities.”²⁷

23. Freedman, “Secularism as a Barrier to Integration? The French Dilemma,” 11.

24. *Ibid.*, 5.

25. *Ibid.*, 11.

26. Poulter, “Muslim Headscarves in School: Contrasting Legal Approaches in England and France,” 50.

27. Poulter, “Muslim Headscarves in School: Contrasting Legal Approaches in England and France,” 51.

IV. The 1989 Headscarf Affair:

The 1989 affair is significant because it was one of the first cases to highlight the modern-day tension between secularism and religious liberty in the French public schools and is considered to have been the catalyst for what eventually led to the 2003 Stasi Report.²⁸ In October 1989 the “question of the *foulard* or *voile* (the Islamic headscarf)” came to a head when Ernest Cheniere, headmaster of the Gabriel-Havez High School in Creil, a suburb of Paris, refused to allow three Muslim girls, Samira S., and sisters Fatima and Leila S., from attending school wearing their headscarves, arguing that it would contravene the Republican principle of secularism.²⁹ The case raised questions over how France would reconcile increasing religious and cultural diversity with the notions of *laïcité* and republicanism. Islam falls into the category of “orthoprax rather than orthodox religions,” which “differ systematically from Christianity (especially in its Protestant form) in requiring certain rituals and ways of life.” Orthoprax religions present more of a “public nuisance” than orthodox religions since they have “behavioural requirements that they take more seriously.”³⁰ In France, which seeks to privatize religion, the place of external religious symbols, such as the veil in schools, becomes all the more vexing. Religious symbols worn in schools are considered a threat to secularity and the republican goals the state seeks to promote therein. Principal Cheniere indeed argued that the *hijab* represented “a form of proselytism and focused attention on the differences

28. O’Brien, “The Stasi Report: The Report on the Reflection on the Application of the Principle of Secularity in the Republic,” 16.

29. Freedman, “Secularism as a Barrier to Integration? The French Dilemma,” 11.

30. Bruce, *Politics and Religion in the United Kingdom*. London: Routledge, 2012, 142.

between students, rather than their similarities.”³¹ In this vein it went against the republican mission of French state, which seeks to have individuals suppress public expression of their ethnicity or religion and only promote their identity as citizens of the nation.

Creil, a suburb north of Paris, was a “town built in the post-war economic boom to house migrants from rural areas and immigrant workers from France’s ex-colonies.”³² A microcosm of a society in flux and the attendant challenges this brought, the 1989 case in Creil epitomized how the changing demographics of French society seemed to conflict with the state’s mission of *laïcité* and republicanism. The Gabriel-Havez School was “founded to educate the children of these new housing estates or *cities*.”³³ Much of Creil’s population included immigrants from North and Sub-Saharan Africa.³⁴ Indeed the three girls involved in the 1989 case were all of Maghrebi origin. Politicians and much of the French population “focused on the affair as a challenge to secularism in the French education system and as a sign of the failure to integrate immigrants into the system.”³⁵ Above all, the case raised the question of whether accommodation and respect for religious and cultural diversity could be reconciled with France’s secular education system, one of whose primary purposes is integration.

The 1989 event in Creil elicited a range of positive and negative opinions and a series of policy responses from French government and courts. The many issuances that

31. Adrian, “La’icit Unveiled: A Case Study in Human Rights, Religion, and Culture in France,” 102.

32. Freedman, 11.

33. *Idem*.

34. Kaya, *Islam, Migration and Integration: The Age of Secularization*. Great Britain: Palgrave MacMillan, 2009, 79.

36. Freedman, 12.

followed, and the fact that they took contrary positions regarding their support or disapproval of the ban, indicated the divisive nature of the debate. In addition, increasingly the debate encompassed a broad set of issues not limited to religious liberty alone, but also to the contentious questions of immigration and French identity. At first, the Minister of Education, Lionel Jospin, intervened to overturn the suspension order, announcing on October 25th that the administration of the Gabriel-Havez High School had to allow students who wore headscarves to still be allowed to attend school. While he suggested that school officials should discourage students from wearing headscarves to school, ultimately “the school must not exclude children” but “welcome them.”³⁶ The dispute seemed to be resolved within a week when the parties reached a compromise, allowing the girls to wear their headscarves in the school playground and corridors, but not in the classrooms.³⁷ However, this compromise only lasted ten days. With the “support of several human rights groups and the Catholic cardinal of Paris,” the students refused to remove their hijabs even in the classroom and were once again expelled.”³⁸ The “entry of the Catholic Church into the debate,” in defense of the right to religious freedom, “in turn alarmed the defenders of strict *laicite*, who remembered all too well the previous century’s struggles between the Church and the advocates of *l’ecole laique*.”³⁹

Education Minister Jospin’s proposed compromise came under fire from both the right wing Front National and, increasingly the French public, who viewed it as too conciliatory to immigrant groups. The Front National was the party that took the clearest

37. Kaya, 79.

38. Freedman, 12.

39. *Idem*.

40. *Idem*.

position on the headscarf debate. Their spokesperson Bruno Megret stated shortly after the affair, in somewhat polemical fashion:

“A Muslim civilization has arrived in France. After its installation on French soil, it is now implanting itself symbolically by the wearing of the headscarf in schools. We must ask ourselves the question: should France adapt her principles to those of immigrants, or should immigrants adapt their custom to the laws of our country? You can imagine our reply.”⁴⁰

In addition, a majority of the French public in a 1989 opinion poll seemed to support the Front National’s position. *Le Monde*’s opinion poll in November 1989 found that “75 percent of those questioned were hostile to the idea that girls should be allowed to wear a headscarf in school.”⁴¹ Amidst this public groundswell in support for the more right wing position, Minister Jospin faced criticism from *both* the Left and Right in France for his compromise position. Under fire for his actions, Jospin called the *Conseil d’Etat*, the highest court in France, to resolve the dispute and decide the matter.⁴²

In 1992, the *Conseil* issued the following ruling, declaring that the *hijab* was permitted in schools, and that it did not contravene *laicite*. Wearing the headscarf constitutes “one’s exercise of the liberty of expression and the right to indicate one’s religious beliefs.” Such religious symbols were allowed as long as they did not disrupt public order and schools to function as normal:

“In educational institutions, students’ wearing of symbols by which they intend to indicate their belonging to a [particular] religion is not in itself incompatible with the principle of *laicite* since [this display] constitutes one’s exercise of the liberty of expression and the right to indicate one’s religious beliefs; but this liberty does not permit students to display symbols of religious membership that, by their nature, by the conditions under which they are individually or collectively worn,

41. Freedman, 13.

42. *Idem*.

43. Fetzer and Soper, 79.

or by their ostentatious or protesting character...disturb the order or normal functioning of public services.”⁴³

Scholars who oppose the ban on headscarves cast the Council’s 1992 decision as a victory for religious liberty and pluralism over a strict interpretation of *laïcité* and republicanism. Riva Kastoryano claims that the Council, in their decision, affirmed individuals’ freedom ‘to express and manifest their religious beliefs within public institutions’ with the conditions that it did not infringe “on educational activities of the curriculum, and the obligation to attend class.”⁴⁴ Moreover, Kastoryano claims that the Council sought to balance the international laws protecting freedom of conscience with the constitutional principles of *laïcité* of the state. “It concluded that religious symbols should not be outlawed unless they were ‘*ostentatoires*’ (ostentatious) or ‘*revendicatifs*’ (expressing a demand).” The Court decided that specific incidents would be dealt with on a case-by-case basis under a judge’s supervision.⁴⁵ Jane Freedman, however, expresses a more modest interpretation of the decision in terms of advancing the cause of religious liberty. While the Council maintained: “wearing a *foulard* was not in itself a breach of the laws of secularism,” headmasters still could “under certain circumstances prohibit girls from wearing a *foulard* if this was felt to be a cause of disturbances in the classroom or a sign of overt proselytism.”⁴⁶

44. Fetzer and Soper, 79.

45. Kastoryano, “French Secularism and Islam: France’s Headscarf Affair,” 59.

46. Idem.

47. Freedman, 13.

V. Post 1989 - Continuing Debate in French Society and Politics over the
“Headscarf”:

Although the political debate over headscarves in schools declined somewhat in the years immediately after 1989, it never ended and the issue of Muslim girls’ right to religious liberty versus *laïcité* continued to occupy central importance in French society. French public opinion increasingly was against allowing Muslim girls to wear headscarves in public schools and seemed to grow in strength as the political debate progressed.⁴⁷ The formal political debate over the headscarf dilemma resumed in 1994 when girls wearing headscarves were expelled from their public school and new guidelines were implemented which supplemented the Council’s 1992 decision. These new guidelines took the form of ring wing Education Minister Francois Bayrou’s 1994 public circular. The circular banned “overt” religious symbols in the French public schools. Although Bayrou did not name the foulard as such, it was clear that this was the “overt” symbol he was referring to as he “excluded the wearing of a crucifix or Jewish kippa which he declared were “not overt.”⁴⁸ While not binding, the circular issued stringent guidelines forbidding headscarves in public schools and advising school officials to pursue exclusion of girls if they resisted this rule. The circular and expulsion also suggested that the headscarf would be managed on a local basis and gave teachers considerable authority in decisions.⁴⁹

The background context of Bayrou’s circular is especially relevant since it corresponded to a rise in fears about Muslim fundamentalism. In particular it coincided

48. Freedman, 13.

49. Ibid., 14.

50. Kastoryano, 59.

with “growing fears about the influence of Islam in French schools” exacerbated by international events in Algeria:

“It is significant to note the timing of this ruling by the Minister, made as the political situation in Algeria was deteriorating and the *Front Islamique de Salut* (FIS), an Islamic fundamentalist organization, was gaining more power. Fears about the place of Islam in French society and the threat that fundamentalist Islam posed were growing in this context...”⁵⁰

Initially in 1989, Bayrou had even been against the ban. However, he claimed that he changed his mind because he now fully understood the extent of the threat posed by Islamic fundamentalism.

Minister Bayrou was not the only one to change his mind on the headscarf issue. In fact, the conversion of many to the position that the headscarf should be banned was part of a wider shift in French society from “decreasing strength of the movement in favour of *le droit a la difference* (right to be different)” to the “reassertion of the primacy of a strict version of French Republicanism over any form of multiculturalism.”⁵¹ Part of this shift undoubtedly was rooted in antagonism toward Muslim immigrants, intensified by growing fears of Islamic fundamentalism in the 1990s. On a less immediate level such societal attitudes stem from the principles underlying the French model of integration. Integration along the French republican model “implies a loss of ethnic identity and pressure to conform to a standard civic model.” Concepts of “minority group” or “ethnic citizen” are not even supposed to exist.⁵² Affirming this logic, President Chirac said bluntly in 1997: “We cannot accept that France becomes a pluricultural society in which our historical heritage would be placed on the same level as this or that other recently

51. Freedman, 14.

52. Ibid., 15.

53. Killian, 307.

imported culture.”⁵³ The French model of assimilation necessitates a certain trade-off for immigrants in becoming French citizens:

“...They must eschew their foreign cultural, religious, political and ideological alliances. In other words, they must accept the already existing consensus of reality and polity of the prevailing system and assimilate to it, shedding all alien characteristics. The French policy of Gallicization sees the end result of integration as the privatization of religious practice, with Muslim individuals becoming socially and economically assimilated.”⁵⁴

Finally it should be noted that, despite their influence, neither the State Council’s ruling in 1992 nor the 1994 *circulaire* were legally binding. Melanie Adrian explains that they were “simply recommendations for action.” Adrian argues that it was only after the Stasi Commission Report was published in 2003 that “enough political will was spurred to legally ban these symbols from public schools the following year.”⁵⁵

VI. The Political Background to the 2003 Stasi Report:

The debate over the headscarf and *laïcité* only intensified post-1994, leading President Jacques Chirac in July 2003 to call the Stasi Commission, named after ombudsman Bernard Stasi, to examine the principle of *laïcité* in “increasingly diverse France”⁵⁶ and make suggestions for government policy. The Commission included 20 sociologists, philosophers, politicians and educators. Freedman explains that dealing with these issues was strongly in line with the Chirac’s government’s 2002 election promises, which included the introduction of new legislative to “solve” the headscarf problem by declaring it illegal to wear any form of religious insignia on school grounds.⁵⁷ Moreover even before the December 2003 publication of the Stasi Report, Chirac had made his

54. Idem.

55. Idem.

56. Adrian, 103.

57. Ibid., 105.

58. Freedman, 17.

views plainly known on the subject of the veil. Chirac claimed it represented an antiquated symbol of gender oppression, antithetical to modernity and the values of French society:

“We cannot accept that some people are hiding behind an aberrant conception of religious freedom in order to defy the laws of the Republic and to put into question some of the fundamental principles of a modern society, namely sexual equality and women’s dignity.”⁵⁸

Arguably in large part motivated by the recent 9/11 attacks, a host of French politicians across the political spectrum claimed that the scarf symbolized fundamentalism or militant Islam and, at the very least, was a threat to French secularism. Alain Juppe, former Prime Minister and President of the UMP, the biggest right wing party, argued that women or girls who chose to wear headscarves, rather than displaying religious commitment and modesty, were in actuality taking part in a “militant act which is supported by real fundamentalist propaganda.”⁵⁹ Even the Socialist Party supported a ban on headscarves. Francois Holland equated banning such religious symbols with “fighting for secularism.”⁶⁰ While the rationale and justification for support for a ban on the headscarf in public was different between the different parties, with the more right wing raising the specter of Islamic fundamentalism, while the left-wing parties’ defense was based on the necessity of upholding secularism, officials across the political spectrum were calling for similar types of legislation banning the *hijab*.

VII. The 2003 Stasi Report and the 2004 Ban on Headscarves in Public Schools:

The 2003 Stasi Report begins by noting the changes that had taken place in circumstances between 1905 and the present, and how this affected the meaning of

59. Idem.

60. Freedman, 17.

61. Idem.

laicite. The report stated: “In comparison to the context of 1905, French society has changed: the hold of the Catholic Church [on society] is no longer perceived as a threat.”⁶¹ The Report then goes on to describe the increasingly diverse religious landscape of French society:

“In the last couple of decades new religions developed. Islam, resulting principally from populations of Maghrebi, African, and Middle East origins, is represented [in France] by the largest community of the European Union... France today is the most diversified [one] in the spiritual plane among the European countries.”⁶²

The principle tension in need of resolution centers on respecting diversity while promoting the unity of society as a whole.⁶³ The Report claims that our “political philosophy,” *laicite*, was “founded on the defense of the unity of the social body” and ensuring that “uniformity dominated over any expression of difference which was perceived as a threat.” Report states that *laicite* today faces the “challenge of forging unity while respecting diversity of society.”⁶⁴ Ultimately the Report decided it was critical importance for the state to promote republican principles and the unity of society as a whole. Republican values of the nation and societal cohesion took precedence over recognizing diversity through respect for cultural and religious pluralism in the public sphere.

Next the Report addresses, how in the name of public order, derogation clauses restricting individuals’ religious liberty of conscience are allowed:

“The French government” holds the “possibility for derogation for the right to freedom of religion when a case for public disorder can be made. Specifically, the Commission Report outlines four situations, three of which give it the right to

62. Akan, 4.

63. Idem.

64. Idem.

65. Ibid., 5.

curtail freedom of religion: (1) any act which is a form of pressure, provocation, proselytism, or propaganda; (2) all acts which could endanger the dignity or the liberty of any student or member of the larger school community especially if these acts compromise their health or security; (3) any activity which disrupts the activity of teaching or teachers' educational role, or difficulties brought to bear on the establishment and formal functioning, of the educational process."⁶⁵

The problem, as Melanie Adrian explains, however, is that the Report does not "divulge which public order guarantee the hijab violates, but only vaguely refers to an increasing need for uniformity of decisions regarding the wearing of the hijab across France."⁶⁶

Only in the last section of the Report does the Commission give reasons that render the hijab in school a public order issue, based on more than 100 public gatherings and 40 private interviews between July and December 2003 with teachers, school officials and some students.

During their meetings, most of them with teachers, the Stasi Commission members heard about physical and verbal attacks on young women that supposedly followed resulted from them wearing the *hijab*. Such incidents were often between groups of Muslims and Jews. Teachers relayed to the Commission their views regarding the intensity of family pressure on young women to wear the headscarf in public. As Melanie Adrian explains, these stories "carried feelings of female suppression and an associated sexism that accompanied the hijab." Finally the Commission was told about the "isolation of females as they were increasingly being excused from certain classes."⁶⁷ The symbolism of the veil, the purported claim that it was a symbol of female oppression, was central to the arguments proponents of the ban made. Bernard Stasi himself even linked the importance of banning the foulard to that of guaranteeing women's rights in

66. Adrian, 108.

67. Idem.

68. Idem.

the French Republic. Stasi claimed, prior to the Report, “fundamental women’s rights are being denied daily in our country, and such a situation is unacceptable.”⁶⁸

However, arguments advocating a ban on the headscarf grounded in a defense of women’s rights were often simplistic and carried undertones of French superiority. Specifically such arguments were “based on a simplistic dichotomy between “liberated” French women, and their “oppressed Muslim sisters.” This dichotomy held that there were two “types” of Muslim Women in France: “those who had assimilated into Western culture, modes of dress etc. and those who remained faithful to their “traditional Islamic cultures.”⁶⁹ Implicit was the assumption that those who maintained traditional Islamic culture, when they had the option of assimilation to Western culture, could only do so for one reason – they felt compelled out of familial, peer, or social pressure. Supporters of the ban could not fathom the possibility that women or girls wore the headscarf as a personal choice, either for religious or individual reasons. These arguments – that the headscarf spurred conflict between different religious groups, was rooted in social and familial pressure, and constituted a symbol of female oppression – were the reasons the Commission cited in claiming that the act of wearing it was detrimental to public order.

Stasi emphasized that the Report’s recommendations offered “opportunity for integration” “through affirmation of common values.”⁷⁰ Secularism was presented in the Report as a “fundamental value of the Republican pact which permits the conciliation of living together with pluralism and diversity.”⁷¹ While the ban on religious symbols was the centerpiece of the Stasi Commission’s Report, the Commission made other

69. Freedman, 18.

70. Freedman, 19.

71. *Ibid.*, 18.

72. *Idem.*

suggestions as well, most importantly a new law on secularism, which aimed at “ensuring both the secularism and neutrality of public services and institutions, and the respect of spiritual diversity.” The “first objective” consisted of the ban on wearing “obvious religious signs in schools and all other public services,” whereas, the “second objective would be met by making the festivals of Aid-El-Kebir and Yom Kippur into public holidays and by the creation of a national school for Islamic Studies.”⁷²

VIII. The 2004 Law Banning Religious Symbols in Schools:

Although not “legally binding,” the Report did spark “tremendous national and international controversy” and “ultimately also to laws banning ostentatious religious symbols in schools, including the hijab.”⁷³ It was the French responsibility to have the final say regarding legislation. The Stasi Commission did, though, give the “green light for those in the government who favoured a ban to push for rapid legislation.” From his campaign promises and previous rhetoric, Chirac was not shy about identifying himself as a proponent of banning such religious symbols as the *hijab*. On 10 February 2004 the law outlawing the wearing of overt religious signs within schools was passed by the National Assembly and by the Senate on 3 March 2004.⁷⁴ The ban included “ostensible” or “conspicuous” religious symbols, in particular Muslim headscarves, Jewish *kipot*, and large Christian crosses, in schools beginning with the 2004-2005 school year.⁷⁵

VIII. The 2004 Law: Legitimate Grounds for Contravening Religious Liberty?

As stated in the foregoing, I argue that restricting religious liberty requires that the state meet a high threshold in terms of proving its claims regarding both the necessity of

73. Freedman, 18.

74. Adrian, 105.

25. Freedman, 19.

76. Killian, 308.

the legislation and the benefits that will result because of it. First, as the state claims, is the ban consistent with a French state policy that has been entirely neutral with regard to religion especially with regard to education? Secondly, has the state demonstrated that the headscarf is actually an instrument of “proselytism” and a significant disruption to the “public order”? Finally, will the ban accomplish its professed and extensive goals, namely integration, and specifically, liberation and greater freedom for girls who do not wish to wear headscarves but feel family or peer pressure to do so? Assessing the validity of the state’s rationale and defense for the ban, I argue that in all three cases the state’s claims are not supported by actual circumstances and evidence, fall short, or simply can not be proven concretely.

IX. State’s Total Neutrality regarding Religion?

One of the first arguments advanced by the supporters of the 2004 ban was that it was consistent with prior French policy regarding strict separation between Church and State and the state’s neutrality toward religion. However, the French state, contrary to its claims, has not been entirely neutral with regard to religion, especially in the sphere of education. Making an exception for individuals to wear the hijab and similarly *kippot* and crosses would not, accordingly, jeopardize prior state policy.

Actual arrangements between Church and State in France undermine the claim of a totally strict separation, that religion is always kept private, and that the state remains neutral. “Although all religion in France is supposed to be private, the cultural climate and calendar are conducive to practicing Catholicism.”⁷⁶ Also crucial to note is the fact that “prior to the new law, Christian crosses and Jewish *kippot* were frequently tolerated

77. Killian, 314.

in French public school.”⁷⁷ Indeed “during the headscarf affair of the 1990s, Francois Bayrou, the Minister of Education, even declared that “France is a Judeo-Christian country’ despite the fact that Muslim girls were being excluded from the school in the name of *laicite*.”⁷⁸ The claims that the state makes appear contradictory when compared to actual practice. These discrepancies in the treatment of Christianity and Judaism versus Islam have led critics of the Bill to charge that the government only added large crosses and Jewish *kippot* to the ban to avoid charges of singling out Muslims.

Some of the strongest evidence to support the fact that exceptions have been made to *laicite* is the 1959 Debre Law. With the law, the state began the practice of subsidizing private Catholic schools. “What the Debre law brought was precisely the funding of private education, 90 per cent of which was Catholic.”⁷⁹ These Conservative governments of the 1950s were “successful in introducing legislation providing funds for Catholic education despite the opposition of socialists and radical republicans.”⁸⁰ Sebastian Poulter similarly argues that actual French policy has challenged this notion of strict *laicite*. “Provision has long been made for private, notably Catholic, schools in France and, despite opposition from some on the political left, these receive substantial funding from the State.”⁸¹ The lone person on the Stasi Commission to object to its conclusions was Jean Bauberot. Specifically, he pointed to the 1959 law as part of his rationale. The Debre Law, Bauberot claimed, had challenged the secular nature of the educational system in France, and had made the state a player in so-called private

78. Ibid., 317.

79. Killian, 318.

80. Akan, 10.

81. Akan, 9-10.

82. Poulter, 55.

religious education,⁸² violating the very principle of *laicite* and the state's promise of non-intervention in private religious affairs.

In addition, Joel Fetzer and J. Christopher Soper argue that while the French state has granted funding to Jewish and Christian schools, Muslim schools have been far less successful getting similar funding. "French educational authorities have thus far failed to approve any of the admittedly very few applications for public funding of an Islamic school."⁸³ Writing in the early 2000s, the authors claim that the only Islamic *ecole* in France, which the government approved as a 'private school under contract with the state,' was not even on the French mainland itself. Attesting to its marginality, the Medersa ta'limoul-Islam/Ecole Franco-Musulman, founded in 1947 and located on the island of Reunion, off the Eastern coast of Africa, operated independently until 1970. In 1970 it received 'simple contract' status and hence funding from the French government. Under the school's related 'association contract,' the state currently pays the salaries of teachers of the standard French curriculum, but the Muslims themselves finance the separate classes in Islam."⁸⁴

Previously, during the 1950s-1960s, a period of greater support for the politics of "right to difference," the French state had actually granted funding to Muslim groups. This exception to *laicite* was motivated by the demographic changes of the 1960s and 1970s, brought on by large-scale migration from Northern Africa and other regions. During this time, the government "recognized that there is value to preserving the cultural

83. Akan, 10.

84. Fetzer and Soper, 85.

85. Ibid., 86.

norms of these communities generally and the religious traditions more specifically.”⁸⁵ Accordingly this culminated in the Secretary of State of Immigrant Workers sending a circulaire in 1976, allowing funds to be directed toward projects, including religious ones, within minority communities. “It is partly due to this availability of funds that more mosques and religiously identifiable buildings were constructed.”⁸⁶

As Melanie Adrian explains, the Stasi Commission, not surprisingly, avoided making reference to these exceptions in its report. However, given these exceptions made to *laicite*, it is misleading for the Commission and state to claim that the ban follows in a strict tradition of *laicite* and state non-interference in the domain of religion. In reality, the relationship between the state and religious institutions, especially Catholic educational ones, was more fluid. Most importantly the exceptions attest to the reality that “it is not unusual for a state to be driven by a certain concept or ideal and deviate from this when times necessitate.”⁸⁷ As Adrian explains: “*Laicite* is a guiding principle, not a dogma as the Report pointed out, and is therefore open to exceptions and interpretations.”⁸⁸ Therefore the government could have made a similar exception in the case of the hijab. Their decision not to do so rests partly on considerations of political expediency. Unlike subsidies for Catholic schools, French public opinion was much more against allowing Muslim girls the right to wear headscarves in schools.

X. Guarding against “Proselytism” and Protecting “Public Order”:

The second claim advanced by advocates of the ban on headscarves is that the law guards against proselytism and keeps “public order.” However, I argue that the state has

86. Adrian, 109.

87. Idem.

88. Idem.

89. Idem.

not proven that wearing the veil constitutes an act of proselytism and that it necessarily disrupts the public order. First, the number of girls wearing veils was decreasing, not increasing, contradicting the notion advanced by the Stasi Commission and government that an increasing number of girls were feeling peer pressure to wear the headscarf. Secondly, the claim that public order was being threatened is brought into sharp relief by the fact that the state could not specifically list in which way public order was being challenged just merely claimed that it was the case.

Caitlin Killian considers whether the number of girls wearing headscarves during this period helps support the state's claim that a growing number of girls were being pressured to wear headscarves by their family members or peers. "Given that one of the key arguments is peer pressure, the exact number of girls actually wearing the veil to school is important."⁸⁹ The Stasi Commission argued that because "so many girls were veiling, it was putting tremendous pressure on non-veiled Muslim girls to also adopt a headscarf." This is particularly crucial since European human rights standards emphasize that restrictions on rights and freedoms to protect the public order must be proportional to their "desired goal."⁹⁰ Yet, contrary to the state's claims, the number of girls wearing veils was in fact decreasing, not increasing from 1994 to 2004. Confirming these figures, "Government estimates show a constant decline in the total number of headscarves in school, from 2,000 girls a year ten years ago to a little over 1,000 in 2004."⁹¹ Since the number of girls wearing headscarves was actually declining, the Commission's concerns about the "state's obligation to protect children's and young girls' individual choice"

90. Killian, 309.

91. *Idem.*

92. *Idem.*

becomes weaker. Imposing a “blanket ban in primary and secondary schools” in fact may end up leaving less space for individuals’ choice.⁹²

Furthermore, as Adrian suggests that the “reasons underlying the decision to restrict the hijab in schools under the public order clauses” are murky and “do not purely deal with public order per se.” Rather “the concerns focus on the place and treatment of women and the relationships between the hijab-wearing community and others.”⁹³

“Perhaps a definition of “public order” is necessary in order to ascertain the threshold required to implement a restriction on rights. However, the Commission Report does not provide a definition.⁹⁴ What is important is that the International Covenant on Civil and Political Rights hold that certain rights can only be restricted in a “time of public emergency which threatens the life of the nation.” “If this definition is utilized as a threshold, then it seems clear that France has not made a convincing enough case to warrant the limit of such an important series of rights as the right to religious freedom.”⁹⁵

XI. Achieving Integration and Gender Equality and Liberation?

Finally does the ban actually achieve its professed and extensive aims of integration, gender equality and providing girls with opportunities for advancement? I argue that the ban does not advance the goals of better integrating girls and freeing them from structures of “oppression.” Banning girls does not help them assimilate. The policy is focusing on superficial physical question rather than the broader and more important question of whether the girls actually stay in school and receive an education. If anything,

93. Skjeie, Hege. “Headscarves in Schools: European Comparisons.” In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line*. Edited by M.L.P. Loenen and J.E. Goldschmidt. Antwerpen: Intersentia, 2007, 145.

94. Adrian, 108.

95. Idem.

96. Idem.

excluding girls who want to wear headscarves decreases their integration into the French education system and likelihood of subsequent success. One Marseille teacher, Youcef Mammeri, explained in 2001: “by expelling certain girls because they wear the *hijab*, one is at the same time preventing them from receiving an education that will allow them to take up professional careers and so become emancipated.”⁹⁶ As H.A. Hellyer warns:

“Indeed, one of the greatest arguments against the ban is that it will create a *de jure* exclusion of devout Muslim women from mainstream life; that this is a measure which is discriminatory on the basis of religion and of sex, hindering integration, as opposed to aiding it.”⁹⁷

In addition, forced out of French public school system, these girls may enter private schools. Expressing a position similar to Mammeri, Jean Bauberot, the lone member of the Stasi Commission to disagree with the Report’s recommendations, asserted that the ban had the effect of “discouraging Muslim girls from entering the public education system and encouraging them to seek an alternative in private schooling.”⁹⁸ Thus a ban on religious symbols in the name of *laïcité* at the same time seems to contradict its goals by “undermining the public education system which historically and theoretically is the main constitutive institution of *laïcité*.”⁹⁹ Caitlin Killian contends that the ban may in fact lead to “the creation of more Islamic school encouraging further *communitarisme*” or “ghettoization” and less government oversight of education.”¹⁰⁰ Through its exclusionary measures, the 2004 law may in fact have the effect of strengthening group and religious identity and possibly weakening individuals’

97. Hellyer, H.A. *Muslims of Europe: The ‘Other’ Europeans*. Edinburgh: Edinburgh University Press, 2009, 35.

98. Idem.

99. Akan, 9.

100. Idem.

101. Killian, 309-310.

connection to the state. Arguably the growth of private religious schools runs contrary to the state's goals of using the public educational system as a means of promoting social integration.

XII. Conclusion:

As this paper has argued, *laicite* has a long tradition in France, dating back to the Revolution. However, beginning with waves of immigration in the 1950s, the increasingly multicultural nature of French society posed challenges to strict *laicite* and the republican model of French assimilation. In 1989 the school, an important vehicle for the state's promotion of secularism and republicanism, became the battleground for these tensions. The incident in Creil sparked an intense political and social debate over the right to religious freedom and also brought to the fore concerns about immigration and French national identity. For more than a decade these conflicts involving pupils' right to wear headscarves were dealt with on an ad hoc basis by individual schools. Seeking to implement a national, uniform policy, President Chirac called the Stasi Commission in 2003. Eventually in 2004 France passed a national law banning headscarves in public schools. While the state invokes *laicite* and republicanism to defend the ban, such a contravention of religious liberty makes it imperative for the state to meet an equally high threshold in proving its claims. As the state fails to demonstrate conclusively the necessity and positive outcomes of the ban, the case for religious liberty in this particular debate seems stronger than the argument against it.

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