

A nation in diversity: France, Muslims and the headscarf

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Behind the French parliament's ban on religious apparel in schools lies not anti-Muslim prejudice but the secular, liberal reasoning that gives the French republic its life and soul, argues one of the policy's architects.

On 3 July 2003, President Jacques Chirac of France established an independent commission to study the implementation of the principle of *laïcité* (secularism) in the French republic.

In the previous weeks, the issue of violence in public schools had risen to a level of visibility so high in the media and the public eye that the French national assembly had already created a special commission run by its president to study the issue of "religious symbols in schools". The presidential commission had a wider scope – *laïcité* in the whole society. Its composition was also more open: its nineteen members consisted of school principals and teachers, academics, civil servants, businesspeople and parliamentarians – a group also with very diverse origins, religious beliefs and political opinions.

I was a member of this presidential commission, most likely chosen for my expertise in the field of immigration policy and nationality law, and as a former member of the high advisory council on integration. I arrived with the idea that a law was probably unnecessary for resolving the problems. Yet, after four months of public hearings involving

representatives of all religious confessions, political parties, trades unions and NGOs, as well as individual actors – principals, teachers, parents, students, directors of hospitals and jails, company managers – I endorsed a report recommending twenty-five different measures, including the banning of conspicuous religious symbols in public schools. I would like here to explain why.

But let me emphasise one point at the start, before setting out the background and reasoning of my decision. After we heard the evidence, we concluded that we faced a difficult choice with respect to young Muslim girls wearing the headscarf in state schools. Either we left the situation as it was, and thus supported a situation that denied freedom of choice to those – the very large majority – who do not want to wear the headscarf; or we endorsed a law that removed freedom of choice from those who do want to wear it.

We decided to give freedom of choice to the former during the time they were in school, while the latter retain all their freedom for their life outside school.

But in any case – and this is the fact I want to emphasise at the start – complete freedom of choice

for all was, unfortunately, not on offer. This was less a choice between freedom and restriction than a choice between freedoms; our commission was responsible for advising on how such freedoms should both be guaranteed and limited in the best interests of all.

Testimonies of faith, voices of freedom

The French tradition of *laïcité* was built against the influence, indeed domination, of the Catholic Church in public affairs. The 1905 law of separation between the church and the state was a victory for the majority of French citizens educated in Catholic faith, but who wanted the Catholic Church to be excluded from public education and influence.

Yet this was not anti-religious legislation. The 1905 law also recognised the right of everyone to practice his or her own beliefs, to the point where the state even paid the salaries of religious officials in order to allow those obliged to live in confined institutions (asylums, prisons, the army, residential schools, hospitals) to practice their faith.

The law did not forbid the wearing of religious signs, but the custom in France was (and still is) to keep religious faith as a private matter. This tradition is most likely linked in France to the long battle against the power and public exposure of Catholic faith: in the relation between the individual, the religious group and the state, the latter is both expected and seen to act as protector of the individual against group pressure.

But our commission did not base its proposals on this custom, nor on a human right that emerged in the half-century after 1905, the equality of women and men. Either approach would have meant an intrusive interpretation of a religious symbol which, clearly, can have different meanings in different circumstances.

Whereas for a majority of women the headscarf is an expression of the domination of women by men (a view strongly expressed by many women refugees from Iran), it can also be the articulation of a free belief; a means of protection against the pressure of males; an expression of identity and freedom against secular parents; a statement of opposition to western and secular society.

The state has no right to “adjudicate” between these meanings, or to interpret religious symbols *tout court*. After all, if the headscarf had been banned (for example) on the basis of discrimination against women, it would have been necessary to do so not only in schools, but across the whole of society.

Moreover, France since 1905 has formally acceded to international rules and conventions of various kinds – most recently the European Union, the European Convention on Human Rights, and many other international conventions that recognise the individual’s right publicly to express religious belief. It was on this basis that in 1989 the French *Conseil d’Etat* (supreme court) stated that the Muslim headscarf is not in itself an ostentatious symbol that could be banned from schools; it could only be forbidden if it were used as an instrument of pressure on girls who were reluctant to wear it.

What, then, has changed since 1989? In this period, and especially in the last two to three years, it has become clear that in schools where some Muslim girls do wear the headscarf and others do not, there is

strong pressure on the latter to “conform”. This daily pressure takes different forms, from insults to violence. In the view of the (mostly male) aggressors, these girls are “bad Muslims”, “whores”, who should follow the example of their sisters who respect Koranic prescriptions.

We received testimonies of Muslim fathers who had to transfer their daughters from public to (Catholic) private schools where they were free of pressure to wear the headscarf. Furthermore, in the increasing number of schools where girls wear the *hijab*, a clear majority of Muslim girls who do not wear the headscarf called for legal protection and asked the commission to ban all public displays of religious belief.

A large majority of Muslim girls do not want to wear the scarf; they too have the right of freedom of conscience. Principals and teachers have tried their best to bring back some order in an impossible situation where pressure, insults or violence sets pupils against one another, yet where to protest against this treatment is seen as treason to the community. There are cases where pupils who have had their arms broken

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in violent acts have lied to their parents in order to avoid denouncing their peers.

A complex emotional territory

We on the presidential commission studied many possible solutions. I myself considered making a distinction between school courtyards and the classroom itself, and enforcing rules concerning a dress code only in the latter. Another possibility was to devolve authority over religious symbols to school principals at a local level.

But after four months of inquiries and hearings, our commission did not endorse such solutions. Rather, our near-unanimous sentiment (there was one dissident among our group of nineteen) was that we had to understand and then address the issue at a national level rather than merely a local one.

The reason was plain: the wearing of a headscarf or the imposition of it on others is much more than an issue of individual freedom: it has become a France-wide strategy pursued by fundamentalist groups who use public schools as their battleground. A devolution of decisions to local level would guarantee permanent tension between principals and these groups who would have relentlessly targeted individual schools in order to attract, week by week, public and press attention.

This lay behind our proposal to ban conspicuous signs of religious adherence (including Jewish skullcaps and large crucifixes). We did this in full awareness and respect of the European Convention of Human Rights, which authorises limiting expressions of religious faith in circumstances where these create problems of public order or attacks on the freedom of conscience of others.

The ban concerns only public schools because there, those concerned are minors. There is no question of forbidding religious display in universities or elsewhere in the adult world. Adults have means of defence that children do not; they can go to court and otherwise claim their right of freedom of conscience in ways children cannot.

We made this choice after long reflection and hesitation, both individual and collective, but with a valid expectation that the majority of Muslim families in France would endorse it or at least be relieved.

A minority of Muslims in France are anti-religious; a small minority is fundamentalist and consider that *sharia* (Islamic) law is superior to civic law; a large majority do not want to impose the headscarf on their daughters but are also discomfited by any suggestion of infidelity to their religious tradition.

It is members of this third group, hitherto vulnerable to pressure from friends, neighbours or family members who want to impose the headscarf on their daughters, who can now reply: "I was ready to follow your advice, but now it is impossible: I cannot disobey the law!"

The space of feeling opened up here is reminiscent of that shared by many Algerian immigrants when their children born in France were automatically granted French nationality. Abdelmalek Sayad describes this well in his book *The Suffering of the Immigrant* (Polity, 2004). Algerians could never have applied for this individually, he writes, but they were discreetly satisfied when it was "imposed" by law:

"The beneficiaries of [French] nationality, acquired without having applied for it, adapt to their situation well, and protestations of circumstance (which can be perfectly sincere in other respects) cannot convince to the contrary. Their circle, who would not have accepted an act of naturalisation that followed an ordinary process, later appear relieved that French nationality...occurred by itself, as a constraint collectively imposed: it is a condition shared by all, not the result of individual and voluntary acts where some called attention to themselves and separated themselves from the others. . . . Despite protestations of all sorts that are the 'right thing' to proclaim, despite the guilt or simple unease that continues to be felt by the naturalised, this 'forced' naturalisation finally produces something like a satisfaction which, for a whole series of reasons, asks to remain secret and, sometimes, resigned to."

Making history a new

The emotional logic is clear: a ban on religious display via the law, from the "outside", ensures the protection of children from fundamentalist pressure yet does not enforce a break in religious ties.

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I admit that the law passed by the French parliament has one unfortunate consequence: the right of Muslim girls who freely want to wear the scarf in public schools, without pressuring anyone else, is denied. What will happen to them if, after the period of dialogue established by the law, they do not want to remove their scarf? It is most likely that they will be offered the opportunity to attend private religious schools – probably Catholic, Protestant or Jewish (there are only three Muslim schools in France). These schools, if they are under state contract (as 95% are), have an obligation to accept applications from pupils of other faiths.

More Muslim schools under state contract (which entails authority over the curriculum) will develop in future. The French state historically gives large subsidies to this “parallel” educational sector, enabling the tuition fees to remain very inexpensive. The Muslim community, like other faiths, has the right to establish schools where the customs and holidays of its faith are observed, and where religious instruction exists alongside the national curriculum.

But my single, strong regret as a result of this commission process does not relate to the headscarf issue as such: it is that the ban on religious signs in public schools is the only one of our twenty-five proposals yet implemented by President Chirac, his government, and the national assembly.

Certainly, religious fundamentalism needs to be fought and contained when it challenges the basic values of democracy. It also has its own autonomous dynamic and is not the simple product of social injustice. But our commission also recommended stringent policies to address the social factors favouring the rise of

fundamentalist influence. France has not done enough to correct the ethnic, racial, and religious discriminations that negatively affect most children of North African immigrants. School history lessons do not acknowledge slavery or colonisation as a full part of our national history.

There is also an urgent need to adapt to the new diversity of the French religious landscape in order to sustain one of the main principles of *laïcité*: equality of all faiths before the law. France has the largest Buddhist, Jewish and Muslim communities of any European country; but the scale and currency of the Muslim presence in France makes a focus on it more necessary.

Thus, for example, our commission demanded that the French state respect fully the freedom to build mosques, and observe funerary rituals and culinary customs. We even proposed that the most important religious feasts of minority faiths be recognised as public holidays, to mark the respect of the entire French community towards their compatriots. This last proposal was rejected by the government and coolly received by most socialist leaders, but 40% of citizens immediately supported it and it provoked a very intense, fruitful and creative debate in millions of families across France. I am certain that it will return to the public agenda.

The historical success of the French model of secularisation, *laïcité*, rests on its guarantee to individuals of state protection against pressure from any religious group. But its future success requires a flexible capacity to respect cultural and religious diversity – and to consider this diversity not a burden, but a challenge and an opportunity.

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