Politics, Religion and Gender

Framing and regulating the veil

Edited by
Sieglinde Rosenberger and
Birgit Sauer

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Heated debates about Muslim women's veiling practices have regularly attracted the attention of European policymakers over the last decade. The headscarf has been both vehemently contested by national and/or regional governments, political parties and public intellectuals, and passionately defended by veil wearing women and their supporters. Systematically applying a comparative perspective, this book addresses the question of why the headscarf tantalizes and causes such controversy over issues about religious pluralism, secularism, neutrality of the state, gender oppression, citizenship, migration and multiculturalism.

Seeking also to establish why the issue has become part of the regulatory practices of some European countries but not of others, this work brings together an important collection of interpretative research regarding the current debates on the veil in Europe, offering an interdisciplinary scope using a common research methodology, the contributors focus on the different religious, political and cultural meanings of the veiling issue across eight countries and develop a comparative explanation of veiling regimes.

This work will be of great interest to students and scholars of religion and politics, gender studies and multiculturalism.

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Routledge
Taylor & Francis Group

LONDON AND NEW YORK

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Acknowledgements

Abbreviations

ADS	*Antidiskriminierungsstelle des Bundes*; Federal Anti-Discrimination Agency
AGG	*Allgemeines Gleichbehandlungsgesetz*; General Equal Treatment Act
AKP	*Adalet ve Kalkınma Partisi*; Justice and Development Party
BZÖ	*Bündnis Zukunft Österreich*; Alliance for the Future of Austria
CDU	*Christlich Demokratische Union*; Christian Democratic Union
CSU	*Christlich-Soziale Union*; Christian Social Union
CE	*Conseil d'État*; Council of State
CHP	*Cumhuriyet Halk Partisi*; Republican People's Party
CNDF	*Collectif National des Droits des Femmes*; National Women's Rights Collective
D66	*Democraten 66*; Democrats 66
DFP	*Dansk Folkeparti*; Danish People's Party
DR	*Danmarks Radio*; Denmark Broadcasting Corporation
DRC	*Dokumentations og rådgivningscenter om racediskrimination*; Documentation and Counselling Centre for Racial Discrimination
DVP	*Demokratische Volkspartei*; Democratic People's Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EKD	*Evangelische Kirche in Deutschland*; Protestant Church in Germany
EP	European Parliament
EU	European Union
ETC	Equal Treatment Commission
FCC	Federal Constitutional Court
FPÖ	*Freiheitliche Partei Österreichs*; Freedom Party of Austria
HALDE	High Authority for the Struggle Against Discrimination and for Equality
HK	*Handel og kontor*; Union for Commercial and Clerical Employees
IFE	Islamic Forum Europe
IRCA	Islamic Religious Community in Austria
KF	*Det Konservative Folkeparti*; Conservative People's Party

KZD	Комисия защита от дискриминация; Bulgarian Commission for Protection from Discrimination
LPF	*Lijst Pim Fortuyn*; List Pim Fortuyn
MCB	Muslim Council of Britain
MEP	Member of European Parliament
MFPF	*Mouvement Français pour le Planning Familial*; French Movement for Family Planning
MLF	*Mouvement de Libération des Femmes*; Movement of Women's Liberation
MP	Member of Parliament
MRF	Movement for Rights and Freedoms
NGO	Nongovernmental organization
NMWAG	National Muslim Women's Advisory Group
NPNS	*Ni Putes Ni Soumises*; Neither Whores, Nor Submissives
PVV	*Partij voor de Vrijheid*; Freedom Party
ÖVP	*Österreichische Volkspartei*; Austrian People's Party
REP	*Die Republikaner*; The Republicans
RIE	Regional Inspectorate of the Ministry of Education
SPD	*Sozialdemokratische Partei Deutschlands*; Social Democratic Party of Germany
SPÖ	*Sozialdemokratische Partei Österreichs*; Social Democratic Party of Austria
SJÖ	*Sozialistische Jugend Österreich*; Socialist Youth Austria
UDF	*Union pour la Démocratie Française*; Union for French Democracy
UIDC	Union for Islamic Development and Culture
UMP	*Union pour un Mouvement Populaire*; Union for a Popular Movement
UK	United Kingdom
V	*Venstre*; Left

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An introduction

Sieglinde Rosenberger and Birgit Sauer

Context and aims of the book

Since the 2000s, veiling practices, that is the covering of women's hair and the covering of face and body, have been heavily discussed all over Europe. Originally, the controversies started with the enforcement of a headscarf ban in Turkey in the 1990s, followed by a law that forbids the wearing of 'conspicuous religious signs' in schools in France in 2004. As a highly visible symbol of religious and cultural difference displayed by Muslim women, the Islamic headscarf has been the subject not only of disputes and claims, but also subjected to new legislation and court decisions at national and European levels. However, compared to the occurrence of fierce public contentions over the various meanings of the headscarf, it is surprising that policymakers in only a few nation states decided on restrictive headscarf regulations. Most notably France, some German federal states and Turkey introduced prohibitive regulations, while other countries such as Austria, Denmark, Greece, the Netherlands and the United Kingdom have stuck to non-regulation practices or even confirmed explicitly accommodating rules. Also, prohibitive regulations are limited to specific social sites, mainly state institutions, and to specific groups of covered women, e.g. pupils, teachers or public servants. Thus, the intensity and the positions towards the veil expressed in public debates via the media differ from policy decisions and legislation.

However, in the previous years, the debates over Islamic body covering have changed: no longer is the headscarf the primary object of conflicts, but the so-called *burqa*, the full face- and body-covering moved to the fore.[1] Calls to ban the full face and body covering arose in the Netherlands, in Germany and Austria, in Switzerland, Italy and the UK. In 2010, prohibitive regulations on the full body covering came into force in France and Belgium. In consideration of these developments, it seems as if the politicization of the full veil has superseded the headscarf, in particular in countries with a liberal, accommodative tradition towards the wearing of the Islamic headscarf, as for instance the Netherlands and the UK.

All chapters in this volume strive for a systematic comparison of headscarf debates and policies across Europe. The authors analyse the publicly debated

meanings and regulation of Muslim headscarves. Moreover, the book intends to explain one common feature of all headscarf debates, namely the use of gendered frames and/or the reference to gender equality. The theoretical and empirical research results presented in this book draw on the findings of the VEIL project, funded in the sixth European research framework of the European Commission from 2006 to 2009. The VEIL project was a collaborative study which investigated diverging and converging policy approaches towards headscarves in eight European countries in a cross-national comparative method. Countries included in the VEIL project were Austria, Denmark, France, Greece, Germany, the Netherlands, Turkey and the United Kingdom. In addition to the national perspectives, the European level was included in the analysis.

The selection of countries was inspired by a threefold typology of policy approaches to the headscarf issue discussed in the literature – restrictive legislation, accommodating rules and non-regulated practices (see Skjeie 2007; Joppke 2009). Moreover, the country cases discussed in this book vary in their historically established approaches to immigration as well as in their traditions of gender and anti-discrimination policies and are characterized by different institutionalized types of state–church relations. Turkey is a very interesting case in terms of headscarf struggles, differing significantly from the other seven countries. A country with a Muslim population and secular constitutional principles, Turkey has gained a lot of attention in Western European societies, also with respect to its restrictive headscarf policies. A chapter on Bulgaria is included in this volume; Bulgaria is an example of a former state-socialist country with an autochthonous Muslim minority, which has faced several headscarf conflicts in the last few years. Hence, this country example illustrates some differences from established democracies and EU member states.

In the last years, empirical research on how European countries accommodate religious and cultural diversity in general and, in particular how the headscarf issue is regulated has been conducted (e.g. Fetzer and Soper 2005; Bader 2007; Klausen 2005; Scott 2007). To a large extent, this research is based on national case studies such as Altinordu (2004), Amiraux (2007), Berghahn (2004), Mushaben (2004, 2008) and Amir-Moazami (2005) on headscarf policies in Germany, Göle (1997) and Saktanber (2002) for Turkey and Scott (2007), Bowen (2007) and Poulter (1997) for France. Moreover, a number of two- or three-country comparisons aim at explaining differences and similarities in regulations, like Amir-Moazami (2007) and Joppke (2007, 2009) comparing France, Germany and UK, Saharso (2006) comparing the Netherlands with Germany, and Skjeie's (2007) comparison of Nordic countries. Also, a special issue of the journal *Social Politics* contains several country studies, some of them based on the VEIL project (*Social Politics* 2008).

The comparative literature on the headscarf issue distinguishes three models of headscarf regulations across Europe (Skjeie 2007: 130): First, the prohibitive approach advocating bans on all forms of Muslim body covering in public institutions. Second, the soft or selective approach that applies prohibitive measures

only to certain kinds of body covering such as full-face veils. Third, the non-restrictive, tolerant model where the wearing of head and body covering is not restricted (see also Joppke 2009).

Against this research background, the VEIL project refined the existing typology of headscarf regimes in Europe. The typology in this volume distinguishes accommodating and prohibitive regulations and cases of 'non-regulation'. The authors in this volume argue that clustering countries along general statements would not grasp reality adequately: the picture is much more complex than a threefold typology can cover. With regards to sites of regulation (e.g. state institutions or private business), to instruments of regulation (e.g. laws, decrees or court decisions) and to types of religious attire, a much more sophisticated variation is in place. In some countries, at some political levels (regional or national), specific modes of regulation are established for specific social sites and domains with prohibitive consequences (e.g. courts, schools and universities). In other countries non-restrictive propositions are at work for all domains. Beside this, some legislation could be qualified as tolerant: in other countries no regulation at all exists with regard to the wearing of the Islamic headscarf. Also, we have to distinguish different groups of women affected by a regulation (such as pupils, teachers or public servants).

The puzzling question at the beginning of the research for this book was how to understand and explain the different public debates and regulations on the headscarf issue across European countries. Hence, the two core aims of this book are to explain differences and similarities first in the meanings negotiated in policy debates over veiling with regard to frames, values and principles. The second aim is to analyse and explain policy outcomes and modes of regulations in comparative perspective (prohibitive, accommodative or non-regulated). Therefore, the book's analytic focus has two levels, first the *framing* of policy debates and conflicts over different practices and the meanings of veiling and, second, the *regulations* in different national settings pertaining to head coverings of Muslim women in the public sphere, particularly in public institutions like schools, universities and the courts.

What is meant by the term *veiling* in this book? As debates about Muslim head and body covering are loaded with different meanings we want to clarify the different terms that are referred to in political and academic debates. In general, the authors of this book use the generic term 'veil' to refer to *hijab*, *burqa*, *jilbab*, *niqab* and *chador*. If a specific form of body covering is referred to in the chapters the appropriate term will be specified. Muslim female body covering differs regionally and has different individual styles. The headscarf (*hijab* in Arabic, *foulard* in France) is worn in various ways: the scarf can cover only the hair (and ears) and can be tied either loosely and covering the neck, or be wrapped at the back in a knot. Some women wear the headscarf in the 'turban' style that is tightly wrapped around the face and loosely covers the hair, ears and shoulders, often in combination with loose blouses and robes. A *burqa* is a robe worn by Afghani women that covers the body from head to toe, including the face and eyes, the latter being covered with a mesh. *Jilbab* is a robe covering the

body, including a veil that leaves the face visible but covers the rest of the head and body. *Niqab* is a black robe, which covers the body from head to toe, with a fitting veil that covers part of the face but leaves the eyes open. It is also called *chador* (among Pakistani, Iranian and Afghani people) or *carşaf* (among Turks).

Another clarification of terms is important. The authors of this volume use the term *Muslim* women to describe the subjects of the policy debate. The term refers to individuals who due to their national origin, ancestry or conversion to Islam define themselves as Muslims or are labelled Muslims by debaters. This comprises a heterogeneous group of women with different ethnic, racial, linguistic, national, sexual and socio-economic backgrounds, not all of them practising their faith or even adhering to the five pillars of Islam. Some authors in the book use the denominators 'secular liberal' Muslim women to differentiate them from 'veiled' or 'devout' women to denote their standing in the discourse.

Critical discursive institutionalism: methodology of the book

The chapters of the book do not only have a strong common focus on first the framing of headscarf debates and second on regulations, they are also based on a common methodology which can be labelled 'critical discursive institutionalism' (see Schmidt 2008; Sauer 2009, 2010). This approach consists of two core elements: first, a frame analysis of policy documents related to headscarf debates and, second, a comparison of national policy decisions based on a variety of explanatory factors which describe the institutional setting of policy making on the issue of Muslim headscarves such as citizenship and integration regimes, state–church relations, gender equality and anti-discrimination regimes. This institutional matrix is informed by social science theories on institutionalism, resource mobilization, discursive policy analysis and gender theory. The two methodological elements – frames and institutional settings – have the strength to explain differences and similarities in presenting the headscarf issue in national policy debates as well as to contribute to the understanding of national regulations.

Frames and frame analysis

The symbolic-interpretive constructs (consisting of, for example, shared beliefs, images and symbols) that people use to make sense of their environment are called 'frames' (Snow and Benford 1992; Triandafyllidou and Fotiou 1998). The study of the role of ideas in public policies maintains that frames play a constitutive role in policy formation as well as in policy solutions (Bacchi 1999; Schmidt 2008; Lombardo *et al.* 2009; Sauer 2010). A frame is defined as 'interpretative schemata that signifies and condenses the "world out there" by selectively punctuating and encoding objects, situations, events, experiences, and sequences of action in one's present or past environment' (Snow and Benford 1992: 137). Frames are 'organized ideas', which provide some 'coherence to a designated set of elements' (Ferree *et al.* 2002: 105). In other words, frames give meaning to

certain policy situations; they connect a policy position to a wider set of ideas and ideologies. Moreover, frames do not only interpret policy problems, but also create policy problems (diagnostic frames) as well as policy solutions (prognostic frames) (Zald 1996). Considering reality as a socially constructed phenomenon also implies that knowledge of and particular accounts of 'the truth' are situated and always shaped by a specific historical, cultural and political context (Hajer and Versteeg 2005). People always shape a proposition in a way that is directly linked to particular 'political and cultural contexts, and to political and cultural histories and ideologies' (Verloo 2005: 17).

A careful analysis of these processes aims to understand the ways in which societal issues are represented in the political domain, which particular understanding gains dominance at some point and why, and which understandings are discredited. The headscarf issue is thus conceptualized and represented differently by various actors who compete with each other over the meaning of the conflict and who offer different solutions to solve it. Hence, headscarf debates are political conflicts in which power plays an important role in influencing which representations gain standing and which ones disappear.

In the VEIL project, the particular definition of the headscarf problem (diagnosis) and the proposed solution to the problem (prognosis), as well as the argumentation and structure of norms have been translated into an analytic framework that consists of a coding scheme with a set of 'sensitizing questions' on each element (Verloo and Lombardo 2007). This 'analytic matrix' of the frame analysis included questions about who gets a *voice* or who has a *standing* in a policy document in order to identify who is involved in the construction of a frame and who supports this frame. The matrix further inquired about gender relations constructed in the document as well as norms discussed in the headscarf debates. The material of the frame analysis applied in Chapters 1 to 4 of this book was composed by policy documents used and produced in headscarf debates in the eight countries and the EU from 1989 to 2007.[2] Policy documents are defined as written documents dealing with veiling of all actors involved in public headscarf debates. Analysed documents originate from the following actors or institutions: academic journals, churches and religious groups, courts, employers, media/journalists, Muslim groups and women's groups, groups of other minorities, parliaments and legislative bodies, state bureaucracies, political parties, public intellectuals, schools and universities. The material also included some interviews with relevant policy actors. In each country under investigation, a minimum of 20 and a maximum of 40 documents were analysed in-depth. The sampling of the documents was guided by a manual determining that the selected documents have to be grouped around policy decisions and policy incidents in the country from 1989 to 2007. Preferably, all actors and sites of headscarf debates should have been represented in the selected documents. The Appendix contains a detailed list of the policy documents on which the chapters are empirically based (see Appendix 1).

The framing strategies of actors and institutions in the eight countries and the EU were solidified by developing 11 major frames from the material: these

major frames were divided into 32 subframes (for a list of all frames and sub-frames see Appendix 2). Finally, the frames were compared cross-nationally in regards to the use, negotiation and construction of gender images (Chapter 1), the significance of secularism/*laïcité* in arguments pro and contra veiling (Chapter 2), the construction of identity, rights and belonging (Chapter 3), the discursive formation or non-formation of a European value-oriented identity (Chapter 4) and the major frames used by Muslim actors' defence of veiling (Chapter 10).

Institutional settings

The second methodological dimension of the VEIL project, the concept of institutional settings, aims at gaining knowledge concerning the reasons and purposes behind the variety in governing the headscarf in European democracies – prohibitive and accommodating rules, and non-regulation. The notion of 'institutional setting' applied in Chapters 7 to 9 of this book covers in particular the citizenship regime and immigrant integration policies, state–church relationship, gender equality and anti-discrimination regimes (see also Saharso 2007; Fetzer and Soper 2005; Koopmans *et al.* 2005). In the following we briefly describe these institutional settings.

Citizenship regimes and integration policies

Political and sociological theories on citizenship and immigration often assume that specific citizenship models determine patterns of political contestation over issues relating to immigration and integration, including conflicts about immigrants' religious identities (Joppke 2010; Fetzer and Soper 2005). This literature focuses mainly on rules for access to citizenship and the extent to which countries are willing to recognize religious and cultural diversity within their polity (e.g. Koopmans and Statham 2000). In general, three citizenship models are presented: the civic-assimilationist or republican model, the ethno-cultural model and the multicultural model (Saharso 2007: 516f.; also Joppke 2009). In the civic-assimilationist model the nation state is seen as a community of citizens sharing common values and principles. This model is generally open to include migrants as citizens and provides easy access to citizenship (*ius soli*), but does not recognize cultural and religious group differences (this is, for instance, the case in France). The ethno-cultural model is based on descent (*ius sanguinis*) rather than on consent to common values (such as in Austria and Germany). Finally, the multicultural model promotes cultural and religious diversity with relatively easy access to citizenship and recognition of cultural differences (like in the Netherlands and the UK).

However, it is important to note that the political controversy regarding the headscarf does not necessarily correspond with the approaches conceptualized in the body of relevant literature (see Koopmans *et al.* 2005). Calling for the public recognition of a religious identity does not fit into the regular and generally

expected pattern of migrants' political claims made in France for instance. Similarly, in Austria, facing an exclusionary ethno-cultural model where complex barriers for immigrants to become citizens are in practice and Christian cultural monism is hegemonic, one would not expect the accommodation of the Islamic headscarf. Yet, Austria is one of the very few countries where the conflict over the Islamic headscarf is virtually absent and a fairly inclusive policy towards Islam, despite Austria's right-wing populist parties, exists. These observations suggest that, at least with regards to a thorough scientific analysis of the Islamic headscarf, the theoretical model of citizenship regimes and integration policies must be broadened and revised. In accordance with other authors (e.g. Fetzer and Soper 2005; Joppke 2010), this book suggests additional explaining factors such as state–church relations, the recognition of religious communities, gender and anti-discrimination policies as well as the framing of discourses.

State–church relations and recognition of religious communities

Relations between state and religious communities are an important factor for understanding the conflicts over and the regulations of Muslim veiling practices. A comparative study by Fetzer and Soper (2005: 7) emphasizes 'the development of public policy on Muslim religious rights is mediated … by the different institutional church–state patterns'. In Europe, three state–church relation models can be distinguished: a 'separation' or laic model (like in France or Turkey), a 'cooperative model' (like Austria, Germany and the Netherlands) and a 'state–church model' (like England, Scotland and Denmark) (Brocker *et al.* 2003: 14). In laic systems, state institutions have to be free of all religious practices and symbols and religious education is not taught at public schools. States with a 'cooperative' understanding of neutrality do work together with religious communities. Here, the state has to be equally distant from the recognized churches, and religious education may be taught in schools – like in Austria and Germany. Also, the display of the Christian cross in public buildings is not considered a contradiction to state neutrality. Countries that prescribe to the state–church model do not claim neutrality towards religious denominations; most of them have historically developed specific forms of relationships between the state and the dominant church. With respect to the headscarf, Sabine Berghahn (in this book) argues that laic states tend to ban all religious symbols, including headscarves, from the public realm, while countries with a state church tradition or with strong ties between – mainly Christian – churches and state institutions respond more inclusively towards the wearing of Muslim headscarves and other forms of bodily covering.

   Thus, the argument of state–church relations explains differences in the recognition of claims made by Muslim communities, especially with regard to tolerance towards the wearing of headscarves and other forms of veiling. However, while in Germany strong ties between the Christian churches and state institutions exist, eight out of 16 federal states have banned the wearing of a headscarf. Again, Austria differs from Germany with respect to this factor. Due to its

cooperative system of state–church relations, similar to Germany, Austria neither bans veiling nor does a fierce public debate about Muslim headscarves in state institutions exist. To explain the differences between these two countries another variable has been considered: the official recognition of the Muslim community. Again different from Germany, Austria's inclusive practice of religious pluralism is based on the legal recognition of Islam as a religion and the approval of the Islamic Religious Community in Austria as the official representative body of Muslims living in Austria (Mourão Permoser and Rosenberger 2009).

Gender equality and anti-discrimination policies

Another factor which may shed light on the accommodation of religious diversity and headscarf practices is the tradition of gender equality and anti-discrimination legislation and policies and their authority over state institutions. In the literature it is argued that countries with strong equality orientation are less inclined to ban the headscarf and other forms of veiling because such prohibitive measures are viewed as an infringement on Muslim women's rights to participate in the public realm (McGoldrick 2006; Skjeie 2007). Conflicts over veiling in Britain and the Netherlands at the end of the 1990s show that anti-discrimination and gender equality commissions indeed framed the headscarf and other forms of bodily covering as an equal opportunity issue and hence supported Muslim women's right to wear these forms of garment. However, Austria is again an exception. Although anti-discrimination and gender equality have always been of less importance in the country's value order and women's policy enforcement is rather weak, Austria has a rather tolerant approach to the accommodation of the Muslim headscarf.

Although debates and policies on Muslim head covering focus on gender equality and the oppression of women (Chapter 1), and issues of migration and integration are negotiated in headscarf debates in most of the countries, these arguments do not explain differences or similarities in regulation in the eight countries of the study. The research results in Chapters 5 to 10 show that headscarf bans, accommodative policies and non-regulation politics cannot be explained by the given anti-discrimination or gender equality machineries. They only play relatively marginal roles both in debates and legislation for or against head- and body-covering regulation.

The VEIL project concludes that it is also the political culture and national belief systems of norms and frames that account for cross-national differences in the structure and extent of the debate on headscarves as well as in the forms of political regulations of female Muslim attire. For instance, in Denmark it is the highly valued individual rights, in Austria it is the inclusive state–church relationship, in France and in Turkey it is the principle of secularism, which impact on framing and regulating the headscarf. The VEIL project results indicate that it is a tiny set of factors that explain the variations of regulation, namely that the historically established relation between religion and state and normative traditions are major factors in determining the regulation of Muslim head covering.

Organization of the book and overview of the chapters

All book chapters, except the chapter on Bulgaria (Chapter 6), follow a comparative perspective on the different religious, political and cultural *framing* of the veiling issue across European countries and on the explanation of different veiling regimes. Subsequently, the book has two main parts: Part I places the focus on frames and framing strategies and identifies (conflicting) universal rights, moral values and liberal principles embedded in the headscarf debates on the national and European levels. Part II contains research results on different outcomes of regulation and legislation of the issue of veiling and aims at contributing to explain the differences and similarities in these regulations and legislation.

Rikke Andreassen and Doutje Lettinga (Chapter 1) analyse how arguments of gender and gender equality are used in European debates about Muslim women's head and body coverings. It is obvious that many actors in headscarf debates use arguments of gender and gender equality. The chapter sheds light on how gender is framed and negotiated in these debates, and it analyses how gender and gender equality play into constructions of nationality and national identities. The debates about headscarves are not simply about Muslim women's clothing or immigrant integration, rather the debates contribute actively to construct certain gendered national narratives. This chapter emphasizes the links between headscarf debates, gender and nationality in order to show how these categories intersect and influence each other.

The second chapter by Eirini Avramopoulou, Gül Çorbacıoğlu and Maria Eleonora Sanna presents an overview of the conditions that mediate the political and ideological negotiations over veiling practices by focusing on the concept of secularism. The authors propose to use 'secularism' as a 'hub-concept' which helps to read, relate and represent the prevalent – or absent – frames in each country while focusing on the hegemonic discourses on the 'secular' and the 'religious' which cut across contexts of different cultural, political and legal values, norms and regulations. The aim of the chapter is to detect the particular discursive instances of negotiations over veiling practices in order to explore the antagonistic relation between 'the religious' and 'the secular' – an antagonism supported and mediated by social and political actors of different affiliations.

Nora Gresch, Petra Rostock and Sevgi Kılıç ask for the role of frames in constructing borders of belonging (Chapter 3). The chapter argues that in debates and regulations concerning head and body covering of Muslim women, nation states create specific narratives of belonging by defining habitual practices that citizens need to comply with or need to embody to be considered a full member of a particular national community and to be granted full citizenship rights. In the debates of the eight countries, specific argumentative patterns are used to advocate for or against Muslim body covering: an exclusive paradigm of belonging advocates for restrictive measures. Actors who argue against legal restrictions use an inclusive paradigm of belonging.

The last chapter of Part I by İlker Ataç, Sieglinde Rosenberger and Birgit Sauer (Chapter 4) focuses on 'discursive Europeanization' by value diffusion in

headscarf debates. Assuming that norms and beliefs are discursively constructed and negotiated in headscarf policies, the authors take both the European and national levels into account. The major concern of the chapter is to investigate whether these debates contribute to Europeanization or, respectively, to the emergence of a European sphere of common norms and values. The idea of a European sphere of shared values is understood as an 'empty signifier', i.e. not as a given set of norms and values but as a deliberative and multifaceted process of negotiation. Differentiating between a vertical and a horizontal dimension of Europeanization, the chapter argues that both horizontal as well as vertical Europeanization show only minor salience. Instead, the authors detect policy frames that underline a nationalization of religious and cultural values in Europe.

The second part of the book is dedicated to the modes and actors of national regulations as well as to the limits of claim-making for restrictive regulations from a comparative perspective. Although European countries are based on the traditions of liberal democracy and fundamental human rights, including freedom of religious expressions and gender equality, differences in institutional settings have translated into a multifaceted spectrum of approaches to headscarf policies. The chapters follow the differentiation in three major clusters of regulation (accommodative, prohibitive and non-regulation) and look for explanations as to why similar and/or different modes of regulations for specific social sites and groups of covered women have been adopted in different European countries.

Chapter 5 provides an overview of the regulations, of the occurrence of conflict cases and of the most important court judgements concerning the Muslim headscarf and veiling in the eight states of comparison by Sabine Berghahn. The chapter identifies the most influential factors for the headscarf regulations. What is important for the explanation of the legal treatment of female head and body covering are not only national peculiarities such as state–church relations, historical obligations and the (non-)existence of anti-discrimination awareness and institutions on the national level. Moreover, European norms and judgements and the national transposition and interpretation of these norms impact veiling policies.

Chapter 6 by Kristen Ghodsee analyses the regulation concerning Bulgarian schools. As one of the European Union's two newest member states, Bulgaria is actually the EU country with the largest Muslim minority, estimated between 13 and 15 per cent in a country of 7.9 million. In 2006, several complaints regarding Muslim girls wearing a headscarf at public schools were filed with the Bulgarian Commission for Protection from Discrimination, the national body in charge of adjudicating human rights violations. This chapter discusses the two key cases that came before the Commission in 2006 and 2007, the circumstances leading to these cases and the arguments made both for and against religious symbols in schools. Methodologically, the chapter is based on a detailed discourse analysis of the texts of new Muslim magazines targeted towards young Slavic Muslims. It is shown that the language of these decisions explicitly relies on language and rationales from the European Court of Human Rights in order to unofficially ban

the headscarf in Bulgaria, while still leaving plenty of ambiguity for individual headmasters to circumvent the ban if they wish. This reflects Bulgaria's uneasy position vis-à-vis its Muslim minority, as well as intra-Muslim rivalries between the ethnic Turkish population and Bulgarian-speaking Muslims.

Next, Leila Hadj-Abdou, Sieglinde Rosenberger, Sawitri Saharso and Birte Siim explain accommodative policies in countries with populist anti-immigrant mobilization (Chapter 7). Denmark, the Netherlands and Austria are countries where explicit regulations exist that enable veiling in various public domains, such as public schools, the civil service and the parliament. At the same time, all three countries are known for their right-wing and populist politicians speaking out against migration and Islam. This chapter tackles this apparent paradox by disentangling the process of transformation from non-regulating to adopting policies that regulate the veil in a tolerant way. By scrutinizing and comparing the political conditions under which Austria, Denmark and the Netherlands have passed different decrees of toleration, and relating these to historically specific national contexts and populist 'symbolic' tactics, it shows how and why accommodative rules in regard to veiling have been established. Yet, because this comparison is led by contextual specificity over time, it pays attention to the changing political context that has put pressure on accommodative policies regarding different realms and forms of covering. The chapter stresses the potential of the national political opportunity structures to facilitate accommodative regulations despite heavy populist challenges.

Prohibitive regulations concerning Muslim headscarves in France, Turkey and Germany are analysed in Chapter 8 by Sabine Berghahn, Gül Çorbacıoğlu, Petra Rostock and Maria Eleonora Sanna. While France and Turkey are rather similar in restricting the headgear of pupils, the case of Germany is different: here, no restrictions for pupils and students are in effect, while in some parts of the country prohibitions for teachers in public schools to wear headscarves, and partly for other civil servants, were established. On initial observation, the French and Turkish regulations seem to be in accordance with their state–church regimes of *laïcité* and secularism, while the German regulations obviously contradict the country's principle of an open and comprehensive state neutrality. Though for different reasons, all three countries are currently undergoing a period of transition, Muslims as migrants have become the 'other' par excellence as both the French and the German society face their multi-religious and multicultural reality. In Turkey, in contrast, Islam is the religion of the majority of the population. Here, debates about the headscarf ban reflect the ongoing highly controversial struggle mainly between secular Kemalist and Islamic forces over the constitution of Turkey as a modern state.

Chapter 9 by Rikke Andreassen, Eirini Avramopoulou, Nora Gresch, Sevgi Kılıç and Birgit Sauer analyses those European countries that do not have all encompassing national regulations, either prohibitive or tolerant, regarding Muslim women's head and body coverings. Instead, Austria, Denmark, Greece and the UK have general anti-discrimination regulations that secure the rights to religious freedom and are hence labelled as tolerant. However, the chapter

detects policies of 'non-regulation' in some – but not all – sites of society. Thus, non-regulation policies might at first glance seem like an inclusive approach towards the Muslim veil. This chapter, however, shows that the four countries studied have passed several decentralized regulation rules or case-to-case approaches, which might actually result in excluding veiled women. The chapter illustrates how these practices of non-regulation function as a tool to maintain the status quo of a mono-cultural country in some situations rather than a tool to become an inclusive multicultural country.

The next chapter by Leila Hadj-Abdou and Linda Woodhead (Chapter 10) has a slightly different focus: it stresses the role of women's civil society organizations in the policy debates comparing the United Kingdom and Austria. The authors are interested in the degree to which, and in which ways, Muslim minorities have entered the public domain in respect to the issue of the veil. Are they visible at all in disputes? Are they visible in collective and organized forms, or as individual voices? What are their demands and what are the strategies to push through their demands? After addressing these questions, the chapter explores which factors restrain or enhance the possibility of Muslim minorities taking part in public disputes, and how opportunity structures in the two countries shape the strategies employed. An underlying interest is whether the fact that this is an issue concerning not merely a minority (Muslims), but a minority within a minority (Muslim women) makes a difference.

The book concludes with some general reflections on the role of liberal values and norms within the European Union by Sawitri Saharso. Saharso claims that liberal values allow far more room for alternative interpretation than is reflected in current public debates on headscarves. Due to that, the debates on Muslim women's body covering risk running into a rather 'illiberal liberalism'. Instead, the arrival of new cultures in Europe should be seen as an opportunity to question current European interpretations of the liberal tradition and to combine well with the desire to develop common European values.

Notes

1 Public debates use the term *burqa* for garment covering the face and the body in order to allude to women in Afghanistan although the targeted women in European countries are wearing a *niqab*. See description of different garments in this chapter.
2 The analysis of policy documents starts in 1989 due to the fact that this year was marked by the first debate on Islamic headscarves in France. The time frame of the analysis ends in 2007 due to practical reasons – this was the year when the VEIL project started.

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Part I

Frames and framing

1   Veiled debates

Gender and gender equality in European national narratives

Rikke Andreassen and Doutje Lettinga

Introduction

This chapter sheds light on how gender is framed and negotiated in European debates on Muslim women's head and body coverings, and analyses how gender and sexuality play into constructions of nationality and national identities. The chapter demonstrates that a wide variety of actors in all countries debates the headscarf and veil from a women's rights perspective. Veiling is persistently framed as being a threat to universal values and principles of gender equality, autonomy, emancipation, secularism and tolerance. Our comparative analysis shows that these universal values are not only particular national interpretations and institutionalized applications thereof (Parekh 1992) but are even contested within the nation itself. By illustrating how categories of gender, race, ethnicity, religion and nationality intersect and influence one another within this frame, this chapter analyses how the headscarf and veil debate contributes to the exclusion of veiled Muslim women in certain national imaginaries (Anderson 1991). Furthermore, considering the conflicting views observed between feminists on the issue, the chapter also argues that the debates moreover reflect a struggle over who gets to define the values and strategies of feminism in a multicultural Europe.

This chapter is structured into three parts. The first illustrates how actors, especially feminists and politicians, in the eight countries analysed use arguments of gender and gender equality in their debates. In all countries, a prevalent view in the debates on potentially banning Muslim women from wearing veils is that covering is oppressive of women and a threat to gender equality. This chapter scrutinizes examples of this frame, which we labelled the 'victimization frame'. It describes the similarities in these European debates with regard to norms and values expressed in this frame and the discourse coalitions of actors employing it (Hajer 1993). The second part of the chapter gives insight into national particularities within this frame. Debates, after all, do not emerge in a vacuum, but are shaped by particular national historical, cultural and political contexts (Hajer and Versteeg 2005; Bacchi 2005). This chapter shows how political actors in each country construct their specific national society as the preserver and securer of gender equality. The third and final part

of this chapter reflects upon counter-arguments which contest the nationalized discourse of Muslim women in need of liberation by the white (Christian) majority. Here the chapter falls back on the conclusion that normative principles of gender equality and emancipation play a vital role in national constructions but that no agreement exists on the meaning of these terms, nor about the strategies they entail. The chapter concludes that the debate on veiling should be seen as an ongoing deliberation about the conditions of inclusion in and exclusion from the national community in which gender and sexuality play a vital role (Yuval-Davis 1997; Lutz *et al*. 1995). It also concludes that the debate represents an ongoing discussion among feminists about the content and strategies of their political project. The chapter underscores that the nationalizing of gender equality – by inscribing gender equality as an integrated part of a hegemonic national culture that is being threatened by the culturally 'other' – results in exclusionary and racialized understandings of gender equality and of the national community.

Gender and gender equality: common framing in all countries

Victimization and liberation from religion

In the European debates that we studied for the VEIL project, the most common frame observed was that Muslim girls and women are oppressed by their community, culture and religion and in need of liberation. This *victimization* frame appeared in all countries' documents, although it was not very salient in the British and Greek debates. However, establishing the strength of this frame in relation to the country-specific policy debates and regulatory regimes goes beyond the scope and possibilities of our chapter. As we will illustrate, the frame was taken up by various politicians to argue in favour of a ban that curtails girls' and women's right to cover (in various domains). It is interesting to note that feminists themselves have been ambivalent about the desirability of a ban to tackle Muslim women's oppression. Moreover, various feminists contested the idea that the headscarf represents gender oppression and offered alternative interpretations of gender equality and autonomy.

   One of the principal arguments presented in the victimization frame is that headscarves and veils conflict with the idea of gender equality, as these coverings are gender-specific types of clothing, and hence in their very nature mark a hierarchy between men and women. Veiling is seen as a structural problem of Islam (or in religion altogether), because the Qur'an prescribes this practice of gender differentiation. Another argument is that donning the headscarf and veil is a result of the internalization of gender discriminatory norms and that women can only become truly free and equal if they contest the oppressive nature of their religious culture by breaking with it. In the Netherlands, Germany, France and Denmark, various Second Wave feminists opposed the practice of veiling. They supported Muslim women who were critical of veiling

and who were hesitant, if not opposed, to strategies of emancipation that remained within the framework of Islam.

In the Netherlands, the former editor-in-chief of the leading feminist magazine *Opzij*, Cisca Dresselhuys, used this victimization frame when she argued against the headscarf on International Women's Day on 8 March 2001. Dresselhuys stated that she would refuse to hire editors who wore headscarves because this practice contradicts feminist ideals of equality. In her editorial in *Opzij* she explained her principled stance as follows:

> The headscarf symbolizes a particular way of thinking about women being inferior to men. And this is exactly something that feminism has tried to contest. This started many years ago with the struggle against the biblical thought that women should not have any place in public life, have executive positions, have voting rights, wear male clothes, or – yes, all the time that hair! – cut their hair short rather than wearing hats. … Now when we have finally overcome this battle [i.e. against the Christian Church], it would be unacceptable for me to accept similar fundamentalist, female oppressing doctrines. It would feel as justifying and submitting to an error.
>
> (NL3)

Dresselhuys questions the persistent claim that Muslim women don the headscarf of their own personal choice. And even if they were, she considers it anti-feminist if women voluntarily submit to gender-unequal norms that sustain the patriarchal order. She compares the choice to wear the headscarf to the claim of women in the 1970s who maintained they were housewives out of free choice, even though no other alternatives existed at the time. In a similar vein to those who voluntarily submit to social roles of women as mothers and caretakers, veiled women would legitimize patriarchal ideas of women as virgins whose sexuality needs to be curtailed for men. Hence, the wearing of the headscarf is, according to Dresselhuys, not only a form of sex discrimination but also dangerous for women's rights by condoning sexist ideas. *Opzij* has therefore frequently criticized the Dutch Commission of Equal Treatment, which has endorsed the right to cover in various domains for reasons of non-discrimination and freedom of religion.[1] Yet, Dresselhuys was against a ban on headscarves, as it would deprive vulnerable Muslim women and girls of their chances to education and economic independence.

Similar victimization framing can be found among feminists in other countries. In Denmark, a larger debate about headscarves emerged when a Danish Muslim woman wearing a *hijab*, Asmaa Abdol-Hamid, was appointed as a TV hostess at the public service station DR (*Danmarks Radio*; Denmark Broadcasting Corporation) in 2006. The hiring of Abdol-Hamid was met by an outcry from the feminist organization Women for Freedom, who demanded that DR should fire Abdol-Hamid. In their press release of 2 April 2006 they wrote:

> Asmaa Abdol-Hamid is known as an Islamic fanatic and a supporter of *Sharia* … DR is a public service station, and it is important that TV-hostesses

are objective and do not become a space [*sic*] where fanatic attitudes can be expressed and honored. Attitudes that are a serious threat against women's rights.

(DK19)

Similar to the views of former editor-in-chief Dresselhuys of *Opzij* magazine, the organization Women for Freedom expressed a dislike for Islam and headscarves – interpreting the latter as being solely oppressive of women because it views headscarves as a general threat to all women and their gender equality.

Also in the United Kingdom, some feminists questioned that free choice within Islam (or any religious structure) is possible. In an open letter published in the British newspaper, the *Guardian*, in 2005, journalist Catherine Bennett criticized the wife of former British Prime Minister Tony Blair, Cherie Booth, for defending a schoolgirl's right to veil. The female pupil, Shabina Begun, was forbidden to wear the *jilbab* as a substitute for her school uniform. Similar to Dresselhuys, Bennett locates the problem in religion by comparing Islam to Catholicism and argues that veiling is imposed upon young girls by men who interpret the Qur'an in the 'medieval style – that their wives, sisters, and daughters should be viewed only in their entirety by the men they belong to' (UK7). Bennett finds pro-headscarf feminists hypocrites who apply different standards to Muslim girls than to their own daughters, whom they would not like to see wearing the headscarf. She therefore argues that feminists should support Muslim girls' struggle for liberation like any other girl. The government should not indulge itself with religion as it currently does in Britain (UK7). Bennett combines her claim against the headscarf with a critique of the British Anglo-Saxon state church, which also exists in Denmark. Dresselhuys, too, criticized Dutch traditions of institutionalized religious pluralism as being bad for women. Her claim to dismantle the remnants of Dutch pillarized multiculturalism found much support by liberal secular intellectuals such as law professors Afshin Ellian (NL15), Sylvian Ephimenco (NL16), Paul Scheffer and Herman Phillipse. In this frame, religion is clearly seen as the source of patriarchy and liberal secularism as the solution to tackle it, although Muslim men become the new culprits in a form of oppression that seems particular to Islam and Muslim culture.

Islamic fundamentalism as a threat to gender equality

The call to liberate Muslim girls grew louder when the headscarf was linked to the rise of a fundamentalist Islamism. Typical for the German, Turkish and French debate was the claim that the headscarf was not only a symbol of a patriarchal religious culture, but also of a dangerous political Islam. Not only family or community members exert pressure on the girls but also radical fundamentalists, who recruit them for their political ideology. If the state would not draw boundaries to religious claims of recognition like the headscarf or veil, so-called Islamist crusaders would use this space to introduce their political projects

into Europe. Hence, not only the rights of Muslim women and girls are threatened but those of the whole society.

Interestingly, particularly secular Muslim feminists warned of the accommodation of the headscarf as a form of pseudo-tolerance that jeopardized Muslim girls' rights to freedom and equality. In all countries we observed alliances between them and Second Wave feminist protagonists defending national achievements of women's rights against multiculturalism or religious pluralism, as that would give leeway to Islamic fundamentalism. In Germany, for instance, Alice Schwarzer of the feminist magazine *Emma* argued together with German women of Turkish origin like Necla Kelek (G29) and Ekin Deligöz (G31) that people defending a teacher's right to cover are cultural relativists that leave vulnerable girls to their oppressive communities. In 2003 Schwarzer argued in the weekly *Der Spiegel* that the headscarf is a political symbol used by Islamists, who are gradually trying to introduce Sharia law into Germany (G2). Three years later, in an interview in the German newspaper *Frankfurter Allgemeine Zeitung*, she compares the headscarf to the yellow star that Jews were forced to wear during the Nazi regime, to indicate that Muslim women can be considered second rate citizens who are forced to cover by Islamist fundamentalists (G28). In France, similar claims were made by feminists such as Elisabeth Badinter, Gisèle Halimi and Anne Zelenski along with women like Fadela Amara of the organization *Ni Putes Ni Soumises* (Neither Whores, Nor Submissives) (Ezekiel 2006); and in the Netherlands by women like Seçil Arda (NL10), Ayaan Hirsi Ali (NL6) and Nahed Selim (NL13) along with Cisca Dresselhuys.[2]

The seriousness of this threat was often emphasized by references to Muslim countries or Islamic theocracies where women's rights are violated. Islam is consequently represented as an oppressive religious culture, detached from the particular national, political and cultural context where it is practised. Seçil Arda, a Dutch feminist of Turkish origin, argues in a column in *Volkskrant* newspaper in 2001 for instance: 'Fundamentalists in countries like Iran, Egypt, Afghanistan, Turkey, and various Arabic states use liquidation, intimidation, and threats against feminists in order to ban their thoughts' (NL10).

Originating from countries with a Muslim majority, women like Arda often were given voice in the debate to speak out against gender inequality and fundamentalism in Islam. The media producers and politicians who invited them to policy debates apparently reasoned they knew best what Islam entails for women. While this allowed them to put the (precarious) position of minority women on the political agenda, the fact that these women were represented as the 'authentic' Muslim voice also silenced other veiled women whose claims were seen as stemming from a false consciousness and Islamist manipulation. In the final part of this chapter, we will address those other Muslim women's voices who claimed their own right to speak. Moreover, by emphasizing the danger of a fundamentalist and patriarchal Islam encroaching upon a Europe marked by values of gender equality, patriarchy increasingly turned into a cultural problem of the 'other'. This not only rendered invisible the continuing gender inequality and sexism in European societies or the discrimination and social economic

marginalization that intersect with immigrant women's emancipation, it also fed a nationalist discourse that counterposed a backward and dangerous Islam vis-à-vis an enlightened, egalitarian and modern Europe. The next section will illustrate how this enabled anti-immigrant politicians to co-opt and monopolize the feminist agenda for their own interests.

Instrumentalizing the feminist agenda

Not only feminists but also politicians use the victimization frame in congruence with Islam as a threat frame to plead for a ban on headscarves. Some clearly link their claims against veiling with demands for cultural assimilation or even expulsion. In Austria, for instance, Richard Heis, the leader of the rightwing nationalist party FPÖ (*Freiheitliche Partei Österreichs*; Freedom Party of Austria) in Innsbruck, Tyrol, launched a motion to prohibit headscarves in public schools in 2006. He quotes the above-mentioned Necla Kelek in his argument that the headscarf is a political symbol of radical Islam and that a ban would therefore help Muslim girls against unwanted pressure to cover. Furthermore, he argues that headscarves are a sign of disintegration because they conflict with Western values. According to him, teachers with headscarves are incorrect role models for immigrant children and unable to pass Western values on to these children, and hence hinder their integration into Austrian society. He supports his argument with a national claim by saying that 'real Tyroleans' do not want headscarves (A18).

This use of feminist gender equality arguments for assimilative and anti-immigrant agendas can also be observed in Denmark. Peter Skaarup, Member of Parliament (MP) for the populist and right-wing Danish People's Party, has for instance argued:

> According to Danish norms it is discriminatory to veil. The fact that women must hide their sexuality, cover their hair, that is, in a Danish context, an expression of a devaluation of the woman … and that is what we have fought against with our struggle for gender equality, and therefore the veil is a problem for our society. … The right thing is therefore to ban the headscarf and live accordingly to our customs here in Denmark.[3]

Politicians from the Danish People's Party put forward a bill in 2004 to prohibit headscarves and veils in public working places such as educational institutes, hospitals, libraries and public transportation by framing them as incompatible with the Danish culture (DK1). It was said that such a ban would help Muslim girls and women who want to integrate, i.e. assimilate, into Danish society. This bill was not passed, as the majority of parliament argued it would go against the Danish constitution's freedom of religion that is equally applicable to all religious communities (DK5, DK9).

Also in the Netherlands, gender equality functioned in the discourse of the right-wing populist politician Geert Wilders, who submitted a motion to prohibit

*burqa*s in the Netherlands on 10 November 2005.[4] Wilders referred to multiculturalism as 'apartheid' because it would allow 'medieval practices' like full facial coverage.[5] Other (liberal) right-wing politicians also framed *burqa*s as conflicting with Dutch values, as they were interpreted as being oppressive of women, and 'the Netherlands is a country of freedom and equality'.[6] Women were used to illustrate a public order and integration problem. Various parties argued in the subsequent parliamentary debates that a ban increased the integration of Muslim women in Dutch society, because it would break their isolation and enable face to face communication that was required for participation. Moreover, a ban was deemed legitimate because the visibility of *burqa*-wearing women endangered public safety and caused feelings of insecurity and fear among other citizens (Lettinga 2009; van Ooijen 2008). Like Denmark, the ban on the *burqa* was not yet institutionalized in the Netherlands because it contravened human rights of non-discrimination and freedom of religion. In 2008, the government announced a very moderate change of law that aims to ban all types of face covers in the realm of education.

   In both the Dutch and the Danish debates, the (male) majority's cultural practices of organizing gender were viewed as natural and as a right to be protected against Muslims. In Denmark, women's sexual liberation is often associated with women's rights to be topless on beaches and in advertisements and to participate in the pornography industry (Andreassen 2005: 186). By representing head and body coverings as symbols of female oppression, the national understanding of women's liberation therefore seems connected to their bodily exposure of skin (Andreassen 2007). While feminist critiques of the sexualization of female bodies are disregarded, Muslims are positioned as a threat to feminist achievements of (bodily) self-determination and equality, which are represented as universal norms that everyone should follow. In the Netherlands, sexual tolerance functions as a broker for cultural and religious tolerance in the same way as feminism. In 2006, the Netherlands introduced immigration criteria by imposing integration tests that included compulsory viewing of a film of Dutch culture featuring a topless sunbathing woman and gay men kissing. Immigrants from non-Western countries need to pass the test in their home countries in order to be eligible for Dutch citizenship. Also in the headscarf debates, Dutch right-wing politicians presented the growing number of (radical) Muslims of their societies as a threat to the equal rights of homosexuals in their respective countries.[7] In both countries therefore, politicians who have previously not been in favour of sexual minorities' or women's rights – or at least have never participated in their struggle for recognition – are now arguing in favour of the same minorities' rights. Feminists who tried to put Muslim women's equality and self-determination on the agenda saw their feminist claims being hijacked by conservative and populist right-wing politicians who used it as a vehicle to curtail immigration and to exclude (non-liberal) Muslim minorities from the national community (Butler 2008).

   The next part of the chapter elaborates on the finding that gender and sexuality function as a cultural group marker for modern Western cultures in national

policy discourses. We do not argue that all politicians in these countries were merely using the feminist agenda for other aims (although some clearly were). They may have been convinced that a ban would contribute to the equality and freedom of veiled Muslim girls, as this frame began to shape their reality. Instead, we aim to show how in all countries' debates a political community was constructed whose members should share universal values of gender equality. Yet, the communities that were constructed remained nationally particular, illustrating continuing differences in the role of the state in protecting women's equality, in managing (religious) pluralism and in incorporating citizens into the political community.

National particularities in the debate

Celebration of secularist nations

In France, a ban on all 'ostensible' symbols of religion in public schools was implemented in 2004. The purpose was, among others, to protect Muslim girls against Islamic radicals spreading their discriminatory ideology in the French suburbs.[8] Only by offering a neutral space at school, where visible religious symbols were banned, could the state guarantee girls' freedom and equality. The so-called Stasi Commission had advised the implementation of this law.[9] One of the Commission's members, the French scholar Patrick Weil, explains why he thinks such a law is necessary in an article published in *Esprit* in 2005: 'Wearing the scarf or imposing it upon others has become an issue not of individual freedom but of a national strategy of fundamentalist groups using public schools as their battleground' (FR15). The Stasi report connects headscarf debates to practices of forced marriages, and states: 'The basic rights of women are scorned nowadays on a daily basis in our country. Such a situation is unacceptable. … Paradoxically, the headscarf offers the protection to some girls which should actually be guaranteed by the state'.[10]

Although the Stasi Commission recognized that some women may veil voluntarily, their choice was outweighed by the necessity to protect others from community force. French secularism, *laïcité*, was suggested as the framework to realize the liberation and emancipation of Muslim girls. In its report, the Commission emphasized its aim to develop a concept of secularism that corresponded to the present-day pluralistic society and distanced itself from a 'combative' secularism that opposed religion, yet it eventually concluded that headscarves and other visible symbols of religious difference should be privatized in the public realm of education. Particularly the headscarf should not be accommodated in secular public schools because it is used by Islamists to transmit values that conflict with the Republican project of equality, solidarity and liberty. Relegating religious expressions to the private realm was seen as the solution to protect shared values of equality against private community practices and traditions that endangered the freedom of particular young Muslim girls. Girls refusing to unveil were seen as making a political statement of disintegration, by 'insisting'

to preserve and proselytize their religious identity at the expense of other pupils' freedoms. This identity politics was seen as the cause of social fragmentation and discrimination (i.e. of Jewish pupils with skullcaps).

French feminists recognized that for certain young girls the headscarf may symbolize their submission to gender-oppressive practices in their family or community. They deliberated whether a ban constituted the appropriate solution to address the lacking emancipation and freedom of some Muslim girls. Some women supported the government's ban by signing a petition in *Elle* magazine in which they emphasized the necessity of a strictly secular Republican school to avoid the intrusion of religious identity claims that would particularly burden the freedom and equality of Muslim girls (FR3).[11] The feminist organization CNDF (*Collectif National des Droits des Femmes*; National Women's Rights Collective), on the other hand, signed a counter petition to oppose the ban (FR5).[12] Even though the CNDF claimed that the headscarf stigmatizes the female body, it considered a ban an inappropriate solution to address the problem that religious fundamentalists misuse such a symbol to control women's sexuality. Similar to the Stasi Commission, the organization presented *laïcité* as the solution for combating sexism and gender discrimination, albeit one that allowed for the accommodation of the headscarf in schools. For unlike the Commission, the CNDF still believed in the emancipatory power of the secular republican schools that would help girls gain the capacity of autonomy and eventually unveil themselves. The CNDF thus also portrays Muslim girls as victims in need of state help in order to become secular, free, rational subjects. In both frames, Muslims can only be free and equal citizens if Islam secularizes and assimilates to a republican framework of secular modernity.

Celebration of (secularized) Christian nations

In the German and Austrian debate, political actors have similarly framed Muslim women's head and body coverings as conflicting with national values of gender equality and as symbols of disintegration. In the German federal context, headscarf debates and regulations are decentralized to the level of the separate provinces (*Bundesländer*), leading to different (re-)conceptualizations of the nation (Berghahn 2008). In the southern and southwestern states, dominant arguments have been that teachers cannot veil because Muslim headscarves conflict with Western (Christian) values that shape Germany's democracy. In the words of the then Minister of Education in Baden-Württemberg in 2004, Annette Schavan, representing the Christian Democratic Union (*Christlich Demokratische Union*; CDU):

> The headscarf constitutes, as a political symbol, a part of a female oppressive history. It can symbolize an interpretation of Political Islamism, which conflicts with the principle of equality between men and women. In that sense, it is also incompatible with a fundamental value embedded in our constitution.
>
> (G19)

Schavan further argues that civil servants, e.g. teachers, should not wear such female oppressive symbols because with those symbols they are advocating the wrong kind of role model, particularly to young Muslim girls who want to integrate into the German society. Hence, wearing a headscarf is in Germany – like in France – framed as a sign of separatism and disintegration; identified in German as *Parallelgesellschaften*, parallel societies.

Unlike the French Stasi Commission, many actors in the German debate do not propose strict secularism as a solution to the problem and often differentiate their model from the French *laïcité*. In parliamentary discussions in the Federal state of Baden-Württemberg on banning headscarves for public school teachers, the CDU (G1f), the Social Democratic Party SPD (*Sozialdemokratische Partei Deutschlands*) (G1c) and the conservative patriotic party The Republicans (*Die Republikaner*; REP) (G1a) have all argued that religious symbols in themselves do not conflict with the German constitution because Germany has an open, inclusive practice of neutrality. They all refer to, and hence reify, a German history of religious governance in which the state has closely cooperated with the churches, in particular in the areas of social welfare and education (Koenig 2005; Amir-Moazami 2007). Privatizing all religious symbols within the educational realm would therefore conflict with this institutionalized history, as well as with the idea of a nation that gives space to German values and religions. But according to their framing, the headscarf symbolizes more than religion, as it is seen as also carrying a political message. Ulrich Maurer from the SPD emphasized in the 2004 debate why the SPD voted in favour of a ban: 'Other than the headscarf, the Christian cross belongs to our Western culture, to our traditions and symbolizes here brotherly love, tolerance and maintenance of fundamental human values'.[13]

By viewing and presenting Christian symbols as politically neutral and compatible with constitutionally embedded values of Germany, it is possible to plead for a partial ban on only headscarves in the federal state of Baden-Württemberg. Islam can be successfully constructed as representing non-German values, whereas Christian and Jewish symbols are seen as part of a German history that teachers may express. Only politicians from the Green Party pointed at the hypocrisy of pleading for open neutrality while banning certain religious expressions; but their alternative law proposal, to maintain a case by case approach, did not find any support. As a result, traditionally dressed nuns, i.e. with head coverage, can teach in Baden-Württemberg while covered Muslim teachers cannot. Four other provinces have also implemented partial bans for teachers: Bavaria, North Rhine Westphalia, Saarland and Hesse (the law in the latter province also explicitly forbids headscarves in public service). Three other states (Berlin, Bremen and Lower Saxony) have banned all religious symbols for teachers and some other public functions (Rostock and Berghahn 2008).

Also in Germany and Austria, feminists were divided on the issue. As we have seen, various prominent Second Wave feminists and secular Turkish-German

feminists were in favour of a ban on the headscarf for teachers. Even though they never advocated a partial ban that would discriminate between citizens of different faiths, they reasoned that only a strict separation between state and religion would enable young (Muslim) girls to be 'really' free, equal and modern. Other feminists objected to a ban. Former (feminist) commissioners on integration for the federal government of Germany (Marieluise Beck, Barbara John and Rita Süssmuth) have argued, for instance, that gender oppression can only be targeted by including Muslim women in the labour market. Instead of advocating a ban that blames individuals with headscarves for the fundamentalism, feminists should support them in their struggle against fundamentalism (G12). Also the Austrian Sandra Frauenberger, who is serving as Viennese city councillor for women representing the Social Democrats (*Sozialdemokratische Partei Österreichs*; SPÖ), argues against a prohibition of headscarves as that would hinder Muslim women's integration into the Austrian mainstream society. According to Frauenberger, prohibiting headscarves would make the women return to their conservative Muslim families. Instead, the girls and women should be active participants in the school system and workforce; as she argues 'We have to keep them in our society' (A28). In their framing of the problem, these feminists clearly identify a different solution to the problem from a ban. But by presenting the majority society as inclusionary and liberatory, they seem to overlook the (institutionalized) discrimination and xenophobia that continue to function as obstacles in the struggle for participation of minority women.

Social cohesion and gender in the debate on face veils

In the United Kingdom, the framing of gender equality in the veil debates has also been connected to women's participation in society. But the debate in Britain is in many ways different from other European countries' debates, as it solely focuses on full facial covering, i.e. *niqab*s. *Hijab*s are not debated in Britain but tolerated without discussion as an individual right to freedom and part of the multicultural society. The claim that the headscarf conflicts with national or universal values of gender equality and that a secular public space is needed to liberate Muslim women was much less salient in Britain than in the other countries' debates. Instead, it is argued that the current soft secularism, i.e. status quo of an established state church, and British traditions of human rights and democracy will secure women's rights and participation in society (UK2, UK6, UK9, UK12).[14]

In Britain, the debate about *niqab*s has been closely connected to a fear of Islam as a fundamentalist religion or a political ideology. Similar to the other countries' debates on headscarves, arguments are made that Muslim women are forced to veil by male 'fundamentalists' and 'patriarchs' (UK6, UK7). In a similar vein, veils are linked to debates about integration; Muslim women were blamed for wearing clothes that are perceived as 'other' and thus as signalling segregation from mainstream society. The British Labour Party politician and former Foreign Secretary Jack Straw argued in a comment about *niqab*s in

Britain in 2006: 'wearing the full veil was bound to make better, positive relations between the two communities more difficult. It [the *niqab*] was such a visible statement of separation and of difference' (UK1).[15]

The similarity between the British debate on the veil and the continental debates on the headscarf (or *niqab* in the Netherlands) is the underlying assumption that only a community that shares the same values and adheres to the same principles and norms can remain nationally cohesive and egalitarian. In all debates, covered women become the representatives and symbols of a Muslim community that is considered different and separate from the national community. In these national constructions, veiled Muslim women become symbols of – and are held responsible for – 'their' community's potential actions and beliefs or for forging social cohesion between 'their' and other communities. This is an illustration of how women become bearers of their community's (attributed) identity and responsible for change (Volpp 2001; Yuval-Davis 1997; Warring 1998). Veiled Muslim women do not simply symbolize the Islamic, potentially fundamentalist, segregating community; they also mark the physical separation between the two communities, i.e. between the Muslim community and the British/Dutch/French/German/Danish community (Lutz *et al.* 1995: 91; Yuval-Davis *et al.* 2005: 527). We have seen how several politicians, feminists and other actors have demanded that women remove their headscarves or veils in order to integrate, i.e. assimilate into the white, Christian, national culture, and to become modern and emancipated. This suggests that (Muslim) women who do not veil are integrated and presumed to have embraced the national (white, secularized Christian) emancipated culture (e.g. G1b, G1c, G19, FR8, A8, A19). In these debates, women thus become physical markers between the two cultures, which are constructed as each other's opposite in a hierarchical manner, hence making it impossible to be an integrated part of both simultaneously. This integration into European national societies is therefore not simply a question of shared values and norms; it is also a physical integration. Muslim women become, with their bodies, physical symbols of the success or failure of that integration.

Struggles of feminism

Feminism as a floating signifier

As illustrated, principles and norms of gender equality, autonomy and sexual liberation were tied to the victimization frame endorsed by various feminists in Germany, France, Denmark and the Netherlands. Here the argument was that headscarves were symbols of oppression that conflicted with universal norms of gender equality that all national citizens had to share. In this last part of the chapter we want to return to the feminist discussion by elaborating upon the frames of these and other feminists, equally concerned about those principles and norms, who have contested this claim. They have pointed out how such universal principles cannot be interpreted unambiguously and emphasized the multiplicity of feminist strategies to reach gender equity.

Many feminists pointed out that headscarves have multiple meanings and cannot be reduced to a symbol of oppression. They emphasized that women may wear the headscarf for very varied reasons, which can only be understood in relation to the woman in question. In this light, the Austrian-Turkish feminist Dilek Cinar argues that a prohibition would be counterproductive, because a prohibition would imply a simplistic interpretation of headscarves by equating them with religious fundamentalism. A prohibition would stigmatize headscarves and thereby all covered women, disregarding the women's individual motivations to cover (A39). Also the Danish feminist organization the Feminist Forum has argued that headscarves and veils must be interpreted as multifaceted practices that cannot simply be reduced to female oppression (DK20). After the Danish organization Women for Freedom had demanded that Danish public service TV (DR) could not hire a woman with a headscarf (DK19), i.e. the hiring of Asmaa Abdol-Hamid in 2006, the Feminist Forum sent out a press release in which they supported DR's hiring of Abdol-Hamid. They wrote: 'The Feminist Forum congratulates DR for their hiring of Asmaa Abdol-Hamid as hostess for the debate program *Adam & Asmaa*. With this hiring DR participates in strengthening both gender and ethnic equality in Denmark' (DK20). Without endorsing the idea that Muslim women who cover are oppressed, the Feminist Forum proposes participation and inclusion of Muslim women as the most appropriate feminist strategy to reach equality.

The principle of gender equality was interpreted differently by feminists who framed not the headscarf but the ban as a form of gender discrimination. Several feminists pointed out that a ban on headscarves would disproportionately harm the rights of Muslim women and lead to discrimination on grounds of gender, which feminists cannot endorse (A24, A26). Also the principle of autonomy was used to both argue against and in favour of veiling. We have seen how in the victimization frame the headscarf was viewed as a symbol of limited (sexual) freedom; Cisca Dresselhuys argues for instance:

> Because feminism has always been – and still is – to enable women who want to make different choices, I now want to support Muslim women who would like to but do not yet dare to remove their symbol of oppression, their headscarf.
>
> (NL3)

The Dutch feminist scholars Sawitri Saharso and Baukje Prins criticized her stance to refuse women with headscarves as editors as a form of 'intolerant similarity feminism' (NL4). In an open letter to a daily newspaper in 2001, they called for recognition of women's free choice, including choices that are generally disliked by *Opzij* feminists such as the will to veil. Women may want to retain ties with their religion or culture while emancipating, and subsequently even change patriarchal traditions by practising different gender roles than are expected. In the framing of Saharso and Prins, donning the headscarf can thus also be seen as the result of women's autonomic choices that are located within

religious and cultural frameworks, as well as a possible form of 'accommodative protest' (MacLeod 1992). Instead of only supporting women whose emancipation is achieved through the adoption of secular liberal values and a rejection of Islam, they opt for the recognition of multiple strategies of emancipation.

These examples illustrate the great diversity among European (Muslim) women and feminists in their definitions of and views on emancipation and feminism, particularly on women's agency and their capacity or desire to gain autonomy within cultural and religious structures (Friedman 2003; Mackenzie and Stoljar 2000; Deveaux 2005, 2007; Mahmood 2001). The debates about headscarves and veils therefore illustrate how feminism is a floating signifier with no specific meaning ascribed to it (Laclau 1990). The meanings of feminism – as well as gender equality and the interpretation of headscarves and veils – are constantly changing and shifting depending on who uses the terms and in which national, cultural and social contexts they are used. It is important to consider how this lack of a fixed meaning influences the debates. A symbol – feminism – whose meaning differs from context to context will always be accompanied by antagonisms between different discourses trying to ascribe hegemonic meaning to the symbol; i.e. different feminists are constantly trying to make their version of feminism and their interpretation of headscarves appear as the hegemonic discourse (Laclau 1993; Laclau and Mouffe 1985). The result is a debate that seems inconsistent: both feminist camps arguing in favour of and against a ban have used arguments of gender equality and labelled themselves feminists. This does not mean that they necessarily have much in common or share the same values. They all argue in favour of women's rights but they neither agree on what this implies nor on how to get these rights. Another result is that the debates are not simply about headscarves and gender equality but also about gaining hegemonic support for one's ascribed meaning to the symbol and getting one's version of feminism accepted as the common version.

Who speaks for whom?

This draws our attention to the problem of representation. Instead of viewing their terms and strategies as partial and situated, several actors tried to push for their interpretations and strategies of feminism among power holders; unfortunately, sometimes by discrediting and silencing other women's voices. Some feminists (whether they appropriate this label or not) have accused other feminists of speaking on behalf of Muslim women. They have claimed their own voice in the debate.[16] One example is the French activist of Algerian descent Houria Bouteldja (FR27). She is a member of the movement Les Indigènes de la République composed of French citizens who define themselves as descendants of slavery, colonization and immigration. In a feminist academic journal from 2004, she claims that the French initiative to ban headscarves only serves to maintain a symbolic order that dehumanizes citizens of colour and practising Muslims, which, according to her, delineates a colonial mentality of superiority. Bouteldja makes an analogy to the French so-called 'civilization mission' in

colonized Algeria in the early twentieth century, when white French also tried to encourage Muslim women to remove headscarves in the name of their emancipation. She is particularly sceptical of secular Muslim women who have argued in favour of a ban in order to liberate young girls, such as the organization *Ni Putes Ni Soumises* (NPNS). According to Bouteldja, such women collaborate with the colonizers by denouncing their fellow country people as backward and uncivilized if they continue to cover (FR27).

Women like Bouteldja point out that (feminist) discourses are strongly linked to existing social practices and related power positions, which cannot be reduced to sexual difference alone. Although her claim of recognition is weakened by her own denial of NPNS' feminist perspectives, she draws our attention to the important insight that there is no privileged feminist position that gives some the right to speak in the name of others. This should not lead to a moral relativism that denies the possibility of judging practices across religious cultures, because that would mean a 'fetishizing of cultural attributes and claims' by employing an essentialist and static understanding of religious culture (Yuval Davis *et al.* 2005: 529). As women are differently positioned according to class, sexuality, religion, race, ethnicity and age, their difference cannot be reduced to culture and religion alone. This recognition means that women not only speak from different locations (even 'within' the same culture) but may also hold different aims, strategies and goals of gender and women's emancipation (Phillips 1999, 2007). Women's emancipation in contemporary Europe must be understood in an intersectional perspective, where religious practices, like head and body coverings, are viewed in relation to representation, workforce participation, postcolonialism and discrimination, and where other categories of inequalities like class and sexuality are also taken into account.

Conclusion

This chapter has illustrated how gender and gender equality have played a central role in recent European debates on headscarves and veils. There are many similarities between the debates in different countries. One similarity is that in all countries politicians and feminists have drawn upon the victimization frame when discussing headscarves and veiling, and have portrayed veiled Muslim women as oppressed by either a misogynous culture or Islamic fundamentalists. Another important similarity is that these actors describe Muslim women's oppression as an opposition to their national country's state of gender equality as well as a threat to this gender equality. This was blended with integration arguments, where the (male) majority's ethics and norms of gender equality and freedom were presented as universal values that Muslims do not (yet) possess. In other words, all countries are, in the framing of their national actors, presented as the embodiment of gender equality, with unveiling becoming markers of national belonging.

The construction of gender equality as a universal value that Muslim women do not possess leads to a reconfiguration of gender equality as a marker of

cultural boundaries. By analysing how national actors drew upon very different understandings of abstract universal principles and values to plead against veiling, this chapter has shown how different boundaries of the nation were drawn. These could to a large extent be related to the nationally and historically particular traditions of secularism and nation building. Nonetheless, these boundaries were also strongly contested within countries by actors attributing different meanings to similar principles. The debates are thus not simply about headscarves and veils. They can be considered as an arena where different constructions of the nation are made in the context of changing demographic patterns in Europe.

The chapter has further argued that headscarf debates are struggles about how to define feminism, which likewise contains unequal power relations. Muslim women and their headscarves become a platform from which feminists, and others, can debate feminism. The frame of victimization that portrays Muslim women – in opposition to the majority – as not having gender equality, racializes and nationalizes gender equality and serves to retain hegemonic practices of feminism. This denies the complex, contextualized and nuanced understandings of gender equality and autonomy that constitute feminist struggles in contemporary Europe. More in particular, it deprives Muslim women of the chance to combine their faith with emancipation. Moreover, this framing plays into nationalist and other fundamentalist discourses that normalize and juxtapose certain ethics, practices and norms as 'Islamic' and 'Western', which helps to 'freeze' both minority and majority cultures in hierarchal orders. In a Western European context, this may negatively impact Muslim women's struggles for emancipation by forcing them into an either/or choice between a national white community – where they are not fully included – and a diaspora community – where a critique of unequal gender structures might be seen as a betrayal of the group (Ghorashi 2006). In order to increase collaborative feminist efforts that are necessary to challenge patriarchy across cultures, different feminist voices 'within' such cultures must be recognized and supported rather than discredited. This requires a critical self-reflection of one's own (historically, socially, religiously and culturally) specific feminist project and a greater sensitivity for women's agency within moral frameworks that are not necessarily shared.

Notes

1 *Opzij* editor Jolande Withuis has argued for instance: 'The Commission prioritizes religion all the time, discriminates dissidents and hinders integration' ('Handjeklap met seksisme', *Opzij*, 1 January 2007). According to Withuis, Dutch pillarized multiculturalism is a 'sneaky racism' that has allowed 'a Holland full of headscarves, veils and yet even chadors, where homosexual teachers have to hide their way of life and their loves and where doctors waste time and knowledge healing hymens' ('Liberaal?' *Opzij*, 1 February 2003). Since 2008 *Opzij* has a new chief editor, Margriet van der Linden, who is clearly more receptive for Muslim women's different views and strategies of emancipation. She hired a columnist who wears a headscarf herself.

2 This was also a particularly resonant frame in the discussions in Turkey, where

various (female) politicians, intellectuals and journalists argue that Islamists are trying to overthrow the secular state, with the consequence that all women's equal rights would be endangered (TR3, TR6, TR12, TR17). This illustrates the diffusion of this frame across national borders as a result of migration and the increasing transnationalization of citizenship (Soysal 2000).

3 *P1 Morgen* (radio programme), 23 May 2006, DR.

4 NL, TK 29 754, no. 41 (2005–2006): this policy document concerns the motion of Geert Wilders to ban the *burqa* in the Netherlands. TK refers to '*Tweede Kamer*' or 'Second Chamber', the Dutch parliament. These documents were collected from the online database of the Dutch parliament: www.parlando.nl (accessed 9 March 2010).

5 NL, TK 15 (19 October 2005) and NL, TK 29 754, no. 53: this policy document concerns a Dutch debate between parliamentary commissions on education, integration and domestic affairs about radicalization, in which Wilders launches his motion to ban the *burqa* in the Netherlands.

6 Bert Bakker (of the D66, *Democraten 66*, Liberal Democrat Party) in NL, TK 29 203, no. 9 (29 March 2004): 7.

7 Joost Eerdmans of the LPF (*Lijst Pim Fortuyn*; List Pim Fortuyn) argued in a debate on banning religious symbols in certain public functions by referring to Dutch achievements of gay rights:

> My fraction is worried about the growing Islamization of the Dutch society. A few of its fundamental values are being threatened: the equal treatment of men and women, the equal treatment of homosexuals and heterosexuals and last, but certainly not least, the separation between church and state, something we will discuss today.
>
> (NL, TK 59, 17 March 2004)

8 The law was entitled *Loi encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*. A great majority in the national parliament voted on 10 February 2004 in favour of the law, both from left- and right-wing parties (494 to 36, with 31 abstentions). On 3 March 2004 the Senate adopted the law, with 276 voting in favour and 20 against. It was promulgated on 21 March and entered into force the subsequent school year (McGoldrick 2006).

9 The Stasi Commission was set up by the then President Jacques Chirac to reflect upon the application of French secularism (*laïcité*) in its present-day multicultural society. It was officially called 'The committee of reflection on the application of the principle of secularity in the Republic' (*Commission de réflexion sur l'application du principe de laïcité dans la République*), headed by Bernard Stasi. Before it launched its report on 5 December, President Chirac had already announced that he would implement a law to regulate religious symbols out of the school.

10 *Commission de réflexion sur l'application du principe de laïcité dans la République* (2003) *Rapport au President* (Paris, 11 December 2003): 47. From here: Stasi report. All translations are ours.

11 Among the petitioners were the feminist philosopher Elisabeth Badinter and prominent French women like Isabelle Adjani, Michelle Perrot, Francoise Héritier.

12 The CNDF regroups various women's movements and trade unions and parties on the left, such as the MLF (*Mouvement de Libération des Femmes*) and its pillar organization MFPF (*Mouvement Francais pour le Planning Familial*).

13 Parliamentary debate about changing the school law: Plenarprotokoll 13–62 (4 February 2004): 4395. All translations are ours. Christoph Vetter of the German council of the Protestant Church (G8) and Cardinal Karl Lehmann of the German Bishop's Conference (G6, G7) both released a press statement in 2003 in which they doubted whether veiled women could represent the 'German free democrat order' if they were unwilling to remove their headscarf. Both emphasized the freedom of civil servants to

express their religion but at the same time pointed at the possible negative impact that a veiled teacher can have on young girls' emancipation and integration in German society.

14 There is no simple explanation for why the practice of headscarves does not cause debate in Britain when it causes great debate on the European continent. One reason might be that Britain has a strong tradition for organized anti-discrimination. The British Commission for Racial Equality (in 2009 transformed into the Equality and Human Rights Commission) was established by the so-called Race Relations Act in 1976, and has since been active in directing public attention towards discrimination against migrants and descendents of colour. The British Commission has gained a strong public voice and plays a central role in public debates about discrimination. It does not represent all migrants and descendants, especially not Muslim women. The commission is included here as an explanatory factor throwing light on the difference between debates in Britain and on the European continent. Another explanatory factor might be that there seems to be a stronger post-colonial awareness in Britain than on the continent. This might account for the stronger tolerance towards Muslim headscarves and for the less harsh tone in the debates in Britain. Finally, the United Kingdom does not have a strict separation between the church and the state, as the Anglican Church is interwoven into the British constitution. The British debate about veils was not strongly connected to questions of secularism, and there were no arguments claiming that secularism is the way to secure gender equality.

15 This clearly illustrates a difference between the Dutch and the British framing of the debate on face covers; whereas Jack Straw emphasized the communication between two 'communities' as a solution for social fragmentation, Dutch politicians argued for the assimilation of (orthodox) Muslims into the secularized liberal community by demanding for a full ban on symbols like the *niqab* that segregated and isolated vulnerable Muslim women and scared the majority population.

16 Also Muslim women in favour of a ban have felt excluded from the debate. One example is the German of Turkish descent secular liberal feminist Ülkü Schneider-Gürkan who has organized a collective in the Federal state of Hessen (G20). It strives for a separation between church and state and an unrestricted acceptance of the German constitution. Together with other 'democratically minded Muslims', she published a statement in the newspaper *Die Tageszeitung* in 2004 to argue in favour of a ban on headscarves for teachers (G12). They criticized the letter of Marieluise Beck, Barbara John and Rita Süssmuth etc. for speaking in their name by calling for the accommodation of the headscarf for teachers in order to safeguard Muslim women's emancipation (G12).

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2 Thinking through secularism

Debates on the Muslim veil in Europe

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Introduction

Many scholars have emphasized the significance of the concept of secularism in relation to contemporary European modernity (Connolly 1999; Ratzinger *et al.* 2006; Taylor 2007; Levey and Modood 2009). It has been argued that secularism came to be perceived as a political doctrine emerging in modern nation states and that its application was based on the separation between secular and religious institutions (Taylor 1998; Asad 2003; Mahmood 2006). However, as Asad (2003: 1) has poignantly argued in his criticism of Taylor's (1998) embrace of secularism as constitutive of modern democratic states, there is more to it than this. He reminds us that 'modern projects do not hang together as an integrated totality, but they account for distinctive sensibilities, aesthetics, moralities' (2003: 14). And indeed it has become evident in debates on Muslim women's attires, that secularism needs to be further scrutinized and rethought in its relation to the religious, and also in terms of the specific content with which it is infused when presented as constituting and regulating societal, cultural and political embodiments (Asad 2003; Mahmood 2006: 323).

Whereas the division between *the religious* and *the secular* is a pertinent one in the history of Christianity and, as such, is responsible for both the 'fundamental' and 'foundational' separation between the church and the state (Nancy 2007: 7), debates on secularisms cannot escape controversies related to Christianity and Islam. As Anidjar notes, 'Christianity invented the distinction between religious and secular and thus made religion. It made religion the problem – rather than itself' (2006: 62). These continuous conflicts between (and among) Christianity and Islam over religion, which seem to have influenced historically different European modernities, mirror secularism as part of historical processes and narratives in which the political powers mediate gendered citizenships and belongings. The concept of *secularism* offers a prism through which to explore various theoretical and methodological questions emerging in relation to the veil debates across contexts within different state–religion regimes. Furthermore, as will be explained in this chapter, secularism is not only a theoretical conceptualization; it is also, and even more, a political term adopted and strategically used by different actors in various contexts. As such a hub concept, it is

continually reconfigured; and, furthermore, it allows for a comparative perspective that is attentive to its discursive heterogeneity.

This chapter aims at juxtaposing discourses on Muslim veiling practices in countries with diverse histories, cultural and political environments and legal regulations. By building three clusters of national case studies, with each cluster representing a different configuration of state–religion relations, we pursue a comparative approach that attempts to shed light on the understandings and interpretations, claims and demands surrounding Muslim women's head and/or body coverings. The three groups are (a) Austria, Germany and the Netherlands following a neutral model, (b) France and Turkey representing a laic model and (c) the UK, Greece and Denmark illustrating the ways in which a dominant religion affects aspects of state conduct (Berghahn 2007). By employing secularism as a hub concept we raise two main questions. First, how do the discursive arguments employed for or against the veil reflect the different appeals to secularism across different contexts? Second, in which cases of controversies over veiled women and by which actors do interpretations of secularism reconfigure its signification?

The interconnectedness of different forms of secularism and debates about veiling practices points to the heart of recent academic analyses of the relation between the religious and the secular within modern nation states.[1] The aim of our cross-comparison is to engage with these contemporary dialogues and therefore not to perceive the Muslim veil just as a *problem* produced in Europe. On the contrary, we pursue an approach to the debates on religious attires within particular geopolitical regions as the result of a problematization as defined in Foucauldian terms. In Foucault's words,

> problematization doesn't mean the representation of a pre-existing object, nor the creation by discourse of an object that doesn't exist. It is the totality of discursive or non discursive practices that introduces something into the play of true and false and constitutes it as an object for thought.
>
> (Foucault 1988: 257)

In methodological terms, we aim at analysing the embedded power dynamics as unravelled through public debates while we approach them as instances of discursive regimes that cannot be regarded as distinct from practices (Laclau and Mouffe 2001: 107).

Debates on veiling practices and on secularisms are interconnected and on many occasions they crisscross national borders. The analysis of our material indicates that while in some cases it is the manner in which secularism is debated, understood and implemented which sets the conditions or the semantics of particular veil debates, in other situations it is because of the fact that Muslim headscarves ignite discussions of a particular type that perceptions and claims over secularism come to be shaped and/or redefined. And since secularism becomes a notion that is constantly reconfigured, depending on its contextual instances of articulation, it appears as a plural one. Moreover, it should be

mentioned that discourses on secularism as appearing in one national context have already been mediated by relevant discourses in different geographies. For example, discussions following the French restrictive legislation provoked various heated debates in all other European countries and affected the conditions of legal prohibitions in Turkey (cf. Göle 2006; Bowen 2007).

The countries of each cluster are cross-compared by focusing on public debates analysed through selected policy documents, emerging as 'paradigmatic' (Flyvbjerg 2001: 80). In the first part of the chapter, we examine texts from Austria, the Netherlands and Germany, countries in which a modality of state neutrality has been emblematic of regulating the incorporation of the Islamic alterity in society. The appeal to ecumenism in Austria, discussions over multiculturalism in the Netherlands and over pluralism in Germany reiterate the conflicting interpretations of secularism as interrelated with the antagonistic positioning in the debate. Moreover, these discussions reformulate the terms under which the participation of Muslims in European society is negotiated between integration and assimilation while reframing the expressions of national identity. In the second part of the chapter, dialogical connections between *laïcité* in France and Kemalism in Turkey are drawn in order to shed light on the historical and political significations of secularism in countries in which a strict separation between state and religion has been implemented. In the last part of the chapter, cases and particular actors from the UK, Greece and Denmark, countries with a close relation between church and state, reveal either a particular resistance towards secularism which is perceived as a threat to cultural unity and national identity by representatives of the church (cf. UK, Greece), or a certain necessity to secularize Islam in order to follow the country's needs, for instance its economy.

Cluster I: culturalist approaches towards veiling in 'neutral' countries

Austria, Germany and the Netherlands represent a neutral configuration of state–religion relations (Berghahn 2007). Arguments employed by different actors in each national debate emerge as emblematic of processes that reconceptualize secularism and resignify the multiple appeals to both the impartiality of the state and the principle of gender equality. Hence, these debates challenge national identity imagery, anti-discriminatory approaches to citizenship and multicultural policies.

Our research question is thus formulated as follows: first, how do redefinitions of the content of secularism interconnected with debates on Muslim women's attires question the terms under which national self-identifications are (re)configured? Second, how do these redefinitions and consecutive (re)configurations question the conditions and modalities for Muslim women's social participation in countries where unrestrictive or partially unrestrictive regulations (Austria and the Netherlands) have been adopted, and in countries (such as Germany) where the neutrality of the state is built around the idea of pluralism (Berghahn 2007)?

When, in 2003, the provincial leader of the extreme right Freedom Party of Austria (FPÖ) in Tyrol claimed a change of legislation for prohibiting the headscarf in schools (A22), the Islamic Religious Community in Austria (IRCA) reacted by reaffirming that the wearing of the headscarf is both an inner religious matter of an institutionalized religious community and an individual right (A4). The FPÖ waged a media campaign arguing against the headscarf in the name of gender equality; women's emancipation, depicted as a value of Christian modernity disdained by Islam, was referred to in order to argue that Muslims were incompatible with Austrian society (cf. A18, A19, A20, A21). In this context, the IRCA argued that the recognition of Islam, guaranteed by law, is a feature of national identity and is compatible with the Christian tradition of tolerance. In a similar vein, the former president of the Austrian parliament (member of the conservative ÖVP; cf. A15) referred to liberality as an 'old national tradition' thanks to which Austria is able to embrace religious multiplicity in society. In the pro-veiling media battlefield, Christian churches also advanced the idea of freedom of religion as a national tradition while stressing tolerance as underlying secularism. The president of the Ecumenical Council (A2) and members of the Catholic Church (A3) conceive secularism as an ecumenical attitude towards all religions built on the Christian values of tolerance and acceptance. On these bases, the headscarf can be tolerated in the public sphere in the name of state neutrality. According to the Ecumenical Council, limiting the right to wear the headscarf would open the way to other limitations of the expression of religious freedom that would dangerously reduce the visibility of religion in Austrian society. Rainer Bauböck (A35), one of the leading Austrian researchers on citizenship, and Jürgen Wallner (A33), a judicial expert voice in the debate on Muslim women's attires, express clearly the way in which an ecumenical interpretation of secularism can be associated with a liberal conception. According to their analysis, open neutrality towards different and often conflicting religious beliefs, ideas and traditions as well as symbols and practices, implies thinking about religion as a part of society. Hence they criticize *laïcité* (Bauberot 2000) as an ideological principle disregarding individual religious or philosophical convictions which are 'intrinsically part of human beings who are the ones constituting the political sovereignty of the state' (A33). In disapproving of *laïcité* as state ideology, the notion of secularism, oscillating between ecumenism and liberality, becomes a political term able to support the separation between churches and the state not in the name of an ideological division between religion and society, but in the name of the visibility of religious freedom (Balibar 2004a). Stressing the Austrian tradition of religious tolerance on the one hand, the argumentation of the president of the Ecumenical Council seems, on the other hand, to reduce the headscarf to a 'cultural mark'. By avoiding any references to its religious symbolism, Christianity is being presented as a *modern* religion, able to enforce the principle of tolerance, and Islam as a purely 'cultural' religion (Anidjar 2006: 59). In the same way, members of the Social Democrats (SPÖ), such as the Viennese city councillor for women and integration (A28) and the Minister of Women's Affairs in the coalition of SPÖ and

ÖVP (A30), state that the institutionalization of religious diversity is an important political instrument to encourage the participation of veiled women in society, and to improve their social citizenship. This statement, while sensitive to veiled women's integration, is nevertheless ambiguously rephrased by a *culturalist* discourse opposing *our* Austria by right-wing politicians (cf. A28, A30) – a supposedly open, already secular and egalitarian society – to cultural minorities, implicitly conceived as backwards and targeted as being the only people responsible for gender inequalities.

The dominant and politically transversal argument – that the visibility of religious freedom is a feature of national identity – is justified by a discourse on tolerance as the principle infusing Austrian secularism. This discursive instance depicting Austria as being traditionally open to diversity produces a *culturalist* defence of the individual right to wear the Islamic headscarf. In this context, the participation of veiled women in society as well as their citizenship are approached 'paternalistically' (Abu-Lughod 2002): Muslim women, veiled or not, and men, in spite of the formal recognition of Islam, are socially integrated as *cultural aliens* in the name of the Austrian self-defined degree of tolerance and acceptance.

In the following we will compare this argument raised in the Austrian debate with the prevalent arguments framing the Dutch debate on the veil where disputes on multicultural integration policies are embedded in a secular model of 'pillarization' (see Chapter 7). In the Netherlands, the public and political debate on the necessity to restrict religious freedom, a constitutional right, in the name of state impartiality and gender equality, also began in schools by questioning the wearing of veils by teachers and students. It then continued in discussions on the wearing of both headscarves and full body/face coverings in courts and in places of public service. Since 2008, Islamic veiling practices have been forbidden in certain judiciary and police functions. In spite of these specific prohibitions, equal treatment of all religions has been implemented in accommodation policies supported by the case-by-case advice of the Dutch Commission of Equal treatment (NL1). Similarly, several anti-discrimination offices (NL7, NL18), NGOs (NL22) and politicians of different affiliations (from the left-wing to Liberals) have put forward the rights argument while referring to the idea of multiculturalism as being part of Dutch secularism. According to these actors, veiling practices are both an individual right and a sign of the role religion plays in society. Following the historical segmentation of Dutch society along confessional lines, state–religion relations have been shaped into a model encouraging churches and religious communities' corporations. This model, based on a Christian tradition fostering the active function of religion in society, succeeded in defining Dutch public space as a space of religious diversity (Lettinga and Saharso 2009). In this context, Ayaan Hirsi Ali (NL6), an emblematic Muslim laic feminist voice, as well as members of the Liberal party, laic feminists (cf. NL3, NL4, NL9, NL10, NL12), members of socialist, social democratic, liberal and populist parties, called for bans on full body/face coverings in the public sphere. They shared the argumentation that the face veil is the very

symbol of women's oppression in Islam. Hence it must be banned in order to respect a strict separation between liberal institutions and religion, which is the political tool able to promote and safeguard gender equality. Only a few Dutch feminists reacted against this argumentation in the name of the ideal of a multicultural society (NL4, NL17, NL19, NL21). While reigniting the debate about whether multicultural policies should be considered appropriate tools to handle problems of difference and equality or whether they lead to cultural relativism (cf. Okin 1999; Phillips 2007), these feminist voices reacted against Ali's claim by arguing that veiling practices should be considered compatible with the idea of women's self-determination (NL17, NL21). In this perspective, wearing of headscarves could be interpreted as a symbol of religious conviction, of an autonomous choice, and as an identity marker providing a sense of empowerment (NL17, NL19). Thus its institutionalization as both an individual and religious right could improve veiled women's participation in society and support the implementation of anti-discriminatory integration policies (Prins and Saharso 2008). Moreover, according to these voices, the secular character of the Dutch state, based on the ideal of a multicultural society in which religion is visible and dynamic, should guarantee the development of multiple feminist strategies.

Focusing on the dissonances over which the notion of secularism could feed a model of state neutrality able to integrate Islam in the national religious dynamism and Islamic female alterity in the national body politic, the Dutch debate mirrors German discussions on veiling practices as reflecting German dilemmas around the constitutional principles both of religious freedom and of gender equality. In Germany, the political debate on the necessity to regulate Muslim women's attire (G1, G19) reveals a shift in how the content of secularism is interpreted, a shift from a political doctrine guaranteeing the constitutional principle of equality and embodying the ideal of pluralism to a norm of state neutrality in the name of which Islamic practices can be sanctioned and veiled women excluded. The case of Fereshta Ludin, who took legal action against the refusal of the province of Baden-Württemberg to employ her as a veiled teacher (G5, G26), illustrates the ways in which a traditional pluralistic image of national identity can be redefined (Berghahn 2007). The Federal Constitutional Court's (FCC) decision to transfer the competence to regulate teachers' veiling from the national to the province level (ibid.: 28) reconfigures the limits of political neutrality. Moreover, the controversies related to the FCC's decision resignified the content of secularism while disclosing the interrelation between its definition and the different interpretations of and instrumental appeals to the principle of gender equality.

Since the FCC's judgement in 2003, eight German provinces have adopted school acts banning teachers' headscarves, and five of them have passed clauses in favour of Christian-occidental symbols. Cardinal Lehmann (G6, G7, G21), expressing the official position of the Catholic Church, the Christian Democrats (G19, G22, G27b), and the decisions of the Federal Administrative Court (G26) and of the Bavarian Constitutional Court (G32), explicitly privilege Christian religious symbols. They have argued that only the visibility of Islam is threatening

state impartiality, while Christian symbols do not. This interpretation arises from a framework according to which Christianity is considered an integral part of both German culture and a system of values including women's emancipation. These same actors, interpreting state impartiality as the product of a supposed secularization of Christian traditions (Joppke 2007), also agree with German feminist groups (G15, G28, G29). Like Dutch feminists, German feminists interpret the headscarf as both a sign of cultural separation – and hence as a threat to the ideal of pluralism – and as the symbol of the Islamic patriarchy violating the constitutional principle of gender equality. In this context, Ludin's claim to the constitutional right of self-determination and to equal access to public service for every German (G3) reformulates gender equality: how can the Western (Christian) model of women's emancipation go along with veiled women's *agency* (Butler 1990) in a plural society? This reformulation challenges German views on the ways in which 'a serious appreciation of differences among women' (Abu-Lughod 2002: 783) should be developed in order to trigger a democratic debate between subjects about the conditions and modalities of implementing anti-discriminatory policies which embody both the ideal of pluralism and the principle of gender equality.

The social concerns and political impasses of *culturalist* approaches coping with differences among women are clarified by comparing a certain Austrian ecumenical liberalism with the German conflicts related to Ludin's claim, as well as with the Dutch controversies on the meaning and role of multiculturalism. Our cross-comparison thus sheds light on the difficulties of dealing with differences among women when women are culturally recognized as the 'products of different histories, the expressions of different circumstances, and the manifestations of differently structured desires' (ibid.) rather than understood as the product of the plurality of women's political stances and positions (Varikas 2006).

Debates about the secular formulated in the language of Christian ecumenism in Austria and of Christian pillarization in the Netherlands for supporting the right to freedom of religious expression, as well as a discourse on the secular as a Christian inheritance justifying the prohibition of Islamic symbols in Germany, refer to an aporetic idea of tolerance: tolerance as the privilege of the hegemonic religion to tolerate the others and, therefore, 'to minorize' them (Mariet 1991), thereby foreclosing the possibility of an open democratic debate on the meanings and requirements of secularism.

Cluster II: the veil between the citizen and the state

France and Turkey have both implemented a 'laic model' strictly separating state and religion (Berghahn 2007). In France, Muslims are a minority whereas in Turkey they constitute the majority of the population. While both states define themselves as secular in a very strict sense, differences in the constitution of the population, history, culture and traditions of gender relations lead to discrepancies in interpreting secularism and in publicly disputing Muslim headscarves.

However, in both countries, the headscarf is debated within the framework of domestic politics and references to modernity. In France, the visibility of Muslim headscarves is largely perceived as a problem caused by the failure to integrate Muslim immigrants. The headscarf is stigmatized as a threat to the secular order and to national identity. In the Turkish debate, the visibility of the headscarf is perceived as a political sign of a fundamental opposition to the historical principles of the state. We will argue that, despite the differences, veiled women as submissive threats to secular systems are at the core of the debate in both countries. In France and Turkey, veiled women are singled out as 'the subject' who fails to integrate into a secular state system as a modern citizen.

Laïcité, a constitutional principle of the French Republic (cf. the French constitution of 1958), has been appealed to in both public and political debates on Muslim female attire since 1989, when three covered students were expelled from a high school. In 2004, after the Stasi Commission's report on *laïcité*,[2] a law was passed which prohibited students from wearing headscarves in public schools. In France, the juridical inscription of the principle of *laïcité* goes back to 1905 when the strict separation between churches and the state was codified in law (Bauberot 2000). The law of 9 December 1905 aimed at removing the influence of the Catholic Church from schools and at ensuring state control over the educational system. The law created a 'homogeneous' public space, supposed to represent the symbolic sovereignty of the French secular and therefore modern nation (Balibar 2004a: 154). The implementation coincided with the stronger unification of regional identities that composed the territory of the French state 'under a secular state narrative of individual autonomy within a universal nation of free and equal citizens' (Gökarıksel and Mitchell 2005: 153). The notion of a free and equal citizen in a modern secular nation was to be inherent in French national identity, and it was expected to be internalized by immigrants. Being a Muslim is not openly declared as an obstacle to integration, but rather Islamic attire and values are put forward as reasons for their failure to assimilate.

According to Jane Freedman (2004), it is difficult to understand the importance of the headscarf issue in French society without taking into account the importance of secularism for French national identity and the ways in which immigration, especially from the former colonies, has led to questioning it. According to those who oppose the display of Muslim headscarves in the public sphere, such as a large spectrum of politicians, of government officials and of mainstream feminists, the headscarf stands for a denial of French culture and represents a political attack against French secularism (FR8, FR11, FR21). The strategy transforms the 'Islamic headscarf practice' into a 'communitarian' claim, an individual practice into a specific communal claim (FR19). Régis Debray, a philosopher and former adviser on foreign affairs to François Mitterrand's governments, argues that the principle of *laïcité* is endangered through this communitarianism. Therefore, the headscarf is seen as a sort of peculiarity which the French *laïcité* should not allow (FR8). In turn, Freedman (2004: 6) argues that the way in which the headscarf affair is played out must be placed in

an international context of post-colonial relations in which the fear of the spread of Islamic fundamentalism has created tension within French society, with immigrants of Islamic origin at risk of being stereotyped as fundamentalists or terrorists. This is why the headscarf should, according to Françoise Lorcerie, be considered a 'neo-colonial problem' (FR22). *Laïcite* seeks to overcome *ethnic* identities and cultural belongings so as to create equality through sameness, which entails a strict exclusion of all signs of religious difference from the public sphere.

Muslims in France make up a diverse population with different national and ethnic origins and differing levels of religious observance. Nonetheless, Muslims are reduced to *their culture*, stigmatized as essentially oppressive and unequal, and hence the headscarf is largely referred to as the very symbol of hierarchical gender relations presumed to be essentially inherent to Islam (ibid.: 8). However, the headscarf may also be seen as the symbol of 'a reinforced gendered dichotomy between "liberated" Western women and their "oppressed" Muslim sisters' (ibid.: 7). French republican feminists and secularists have both voiced this view. They both demand that Western women should be considered models for non-Western women with regards to gender equality, and that the headscarf should be banned from public schools to protect women and society (FR3, FR9, FR11, FR12, FR14, FR15). An example of this claim is the petition initiated in 2003 by the editor-in-chief of the French women's magazine *Elle* (FR3). According to the signatories (67 French women academics, activists and artists), the headscarf stands for Muslim women's submission and for the denial of Western feminism, as well as being a threat to Western women at large. The sociologist Yolène Dilas-Rocherieux claims that the headscarf reveals a deeper problem related to male control over female bodies (FR14). According to her, denying the submission of veiled women in Islam and arguing that they are free to choose to wear the headscarf leads educated veiled women to become models for the younger generation. These arguments against the headscarf show a lack of recognition of Muslim women's agency and their construction as submissive. The paradigmatic discourses against the headscarf thus underline the 'communitarian' aspect of the Muslim female attire, depicted as imposed on women by certain Muslim groups. In a similar vein, Peter Weil, a former member of the Stasi Commission, argues that the wearing of the headscarf, rather than being an expression of religious identity, has to be identified with a strategy of fundamentalist groups who are using public schools as their battleground (FR15). His interpretation excludes the possibility of questioning what is at stake in religious abuse on women's bodies and sexualities. Instead it identifies women's oppression as being specifically inherent to Islam. Arguments over 'gender equality versus the submission of women' single out Islam as a collection of anti-modern practices opposed to Western values of gender equality. In the eyes of the commentators mentioned above, Western values in general and the value of gender equality in particular are represented by the French principle of *laïcité* and embedded in French national identity. Arguments according to which French national identity is under attack reiterate the idea that the secular state is under threat. As a result,

the mainstream discourses opposing Muslim headscarves are putting forward the defence of French national identity by claiming to keep the public sphere free from any religious symbols and connotations, putting veiled women at the core of their arguments and at the same time stripping them of their agency.

In Turkey, similar to the French context, veiled women and their supposed submission within the framework of Islam are referred to in disputes on secularism. Secularism, which became the most important pillar of the Republic of Turkey since its foundation in 1923, took the form of *laïcité* similar to the principle applied in France. It is based on the official disestablishment of religion from state as well as on the constitutional control of religious affairs by the state (cf. Berkes 1978; Mardin 1983). During the foundation of the Republic, state elites aimed to relegate religion to the private sphere and clear the public sphere of any indication of religious belonging in order to achieve secularization. Reforms, implemented during this period, have aimed at establishing Turkey as a rational secularized society in which equal relations between men and women hold an important place. Nonetheless, a complete secularization has not been achieved in Turkey, either in the social or the political sphere, although it has been effected in the legislative domain. Keyman argues that

> the state's top-down act of creating a secular national identity by initiating strict political and institutional regulatory mechanisms on religious communities has always been challenged by Islam and its powerful symbolic and cultural role in the constitution of societal relations and social identity formations of Turkish people.
>
> (2007: 216)

This especially became evident after 1980, with the rise of political Islam in politics, economy and culture. Since then, increasing visibility of headscarves in the public has been interpreted as the symbol of the rise of political Islam considered as threatening the secular foundations of the state.

Women's status has become an important indicator of Turkey's modernization in the eyes of the state elites, and has thus been the object of many reforms. Women, as Deniz Kandiyoti (1988, 1989) argues, have become 'symbolic pawns' for the state, as well as 'comrades-in-arms' for the nation to achieve secularization and modernization. The headscarf problem is a major component in the debates regarding the relations between gender, religion and secularization in Turkey. A modern, educated, enlightened woman – in binary opposition to the veiled woman – has been idealized since the foundation of the Republic as how a Turkish woman should be. The headscarf has been 'cast as a particularly visible manifestation of a non-secular, "expressive" political subject position that violates the state's strategic construction and global representation of a "confined" Islam' (Gökarıksel and Mitchell 2005: 153). There were no regulations banning the veil in the public sphere until the 1980s. With the rise of political Islam and the symbolic value of the headscarf, restrictions were placed on the use of the veil in the public sphere. Universities were the sites of most debates,

following the Constitutional Court's decision in 1989 stating that the headscarf is a symbol that threatens the unshakeable pillar of secularism.

A major argument used by the opponents of the headscarf is that it causes women's submission. Although secularism is not mentioned directly, the gender aspect, or the idealization of relations between men and women in these arguments, usually points to the achievement of a secular system, which Turkish society must not lose. Veiled women are portrayed as being used by Islamists[3] and politicians with Islamist tendencies for their political aim to overcome the secular system. Secularist women's groups and journalists, who are mostly male, call for Islamist politicians to stop using women for their particular political aims and veiled women to wake up and cease to be submissive (TR6, TR7, TR10). İlhan Selçuk, a journalist known for his strict Kemalist views, argues that the headscarf is a representation of male dominance and patriarchy inherent in society and signals the secondary position attributed to women. The headscarf prevents women from liberating themselves and demanding their rights that are indicated in the Civil Code, which were made possible through the secularization of society (TR15). Another journalist who is widely known for his strict opposition to the headscarf and Islamist political parties in general, Emin Çölaşan argues that the headscarf is a uniform, a symbol of enmity against state as well as a backward practice (TR6).

The perception of veiled women as 'symbolic pawns' in Islamists' hands corresponds with how the state elites and contemporary Kemalists view modern, secular women as the symbolic carriers of the secular system. In the early years of the Turkish Republic, opportunities for women were broadened by the founding fathers, who required a new public visibility for the female citizen they envisaged in the name of nation building and the protection of secularism. Women had to appear within the framework the state bureaucratic elites put forward if they wanted to participate in the public sphere and enjoy the newly gained rights and opportunities. This framework of gender representation is still alive among present day secularist political groups and journalists (TR8).

Not only are veiled women seen as the symbolic carriers of political Islam in Turkey and hence as a threat to the secular system, they are also perceived as a threat to the idealized images of men and women and their relations. These gender images that are pictured as 'modern' take on a drawback, according to the arguments against the headscarf. The attire demonstrates segregated gender relations organized within the framework of Islamic moral rules, which is the opposite of the equal gender relations implemented under the secular system (Göle 1996). However, not only journalists but also Kemalist women frame the headscarf issue not as a gender issue or issue of freedom, but most fundamentally as an 'opposition to the political system', as argued by the chairwomen of the women's branch of the secularist Republican People's Party (TR7).

In France and Turkey, *laïcité* is a political instrument for constructing a modern and egalitarian nation, in which equality between men and women is used as a measure of the degree of modernity, and to advocate the unity of the state. Hence Islamic symbols are seen as being not only antagonistic to *laïcité*

but also to national unity. Secularism legitimizes both the official disestablishment of religion from the state and a detachment of the public sphere from religious belongings, in which 'modern' citizens can participate. The headscarf as a religious symbol has no place in the secularized public sphere according to these stances in both countries. It is presented as a symbol against secular order, a tool of women's oppression and, though for different reasons in the two countries, against national unity.

Cluster III: resisting secularism, secularizing Muslimness

In this part of the chapter we concentrate on public debates over female Muslim attires in Greece, the UK and Denmark, countries following a 'church of state' model (Berghahn 2007). It is important to address the following question: how does the content of a 'church of state' model the veil debate and reconfigure the content of secularism? Statements made by religious leaders in Greece and in the UK are taken as a starting point for the analysis because declarations in which a resistance towards secularism is argued by eminent actors cannot be considered as contingent; on the contrary, they constitute discourses as part of a social semantics affecting public opinions and societal embodiments (Norval 2006: 231). In a similar vein, the Danish public debates over claims for 'the secularization' of the market sphere and the insistence on the perception of veiling as an individual right instead of a religious one, shed light on discursive utterances of veiling as a commodity interweaving modern 'secular' aesthetics and embodiments (Navaro-Yashin 2002: 82–5; Henkel and Sunier 2009: 475).

In 2004, the Greek Orthodox Archbishop Christodoulos took a personal stance against the French headscarf ban by declaring:

> If I want to send my child to school dressed up as an *evzon* [author's note: *tsolias*, traditional Greek national male costume of fighters for national independence], who is going to prevent me from doing so? I can do whatever I like.
>
> (GR10)

While privileging the use of religious symbols and by advocating against the idea of a secular and multicultural Europe, voices representative of Orthodox Christian affiliations in Greece have deployed a 'rights language' in defence of freedom of religious expression in order to effectively safeguard a religious and national homogeneity, a Greek ethnocentric self-perception as religiously and nationally coherent (GR10, GR16). The Greek Orthodox Church, perceiving itself as a religious-national-state entity, has systematically acted as if its main task was to preserve and enhance the glorified ideological construction of identifying authentic and patriotic Greekness as Orthodox Christian and thus retain the privileges attributed to it by the state. Antonis Manitakis has emphasized that the Orthodox Church does not seem particularly interested in the actual religious beliefs of its members but rather works for the perseverance of their

patriotic morale (2000: 132). Therefore, the Archbishop's deployment of a liberal rhetoric in support of 'religious freedom' should be questioned while taking into consideration that the Orthodox Christian Church, which has been granted by the state the authority to deal with the claims of religious minorities, has failed to satisfy even the long-standing demand by the Muslim immigrants' associations to have a mosque built in Athens (Avramopoulou and Athanasiou 2007: 15).

In the UK, in the context of strong legal provisions in favour of anti-discrimination measures, the claim for 'religious freedom' made by the Archbishop of Canterbury (UK18) reflects a different agenda. His claims must be understood in the context of a controversy sparked by Jack Straw, the former British foreign secretary claiming that the *niqab* is a barrier to communication (UK20). In 2006, the Archbishop of Canterbury, who represents the international Anglican community, defended Muslim attires while 'warning politicians not to interfere with people's right to wear visible symbols of their faith' (UK18). By asking the British government not to act as a 'licensing authority' mediating a workable public morality through people's attires, the Archbishop argued that 'the ideal of a society where no visible public signs of religion would be seen … is a politically dangerous one' (ibid.). Furthermore, he commented that 'moving toward a secular society in Christian Britain – where the Queen is the head of the Church of England and religion still features in public institutions – would be more radical than can be imagined' (ibid.). Thus, Christianity is understood as an integral part of a so-called 'Britishness'; the British state and people's culture are seen as embedded in Christian religious symbolism and familiarized with religious ethos (ibid.). His vigorous denunciation of a future secular society animates an interpretation of secularism within the framework of a strict division between state and churches, an incipient scenario, which would threaten the norms of British society and institutions (ibid.).

While the two statements of religious leaders in Greece and the UK differ, they show a striking point of convergence. In both cases, the occasion of debates on veiling ignites an eminent necessity for declarations of resistance towards a certain kind of 'secularism' which is being interpreted as a process distinct from each country's historical, cultural and religious nation state formation. Thus, in both debates secularism is seen as an 'other', as a threat to the 'national self-identification'. Moreover, by defending the right of freedom to religious expression, they strategically entrench the symbolic geopolitical boundaries of the homeland so as to secure the closely interrelated state–church affiliation.

When the protection of economic interests is the focus, correlations can be drawn from the way in which veiling has emerged as an issue of contestation in Denmark where a similar institutional configuration of a strong church–state relation occurs. An important political debate took place in parliament in 2004 when the Danish People's Party, a populist right-wing party, submitted a proposal to ban veils in public working places (DK1). The party representatives argued that headscarves must be prohibited as they are 'foreign' symbols which negate the meaning of democracy, tradition and values as understood and

accommodated within 'Danishness'. Hence they supported the need to implement centralized state regulations against religious symbols in the public sphere (DK4, DK5). A certain interpretation of secularism as neutral is cunningly put forward while it is argued that public neutrality is being necessitated in relation to political and religious symbols. At the same time, 'freedom of religion' is defended as a right only if the expressed religious affiliations could be compatible with a certain understanding of 'Danishness' which does not appear to be compatible with Muslim traditions (DK1, DK4, DK5).

However, no other political party favoured such prohibition. They argued that this would contravene the Law against Discriminatory Behaviour on the Labour Market and the Law of Ethnic Equal Treatment, as well as possibly violate the constitution and the European Convention of Human Rights (cf. Andreassen and Siim 2007: 40). Interestingly enough, though, the main reason for condemning a state intervention in the case of veiling practices was that 'freedom of religion' should be decided, dealt with and interpreted as an individual right and matter, as exemplified by the Liberal Party's spokesperson (DK2). Similar controversies emerged when attempts to regulate the wearing of Muslim attires in the market sphere led to legal court cases while stimulating a heated discussion on whether veiling should be taken as an individual right, i.e. 'choice', or as a religious right, i.e. 'obligation'.[4] Employer representatives argued that it is their right to decide on dress codes and that there should be no centralized legislation determining these matters (DK10, DK11, DK12, DK13). In particular, one of the court decisions formulated the dilemma as to whether the rights of the individual (to wear a veil) should be protected against the rights of the private companies (to formulate a dress code) and whether a dress regulation which would ban the Muslim veil should be considered as discriminating (DK11).

Under such legal negotiations, the claim for institutionalizing 'neutrality' in the market sphere cunningly foregrounds an interpretation of secularism which appears inimical not towards religion as such, but towards Islam in particular. As Balibar has argued, 'many cultures are deemed to be too "religious" to become acceptable in the picture' (2004b: 225). For those who need to define the aesthetic terms under which a citizen could be included as an employee in the labour market, it appears that it is always Islam and in particular the female Muslim attires that mark the limits of the acceptable 'religious female citizen'. Thus, religion is being strategically interpreted through a secularized understanding of faith in which piety and polity do not necessarily contradict each other if only the holy scripts would be open to individual interpretations, if only religion (and in particular Islam) could be apprehended in terms of individual choice or cultural preference, if only women would not 'choose' to veil. By perceiving integration in terms of personal choice or by emphasizing Muslim women's 'free choice' to preferably comply with the rules of the polity, the relation between gender and religion would remain safely unproblematized and the cherished values of the market and the rights of corporations would not be challenged. Secularism in this case is selectively applied so as to make Muslim women conform to the liberal market economy and aesthetics.

While in the UK the limits of securing democracy and the limits of national citizenship are being determined through the use of *niqab* and the remedy is to unveil the face of fully veiled Muslim women, in Denmark it is simply the use of a headscarf that appears to challenge the limits of tolerance towards female religious alterity. In Greece it is merely identifying as a Muslim, not even the use of head or body coverings, which challenges national identity. In 2006, the candidacy of Asmaa Abdol-Hamid (a woman who became the first Danish veiled TV hostess) for a seat in parliament with the Red-Green Alliance created feelings of an incipient 'mistrust'. Although she openly declared that she is a feminist who does not support the death penalty and opposes religious extremism, in the public imaginary she continued to be perceived as a symbol of religious radicalization and fundamentalism (Andreassen 2008). During the same year, two Muslim women of Turkish origin, Özlem Sara Cekic (a Socialist Party candidate) and Yildiz Akdogan (a candidate of the Social Democrats), managed to be elected to parliament. Their difference from Abdol-Hamid is that neither Cekic nor Akdogan wear the veil and thus were embraced by the public. In 2006, in Greece, the candidacy of Gül Beyaz Karahasan, who was the first woman from the Muslim Turkish-speaking minority population of Western Thrace to be nominated as a candidate with the social-democratic PASOK party, triggered similarly suspicious sentiments. Although she made explicit declarations against veiling practices, being herself a non-veiled woman, both her 'Muslimness' and her 'Turkishness' generated polemics and alarmist questioning of her 'genuine national consciousness' (GR11).

These particular discursive instances of contestation towards the participation of the female Muslim 'other' within each country's political field signifies how flexible the notion secularism can be when it is being strategically used to build new walls of exclusion. In the aforementioned case studies, which examine the different terms under which the 'Muslim female other' can be included in the national imaginary of countries with strong state–church affiliation, so as to disarm the supposed threat to the national homogeneity, no common ground can be reached. Within the ongoing discourse on secularizing Islam in order to make it more 'safe for democracy' (Mahmood 2006), Henkel and Sunier emphasize that despite the increasing adaptation of (veiled) Muslim women to the international youth culture, they can still be perceived in society as 'anomalous and aesthetically confusing' (2009: 475). The different reconfigurations of secularism faced with the need to understand and include the religious female alterity challenges the limits of a 'Christian but still "secular", conservative but still "liberal", oppressive but still "tolerant"' imagination (Athanasiou 2006: 115).

By way of conclusion

In this chapter we have focused on three clusters of national case studies with the aim of considering 'paradigmatic' public discourses on Muslim veiling practices. By using secularism as a hub concept, our approach allows perceptions and interpretations of Muslim women's head and body coverings to come under

scrutiny. Through this research the comparison between the divergent conceptualizations and interpretations of secularism, as emerging in different social and political actors' claims, has opened the way for a critical inquiry into the multiple and ambivalent approaches to Muslim veiling attire within European liberal democracies. At the same time, as the manifold understandings, claims and demands over Musiim women's head and body coverings appear in each context, the notion of secularism is constantly reconfigured through different strategies of denomination. Our analysis has shown the interwoven relationship between debates on Muslim veiling practices and certain reconfigurations of secularism.

Additionally, reflecting through the kaleidoscopic interconnectedness of the religious and the secular, our research has tried to shed light on what is at stake each time political and public debates on Muslim veiling practices recall discourses on national gendered citizenship and belonging, not only across but also within European countries. Gender equality, women's emancipation and autonomy as well as individual and religious rights appear thus as challenged, defended but also instrumentalized in the debate.

Notes

1 For a recent debate on the limits of the relations between the religious and the secular, see the debate between Mahmood (2008a, 2008b) and Gourgouris (2008a, 2008b). Moreover, for a thought-provoking debate on the gendered, cultural and national aspects of veiling practices in European secular contexts, see Henkel and Sunier (2009).
2 In 2003, President Jacques Chirac commissioned a group whose role was to reflect on religious signs in schools. The Independent Commission of Reflection on the application of the principle of *laïcité* in the Republic began to work on multiple issues and recommendations, such as fighting labour discrimination or recognizing state holidays for Jews and Muslims. In fact, only the headscarf issue was taken for immediate legislation. The Commission finally advocated for a prohibitionist law on conspicuous religious signs at school and in public administrations.
3 The term 'Islamist' is used to describe the use of Islam as a source of political activism, rather than only practising it as a daily religious non-political ritual.
4 In particular, there have been four cases in which employers have refused to hire women with *hijab.* The labour unions took these employers to court.

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3   Negotiating belonging

Or how a differentiated citizenship is legitimized in European headscarf debates[1]

Nora Gresch, Petra Rostock and Sevgi Kılıç

The headscarf debates: delineating the contours of a European phenomenon

The passionate and fierce debates about the wearing of Muslim body covering and especially the increasing legal restrictions thereof in various public sites of European countries are perceived as puzzling by many observers and commentators of current European politics: all the states that have introduced restrictive regulations adhere to the concept of liberal democracy. Thus, these states conceive of themselves as being based on the rule of law with its premise to ensure that all citizens have the equal right to express their personal beliefs which prominently includes the right to freedom of religious expression. This concept thus stresses that the liberal democratic state must guarantee a neutral public space or sphere that can be accessed and engaged with by all members of the state. Intrinsically linked to this concept is the obligation of the state to treat all people equally independent of their sex, cultural origins, physical abilities or religious convictions by ensuring equal opportunities and the protection of their individual choices (Saharso 2007).[2] But if liberal democratic states are obliged to provide equal opportunities for all their citizens, how then is it possible to legitimize restrictive regulations concerning religious attire, thereby not only depriving Muslim women of equal opportunities by limiting their choices to realize their visions of a 'good life' (Ekardt 2009: 303ff.), but effectively creating a differentiated citizenship?

In debates and regulations about Muslim body covering, the meanings of major principles of liberal democracy are not only renegotiated but collective national identities reconstructed. By means of analysing how the actors within the headscarf debates argue for or against wearing the headscarf within the most contested frames of the headscarf debate in six countries of our sample (Austria, Denmark, France, Germany, Netherlands, United Kingdom),[3] it is our argument that, in the debates and regulations concerning head and body coverings of Muslim women in the public sphere, nation states create specific narratives of belonging by defining habitual practices that the respective citizens need to comply to or need to embody to be considered a full member of a particular national community and to be granted the full range of citizens' rights regardless

of the formal citizenship status. In the following, we will show that by aligning specific arguments with meanings that relate to Western or national associations of belonging, Muslims are constructed as the 'other' to modern European democracies and the boundaries of 'belonging' are renegotiated within the context of the headscarf debates (Dietze 2004).

To substantiate this argument we would like to indicate in this chapter that it is *how* specific argumentative patterns are used to advocate for or against Muslim body covering that construct and employ two different paradigms[4] of gendered, cultural and religious belonging to a nation state. Actors arguing within the 'exclusive' paradigm of belonging advocate for restrictive measures and for institutionalizing specific habitual practices that need to be embodied to be considered a full citizen and thus implementing a specific norm of appropriate behaviour of citizens. In contrast, the actors who argue against legal restrictions of Muslim body covering and within the 'inclusive' paradigm of belonging emphasize the legal status of Muslims in the particular states and hold European liberal democracies to their promise to guarantee all citizens the equal right to freedom of religious expression.

The development of our argument is based on a structural analysis approach (Diaz-Bone 2006) of frame-elements[5] used by the actors in the headscarf debates of all countries of the sample. The methodology of a structural analysis suggests systematized successive steps for investigating the structure of knowledge of a given area of interest and is based on the methodological outline concerning discourse analysis given by Foucault (ibid.). Thus, for our analysis, we, first, developed a working definition of the frame-elements from a social science perspective that defined the frame-elements in relation to the context of their use. Second, we systematized the frame-elements referred to in each of the selected policy documents of the VEIL project[6] in accordance with the frames to which they were aligned and in accordance with the actors who use them. Having systematized the frame-elements in such a way we, third, focused on the questions of whether specific frame-elements are linked to specific frames, how these frame-elements refer to the position on the headscarf and if the actors refer to particular frame-elements in a specific way. We could thus, fourth, identify the predominantly used frame-elements within a specific frame and determine if these frame-elements and frames can be related to a restrictive or permissive position on the headscarf of a respective country. Fifth, as a result of this step we could identify 'citizenship/integration', 'gender/emancipation' and 'rights/religion' as the three frames in which frame-elements figured prominently as justifications for or against specific veiling regulations. For the final and sixth step, we focused our analysis on how belonging was negotiated within the argumentation for or against the headscarf. Thus, we could identify six argumentative patterns – '*the headscarf as a sign of being different*' or '*freedom of choice; women as autonomous subjects*' (gender/emancipation frame), '*the headscarf as a political symbol or violation of national principles*' or '*religious freedom as an individual right*' (rights/religion frame) and '*the*

headscarf as sign of separation; non-integration' or '*integration through rights and/or the recognition of difference*' (citizenship/integration frame) – that can be respectively aligned with the two aforementioned paradigms of gendered, cultural and religious belonging to a nation state.

In the following parts of our chapter, we first set the theoretical context of our analysis by discussing how the politics of belonging, citizenship and national identity are interrelated. Subsequently, we empirically outline how the frame-elements are employed to argue for or against the veiling of Muslim women within the frames of 'citizenship/integration', 'gender/emancipation' and 'rights/religion'. By identifying the respective pro and contra argumentative patterns for each of the three frames, we relate the employment of these patterns to the negotiation of citizenship and belonging. Our chapter is completed by showing how the three contested frames of 'citizenship/integration', 'gender/emancipation' and 'rights/religion' are interrelated through the use of the argumentative patterns, which crucially shape the process of delineating the boundaries of the respective national imaginaries.

The constitutive tensions of citizenship: belonging

We might come closer to answering the question of how it is possible that liberal democratic states introduce restrictive regulations concerning religious attire and thereby limit the right to religious freedom only for particular members of a nation state by taking into consideration what has been only marginally discussed in the context of European headscarf debates so far: how restrictive regulations might be explained in the context of being or becoming members of a nation state as well as being recognized as such (an exception is Rostock and Berghahn 2008).

A nation, in Anderson's famous definition, is 'an imagined political community – and imagined as both inherently limited and sovereign' (Anderson 1991: 6). The nation is perceived of as a 'community, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship' (ibid.: 7), pointing to the crucial principles of equality and connectedness of the people of a specific political community. It is thought of as limited, with enclosing boundaries and never 'all-inclusive', but with criteria of who is included and who is excluded. The nation is moreover imagined as sovereign because the nation state developed and was fought for in demarcation to the 'divinely-ordained, hierarchical dynastic' regimes (ibid.: 7) with a sovereign state as the guarantor and manifestation of freedom.

The development of the institutions of contemporary Western liberal states has thus been deeply entangled with the mentioned characteristics of a nation, which employs the idea of an imagined community with distinct criteria for belonging. Following Nira Yuval-Davis, the social practices of negotiating and delineating these criteria of who belongs to a specific nation state and who does not, encompass the politics of belonging (2007: 563f.).

Although Yuval-Davis stresses the conceptual difference between citizenship and belonging, belonging crucially relates to the dimensions of citizenship. The rights and obligations that come with being a citizen of a specific nation state 'are about *meeting the criteria* of inclusion and there is differential inclusion and exclusion of so-called citizens along the lines of gender, ethnicity, class, age and so on' (Anthias 2006: 22; emphasis added). It is exactly this blurred, fluid social realm where the practices of boundary drawing develop into 'criteria of belonging' and are manifested in rules and regulations that construct differences that can grow into hierarchies (ibid.: 22).

Moreover, if we follow the conceptualization of citizenship that is outlined by Rainer Bauböck (1999), citizenship is not only about the legal status of being a full member (membership) of a democratic political community that entitles every citizen to the enjoyment of a bundle of rights which define the relation between the individuals and particular nation states.[7] Citizenship also needs to be lived and exercised:

> Imagining oneself as a member of a political community will have to be supported by practices of 'good citizenship' ranging from narrowly political behaviour such as participating in elections to the ordinary virtues of civility in everyday life … a certain level of habitual citizenship practices will be necessary in order to support the imagination of a shared political community and to empower individuals through the system of legal rights.
>
> (Bauböck 1999: 3)

Furthermore, we would like to add that certain rights are only granted if a certain level of habitual citizenship practices is embodied in order to constitute or realize the imagination and construction of a shared and exclusionary political community.

In contrast to conceptualizations of citizenship, politics of belonging emphasizes the experiences and practices of 'identification' with a political community on the one hand and an 'emotional dimension' which is attached to these experiences and practices on the other hand (Yuval-Davis 2007: 563f.; Anthias 2006: 21f.). The dimension of identification focuses on the practices and experiences of how people consider and identify themselves as well as others. The politics of belonging thus delineates how members of racial or ethnic collectivities that are considered as 'other' are often not perceived as belonging to the national community even though they are formally full members of the particular political community due to their citizenship (Yuval-Davis 2007: 563). The second crucial dimension for the politics of belonging relates to Anderson's aspect of the community of a nation and encompasses the emotional attachment to the collectivities people feel they belong to (ibid.: 564).

For the analysis of contemporary politics of belonging it is crucial to focus on the interrelatedness of and the dynamics between the three mentioned dimensions of citizenship – membership, rights and practices – the politics of belonging and the renegotiation of the national identity, i.e. the imagined community.

This interrelatedness of the dimensions of the politics of belonging, citizenship and national identity can be traced by analysing how specific arguments are used in the headscarf debates and how, within this process, the boundaries of citizenship and belonging are reconfigured and with it the national imaginary.

In the following we will show how the two contested paradigms of belonging materialize within the six identified argumentative patterns of the most contested frames of our sample to extrapolate the meanings of the arguments that create the conditions of implementing regulations.

Contested paradigms of belonging

Citizenship/integration

The first contested frame that exemplifies how belonging is negotiated within European headscarf debates is the frame of 'citizenship/integration'. As a central difference between citizenship and belonging is the question of identification of the self and especially of 'the other'; it is certainly this notion of belonging that is contested within the two argumentative patterns of 'the headscarf as a sign of separation/non-integration' and 'integration through rights and/or the recognition of difference' that were identified in the 'integration' frame.

The first argumentative pattern – 'the headscarf as a sign of separation/non-integration' – reflects the attitude that in order to participate, migrants have the obligation to integrate first. 'Integration' would require some conformity to certain crucial norms and values of a respective democracy such as gender equality, freedom and tolerance.

This argumentative pattern is strongly articulated in the *German* headscarf debate where mainly members of the two large people's parties (G1b, G1c, G19) as well as Alice Schwarzer, one of Germany's most famous feminists (G2), view the headscarf as hindering integration or even as a political sign of lacking integration and of separation and exclusion. In this interpretation the headscarf demonstrates its foreignness to the social behaviour of Germans and hence symbolizes non-belonging to German society. Accordingly, to prohibit headscarf-wearing teachers from school is seen as an appropriate measure to facilitate integration.

In *France*, the prohibition of the headscarf in schools is defended using a similar argumentation as in Germany; with a nationally specific focus that ties the French principle of *laïcité* to issues of belonging and integration: here state bureaucracy argues that wearing the headscarf is threatening the French republican identity as European, modern, emancipated and secular (FR11) as well as infringing on equality and is especially used by public intellectuals. Therefore, public intellectuals construct the headscarf as not compatible with Western norms and values (FR8), or even as an Islamic 'attack' against French republican values. Muslim women's use of body coverings is viewed as being a distinguishing characteristic that separates itself from French values and undermines integration.

While both the German and the French debate focus on the prohibition of headscarves, in the *United Kingdom* the headscarf was not an issue for the longest time. However, as the debate has unfolded, particularly since 2001, it is mostly in the British media, for example the *Guardian*, that the face veil, or *niqab*, but sometimes also veiling in general is discussed as a mark of separation and as hindering integration (UK8, UK12, UK15, UK17). Moreover, veiling is seen as contradictory to 'British' values such as freedom, democracy and liberalism.

Interestingly, this argumentative pattern is only seldom used in *the Netherlands* and *Austria*: in *the Netherlands* reference to 'integration' is only made in relation to a general ban of *burqa*s in the public space as a means to fight growing Islamic fundamentalism. Only one party member (NL11) and one public intellectual, Sylvain Ephimenco (NL16) interpret 'integration' as a prerequisite to participation, requiring some conformity to dominant norms of behaviour such as gender equality or face visibility in communication in order to maintain a tolerant and equal citizenship within the boundaries of multiculturalism. And in *Austria*, despite an ethno-cultural definition of citizenship similar to Germany, it is only a right-wing party (A21) that uses 'integration' to argue for Muslim women's obligation to unveil. Within this frame it is argued that headscarves are a dangerous sign of disintegration, parallel societies and of Islamist fundamentalists because they symbolize Islam as a political ideology, which would conflict with Western values.

In contrast to the first argumentative pattern the actors of the second argumentative pattern relating to 'integration' mostly emphasize immigrants' rights as citizens and connect 'integration' to socio-economic discriminations that (Muslim) immigrants face. Moreover, Muslims are defined as belonging to the nation state community and thus having the right to recognition of their religious practices. Therefore, the second argumentative pattern can be called 'integration through rights and/or the recognition of difference'. Interestingly, this figure of argumentation is not of relevance in the *UK*. The explanation for the absence of this pattern of argumentation could be that debates on Muslim women's body coverings in which the right to cover is not questioned have only arisen recently. Hence, there is no need to claim recognition of difference as this recognition is already provided.

France is traditionally characterized as a country with an assimilationist citizenship model, relegating cultural and religious beliefs to the private sphere and rejecting distinctions on the basis of ethnicity, class and religion. Here, the argumentative pattern has a focus on the recognition of differences and is articulated by academics like Françoise Gaspard and Fahrad Khosrokhavar (FR1), and (Muslim) women's groups (FR6) who point out that the headscarf does not hinder integration but enables Muslim women to be both French and Muslim citizens.

In *the Netherlands*, traditionally characterized as a country with a multicultural citizenship model, it is women's groups (NL4, NL21) and a Muslim women's group (NL19) that call for the recognition of different strategies of

emancipation and integration with regard to the headscarf and/or all other female Islamic clothing. While Dutch society is criticized for stigmatizing and discriminating against Muslim women, the claims for recognition of difference are not connected to the Dutch multiculturalist citizenship model.

In the *Austrian* case, it is churches (A3, A4, A6), media (A10), Muslim groups (A14), other minorities (A16), parties (A26) as well as public intellectuals which, referring to 'integration', problematize restrictions on or the prohibition of veiling, emphasizing Muslims' religious rights. While headscarf-wearing women are often marked as the cultural 'other' while neglecting Muslim women's social and economic discriminations, 'integration' is also used by Muslim (women's) groups (A6, A13), parties (A26, A30) and women's groups (A38, A40) to claim for the integration of Muslim women into the labour market.

In contrast to the other countries, in the *German* debates it is only German Muslim groups (G10, G25) and other minorities (G18) that criticize the course of the headscarf debate for its assimilationist tendencies, with the majority society defining how migrants should integrate and how they should practise their religion. Linked to this criticism is a rejection of any kind of prohibition of religious symbols.

Although *Denmark* moved from one of the most liberal to one of the most restrictive migration regimes between 1982 and 2002 (Siim 2007: 495), which would give rise to the supposition that integration has been a topic of public discourse, 'integration' was not at stake in the Danish headscarf debate in our body of analysis.

Rights/religious freedom

Even more so than in the case of 'integration', 'religious freedom' is defined in nationally particular ways. The right to religious freedom is closely linked to each country's church–state regime and each country's dealing with religious diversity.

Within the first argumentative pattern which we called 'religious freedom as individual right', religious freedom is asserted within all our cases by Muslim actors who are increasingly using the legal system to support their cause and to claim – together with academics, intellectuals, some feminists and parties – the correct exercise of the right to religious freedom as defined in the respective national constitutions. Hereby, the actors using this argumentative pattern emphasize that Muslim women are members of the respective society and consequently have the same entitlement to religious freedom as all other citizens. Yet this is done with varying intensity in the countries under comparison.

In *France*, as the only laic state in our cross-country comparison, Islam is relegated to the private sphere like all the other religions (Sanna *et al.* 2008). But in contrast to the prevailing rigid interpretation of *laïcité* and the supposedly equal treatment of the different religions through a laic approach, Muslim groups and Muslim women's groups (FR6, FR7, FR27), public intellectuals (FR26, FR28)

and anti-racists, anti-colonialist and anti-capitalist feminists (FR4, FR26, FR28) emphasize the right of freedom of religious expression to compete with the existing ban on veiling in France as well as the current interpretation of *laïcité*. These actors point out that the French state's interpretation of *laïcité* de facto results in the unequal treatment of different citizens. In consequence, they argue for a more inclusive form of state neutrality that treats all religions equally and includes all religions in the public realm instead of reaffirming the hegemonic imaginary of the unity and indivisibility of the French nation. It is emphasized that being recognized as a Muslim and being able to practise one's religion publicly does not conflict with being a French citizen. Thus, the mentioned hegemonic imaginary of the French nation and its citizens through relegating religion into the private sphere is challenged.

Religious freedom is also used in *Germany* to challenge the existing prohibitions of teachers' headscarves. As in France, it is mainly Muslim groups and Muslim women's groups (G9, G10, G23, G24, G25) and public intellectuals like Birgit Rommelspacher (G4) and former constitutional court judge Ernst-Wolfgang Böckenförde (G16) who argue that prohibiting the headscarf limits the individual right to religious freedom of the teacher and prevents a free choice of a 'good life'. Instead, a prohibition of the teacher's headscarf unduly privileges the negative religious freedom of pupils and parents not to be subjected to practices of a belief they do not share over the positive religious freedom of the teacher. Criticizing both the prohibitive and the strictly secular headscarf regulations, it is argued that German state neutrality is not enforced correctly because religions are either banned from the public sphere which is against Germany's 'open' understanding of neutrality or because religions are treated unequally. As state servants – and thus already German citizens – Muslim women confidently claim their belonging to the German nation state by fighting for their right to religious freedom.

Austria can be considered one of the extreme opposites of the German and French cases not just because of the country's 'pluralistically inclusive' church–state regime and, in particular, the legal recognition of Islam preclude the prohibition of the headscarf because this would result in the prohibition of all religious symbols (Gresch *et al.* 2008). Also, the majority of Austrian actors that refer to religious freedom, argue in favour of the headscarf and against any restrictions: mainly churches (A2, A3), Muslim groups and Muslim women's groups (A4, A5, A6, A12, A14) relate to the right of religious freedom by arguing that the headscarf is protected as a religious symbol or expression of personality (right to privacy).[8] Much emphasis is put on the fact that Islam has been a recognized religion in Austria since 1912, which gives the Austrian Muslim religious community legal autonomy in internal affairs and provides Muslims with state protection to freely and publicly exercise their religion.

The position of Muslims in *the Netherlands* is similar to the Austrian case. Not surprisingly, the argumentative patterns of both countries resemble one another. The Dutch history of 'pillarization' (*verzuiling*) has largely influenced the development of a secular system in which religion may play a public role

while the state is obliged to treat all communities in the same way and safeguards a large organizational freedom and independence of all religious bodies (Lettinga and Saharso 2008). Arguing in favour of accommodating the headscarf in the public realm, Muslim groups and Muslim women's groups (NL16, NL17, NL19), other NGOs (NL7, NL18), state bureaucracy (NL13, NL23) and women's groups (NL4, NL21) argue that wearing the headscarf is protected by the right to religious freedom embodied in Article 6 of the Dutch constitution and that Muslims have the same right as non-Muslim collectives to express their faith. A nationally specific argumentation is used regarding the face veil. Amongst others, Muslim groups and Muslim women's groups (NL16, NL17, NL19), and women's groups (NL4, NL21) insist that wearing a face veil is a right of women to adhere to their religion that the liberal democratic state needs to protect, also and even if this would signal gender inequality. Since the Dutch state does not interfere with the religious life of adherents themselves, it would be a form of state paternalism to liberate a woman from a self-chosen ideology against her will because she does not interpret her veil as inequality. Here, Dutch Muslims' citizenship is implicitly employed to enforce the liberal democratic state's obligation to treat all citizens equally and protect their choices of a 'good life'.

In contrast to the other countries, equality of religion is not granted by the *Danish* constitution: Denmark has an established church, the Danish National Evangelical Lutheran Church named 'the Peoples' Church' (*Folkekirken*) and is by its constitution defined as a Protestant Lutheran country. Therefore, while the constitution grants freedom of religion, the hierarchy of religions is not questionable (Andreassen *et al.* 2008). Yet surprisingly, religious freedom does not play an important role in the Danish debates nor has the status of religious communities been central to legal conflicts about veiling. These conflicts have rather been centred on employment in areas of retail and media (ibid.). Moreover, if religious freedom is used to argue against a prohibition of the headscarf it is not framed as a matter of individual rights. Instead, parties (DK7, DK8, DK9) and Muslim groups and Muslim women's groups (DK22) state that while a headscarf might be oppressive, a ban of headscarves would be equally oppressive. Religion should be a private matter and a single person's religious belief should be respected.

As is the case in Denmark, the *United Kingdom* has an established state religion that enjoys significant privileges. In contrast to the Danish case, where the equality of different religions is not an issue, the Church of England's significant privileges serve as a standard against which other religious communities can – on the basis of fairness – claim equality (Kılıç 2008). In the British debates, churches (UK18), Muslim groups (UK14), media (UK5), parties (UK20) as well as academic journals (UK11) use the reference to religious freedom to stress that Britain is not a secular state but a country where people have religious rights and can practise their faith without interference from the state in any way they like. Particular emphasis is placed on liberalism as a key component of British values which encompasses individual rights and choices such as one's religion, thus

viewing the *niqab*, *jilbab* and *hijab* as expressions of religious faith women should be free to express. By using British Liberalism as the reference point from which to argue for the religious freedom of British Muslims, it is taken for granted that Muslims do belong to the British nation state.

At the same time that Muslims in Europe are increasingly claiming their rights to religious freedom, the secular liberal Western democracies under study are constantly defining the boundaries of what is considered as religious in the debates on veiling. These negotiations are reflected in the second argumentative pattern of the 'rights/religion' frames called 'the headscarf as a political symbol or violation of national principles': within this argumentative pattern, the religious freedom of Muslim women can be restricted by either arguing that the headscarf is not a religious but a political symbol and therefore not protected by the right to religious freedom and/or by arguing that it violates certain national values or principles like the negative religious freedom of others. In combination with other values such as gender equality and state neutrality, the principle of religious freedom or neutrality is used to argue for a prohibition of the headscarf.

Supporting the prevailing position in *France*, that the wearing of religious signs in schools is a communitarian danger which destabilizes the French national identity and social cohesion (Cadot *et al.* 2007), this argumentative pattern is strongly articulated by academics (FR10, FR15, FR20, FR22), public intellectuals and experts (FR8, FR15), journalists (FR18, FR21, FR23) and state bureaucracy (FR11). According to this position, wearing a headscarf is not an individual religious right but a national strategy of fundamentalist groups using public schools as their battleground. By constructing the headscarf as a political symbol that discriminates veiled women and targets the French Republican principle of *laïcité*, a strict separation of state and church is favoured and thought to foster women's rights and protect the society against fundamentalism. Thereby, certain habitual citizenship practices are established in order to neutralize any religious expression and thus reaffirm the unity and the indivisibility of the French nation and its citizens while implicitly denying Muslims who refuse to be religiously neutralized the right to belong to the French nation state.

While the argumentative patterns of the 'religious freedom as an individual right' in France and Germany converge, the arguments employed for limiting Muslims' religious rights are rather heterogeneous in *Germany*. A number of actors such as courts (G5, G30) and parties (G1e, G14, G17, G22) argue that a teacher's religious right can be restricted in order to protect the state's neutrality in school while all religions have to be treated equally. In contrast to this argument, churches (G6, G7, G8, G21), women's groups (G2, G20) and parliament/legislation, i.e. party representatives (G1a, G1b, G1c, G1f, G19, G27b) argue that the headscarf is not a religious practice but a symbol for the unequal treatment of men and women, violating the constitutional principle of equal treatment of men and women. Furthermore, it is argued that even if the headscarf were subject to the individual right to religious freedom, the negative religious freedom of non-Muslim pupils must be privileged because students cannot avoid

teachers with headscarves due to the compulsory school attendance and Muslim female pupils have to be protected from headscarf-wearing teachers in order not to be forced to wear a headscarf too. This strongly articulated argumentative pattern furthermore employs a justification – though not used by all the actors mentioned – of the unequal treatment of Christian-occidental symbols, like the nun's habit and wearing a cross as necklace, and the Islamic headscarf by drawing a direct connection between the enlightenment and Christian values, arguing that 'Christian' refers to values detached from its religious content but which are based on Germany's Christian-occidental tradition as embodied in the constitutions of Germany and specific federal states (cf. also Berghahn and Rostock 2007, 2008). Due to this argumentation, belonging to the German nation state as well as German citizenship are intrinsically tied to a Christian-occidental heritage. Thereby, Muslims are not only constructed as culturally and religiously different, but as the 'other', excluded from the German national imaginary.

In *Denmark*, this argumentative pattern is used only marginally and again articulates a very peculiar Danish rhetoric. Women's groups (DK14) and parties (DK1, DK4) implicitly argue that Muslim women's veiling is in conflict with the Judeo-Christian tradition dominant in Denmark. Islam is viewed as intolerant, undemocratic and incompatible with the modern Danish agenda of gender equality. Therefore, the right to religious freedom can be restricted for Muslims not to practise their religion in a public space or in a way which is offending to the ordinary Danish citizen. Thus, citizenship and belonging are primarily defined as Judeo-Christian.

Due to the aforementioned institutional settings of religious pluralism, only few actors in *Austria* and *the Netherlands* and none in the *UK* argue for prohibitive veiling regulations with reference to religious freedom: in Austria, only party members (A22, A27, A32) want to restrict Muslim women's religious freedom because it clashes with values of Austrian society, mainly the equality of men and women. In contrast, it is state neutrality that is cited by Muslim groups and women's groups (NL12), NGOs (NL20) and public intellectuals (NL2) in the Netherlands as a reference for prohibiting headscarves of teachers in public schools and/or for court clerks: if the state wants to protect the equality and (religious) freedom of all citizens regardless of their different backgrounds, it should not be affiliated with any religious creed.

Although, with the exception of Denmark, all the states of our cross-country comparison claim to treat all religions equally, it is with reference to a 'country's identity and its values' that the right to freedom of religious expression is restricted and the exercise of religious practices regulated. Those actors who refer to religious freedom in order to argue in favour of legal restrictions on the headscarf adhere to an exclusive paradigm of belonging. By defining what kind of religious practices are protected by the right to religious freedom, specific criteria are established which need to be met to be considered a 'good citizen'. Thus, the responsibility for belonging is given to the individual who can only belong if she (in our case) complies to these criteria by refraining from her choice of a 'good life'. Only the actors who use religious freedom to argue

against legal restrictions of the headscarf reflect an inclusive understanding of belonging which is open to different forms of religion.

Gender equality

Focusing on the topography of the frame-elements within the gender/emancipation frame, one argumentative pattern encompasses the elements 'freedom of choice, thought or religion', 'self-definition' or 'self-determination' as well as 'women's autonomy' or 'women's agency', which we call '*headscarf as freedom of choice/women as autonomous subjects*'. The other one relates the elements 'being modern, liberal, democratic, and secular/neutral' with Muslim women as 'oppressed, victimized, and sexualized' for defining the '*headscarf as a sign of being different*'.

In the *Austrian* headscarf debate, the elements of the first argumentative pattern are mainly the 'right to self-determination of women' as well as 'freedom of choice of religious expression' and the importance of full 'participation and inclusion of Muslim women' in relation to arguments that centre around gender. They are expressed by actors of the Islamic Religious Community, members of the Green and the Social Democratic Party, the speaker of the Green party's women's organization (Monika Vana), the Minister of Women's Affairs (Doris Bures) at the time and the Viennese councillor for integration and women's issues (Sandra Frauenberger), women's groups and experts (A5, A12, A26, A28, A30, A36, A38, A39, A40). Those actors stress the various personal motivations of why and how women choose to wear the headscarf.

For *the Netherlands*, especially actors related to Muslim and women's groups like the *Werkgroep Ontsluiert*, refer to 'freedom of choice' in conjunction with 'women's autonomous choice' (NL4, NL19, NL21) to veil,[9] 'inclusion/participation of Muslim women' (NL4, NL17, NL19, NL21) and the claim for 'more openness and understanding of Dutch society' (NL4, NL19, NL21), that is also articulated by the actor of the Religious Group (NL17), Haci Karacaer, the director of the Turkish mosque-organization *Millî Görüş*. The headscarf is moreover seen as an 'identity marker' and source of 'empowerment' (NL19, NL21, NL24).

Also in *Denmark*, actors of the media, like the *Feministisk forum*, women's groups and Muslim women's groups, like Sherin Khankan, member of Critical Muslims emphasize Muslim women's right to 'freedom of religion and self-definition' (DK17, DK20), referred to as 'Danish values' (DK21), 'autonomy' (DK22) and the headscarf as a sign of 'identity and belonging' as well as 'liberating' (DK22). The importance to acknowledge the different living conditions and the plurality of Muslim women's lives is seen as a crucial task, especially for the media (DK20) and some Danish feminists (DK17, DK21).

Regarding the *UK*, only individual Muslims (UK2, UK10) refer to 'freedom of choice' in conjunction with gender equality and 'self-determination' and 'women's rights'. Important to consider concerning this argumentative pattern is that the actors allude to the 'veil', not differentiating between the *niqab*, *hijab* or the *jilbab*. Moreover, the use of this pattern is here linked to a critique of the

'values and norms of Western society' which would lead to the perception of women as sexual commodities (UK10) and to the patriarchal structures of Western as well as Islamic societies because the veil is viewed as a mark of separation primarily by the male elites and it makes British men feel 'uncomfortable' (UK2).

In the *French* headscarf debate, the elements within the argumentative pattern of 'freedom of choice and religious expression' are associated with 'human rights' (FR25, FR26, FR28) as used by experts and academics, 'self-determination' (FR6) and the claims to end discrimination against veiled women (FR4, FR5, FR16, FR23) by calling for an intersectional post-colonial perspective of gender, race, sexuality and nationality while debating the wearing of the veil (FR1, FR4, FR25, FR26, FR28). The mentioned values here were primarily used by actors from Women's groups, like the *Collectif National pour les Droits des Femmes* (CNDF) (FR5, FR26), Muslim representatives, like Malika Hamidi-Hosseinpour who coordinates the European Muslim Network, a research group on Islamic cultures in Europe (FR6), public intellectuals (FR28), the academic context (FR1, FR25) and state bureaucracy, the *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) (FR16).

The association of 'freedom of choice' and 'self-determination' with the right to not being discriminated against (G23, G3) is also made in *Germany*. Here again, primarily actors related to Muslim women's groups emphasize 'free choice' (G10), 'women's own responsibility' (G24), and 'self-determination' (G23). Besides Muslim women's groups (G24, G25), only public intellectuals (G4), a representative from the Green Party (G27d) and people related to women's groups (G12) stress that a headscarf ban would 'hinder integration' and especially exclude Muslim women from 'equal access' to the labour market.

The other argumentative pattern describes the major society as modern, democratic, liberal, secular and neutral as well as gender equal while Muslim women are depicted as oppressed, victimized and sexualized by the Muslim community and especially male relatives. Having established this interpretation of the situation of Muslim women in liberal democracies, Muslim women are seen as not being able to make 'free choices'. Thus, we called this argumentative pattern '*headscarf as a sign of being different*'.

For the *Austrian* context, primarily the representatives of the FPÖ (A19, A22) as well as the former Minister of the Interior, Liese Prokop from the ÖVP (A32), link gender equality with 'Austrian values' and neutrality:

> Public institutions have to be philosophically and religiously neutral. … The headscarf is also a declaration of belief in the Islamic legal conception which has absolutely nothing in common with our view regarding religious freedom or the equality between man and woman.
>
> (A22)

Salient for Austria is also the linkage of 'gender equality' with the 'universality of women's rights' that is emphasized by feminists from the SPÖ (A27, A29)

and the media (A8, A11), stressing that wearing the headscarf excludes Muslim women from a self-determined participation in the world and forces them into dependency from men (A11) which contradicts equal treatment.

In the *Dutch* headscarf debate, the self-perception of Dutch society as liberated, modern and gender equal (NL6, NL13, NL26, NL15, NL16) is linked with descriptions of Western women as liberated (NL3), Islam as oppressive and patriarchal (NL3, NL6, NL10, NL13, NL15, NL16) as well as a threat to Western values like secularism (NL10, NL13, NL15, NL16) which would require to be 'far less tolerant towards the oppressive characteristics of the Islamic community' (NL10, NL13, NL15). These value associations are pursued by actors of Muslim and women's groups (NL6, NL10, NL13), public intellectuals (NL15, NL16), the Social Democratic Party (NL26) and Cisca Dresselhuys, chief-editor of leading Dutch feminist magazine *Opzij* (NL3).

Within the *British* headscarf debate, the freedom of religion and religious tolerance is framed as a British norm or value, but wearing a veil[10] is perceived as 'oppressive to women' (UK1, UK6, UK7, UK17) or as hindering 'women's participation and integration' in society (UK4, UK13, UK17) which is why it should be possible to restrict the wearing of the veil case by case, represented by actors from schools, the media, the Labour party and an individual Muslim.

For *Denmark*, the meaning of 'gender equality' and 'personal freedom' are framed as 'Danish values' that are seen as incompatible with 'traditional Muslim values' (DK5) and 'inequality' attributed to the patriarchal structure of Muslim societies (DK4): 'For the sake of the Danish society we must send the signal that we do not accept that women's personal freedom is being violated in Denmark' (DK5). Danish feminist voices share the mentioned opinions by spokespersons of the Danish people (DK4) and the Conservative party (DK5) by also stressing the 'patriarchal structure of Muslim communities', which is oppressive for Muslim women (DK14, DK15, DK16). Thus, the Danish women's movement is viewed as having 'betrayed Muslim women by not supporting them against subordination' (DK14) and the universality of 'women's rights' is emphasized by actors from women's groups (DK15, DK16, DK19).

Regarding the *French* debate, this argumentative pattern is prevalent and refers primarily to the headscarf as a sign of denial of 'Western equality, sexual norms and feminism' as well as 'Western democratic values' (FR3, FR9, FR12), advocated for by experts (FR9, FR12, FR14, FR15), state bureaucracy (FR13) and representatives of the media (FR3). The claim for 'equality' between men and women is here associated with the principle of '*laïcité*' and 'democratic values' (FR9, FR13, FR14, FR15). Moreover, it is 'Muslim men' (FR12, FR13), or the 'patriarchal structure of Muslim communities' (FR15) that are framed as the 'cause' of the problem and the ones who exert control over 'female bodies' (FR14) by for example Patrick Weil (FR15), senior researcher fellow at the National Centre for Scientific Research who was a member of the *Stasi Commission* and Yolène Dilas-Rocherieux (FR14), Associate Professor in Sociology (University Paris X).

This argumentative pattern is also of strong relevance for *Germany*, and it is especially the representatives of the parties – Social Democrats (G1c, G14,

G22), Christian Democrats (G1f, G19, G27b), the Greens (G1d), the Republicans (G1a) – as well as of the churches (Protestant and Catholic) who stress that the headscarf is a symbol for the 'unequal treatment of men and women' that stands in opposition to the German 'constitutional principle of gender equality' (G8, G9, G19). The prohibition of the headscarf is thus not perceived as 'discrimination' because a ban would aim at the 'securing of state neutrality' (G22). Moreover, wearing the headscarf is seen as a result of 'social pressure' which would 'discriminate' Muslim women (G22, G1f, G1a) and deprive them of their 'equal rights', 'self-determination' and 'full participation' in society. This line of argumentation is supported by the public intellectuals Alice Schwarzer (G28) and Necla Kelek (G29).

In regard to our question of how the two contested paradigms of belonging materialize within the most contested frames in the analysed headscarf debates, the proponents of restricting wearing the headscarf within the 'gender/emancipation frame' refer to gender equality as a principle of contemporary liberal democracies and define it as a central trait of democracy like being modern, democratic, liberated and sometimes secular. Thus, they support and reconstruct a specific norm so that equality means nothing more than living up to and complying with this norm while simultaneously defining those who do not as 'different'.

To belong or not to belong – a principled question

Looking now at all three most contested frames within the headscarf debates, we would like to suggest that it is through the specific argumentative configuration of the described frame-elements that the boundaries with regards to who belongs to a nation and who does not are redrawn or renegotiated with specific consequences regarding the practice of 'citizenship' and the related enjoyment of full rights or who is defined and recognized as 'full' citizen. Our analysis showed that all of the six argumentative patterns within the three frames can be assigned to two different paradigms of belonging, one adhering to an inclusive understanding of belonging and the other one to an exclusive one. Both paradigms employ different criteria for being recognized as full members of a political community.

The actors of the headscarf debates who advocate for restrictions on wearing the headscarf employ the argumentative patterns of '*the headscarf as sign of being different*' (gender/emancipation), '*the headscarf as a political symbol or violation of national principles*' (rights/religion) and '*the headscarf as sign of separation/non-integration*' (citizenship/integration). Interestingly, within these three argumentative patterns, the references to the respective national are crucial. In this context, especially the two argumentative patterns which refer to gender/emancipation and rights/religion build a coalition, thereby simultaneously drawing the boundaries of the nation; by equating 'wearing a headscarf' with being against gender equality and neutrality, and thus not belonging to the national community.

The redrawing of the imaginary national boundaries becomes especially obvious in France and Germany. Considering the 1989 decision of the *Court d'Etat*, wearing a headscarf in school was not interpreted as an infringement of the principle of *laïcité* (Gökariksel and Mitchell 2005: 154), but in the wake of the enrolling headscarf debate, wearing the headscarf is now seen as undermining the core values of French identity. Similarly, the German Federal Administrative Court in its reasoning referred to the 'Christian-occidental tradition' of Germany explicitly including specific religions in the national imaginary imagery while excluding others (G26).

Moreover, by employing the particular argumentative patterns, the respective actors not only draw the line of who belongs to the national community and who does not, but simultaneously define what kind of practices need to be expressed as well as embodied to be eligible to belong and to be considered a 'good' citizen. Thus the proponents of restricting the wearing of the headscarf establish a norm or specific criteria which need to be met, thereby placing responsibility for belonging on the individual who can only belong if she (in our case) complies to these criteria and embodies the 'good' citizen.

Within the second – inclusive – paradigm of belonging, the actors advocate against legal restrictions regarding wearing the headscarf by using the argumentative patterns of '*the headscarf as freedom of choice/women as autonomous subjects*' (gender/emancipation), '*religious freedom as individual right*' (rights/religion) and '*integration through rights and/or the recognition of difference*' (citizenship/integration). In contrast to the proponents of a headscarf ban, these actors stress that headscarf-wearing women are already full members of the national community and thus entitled to the same rights and same opportunities as women who wear different religious clothes or no religious attire at all. Moreover, the actors using this paradigm of belonging stress that women wearing the headscarf already belong to the nation state which first has to ensure the conditions of equal opportunities so that individuals have the opportunity to support and contribute to shared political life in a mode that fosters and enables individual agency on the basis of equal recognition and manifesting itself by full inclusion in a political, social and judicial body (Somers 2008: 25).

Interestingly, the proponents arguing for legal restrictions and employing the exclusive paradigm of belonging usually de-emphasize or neglect the positive individual rights of Muslim women while referring strongly to the national imaginary thereby redrawing or reconfirming it. In contrast, the advocates arguing for no restrictions and employing the inclusive paradigm of belonging stress the legal status and rights of the individual members of a nation state, but do only seldom – for example in France – employ, re-articulate and re-envision the national imaginary as a narrative of sparkling plurality. Due to these findings we would like to suggest that the two paradigms of belonging we identified in European headscarf debates can be interpreted as employing two competing understandings of belonging to the nation state: the proponents of legal restrictions envision social cohesion and religious homogeneity of the (imagined) national communities by emphasizing certain habitual citizenship practices that

especially Muslims, as the 'other', have to comply with. The majority of opponents to legal restrictions regarding the headscarf view the nation state primarily as a sovereign with the main obligation to grant freedom to its citizens. Citizenship is therefore mainly understood as a legal status while defining and emphasizing the protection of individual rights as matters that the state should treat as individual concerns. Thus, this paradigm puts its focus on the individual situation or preference that could also be seen as supportive of different affiliations of a citizen, but does not articulate suggestions concerning how solidarity and belonging to a community could be envisioned.

Thus, our analysis showed that the construction of narratives of belonging within the headscarf debates is again related to women's bodies by referring to and engendering national identities: European countries that have introduced restrictive regulations deny access to certain rights and opportunities to Muslim women who opt to wear particular forms of Islamic apparel, which creates differentiated modes of citizenship. Thus, the analysed politics of belonging are setting the stage for introducing normative regulations that strengthen the boundaries into hierarchies, building, allying and intensifying specific power relations between citizens. Although our analysis showed growing leverage of the exclusionary paradigm of belonging, the inclusive paradigm of belonging questioned the hegemonic imaginations of the respective national communities, thereby revealing the contingent character of the articulated narratives. What becomes visible through our analysis is that the tension and the interplay between the nation and the state is currently reconfigured, and in between many opportunities to define and envision inclusive meanings of belonging exist.

Notes

1 We would like to thank Anne Phillips and Mieke Verloo for their inspirational comments on earlier versions of this chapter.
2 Cf. Kymlicka 2007 for an excellent description concerning the mentioned concept and major principles of political liberal theory in relation to the principles of multiculturalist theory (Kymlicka 2007: 25ff.).
3 Greece and Turkey are not considered in our analysis because the 'headscarf issue' is not discussed and framed as an immigration related topic in both countries which relates crucially to the respective politics of belonging in a country. Although, of course, there are many 'not migrated' Muslim women wearing head and body coverings in the six remaining countries, we focus on the argumentations found in the analysed policy documents which relate the discussions about wearing head and body coverings to questions of immigration, integration and belonging.
4 We use the term 'paradigm' in its broad methodological sense, which could be described as the main theme with which a specific problem or situation is analysed (cf. Klima 1994: 485).
5 The term 'frame-element' will be used here to refer to the meaning-giving components of the analysed argumentative patterns. During the process of the research, the research teams referred to these meaning-giving components as 'values', but for guaranteeing unambiguous references to the terms we used in our structural analysis of the project's frame-analysis, we decided to use the term 'frame-element'.

 6 Please see the introduction for a detailed description of the method of a gender sensi-
    tive frame-analysis of the VEIL project.
 7 The mentioned bundle of rights usually denotes T.H. Marshall's differentiation
    between civil, political and social rights within studies of citizenship (Marshall 1950;
    Mackert and Müller 2007: 10ff.).
 8 Other actors are employers/workplaces (A7), other minorities (A16), parliament/legis-
    lation (A15), parties (A24, A25), public intellectuals (A35) and state bureaucracy
    (A37).
 9 Please note that for the Netherlands the arguments here refer to the full veil as well as
    to the headscarf.
10 Please consider that for the UK all contra veiling arguments refer to the full veil.

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4 Discursive Europeanization?

Negotiating Europe in headscarf debates

İlker Ataç, Sieglinde Rosenberger and Birgit Sauer

Why bother with Europe? Introduction[1]

Basic values, constitutional principles and rights, and cultural norms and practices build the core of controversial public debates about Muslim headscarves. In Europe, rights and values such as equality of the sexes, individual freedom of religion, neutrality of the state towards the religions and secularism, justice and tolerance as well as societal norms and aims such as pluralism, social cohesion and integration are addressed by actors involved in the debates about Muslim head covering (Scott 2007; Gallala 2006; Joppke 2007). A wide range of values and norms are embedded in public discussions in order to argue for or against the right to veil. Some references made in the debates of the eight countries[2] we have analysed in reference to 'European' norms and values, suggest that a set of common European values and norms exist. At the same time, some policy actors make explicit reference to 'national' values. Also, both cross-national and cross-actor variation of references to 'European' and 'national' values can be found in the analysed debates.[3]

The starting point of this chapter is that values and norms are socially constructed. Policy actors refer to values and norms, which they have renegotiated in order to give meaning and legitimacy to their policy positions (Fischer 2003; Hajer and Wagenaar 2003). Accordingly, we treat 'European values' (Schimmelfennig 2005) and 'national values' as 'empty signifiers': norms and values are never given, but their content is constructed in deliberative and multifaceted processes of negotiation and referring. Within this methodological perspective, European as well as national values and norms are always in the making and always '*à venir*' (Jacques Derrida).

Taking into account the variety of values and norms referred to in headscarf debates and their contradictory use in favour of and against the right to veil in different national contexts as well as on European levels, this chapter deals with situating headscarf debates in struggles over shared values and norms in European countries. Hence, this analysis mainly examines whether controversies over Muslim headscarves build an arena where common European values are discursively addressed, negotiated and adopted – both by actors in different nation states as well as by institutions and actors on the European Union level. The

chapter deliberates the role of concepts such as 'Europe', 'Europeanness' or 'European values' on the one hand, and the construction of 'national' values in framing strategies of political and social actors on the other. Does the framing of Muslim head covering contribute to the emergence of a European sphere of shared values and norms or does it foster a nationally fragmented landscape of norms and values in Europe (see also Koopmans and Erbe 2004: 97)? Does the European Union act as a 'value entrepreneur' (Gerhards *et al.* 2009: 517)? Moreover, does the framing of Muslim headscarves construct a set of exclusive national values and norms, which might be interpreted as an indicator for 're-nationalization' (Koopmans and Erbe 2004: 97)? In other words, this chapter examines whether and to what extent values and norms which are developed and referred to in headscarf debates contribute to the processes of what we coin the discursive dimension of European integration or 'discursive Europeanization'. While the European Union neither has a mandate for regulating religious issues nor has developed a policy of value integration – on the contrary, it has 'strong resistance against … cultural homogenisation' in the process of constructing a European public sphere (Koopmans and Erbe 2004: 98) – the chapter aims to shed light on implicit processes of value integration.

First, we elaborate on the analytical framework of 'discursive Euro-peanization' in a vertical and horizontal dimension. We then explore the vertical process of Europeanization, namely top-down processes ('Europeanization from above') and bottom-up processes ('Europeanization from below'). Vertical discursive Europeanization will be analysed by the following dimensions: by the framing of the headscarf issue on the European level and the convergence of European and national value debates ('from above'), and by references made to European debates and documents in national debates on Muslim headscarves ('from below'). Third, we present the value structure of national headscarf debates and analyse their similarities and differences in order to detect traces of horizontal Europeanization ('Europeanization from within') as well as centri-fugal framing strategies. Finally, we conclude our findings with reference to pro-cesses of discursive Europeanization and/or national fragmentation.

'Discursive Europeanization:' modelling the analysis of values and norms in headscarf debates

'Discursive Europeanization' refers to complex processes of communication and negotiation between nation state actors and actors on the European level as well as between actors across nation states. In the political science literature on Euro-pean integration, the concept of Europeanization relates to 'domestic con-sequences of the process of European integration' (Radaelli 2004: 2), namely the processes of adaption of European member states to the political framework of the European Union (Axt *et al.* 2007). This focus on the vertical dimension, on Europeanization as a top-down process – 'Europeanization from above' – aims at explaining domestic change through the process of Europeanization often with a focus on convergence of policies in the EU. The transposition of EU norms

and the diffusion of norms into domestic policies (see for instance Falkner and Treib 2008) build the centre of this line of research.

In contrast to this body of literature, this chapter rather approaches Europeanization as 'something to be explained' and less as 'something that explains' (Radaelli 2004: 2). Radaelli suggests the following definition, which we would like to use as our starting point:

> Europeanisation consists of processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies.
>
> (ibid.: 3)

Accordingly, Europeanization does not cover a simple top-down process nor a 'uni-directional reaction to "Europe"', it extends to interactive processes, which provide considerable opportunities for creative usage of Europe (ibid.: 4; cf. Grossman 2006). Hence, 'Europeanisation covers both vertical processes (from the EU to domestic politics) and horizontal dynamics' (Radaelli 2004: 5). In a similar vein, Koopmans and Erbe (2004) differentiate between two dimensions, the 'vertical Europeanisation' and the 'horizontal Europeanisation'. 'Vertical Europeanisation' relates to 'communicative linkages between the national and the European level' consisting of two basic characteristics; first, a 'bottom-up' perspective, dubbed as 'Europeanisation from below', in which national actors 'address European actors and/or make claims on European issues' (Koopmans and Erbe 2004: 101). The bottom-up perspective starts with the interaction at the domestic level and goes beyond the 'reaction to Europe' (Radaelli 2004: 4) and analyses discursive and communicative processes within the different nation states (Schmidt and Radaelli 2005: 9). The second dimension of the vertical pattern is a 'top-down' point of view, in which 'European actors intervene in national policies and public debates' (Koopmans and Erbe 2004: 101), which might be labelled as 'Europeanization from above'. In contrast, 'horizontal Europeanisation' consists of communicative linkages between different member states (Koopmans and Erbe 2004: 101), stressing convergence (or non-convergence) of public policies at national levels.

Along with Koopmans and Erbe (2004), Radaelli (2004) and Giuliani (2003) we see Europeanization twofold: as a process of mutual adaption and co-evolution between domestic and European levels, and as a convergence process which takes place on the national levels. The notion of Europeanization shifts the 'attention to the interactions between the national and EU level' (Müller and Alecu de Flers 2009: 24) – and we would add between nation states. Hence, our term of Europeanization attempts to move beyond the confusion between 'up-loading' and 'down-loading' (Börzel 2002) by focusing on parallel processes of Europeanization in both directions. 'Europeanization is best understood as an

interactive process of change linking the national and EU levels' (Müller and Alecu de Flers 2009: 12) – and, in addition, linking political processes to the idea of convergence in member states.

Only recently has the study of frames, values, norms and discourses as underpinning politics of Europeanization come to the agenda of political science literature (Radaelli and Schmidt 2005; Daviter 2007). Discourses are both 'a set of ideas' which 'appeal to values', and an 'interactive process of policy construction and communication' (Schmidt 2002: 169f.). Discourses are more than 'cheap talk' and 'more than a mere accompaniment to policies'; they can 'act as a causal influence' on policies (ibid.: 173; Schmidt 2010). Itself grounded in a new form of institutionalist approach, the new 'discursive institutionalism' (Schmidt and Radaelli 2005: 2; Schmidt 2010) suggests that frames and belief systems are also to be viewed as relevant features that carry responsibility in the process of Europeanization (Schmidt and Radaelli 2005: 2; White 2004). Hence, Europeanization is a multidirectional interactive process which includes the analysis of the ways in which a problem is framed (Forest and Lombardo 2010: 4). Discourses and frames contribute to and can explain Europeanization (Schmidt and Radaelli 2005: 2) as Europeanization proceeds through 'framing domestic beliefs and expectations' (Knill and Lehmkuhl 2002: 259) Also, 'Europeanisation may be limited if it goes against the preferences of national actors who have another set of ideas' (Radaelli and Schmidt 2005: 195).

Eder and Kantner (2000) conceive a common European 'frame of reference' in domestic debates as a benchmark for Europeanization (after: Kleinen-von Königslöw *et al.* 2005). Also, taking up the concept of governance, Katzenstein and Byrnes (2006: 682) suggest that a successful process of Europeanization depends on shared values and belief systems which European citizens can identify with and, thus, contribute to legitimatize European policy making.

Besides the multidirected perspectives of vertical and horizontal Europeanization, this chapter also focuses on the aspect of 'discursive policies'. Theoretically, discursive policies refer to explicit and implicit policies of norm and value negotiation, communication, diffusion and adoption. Therefore, the notion of 'discursive Europeanization' in this chapter stands for 'Europe/Europeanness' as constructed through discourse, through frames as well as through values and norms (Hay and Rosamond 2002). 'Discursive Europeanization' implies on the one hand that the EU may provide the 'cognitive and normative "frame", the terms of reference' (Radaelli 2004: 5). On the other hand, discursive Europeanization is a process 'through which the EU gains its own autonomous meaning and self-validation within the logics, cognitive frames, and norms of behaviour of domestic actors' (ibid.: 8). Hence, discursive Europeanization is not only about compliance of national actors with EU 'scripts' (Gerhards *et al.* 2009: 517, 523) but also the ongoing process of negotiating values and norms. The vertical and horizontal dimension of Europeanization is a process of benchmarking and comparison as well as cognitive reorientation, that is, the similar use of frames and values (Radaelli 2004: 11).

To sum up the modern literature and move on to our analytical model: in this contribution we do not want to demonstrate whether European values are 'really' affecting domestic debates about headscarves. Rather we want to address 'discursive Europeanization' as processes of renegotiating values and norms (see Figure 4.1). In this regard, the chapter conceptualizes 'discursive Europeanization' as a complex framework of interactions, first, among nation states and, second, between national and European levels. 'Discursive Europeanization' will be conceptualized as a double-sided communication, negotiation and diffusion of values and norms including a vertical dimension, namely a top-down and bottom-up perspective ('Europeanization from above and from below'), and a horizontal dimension ('Europeanization from within').

In our framework, vertical discursive Europeanization relates to shared frames between the European level and nation state levels. As mentioned above, it can be seen first as 'discursive Europeanization from above', that is as a top-down process of diffusion of values and norms from the European to the domestic level, as an implementation of European Union frames in national contexts and as a value convergence between EU and national levels. Vertical discursive Europeanization from above is operationalized as a frame fit between the European and the different national levels (a comparison of frames and values between the EU and the different national debates). Here we pose two questions: first, whether frames and values referred to on the European level diffuse into national debates; and second, whether there is a trend of convergence or divergence of norms and values expressed in national and European headscarf debates. The assumption is that discursive vertical Europeanization might lead to a convergence of the contents of values and norms discussed in national debates about headscarves with contents of values and norms discussed on the European level.
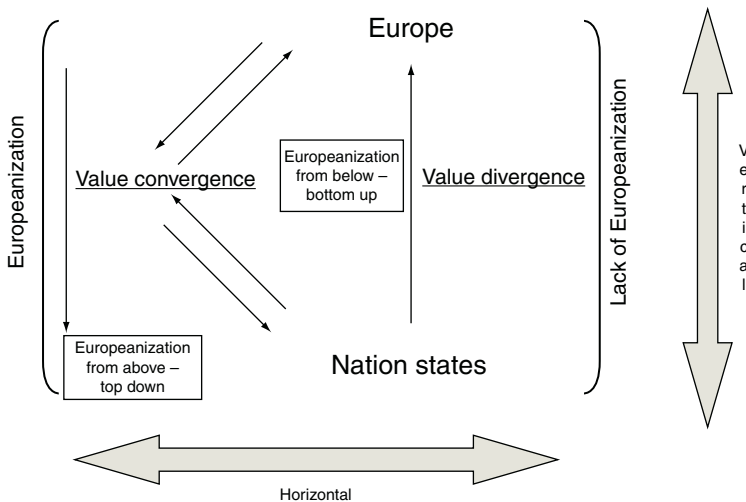
Figure 4.1 Operationalization of 'discursive Europeanization'.

Second, the vertical dimension of discursive Europeanization is conceptualized as a bottom-up process of frame reference, as 'discursive Europeanization from below'. Appropriate indicators for this pattern of discursive Europeanization are direct quotations of 'Europe', 'Europeanness' and 'European values' and direct positive references to European documents by national actors. Within our research these quotations in national statements are considered as an indicator for communicative processes between domestic and European levels, as well as for the adoption of European values by national actors. In our understanding, discursive Europeanization takes place when the 'EU becomes a cognitive and normative frame' (Radaelli 2004: 11), what Radaelli calls 'ideational convergence' (ibid.: 14).

Horizontal discursive Europeanization finds its expression in shared frames and values between nation states, without explicitly mentioning Europe or the European Union. With the horizontal dimension we assess processes of value and norm negotiations in headscarf debates, which indicate the development of shared values in cross-national arenas. Horizontal discursive Europeanization ('Europeanization from within') is operationalized on the one hand as frame convergence between different states as well as the use of similar frames as reference to framings and debates in other European countries. We will identify divergence and convergence of values and norms between nation states. It is assumed that commonalities might contribute to a transnational framework exerting an impact on the debates on the European level and, eventually, lead to shared European values and the development of a common set of European values and to a European value space (Schimmelfennig 2005). On the other hand, discursive elements that reinforce and strengthen the idea of national value systems based on homogeneous cultural orders and practices might facilitate value fragmentation and also nationally exclusive value systems (Mouritsen 2006).

Misfits:[4] the lack of vertical Europeanization

Our assumption is that the diffusion of frames and values referred to on the European level facilitate the convergence of national value sets discussed in headscarf debates with norms on the European level and by European actors. In order to locate the complex dynamics of the frames and values on the European level it is important to be aware of the following three characteristics of the European level of headscarf debates. First, although Europeanization creates new legal frameworks, political opportunity structures and cultural repertoires for claims of religious recognition (Koenig 2007: 913), the EU has no direct regulatory competence regarding headscarves to harmonize rules and practices. However, different subunits of the European Commission follow closely the regulations concerning the headscarf in the nation states. For instance, the European Commission's expert reports and recommendations point out that headscarf debates raise issues of different fundamental rights and legal principles such as freedom of expression and anti-discrimination on grounds of religion and belief (EU5).

Second, in two cases the jurisprudence of the European Court of Human Rights (ECtHR) (*Dahlab* v. *Switzerland* in 2001 and *Şahin* v. *Turkey* in 2005) supported the restrictive approaches of the nation states, namely Switzerland and Turkey, and claimed that there is no violation of freedom of thought under Convention Article 9. Our research indicates that these rulings led to a European-wide discussion of values, especially of freedom of religion, gender equality and secularism.

Third, besides the jurisprudence of the ECtHR, the restrictive French regulation from 2004 brought a new dynamic into the headscarf debates. The regulation offered an arena for civil society groups to organize and articulate their ideas. For instance, Muslims actors organized on the European level to develop arguments against the French regulation and the ECtHR decisions. Also, social scientists, especially law theorists and feminists as well as public intellectuals, argued in the cases of the ECtHR decision and discussed the problematic outcomes of the rulings for European societies. Our analysis shows that access to EU fora entails an opportunity for these civil society actors to place their demands and to articulate their ideas from a European perspective. Particularly the European Parliament (EP) builds an important arena for various party actors. However, the far-right group in the EP produced a strong 'Othering'-discourse in which Muslims were constructed as a religious group that conflicts with European culture and religion (EU3).

Following these introductory remarks, we will analyse the processes of vertical discursive Europeanization by first presenting the values discussed on the European level and then comparing frames and values constructed on the European level with those of the domestic levels in order to analyse trends of convergence or divergence. Third, we examine trends of vertical Europeanization 'from below' by scrutinizing direct quotations of 'Europe', 'Europeanness' and 'European values' and direct references to European documents by national actors.

Values on the European level

The judgements of the ECtHR and the French ban of religious symbols in schools contributed to a European-wide discussion of the Muslim headscarf. European policy documents refer to three value sets, to gender equality and freedom of religion as constitutive parts of liberal individual rights, and to secularism. The following section analyses the two rulings of the ECtHR as well as the reactions to the rulings and to the French headscarf ban.

Gender equality is used in headscarf debates to argue for and against a headscarf ban. On the European level the ECtHR refers to gender equality in its two decisions in order to legitimize the headscarf bans in the two countries. In the case of *Dahlab* v. *Switzerland* the court describes the headscarf as a 'powerful external symbol' which is imposed on women by a precept laid down in the Qur'an (EU9). In the case of *Leyla Şahin* v. *Turkey*, the court legitimizes the headscarf ban as a form of protection of the rights of women and of gender equality. Thus, the headscarf is constructed as a symbol for the submission of women, which works against the equality principle (EU10).

The Grand Chamber's (ECtHR) position on gender equality triggered a fierce debate about gender equality. Judge Tulkens claimed that a headscarf ban will not promote the equality between men and women. Moreover, she stressed that the headscarf has no single meaning but is worn for a variety of reasons (EU11). Similarly, Tore Lindholm criticizes the judgement as an example of illiberal and authoritarian feminism because it fails to respect the 'free' decision to wear religious attire. He concludes that barring access to public education and public employment for covered Muslim girls is against women's rights and gender equality (EU12). Anastasia Vakulenko criticized that the headscarf was attributed a highly abstract and essentialist meaning of a religious item extremely detrimental to gender equality (EU14). Also, Muslim actors argue with gender equality. In a media release, the Islamic Forum Europe (IFE) sees the judgement of the ECtHR as 'a slap in the face for all educated women' and as an 'affront to a woman's fundamental right to choose and expression' (EU17).

Regarding the *freedom of religion and thought*, Article 9 of the European Convention of Human Rights (ECHR) constitutes an important source of reference for different actors. Article 9 guarantees protection of a particular belief and of an association with a religion. However, the right to manifest is subject to restriction. The ECtHR grounds its decisions in the two headscarf cases on Article 9. But the court emphasizes that in democratic societies with several coexisting religions, it may be necessary to put restrictions on the right of freedom of thought, conscience and religion in order to reconcile the interests of various groups. From this perspective, the headscarf ban is legitimized for the protection of rights and freedom of others, of public safety and order (EU9, EU10).

Several actors criticized the rulings stating that the headscarf alone does not infringe the rights and freedom of others and does not prejudice public order (EU11). A prominent reaction to the French ban is the Written Declaration in the EP.[5] This declaration states that individual rights, namely religious freedom, are the most precious value in the European Union. Therefore, European governments are expected to allow the expression of individual faith for religions and minorities within educational and state institutions (EU1). Muslim actors at the European level also refer to religious freedom. Arlene Rodrigues, a member of the Assembly for the Protection of Hijab (Pro-Hijab), sees the ban as an infringement of both the European and United Nations Conventions on Human Rights. She indicates that the ban will further stigmatize Muslims and make them feel victimized and marginalized (EU18).

Another principle which legitimizes the headscarf ban is secularism. In its jurisprudence the ECtHR differentiates between 'segments of society who live under the secular and democratic elements' and 'extremist movements' in Turkey. According to the court, the freedom to manifest one's religion can be restricted in order to defend the principle of secularism which is perceived as protection from extremist movements and as guarantor of democratic values. Hence, the ECtHR strengthens the specific national state–religion relationship emphasizing that nation states have a margin of appreciation to balance the religious freedom of one party against the religious freedom of others (EU10).

This concept of secularism is criticized for example by Judge Tulkens who blames the underlying abstract conception of secularism. She reasons that the judgement does not address the applicant's argument that she had no intention of calling the principle of secularism into question. Moreover, she criticizes the discursive construction of the 'Other' by debating about 'segments of society who live under the secular and democratic elements versus extremist movements'. She claims that the wearing of the headscarf cannot be associated with fundamentalism but that it is vital to distinguish between those who wear the headscarf and 'extremists' who seek to impose the headscarf as they do other religious symbols (EU11). Tore Lindholm, too, criticizes the underlying concept of secularism. He questions the ECtHR's ability to deal with the rights of religious minorities and nonconformists competently and fairly, especially with Islam and Muslims, and criticizes that Muslims are seen as the 'threatening Other' (EU12).

In the next section we will compare these framings with debates in the analysed nation states.

Convergence of values? A comparison of European and national levels

Actors on the *European level* refer to freedom of religion and the right to publicly manifest one's religious observance as an essential human right grounded in the ECHR, in the Charter of Fundamental Rights and EU anti-discrimination directives. While this liberal reference is contested – as we have shown with the rulings of the ECtHR – the European discursive field is, however, open and plural. Our analysis shows that policy makers as well as representatives of Muslim groups take a positive reference to Europe as a sphere of human rights. They call on European authorities to recognize Muslims as citizens with equal rights and duties (EU18). At the same time, they call upon 'European Muslims' to actively take part in European societies. From this perspective, European institutions and regulations are seen to guarantee the protection of human rights (EU17).

Voices raised against the headscarf ban address the European Commission and the EP to work out a solution on the European level and to offer an alternative to the restrictive approach pursued by the ECtHR and national governments. Approaching the headscarf issue from a minority perspective, a 'European model of integration', which rests on respect for differences and respect for different religions, is constructed (EU4). Furthermore, the strand of European secularism is being criticized as illiberal because it discursively constructs a European 'Us' (progressive, liberal and modern) and a 'Them' (reactionary, fundamentalist and anti-modern) (EU16).

However, actors such as representatives of the far-right parties in the EP are pleading for restrictive policies and in favour of a headscarf ban. In his statement, the Austrian MP Mölzer asserts from a culturalist point of view that Muslim migrants are incompatible with European culture and religion. The claim of Muslim women to wearing the headscarf is hence framed as an

attempt to impose Muslim culture on European countries. Moreover, the European Union is made responsible for failures in integration policies by granting financial support to immigrants without demanding anything in return (EU3).

Turning to *the national level*, our findings show that national frames do not fit with the European level. While on the European level the headscarf discourse has a strong focus on basic rights such as freedom of religion, *national* headscarf debates hardly reflect these universal norms and rights promoted on the European level. In national documents only few references to individual rights, such as religious freedom, gender equality and anti-discrimination, which are considered as supportive of the inclusion of veiled women into public life in European countries, can be detected.

Furthermore, we found that debates on gender equality frame the latter as a cultural achievement of the individual national societies but not as a universal rights. The sentiment is that this national achievement has to be protected against veiling on the grounds of tradition, religion and politics. In this context, the national 'Self' is attributed as being modern, emancipated and women friendly. Political parties and intellectuals have adopted this frame in *Denmark* (DK9). In *Germany*, a frame coalition of Christian Conservatives, Social Democrats and mainstream feminists portrays the covered woman as a victim, oppressed by her culture, whilst women from the majority society are presented as emancipated (G1b, G1c, G1f, G28). In the *Netherlands* (NL12) and in the *UK* (UK4), moreover, Muslim men are viewed as more backward, patriarchal and pre-modern than the male majority.

Religious freedom is played out as the main principle supportive to the right of wearing the headscarf in public institutions (this is particularly the case in Austria and the Netherlands: A5, A40, NL1, NL8) (Gresch *et al.* 2008). Religious freedom as a right enjoyed by all people regardless of ethnicity and nationality seems to almost be the only principle that is stressed in favour of a tolerant (inclusionary) regulation of the headscarf.

In addition to religious freedom as a basic right in liberal democracies, voices in several countries emphasize democracy in order to make a statement for or against the wearing of the headscarf. The democracy-concept is framed as follows: the given value system is linked to liberal democracy which is characterized by individual rights, religious rights and freedom (of choice). Democracy is equated with an open and tolerant society, a frame which is particularly strong in *Denmark* (DK5, DK7), the *UK* (UK9) and *Germany* (G10). However, this representation also includes a positioning against the headscarf (as for instance in Germany, G22). In the *Netherlands*, the concept of democracy is moreover seen as a communicative act – which is hindered by full body covering. Therefore, the *burqa* is framed as undemocratic and has to be forbidden (NL11).

Compared to the traditional liberal right of religious freedom, the reference to gender equality and anti-discrimination in these arguments is weak. References to gender equality are not built upon the individual right of a woman to

equal treatment, the right to anti-discrimination or the individual right of a woman to choose her dress without any restrictions and express her (political or religious) identity. Thus, it is notable that the principle under the guise of inclusion and participation, which is highly valued in the European Union, namely non-discrimination, plays only a minor role in national debates. It is only Muslim organizations, for instance in Germany, which emphasize that the headscarf ban will foster group building and discrimination of minority groups (G24, G25).

In the first place, political parties in *Denmark* make statements consisting of references to individual rights and are in favour of both a tolerant and restrictive regulation alike. On the one hand, it is said that Denmark would not accept that women do not have personal freedom (DK5). According to the Christian Democratic Party, banning the headscarf would go against freedom of religion and hence against democracy. The Christian Democratic Party states that religious garments should be accepted in an inclusive society (DK9). On the other hand, the Danish People's Party positioning itself against veiling argues that veiling does not count as compatible with Danish freedom rights (DK7).

The reference of national actors to the European level: 'Europeanization from below?'

One result of our frame analysis is that hardly any national documents explicitly refer to European documents, European legal frameworks and European debates on values comprising religious freedom, anti-discrimination and integration. In the cases of the Netherlands, Denmark and the UK, no references to the European realm of values, norms and (individual) rights are made. This is slightly different in French and German policy debates where references to European documents and their enshrined values as a common denominator can be explored. In *German* policy debates the ECHR is mentioned (Article 9 Religious Freedom, Article 14 Prohibition of Gender Discrimination; G14, G22). These references to fundamental liberal rights are accompanied by the interceding of decisions of the ECTHR in the Swiss headscarf case (G14, G13, G18). Also in *France* reference is made to European documents especially with the aim of opposing the headscarf ban. In contesting the ban as a discriminatory practice against covered women, commentators quote the European Convention on freedom of thought, conscience and religion (§2, Article 9), but also the European Council Directive (2000) establishing a general framework for equal treatment in employment.

All in all, only modest references to Europe or to a European value system are present in national debates. This is especially true for countries where political conflicts over headscarves are moderate, such as Austria and the Netherlands. Only in countries with fierce debates – France and Germany – do political actors refer to the European Union level. Ultimately, the international level is referred to in fierce controversies in order to strengthen one's own argument – either pro or contra the *hijab*.

Some of the national documents refer to secularity depicted as a European value and to 'Europeanness'. In *Greek* debates, for instance, secularism is framed as European and as posing a threat to national cultural traditions. The idea of national pride and patriotism is mobilized against the idea of a secular European universalism. The EU is presented as a threat to the Greek church–state relation, which is seen as part of national traditions, a threat to (Greek) Christianity; therefore, the Orthodox Church demands freedom of religious practices (GR10). These voices, which are mainly pro-veiling, criticize European debates on headscarves with the argument that religion is being politicized (GR9).

The *French* discourse differs completely, presenting the idea of 'Europeanness' as a norm to which veiled women ought to adhere. The strategic invocation of a liberal-secular logic of 'Europeanness' as an idealized and normative value becomes quite evident in the discourses that explicitly deploy the dominant conception of the republican principle of *laïcité* in order to develop the argument of the necessity of Muslim women's emancipation and assimilation (FR8).

Summing up the dimension of 'vertical discursive Europeanization', our findings show that processes of Europeanization from above and from below are ambivalent and precarious. While the European level fosters individual rights as universal rights, important national actors do not refer to European debates but rather frame these liberal rights as national values and, hence, not as parts of a European space of shared values.

National fragmentation: the lack of 'horizontal Europeanization'

On *national* levels our analysis shows that in almost all headscarf debates Muslims living and working in a given country are referred to as immigrants rather than as citizens. The construction of opposed values and norms serves to portray a common 'Us' (the citizens) distinguished from a different (non-European and immigrant), external 'Other' (see also Katzenstein and Byrnes 2006: 680). The 'Other' is often presented not only as different, but also as being alien, backward or anti-modern (Scott 2007; Rosenberger and Sauer 2008). The mode to construct different categories of people and social groups runs – first of all – along majority societies and minority, namely migrant communities (an exception is Turkey). Advocates of restrictions of the wearing of the headscarf perceive Muslims as 'Others', at least as non-Europeans. Even the headscarf controversy in France, most profoundly its parts which are supportive of the outlawing of the veil, seems to be discursively organized around an oppositional scheme of France and its Muslims, the designed distinctions between tradition and modernity, religion and enlightenment, community and republic (FR8).

In national headscarf debates the categorization of distinct groups follows mainly four major discursive 'demarcation' lines – culture, gender, modernity and 'Westernness', and fear and threats. As already mentioned, this categorization is

linked to conflicting value systems. In the following we will present frames used in domestic debates in order to point out the patterns of constructing the 'Other' in national headscarf debates.

The cultural 'Other'

Framing strategies pointing to culture construct the 'Other' as belonging to a clear-cut different culture based on traditions, habits and values, which are perceived as being incompatible with the culture of the majority society. The 'Islamic culture' as a marker for unwanted differences is particularly developed in the Christian-conservative debate in *Germany* where 'Westernness' is equated with Christianity and Christian values (G17), and in the right-wing-populist discourse in *Austria* (A20) and in *Denmark*. The populist Danish People's Party demands a policy to ban the headscarf and highlights that the medieval Muslim culture contradicts Danish culture based on democracy and individual rights (DK4).

The oppressed woman

Arguments referring to gender equality are instrumental to build and strengthen boundaries between Islam and Europe, in order to give meaning to the separation of 'Them' from 'Us'. In all countries investigated, political actors are outspoken in presenting Islam as a backward and medieval religion or tradition by referring to gender relations and/or the image of the oppressed women, for instance in the *UK* (UK7), *Denmark* (DK19), *Austria* (A20, A23), the *Netherlands* (NL12, NL14). Even in the *Greek* debate where only few references are made to gender equality, covered women are seen as more backward compared both to majority women and to uncovered Turkish minority women (GR1). The predominant perception underlying some commentaries is that a prohibition of veiling works not only to protect national culture in its homogeneously European modality, but also to liberate women and girls who are victimized and oppressed by the archaic patriarchal traditions of Islam (FR3). In the *French* anti-veiling discourses of the media, in feminist discourse and by public intellectuals, experts and commentators, the conclusion is drawn that backward-portrayed veiled women should be assimilated into the French, modern, secular mode of citizenship. Thus, banning the headscarf is meant to promote gender equality.

Anti-modernity

The backwardness of a culture is a very strong image associated with headscarf wearing women (FR13). Ahmed Aboutaleb, a Dutch-Moroccan politician, equates emancipation with Enlightenment. His line of argument is that immigrants, having not yet reached the level of emancipation of Western and Dutch societies, are expected to adapt to this standard; he does admit, though, that time is needed to do so (NL12). Mass media and political actors attempt to draw a

line between a backward, patriarchal and oppressive political ideology of Islam and an emancipative, progressive and enlightened notion of national or European modernity (DK7, A20). Within the conceptual framework of this purported polarity between 'Islam' and 'Europe', 'Islam' is typically depicted as a religion and culture essentially positioned outside of and against modernity. Also in *Turkey*, the image of the headscarf as oppressive and backward is discursively constructed. Academics, journalists and politicians alike present the society as divided into veiled and unveiled women leading to conflicting religious and secular sections (TR9).

Loss of national unity

One of the core elements in some national debates about headscarves, but very strongly in debates about face veils, is the fear of divisions, separation, fragmentation and lack of social cohesion. In the *UK*, *Denmark* and *Turkey* (UK1, DK1, TR2) a 'non-integration frame' is pronounced and implies that a lack of social cohesion is dangerous for democratic societies, therefore individuals have the duty to integrate and to assimilate and not to claim their individual rights – such as to wear a face veil. What the debate about the *full body covering* in the UK brings to the fore is that two separated communities are in place: the Muslim community and the white British community (UK1, UK20). The latter is described as a society searching for dialogue and the Muslim community is presented as not wanting to communicate and hence not be part of the British society (UK20). Muslim veiled women are presented as a group distinct from and alien to women of the 'British society' (UK1, UK4). From a politician's perspective (UK8), Muslims are constructed as victims due to their poor economic and social status and marginalization within society. It is argued that women who are hidden cannot be fully included into society, or women who are fully covered are not able to be active participants in society (UK13).

Christian-democratic politicians in *Germany* claim that the headscarf is a sign for group construction and cultural separation with disintegrative effects. Annette Schavan, the then Minister for Culture of the federal state Baden-Württemberg, who supported the law against headscarves at schools, claims that husbands and fathers force girls and women to wear the headscarf in order to distinguish themselves from the German society (G1f). Social democrats are also afraid of in-group building by Muslim immigrants and plead for integration and, thus, for avoiding signs that might promote isolation or separation like the headscarf (G1c). In the *Netherlands*, the study organization on multicultural society 'Education' is worried about young Muslims claiming religious identity and therefore excluding themselves from Dutch society (NL22). In *Turkey*, the framing referring to separation and segregation is very similar to the one in Western Europe. Here, veiled women are also portrayed as un-modern and blamed for segregation and inequality in the society. It is the covered woman who is depicted as causing separation and splitting the society into two sections – the Islamic and the secular section (TR2).

In *France*, the proponents of the ban perceive the headscarf as an exceptional case, which legitimates limitation to the expression of religious faith. The 2004 law is presented as a necessary gesture of defence of the French republic and its indivisible national unity. National unity, as a fundamental principle of the republic, is presumed to be achieved and safeguarded through the remedy of cultural assimilation (Scott 2007).

In sum, we point to general debates on Islam and Muslim accommodation which often imply 'accentuations of symbolic frontiers between Europe and Islam' (Koenig 2007: 924) and question whether Islam, Muslim values and the visibility of Islamic symbols are seen as compatible with the principles of liberal democracy and enlightenment (Cesari 2004). In headscarf debates and in debates about full body covering as in the UK and the Netherlands, the external covered 'Other' embraces values, which are viewed not only as different from 'ours', but as incompatible with Western values or with Judaeo-Christian norms. In those discussions that advocate for restrictions or even a ban of veiling, political actors assume culturally homogeneous value systems that, in turn, contradict with religious and ethnic pluralism. Very often right-wing populist parties argue against headscarves by contrasting traditional Muslim values (spelled out as patriarchy and gender inequality) with democratic values (personal freedom and gender equality). The latter are ascribed as substantive components of a given nation state or even of Europe (DK4).

It is interesting to note that contradicting value systems are grounded in very different situation-specific events and markers. In *Germany*, for instance, it is a Christian foundation linked to gender equality (G21); in *Denmark* it is democracy on which the country is based (DK4); in the *Netherlands* it is gender equality (NL14); in *France* and *Turkey* it is secularism; in the *UK* it is openness and toleration which characterizes the British 'white' society (UK20). The examples show that rather often political actors and opinion leaders do not legitimize restrictions of veiling with a universal or 'European' set of values but with nation-specific value systems.

Conclusions: discursive Europeanization or national fragmentation?

In contrast to our original assumption that headscarf debates use 'European values' as an empty signifier in order to construct a common sphere of shared values, the empirical data show that in *national* headscarf debates the saliency of explicit references to a European value system, European norms and documents is fairly modest. We could not find convergence of values and norms referred to on the European level with those in the nation states in headscarf debates. On the contrary, actors in national arenas are inclined to refrain from setting the stage for a discursive European value space. Debates about Muslim head covering use frames which refer to values that are closely linked to cultural practices and norms archetypically ascribed to the respective nation state. The comparison of frames between nation states also highlights a divergence of values. Thus, we

might conclude that in veiling debates a new form of 'neo-nationalism' is emerging (Gingrich and Banks 2006), or at least a fragmentation (see Figure 4.2). In the remainder of the chapter we will have a concluding look at our findings.

Absence of Europe in national headscarf debates

'Europeanization from above' is the perspective of trickling down values stressed at the European level to domestic levels and a convergence of European and domestic debates. Our empirical findings do not indicate a discursive convergence of basic rights and inclusive values discussed on the European level in national headscarf debates. On the contrary, national actors only selectively refer to debates in the European arena to strengthen value settings, which are framed as national traditions. With respect to 'Europeanization from below', the findings show that Europe is broadly absent in domestic debates. National actors involved in headscarf debates overwhelmingly refrain from making references to values attributed to Europe or from quotations of European documents. For instance, the European Union legal framework is only marginally referred to by people or groups who have a stand in headscarf debates on member state levels. On the contrary, social and political actors in headscarf controversies construct values and norms which are closely linked to national features, institutional peculiarities and achievements.

Europe

Europeanization

• Universal rights
• Inclusive values

Value convergence ⟷ Value divergence

• Religious freedomu

• Cultural/national values
• Exclusive values: 'Us' – 'Other'u

Fragmentationu

Nation States
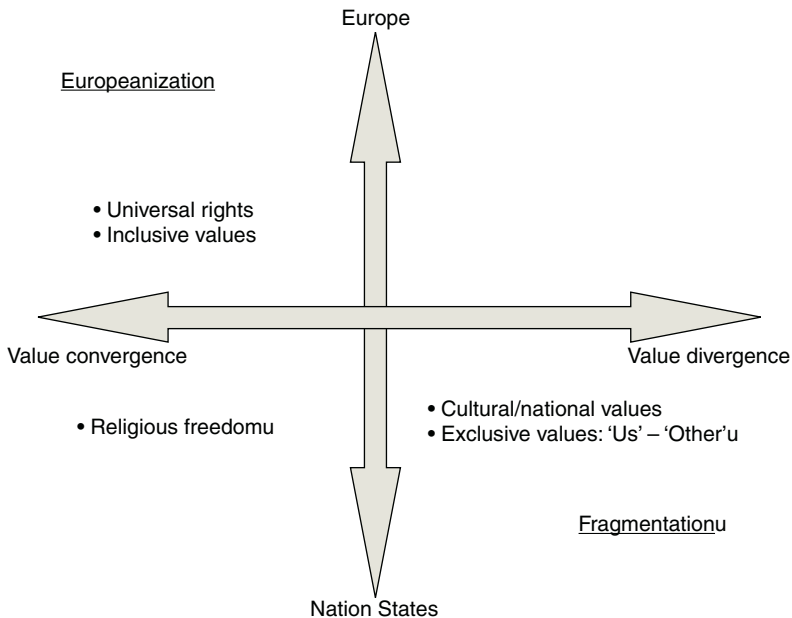
Figure 4.2 Europeanization versus national fragmentation.

Strengthening nationalistic values

The second dimension to assess discursive Europeanization encompasses the horizontal aspect. The indicator used is whether values and norms addressed in headscarf debates in national political spaces between the analysed countries converge. At first glance, on *national* levels some similarities in formal patterns of values and norms addressed in policy documents and media texts can be detected. In several countries various political and social actors stress values such as individual rights of religious freedom and gender equality. Can this be labelled as the creation of a common set of values, in other words, a 'discursive Europeanization from within?' At second glance, it turns out that almost all values and norms in domestic debates are being presented as specific to a given nationhood. The frame analysis shows that similarities exist; however, these do not contribute to a common set of shared 'European values' but rather to value systems presented as national self-understanding.

Nonetheless, we could observe a specific form of convergence of values at the horizontal level: in particular, two mechanisms of value convergence on domestic levels are in place which contradict potential processes of 'discursive Europeanization': first, the discursive articulation of universal rights as cultural achievements of a given nation and, second, values designed as nationally historicized peculiarities.

It is remarkable to what extent culturally constructed norms, values and representations of the imagined 'Other' are in place, while liberal values based on universal rights accessible for all people are placed peripherally. Basic universal rights such as gender equality and the individual right to religious freedom are largely exploited as 'cultural rights' linked to the tradition of a given nation state. In sum, debates on veiling turn out to be instrumental for redefining universal values and norms as nation specific. This 'culturalization of values' might lead to particularization and nationalism (Mouritsen 2006).

This chapter showed that on the national level debates about individual and anti-discrimination rights are gradually transformed into an approach dedicated to cultural heritage: basic values like gender equality and religious freedom are not presented as components of universal rights but as values ascribed to a specific national culture. This is also the mechanism of the exclusionary construction of groups viewed as the 'Other'.[6] In these deliberative processes, patterns of beliefs and behaviours are deployed which constitute certain categories of people along religious and ethnic boundaries. Thus, headscarf policies are not only contested, they become a tool to define the 'liberal Self' as opposed to the 'Other' and to renegotiate collective identities on the domestic level in an exclusionary way.

Within the framework of 'culturalization of values', the argument that wearing the headscarf is a visible sign of the unwillingness of integration into settler societies takes a slightly different form. In this type of framing strategy, the headscarf serves as a symbol for non-compliance with declared norms such as integration into a society and modernity. Stressing unwillingness and

incompatibility of values and norms, the debate furthermore touches upon the self-evidence of social cohesion against threats imposed by the existence of different social and religious practices. Moreover, the topos of integration of immigrants and social cohesion is not only highly rated within the proclaimed value order; these discursive elements enjoy almost the same valued position as fundamental principles do. To a certain extent, we might conclude that in headscarf debates universal rights, equality and religious freedom are being sacrificed for the need of social cohesion and cultural integration of immigrants into the majority society. Besides the mere trend of transformation of universal rights into cultural values, the social construction of diverse national peculiarities is a further significant pattern of nationalized discourse.

Besides Turkey, France clearly faced the most heated controversies during the last decades. Studying the French case, Joan Scott observed the preservation of a mythical notion of 'France' as driving force in the *affaire foulard* (2007: 173). Our study on the display of 'European frames of references' (Eder and Kanter 2000) gives strong indications that in headscarf debates social meanings and values ascribed to nation states play a much greater role than European ones. On the contrary, in various debates nationalistic defined values are being reinforced. In addition, the idea that Europe is a space where inclusive standards of recognition of Muslim religious specificities could be translated into national policies appears as illusionary (Massignon 2007: 136).

Notes

1 We owe special thanks to Athena Athanasiou from the Greek team of the VEIL project.
2 Besides the European level, that is the European Union institutions and the institutions of the 'Council of Europe', countries included in this investigation are Austria, Denmark, France, Germany, Greece, the Netherlands, Turkey and the United Kingdom.
3 For this chapter we analysed policy documents by party politicians, by NGOs as well as media articles which explicitly referred to 'Europe' and/or universal norms and which used values and norms by framing them as 'national'.
4 See for the issue of 'goodness of fit', Asensio (2008).
5 In the Written Declaration the members of the EP call on European actors to support religious rights and freedoms in France and throughout the EU, including the right to wear the Muslim *hijab*, Sikh turban, Jewish skullcap and Christian cross in schools.
6 Triandafyllidou (2001) shows the role of the 'Other' as a factor that shapes national sentiments, not only in activating feelings of belonging to a specific group but also in shaping them in a particular direction given that each nation seeks to differentiate itself from a specific 'Other'. From this perspective she argues that 'Others' should be seen as part of the nation because they represent its negative.

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Part II

Regulations and actors

5   Legal regulations

Responses to the Muslim headscarf in Europe[1]

Sabine Berghahn

Introduction

A crucial element in dealing with the Muslim headscarf pertains to the legal regulations, that is, the normative setting by which political and everyday practice is strongly influenced – and also vice versa.[2] Legal cultures and traditions vary across Europe. While legal systems in the common law tradition are mainly based on case law created by courts, legal systems rooted in civil law consist of codified laws adopted by parliaments. Both legal systems are challenged by the question of whether religiously motivated symbols or clothes may be worn in public institutions and/or by state employees exercising their professional functions. However, how do regulations concerning the Muslim veil relate to the constitutional concept of state–church relations? Does this concept allow scope for religion to have an influence on political outcomes in the different legal systems? Therefore this chapter examines whether citizens are allowed to display their personal religious and spiritual affiliations publicly or are required to keep these symbols of their identity out of the public sphere. This leads to the main question: have the countries managed to strike a reasonable balance between individual human rights on the one hand and a commonly agreed regime of regulations concerning collective values for the public sphere on the other hand?

In the first instance, when we speak of 'regulations' we are referring to legal norms. These are legally binding abstract rules and provisions which enable decisions to be taken systematically in specific cases of conflict. Important binding norms are usually contained in written laws in the sense of bills adopted by parliaments. The more fundamental a norm, the more likely it is that this will be enshrined in the constitution, if the country in question has a written constitution; Britain, for example, does not. For France and Turkey, the constitutional principle of *laïcité* or 'secularism' is the most relevant norm structuring the system of citizens' rights and duties (Amir-Moazami 2007: 47; Saktanber and Çorbacıoğlu 2008).

In the absence of specific legal regulations in the form of bills adopted by parliament in these countries, the courts, particularly constitutional or supreme administrative courts, have the role of interpreting the constitutional principle. Hence, specific regulations may also be contained in court decisions. While

regulating by case law, the courts sometimes take the functions of a legislative body, namely adjusting criteria and creating 'norms' to resolve further cases of conflict by 'precedent' judgements. Furthermore, regulations may also be incorporated into decrees, adopted by executive state institutions. Norms created by governments, ministries and other state institutions must be based on a legal authorization in the form of a bill adopted by parliament. In addition to these decrees, there are sometimes in-house documents, administrative statements, instructions or directives giving legal interpretations in order to 'regulate' how state authorities should implement general legal norms in a specific context. These do not establish direct obligations on citizens, but may nevertheless have a de facto impact. In any case, state action encroaching upon citizens' fundamental rights must be based on binding norms – written or unwritten – and must be justified by compelling reasons based on the rights of others or public or private interests as defined by the prevailing social and political consensus in a particular country (Böckenförde 1999: 234; 2001; Sacksofsky 2009: 284). The aim of this chapter is to analyse which legal influences are at work in each country and to criticize them from a normative point of view. In this explicitly legal respect, the relevant criteria for a reasonable mode of regulation include constitutional consistency and compatibility with individual basic and human rights.

The following section examines the legal situation in the countries of our analysis. First, the states applying a prohibitive model of regulation are portrayed, followed by 'tolerant' models. Subsequently, the question whether and why there is a major correlation between the mode of regulation and the legal pattern of state–church relations is discussed. Before drawing conclusions we look at the legal influence coming from the European legal sphere represented by either the European Court of Justice (ECJ) or the European Court of Human Rights (ECtHR).

Modes of regulating the Muslim headscarf

In our sample of eight European states – Austria, Denmark, France, Germany, Greece, the Netherlands, Turkey and the United Kingdom – we find two 'laic' states (in the sense of a strictly secular separation of spheres), three 'neutral' states (where separation between the state and religious communities is implemented, but religious and other 'private' affiliations are allowed to be included into the public sphere) and, finally, three countries with a (privileged) Christian state church (Berghahn 2007, 2008b). France and Turkey are 'laic' states, whilst the neutral states are Austria, Germany and the Netherlands. The countries with a state church are Denmark, Greece and the United Kingdom (England, Scotland).

The 'prohibitive model': France, Turkey and some German federal states

In *France*, the principle of strict state neutrality applies to all public services (including teachers) as well as to courts. This strict form of neutrality is called

laïcité. It stems from the first article of the French constitution affirming the secularity and indivisibility of the Republic and is formally stated in the 1905 Law on Separation between Church and State. Referring to this 1905 law, which demands *laïcité* in public schools, the 2004 legislation (law of 15 March 2004) was adopted to strengthen the principle of strict secularism and gender equality in order to combat violent and patriarchal tendencies within Muslim communities. The law prohibits the display of any religious or political symbols in primary and secondary schools but not in universities. Therefore, wearing a headscarf is forbidden for school pupils. Employees of the state and of public institutions, including teachers, are also forbidden to show their private religious affiliations. Even though there is no legal prohibition in the private sector labour market and despite a law transposing European Union anti-discrimination directives (especially 2000/78/EC) into national law, the principle of *laïcité* and strict ideological 'neutrality' is tacitly applied by many employers to ban the Muslim headscarf in the private sector too (Sanna 2011).

In *Turkey*, students and academics at public or private universities are banned from wearing the headscarf on campus. Most of the court cases regarding the issue have emerged because of incidents in universities. In the past, several students and a few faculty members were expelled from university and lost their lawsuits appealing against their expulsion. However, this does not only affect students; school pupils, teachers and academics working in the education system (including universities), as well as women working in other state institutions and even in hospitals are not allowed to wear any form of religiously motivated head covering prescribed for women or any other religious symbols at all (Saktanber and Çorbacıoğlu 2008). The regulation concerning students refers to Article 17 of the Regulation of the Council of Higher Education in combination with the interpretation by the Constitutional Court in 1989[3] stipulating that head coverings worn by women contravene the principle of secularism. In January 2008, the governing party AKP (*Adalet ve Kalkınma Partisi*; Justice and Development Party) tried to lift the headscarf ban and created a legal framework for this while amending the constitution. However, on 5 June 2008 the Constitutional Court declared this reform unconstitutional as it again violated secularism as the central principle of the Turkish Republic. If even the attempt to lift the (not formally codified) ban on the headscarf for students in universities has failed, it is apparent that the legal prohibitions for all state employees, court staff, members of parliament (MPs) and even for employees of public hospitals will remain in effect. Contrary to the situation in public institutions, no formal law or regulation restricts any kind of veiling in private enterprises in Turkey. However, many employers in the private sector prefer to hire unveiled women, especially for high profile jobs (Saktanber and Çorbacıoğlu 2008).

In *Germany* half of the *Bundesländer* (federal states) (Berghahn 2009; Rostock and Berghahn 2009) have prohibitive regulations. The process of legislation was initiated by the Federal Constitutional Court (FCC) on 24 September 2003,[4] when the court handed down a ruling in the case of Fereshta Ludin, whose application for a teacher's job had been rejected in the federal state of

Baden-Württemberg in 1998. The judgement consisted of a compromise containing liberal and restrictive elements. The court decided that teachers cannot generally be prevented from wearing religious clothes without a legal basis. The majority of judges attributed competence to restrict teachers' religious clothing to the *Land*, referring to the fact that education and school policy fall within the ambit of distinct legislation passed by the federal states. As a consequence, restrictive legislation has been adopted in the parliaments of eight (of 16) *Länder*. Some of them adopted prohibitions for civil servants outside the educational domain (in Berlin and Hesse). However, pupils and students all over Germany are still free to wear the headscarf and no explicit legal restriction of wearing the headscarf on the private labour market exists.

Baden-Württemberg, Bavaria, Hesse, North Rhine-Westphalia and the Saarland have introduced a 'Christian-Occidental model' of regulating the headscarf: the Education Bills adopted in each of these five *Länder* stipulate that teachers (in Hesse all public servants; cf. Sacksofsky 2009) shall behave and dress according to the principle of the state's religious, political and philosophical neutrality and shall not disturb the peace of school or infringe the 'negative freedom from religion' of pupils and parents.[5] The wearing of religious clothes and symbols is explicitly covered by these rules, which were intentionally worded to prohibit the Muslim headscarf. Exceptions are stated for Christian and occidental symbols – e.g. a nun's habit and Jewish *yarmulkes* – in the formula that the 'exhibition' of 'Christian-occidental' 'educational and cultural values or traditions'[6] does not contravene the duty to maintain neutrality. In contrast to this model, Berlin, Bremen and Lower Saxony's Education Bills apply a 'secular model', stipulating neutral behaviour and outer appearance *without* reference to religious traditions of any kind. In these federal states teachers may not wear any form of visible religious or ideological symbols.

It is important to note that the authorities of the *Bundesländer* decide if and which symbols or clothes infringe on state neutrality or endanger peace in the school or the 'negative freedom' of pupils or parents. It does not matter at all what the person wearing a headscarf does or declares, nor how she behaves while teaching. It is claimed that ignoring these individual aspects is justified by the duty to ban the 'abstract danger' – irrespective of individual aspects, although it remains unclear what an 'abstract danger' is. While lawsuits of teachers appealing against these sanctions have failed so far, a number of courts have ruled that all religions must be treated equally. This means that not the headscarf nor the nun's habit nor the Jewish yarmulke should be allowed for teachers. Thus courts rejected the original interpretation of the Christian-occidental clauses as exceptions from equal treatment (Berghahn 2009: 40; Sacksofsky 2009: 289).[7]

The remaining eight states without new regulations apply non-specific norms on requirements for teaching staff to individual cases of teachers wearing a headscarf, if such cases arise. In these federal states teachers may wear the headscarf as long as they do not act in a problematic, non-impartial way, especially by proselytizing.

The 'tolerant model'

Austria has two explicitly tolerant regulations: a decree concerning the national school system, and a collective labour agreement on a local level in the health sector (concerning hospitals in Vienna). For other domains, no specific regulation exists, but there is a practice of tolerating the headscarf. Although right-wing populist politicians have tried to ignite a political debate about headscarves, the legal situation is clearly liberal, as the Minister of Education issued a decree in 2004 stipulating that pupils' headscarves must be tolerated in order to guarantee the constitutional right to religious freedom and free manifestation of faith. In Austria this right is specifically covered by the 1912 'Muslim Law' recognizing the Muslim minority in the occupied territory of Bosnia-Herzegovina (in the context of the Habsburg Empire). Later, contemporary religious communities in Austria were recognized by bills adopted by parliament (Gresch *et al.* 2008; Gresch and Hadj-Abdou 2009). Thus, conflicts on the headscarf in the public domain (mainly schools) have been resolved quickly by referring to the legal provisions, which protect the right to veil on the grounds of respect for religious freedom. Austria, therefore, has one of the most tolerant regulations in Europe concerning expression of religious belief and its manifestation in the public realm. So far, only one prohibitive practice has been legitimized by state authorities: a woman defendant wearing the *niqab* was expelled from a (criminal) court. This decision was confirmed by the Supreme Court, which interpreted full covering as a politically and ideologically motivated gesture (and not as a religious practice).

In *Denmark*, no law at the national level prohibited the wearing of the headscarf, the *niqab* or any other religious symbol until the end of May 2009. However, there were and are some de-centralized regulations that restrict the wearing of headscarves: several shops of the chain *Dansk Supermarked* adopted regulations which prevent hiring employees with headscarves. Also, some high schools have prohibited the *burqa* and the *niqab*, and some municipalities refuse to give welfare benefits to fully covered women. In the meantime, the public mood has grown more radical and since summer 2008 the Danish government has prepared a bill regulating the display of religious (and political) symbols by judges in courtrooms. The regulation does not apply to jury members or lay judges. The government proposal to ban the use of the headscarf by prohibiting all religious and political symbols for judges was supported by the major political parties, but at the same time a number of individual politicians from all political parties – except the far-right Danish People's Party – opposed this ban on religious and political symbols. In May 2009, however, the bill was adopted by parliament and came into effect in June 2009 (Siim 2009).

Although Denmark has one explicitly prohibitive regulation in courts the country shall not be labelled as 'prohibitive' because this ban is a mere symbolic demarcation and so far no woman has been affected by this regulation. At present there are no judges in Denmark who wish to wear a headscarf in court.

Greece has no general law, administrative decree or other legislation regulating the wearing of headscarves or other religious symbols. Therefore, decisions

on implementing specific regulations on pupils' dress are usually left to the discretion of headmasters of public schools. In private schools the issue is regulated by 'internal regulations of practice'. There are no relevant legal regulations or even practices in Greek universities. Within the civil service and the state-owned enterprises, the relevant legislation in the code of practice for civil servants[8] does not include any restrictions on the clothing of public sector employees, apart from general provisions on 'decent behaviour' (Article 27), the right to freedom of expression and the condemnation of any discrimination on the basis of religious or other beliefs (Articles 27 and 45). Despite the liberal legal situation, we can assume that religious minority groups which do not fit into the mainstream pattern are treated with more intimidation than the liberal dynamic of non-regulation might suggest (Avramopoulou and Athanasiou 2011).

In the *Netherlands* women can claim the right to wear a headscarf in the private labour market, in public education and in social welfare services. Individuals who perform certain functions in court and hold jobs in the police force requiring contact with the public are excluded from this liberal regulation (Saharso and Lettinga 2008). A clothing directive issued by the government in 2003[9] laid down criteria stipulating when it is legitimate to impose restrictions on religiously or politically motivated clothing and symbols in the education system. A 2004 policy document[10] concluded that religious symbols should be avoided in courts and for certain positions in the police force. In the past, the liberal outcome of these largely permissive regulations was inspired by consultations in the Equal Treatment Commission (ETC), an autonomous body of nine experts that advises the government and others on equality legislation, as well as by recommendations from an advisory committee on integration in 2004 (*Commissie Blok*). Thus, the government considers the headscarf in its directive on the education system and in its policy statement as an expression of a Muslim woman's religious belief and hence it is protected by the right to freedom of religion. Freedom of religion is a fundamental right in the Netherlands, which can only be restricted if it can be shown that the aim pursued in restricting the exercise of this right is legitimate, and that a ban meets the requirements of proportionality and subsidiarity. The incompatibility of the headscarf with certain functions in the police force and all positions in the judiciary stipulates these exceptions from the overall liberal rule (Saharso and Lettinga 2008; Lettinga and Saharso 2009).

There is no regulation by parliamentary legal act in the *United Kingdom* (UK). Conflicts over veiling in schools and courts are avoided, since pupils in most schools must wear school uniforms and judges in courts still wear wigs and are therefore not affected. If Muslim girls or women and other religious minorities wish to wear more comprehensive covering than the headscarf or if their clothing clashes with the school uniform rules, their wishes must be weighed against the functional imperatives of school life or court procedures. In this case recommendations from experts have been developed (Kılıç *et al.* 2008; Fehr 2009).[11] The main factor that explains Britain's tolerant regime on veiling has its roots in historical traditions and the relationship between church and state.

Although – or even because – there is a state church in parts of the country (England, Scotland), religious freedom is an essential underpinning of British society and, in contrast to other European countries, this is not based on secular procedures and arrangements. However, Britain is an immigration country and has been a multicultural society since the days of the British Empire. Individual rights are viewed as crucial, including the right to choose one's style of dress. The autonomous recommendations for schools and courts explain the principles at stake, how to take them into consideration and how to respect the various aspects of religious, cultural or gender differences. Nevertheless, some cases of conflict concerning veiling practices have arisen and there are media debates about full body veiling. In 2006, the former government minister, Jack Straw, triggered a fierce discussion about citizenship and full body veiling in a newspaper commentary about a fully covered lady consulting him in his office hours (Straw 2006).

Since the terrorist attacks of September 2001 in the USA, major changes in discussions about the wearing of headscarves have taken place across Europe. Restrictive tendencies have emerged even in the countries of 'tolerant' types of regulation. The policy shift in Denmark, which to date is primarily symbolic, and the Dutch reservations against the headscarf in the police and in courts have already been mentioned. Nevertheless, the Netherlands remains an overall permissive and multicultural country, supposedly the most tolerant together with the UK. Analogously to the recent French legal initiative, mainstream Dutch parties also felt encouraged in 2005 to press ahead with an initiative to prohibit full body covering (the *burqa* or *niqab*) being worn on public transport and in the streets. In the Netherlands these attempts to ban full body covering, not just in pragmatic case by case practice but by an explicit law, have failed several times because liberally minded experts (Vermeulen *et al.* 2006) have argued that there are enough instruments to restrict individuals who pose a risk to public safety (Saharso and Lettinga 2008; Loenen 2008). However, in 2009, the government announced that it will prepare a bill to forbid any head or body covering that fully covers the face in both public and private schools. Though Geert Wilders' more radical proposal (to prohibit *burqas* in all public spaces) failed again and is still pending, the government is meeting him halfway by devising a law on clothing that covers the face (Saharso and Lettinga 2008; Lettinga and Saharso 2009; Loenen 2008: 324).

Hence, the countries classified as 'tolerant' in our sample still follow the liberal principle with its permissive implications in their overall practice. Behaviours and outfits which are not prohibited and do not harm others are allowed by law, and the person in question must not be discriminated against. When cases of conflict occurred, however, and political actors – especially from the far right – tried to establish a legal prohibition on veiling, other political or judicial forces have reacted, sometimes in a liberal manner, but increasingly more restrictively. In some cases government decrees, bills adopted by parliament and court decisions regulate head or body covering in either a selectively restrictive or permissive fashion. Equal treatment or anti-discrimination institutions had a

moderating function especially in the Netherlands and Britain (Squires 2007a), where they have a long and active tradition. Even in Denmark, where the ban on judges with headscarves was introduced in 2009, the right of an MP to wear a headscarf was confirmed in 2008 by the Presidium of the parliament (Siim 2007, 2010a, 2010b; Siim and Skjeie 2008; Andreassen 2010). These results correspond with findings that the majority of European states adopted a permissive approach to regulation where and when headscarves may be worn, but at times take a selective approach (overview: Berghahn 2007, 2008a, 2008b; Sauer 2009; Skjeie 2007; Coene and Longman 2008 on Belgium; Wyttenbach 2009 on Switzerland). Almost everywhere, however, full body and face covering is not tolerated in the education system and public sector. The restrictive measures are based on functional reasons (face-to-face communication, safety) and have been handled on a case by case basis with no need for a specific law.

Headscarf regulations and the influence of state–church relations

How do these results fit into categories of state–church or state–religion regimes? Looking at the pattern of banning or tolerating the Muslim headscarf, it becomes clear that there is a strong connection between 'laic' states and the prohibition of any religious clothing in public institutions. However, the examples of Germany and recently of Denmark, where prohibitions of the strongest form – bills adopted by parliament – have come into force, show that legal prohibitions, regardless of the intentions and behaviour of the individual in question, are not exclusively a feature of states that have adopted a strict interpretation of secularism. Neither Germany nor Denmark belongs to the small group of 'laic' states. Apart from these two exceptions, no prohibiting regulations established by law are to be found in the countries of our sample with a neutral state attitude or a state-sanctioned church. That allows us to affirm that the principle of religious pluralism prevails in these countries even though there are tendencies towards restriction and prohibition. At the very least, the majority of 'non-laic' states avoid curtailing the individual right to religious freedom by introducing a ban. In the 'neutral' states and in countries with a privileged state church, it is important to maintain a reasonable balance between fundamental rights and collective values and traditions. Contrary to the 'laic' states, the two other types of state–church regimes always risk being blamed for practising a hidden double standard by privileging their 'own' majority religion and discriminating against the faith of minorities. Therefore they tend to achieve a more pragmatic way of dealing with the problem. However, as we see in the cases of Germany and Denmark, the wish to establish a clear demarcation (setting the German or Danish body politic apart from Muslim immigrant communities) is sometimes stronger than the call for legal rectitude and loyalty to universal principles (Rostock and Berghahn 2008; Berghahn 2010).

The different modes of state–church relations, of identifying or not identifying the state with religions/churches, are themselves the effects of historical

processes in Europe. They mirror the institutional consequences drawn from the religious wars that flared up after the Lutheran Reformation, culminating in the Thirty Years War. The centuries after 1648 are characterized by the fact that a consensus on transcendental questions is impossible and therefore states must avoid conflicts among citizens and states on these issues. In this 'Westphalian' interpretation of 'modern' statehood, countries mainly agreed to respect each other's sovereignty and achieve internal societal peace by giving order and safety to their citizens. Within state territories the governing powers first tried to achieve the ideal of religious homogeneity to avoid or neutralize struggles over metaphysical conflicts. Later, the principle of pluralistic tolerance for different denominations, faiths and opinions was institutionalized; the individual and collective right to 'freedom of thought, conscience and religion', as enshrined in human rights conventions, gained acceptance, as did the right to manifest one's faith. Nevertheless, France and Turkey, states that refounded themselves in spectacular revolutionary processes, represent a more radical approach, the secularist solution, by creating a fundamental dichotomy between the public and the private sphere. Manifestations of religious belief are thus limited to the private realm; reconciling the political and individual implications of religious affiliations is held to be undesirable. Both countries have established a specific combination of 'laicism' and republicanism, with the underlying assumption that the spiritual influence of religion, faith and clerical power could be kept out of the political and governmental system of the Republic.

Under the premises of modern and liberal legal conceptions of statehood and citizenship, however, the hegemonic protection of the public (=political) sphere from private heterogeneity has become problematic, as fundamental human rights empower individuals and therefore limit the power of the state in restricting these individual rights (about principle tensions cf. Motha 2007). The strict separation of the public and the private sphere fails to provide sufficient justification for a complete prohibition of religious expression in the public sphere; at least the principle of proportionality must be taken into consideration. This means that a regulation should not ignore the individual motivations, intentions and self-interpretations of veiled persons, otherwise the regulation is likely to be perceived as an infringement of the principles of anti-discrimination and diversity enshrined in EU law – with the emphasis on actual participation in the labour markets and economies of Europe (Baer 2007; Squires 2007b).

Hence we can conclude that the 'laic' model is not an adequate basis in developing an appropriate response to the existing multicultural and multireligious diversity of European societies. The two other types of state–church regimes, especially the 'neutral' one, provide pragmatic conditions for a reasonable legal balance. However, these states have problems in adjusting to nondiscriminatory legal management of religious plurality too, as demonstrated by the tendencies towards selective restrictions and prohibitions on the Muslim headscarf in the countries of our analysis.

Conflicting influences from European directives and case law

As we have seen, the regulations in the countries of our sample are strongly influenced by national legal traditions and the historically handed down state–church relations, but in a globalized world and especially in Europe the states have to be committed as well to external legal norms: those of the European Union and international human rights conventions. Therefore we can assume that EU or European Community (EC) anti-discrimination law should have considerable influence in shaping legal regulations concerning the Muslim headscarf, as religious reasons are usually given for this clothing practice. Women who wear headscarves – and a number of Islamic religious authorities – used to agree on the interpretation that some verses of the Qur'an, the holy book of Islam, require women to cover their hair, neck and ears. The question, however, of whether this is a religious duty or a mere social demand deriving from the historical time of the Prophet Muhammad, is contested. Within pluralistic legal systems, 'religious duties' of any kind have to be treated with respect: if a reasonable number of individuals feel obliged to fulfil this duty it has to be regarded as part of their right to religious manifestation and observance, as long as the individuals in question do not harm others or endanger public safety (Böckenförde 2009; Loenen 2006). Once again, an important legal issue of human rights policies, in particular in EU policy, is that nobody shall be discriminated against because of his or her religion – including the exercise of perceived religious duties.

This legal standard is relevant across the EU as stipulated by the directive 2000/78/EC[12] on the labour market. This directive forbids discrimination on the grounds of religion and belief, of age, disability and sexual orientation; other directives ban discrimination in reference to 'race' or ethnic origin (2000/43/EC)[13] and to sex/gender (2002/73/EC, 2004/113/EC, 2006/54/EC)[14] in several areas of economic and social life. These directives, based on Article 13 of the Amsterdam Treaty, in effect since 1999, have been adopted since 2000, and prohibit either direct or indirect discrimination. Since 2009 the European Commission has been preparing a new directive to ban discrimination on grounds of religion or belief, age, disability or sexual orientation in access to goods and services such as banking, education, transport and health: the anti-discrimination directives of 2000 and 2002 have now been transposed into national legislation by the EU member states. However, experts and the European Commission have grave doubts about full compliance of some of the newly adopted laws with the normative requirements of the directives. As this overview on headscarf prohibitions shows, the national acts allow in some cases restrictions of religious freedom and exceptions from the rule of non-discrimination on the grounds of religion. Restrictions and exceptions to this general rule are sometimes based on increased demands for secularity or neutrality for public employees, and requirements by churches and other organizations concerning the denominational affiliation and ethos of their employees are widely permitted by the national legislation, for example in Germany. Such restrictions to the general provisions are provided for in Article 4 Paragraph 1 and 2 of the directive 2000/78/EC. As

a consequence, the 'laic' state of France in particular continues to prohibit all religious symbols for civil servants, whilst newly restrictive approaches in countries, such as Germany and Denmark, deny that banning religiously motivated clothes, symbols and behaviour for teachers or judges could be a violation of non-discrimination on the labour market. In the case of specific conflicts, national courts must ensure that national legal regulations comply with the meaning and spirit of the EU directives. In cases of uncertainty, national courts may refer the question of compliance to the ECJ;[15] national supreme courts are even obliged to ask for 'preliminary rulings' in such cases.

Besides the aspect of religion, sex/gender is also an important consideration (as a potential source of 'multiple discrimination') in this intersectional context (Sauer 2009), as the particular covering duty only applies to women. Bans on such clothing might be a sort of indirect discrimination, as these women who are excluded from school or employment are much more disadvantaged than Muslim men, who do not feel obliged by religious rules to cover their heads. A similar logic could apply in the light of the ban on discrimination on the grounds of 'race' or ethnic origin. As a number of female Muslim immigrants wear a headscarf, any rejection in a job application process might be indirect discrimination on the grounds of them belonging to the often despised group of Muslim immigrants from a certain region and with a foreign ethnic background.

As the labour market is the domain where all these disadvantages and rejections generally have a pronounced impact, directive 2000/78/EC becomes rather important. Member states shall ensure

> that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.
> (Article 4, Paragraph 1 of directive 2000/78/EC)

In other words, Article 4, Paragraph 1 of the directive 2000/78/EC calls for equal treatment of employees and prohibits disadvantages introduced vis-à-vis the non-discrimination criteria in Article 1 of the EC directives 2000/43/EC, 2000/78/EC and 2002/73/EC (in reference to race/ethnic origin, religion or belief, disability, age or sexual orientation and sex) on the labour market. If employees or job applicants are not all treated in the same fashion, this must be justified by compelling occupational requirements of the specific job. As the anti-discrimination directives have been transposed into binding laws in the member states, a Muslim woman should be allowed to cover her head as long as the headscarf does not prevent her from doing her job properly – and in the civil service this means neutrally and impartially. However the legislation allows, as we have seen by regarding the regulations in some countries, a general ban on religious symbols or clothes for pupils or civil servants.

The ECJ has not yet handed down a ruling on a headscarf or covering case; there have been no cases submitted to the court in Luxembourg by a national court via a request for a 'preliminary ruling' (Article 234 TEC/Amsterdam Treaty, Article 267 TEC/Lisbon Treaty). Concerning other issues, the ECJ has affirmed in several judgements that discrimination tied to the characteristics of 'race'/ethnic origin, sex/gender, religion and belief, age, disability or sexual orientation cannot be tolerated. One example is the judgement in the 'Feryn' case (C-54/07 of 19 July 2008)[16] versus a Belgian company. The company had stated publicly that it would not recruit employees of a certain ethnic origin; the ECJ declared this as grounds for presumption of direct discrimination even though nobody was affected. Plaintiffs and experts maintain that the prohibition on wearing a headscarf is not compatible with EC directive 2000/78 (e.g. Walter and von Ungern-Sternberg 2008). However, even though in Germany, for example, about 20 to 30 courts of all levels up to the Federal Labour Court and the Federal Administrative Court have been engaged in lawsuits, none of these courts has so far appealed to the ECJ in headscarf cases. Instead of asking for 'preliminary rulings' these courts dismissed cases brought by several covered Muslim teachers and a social worker, and declared the prohibitive Education Bills compatible with European anti-discrimination norms. Nevertheless, this prohibitive practice might easily be challenged if one single court were to dare to deviate from the common line in court decisions and request a ruling from the ECJ. On the one hand, the ECJ then could apply its strict anti-discriminatory rules and principles consistently in order to affirm the idea of a European space of economic liberties and equal treatment on the labour market. On the other hand, the ECJ would have to find a way to deal with case law from the ECtHR, which tends to hand down rulings based on rather different criteria. The ECtHR, an institution of the Council of Europe, decides on the basis of the ECHR of 1950, which is binding on all 47 Council of Europe members, including the 27 EU member states.

While there are no ECJ rulings on the headscarf issue, there are several ECtHR judgements on headscarf cases involving Switzerland, Turkey and France, supporting headscarf bans in these countries. The rulings might be interpreted in favour of the notion that a general ban on headscarves is compatible with international human rights, particularly those of the ECHR.[17] The crucial point, however, is that contrary to the EC anti-discrimination directives, the reference norm within the ECHR limits the individual scope of religious freedom to the specific notions within each state concerning the manner in which the right of freedom of 'thought, conscience and religion' should be protected. Article 9 ECHR states:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
>   Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic

society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

According to the second paragraph of the article, the right 'to manifest one's religion' may be restricted by limitations that are 'prescribed by law' and pertain to what is necessary in a 'democratic society'. Further reasons for restrictions include the requirements of maintaining public order, demands of health or morals or the rights of other persons. Paragraph 2 thus weakens the imperative of Paragraph 1. While 'holding' a religious belief is protected absolutely, the right to 'manifest' one's belief – outside a religious context (worship, teaching, practice and observance) – is only protected with certain caveats. This makes clear that restrictions may impinge on the right to exercise 'thought, conscience and religion' in the public sphere.

By admitting broad discretionary scope to Council of Europe members, the ECtHR has assessed the ban on headscarves as being compatible with Article 9 and other freedom and equality rights of the European Human Rights Convention. One spectacular decision concerned a Swiss teacher in the canton of Geneva,[18] another concerned a Turkish scholar[19] and in one case the Grand Chamber of the Court ruled on the claim of a Turkish medical student.[20] In addition, the Court has ruled on several French and Turkish cases of pupils,[21] in each case in favour of the states involved and their restrictive measures against the women and girls wearing headscarves.

The most controversial debate among international and European legal experts flared up in response to the decision in the case of *Leyla Şahin* v. *Turkey*. The Grand Chamber ruled in 2005 by 16 votes to one that the exclusion of Leyla Şahin from the Faculty of Medicine of Istanbul University did not constitute a violation of Article 9 ECHR. Violations of Articles 2, 8, 10 and 14 were also denied. One main argument by the court referred to the 'margin of appreciation' of the contracting states. According to the principles of self-determination of states, rather broad discretionary scope was granted to the contracting states. States may appreciate their 'own' rules, values and principles related to the necessities of maintaining order and democracy in the particular country and the ECtHR would not intervene, unless the interference of the state was not 'justified in principle and proportionate to the aims pursued'.[22] In the Turkish and French headscarf cases, it is obvious that the ECtHR accepted the overriding importance that both the Turkish and French constitution and political system attribute to secularism or *laïcité*. The court seemed to admit that the prohibition of the headscarf is generally 'necessary in a democratic society' without asking for evidence and compelling contextual arguments. In the case of *Leyla Şahin* v. *Turkey* the court assumed the restrictions to have been foreseeable, practised equitably and to have been compatible with the principle of proportionality. However, all these judgements are vehemently criticized. Appended to the Şahin decision we find the very critical dissenting vote by Françoise Tulkens, the Belgian judge who set out the criteria which the court should have examined but failed to consider sufficiently:

> Owing to its nature, the Court's review must be conducted *in concreto*, in principle by reference to three criteria: first whether the interference, which must be capable of protecting the legitimate interest that has been put at risk, was appropriate; second, whether the measure that has been chosen is the measure that is the least restrictive of the right or freedom concerned; and lastly, whether the measure was proportionate, a question which entails a balancing of the competing interests.
>
> (*Leyla Şahin* v. *Turkey* Judgement.
> Dissenting Opinion of Judge Tulkens: 42)[23]

Tulkens ultimately concludes the exact opposite: she assesses the ban on head-scarves for students in Turkey as a violation of Article 9 ECHR. In other words, she expresses the argument that the aim of the court's case law is to protect the rights and freedoms of citizens and not in the first place to affirm broad discretionary 'room for maneuver' of states, which generally restrict these rights to the detriment of individuals.

Tulkens opposed the assertion of the court concerning the 'gender argument' too: this line of reasoning claims that a student wearing a headscarf undermines the equality of women and men, of girls and boys in the perception of others. Indeed the ECtHR had stated in the headscarf judgement concerning the Turkish student Leyla Şahin (10 November 2005) as well as in the earlier case of a teacher (*Lucia Dahlab* v. *Switzerland*, 15 February 2001)[24] that a Muslim woman wearing a headscarf displays a 'powerful', 'external' and 'manifest religious attribute'[25] that might have 'some kind of proselytizing effect' and 'is hard to square with the principle of gender equality'.[26] In her dissenting vote in the case of Leyla Şahin, Judge Tulkens countered the court's argument, arguing that it is not the role of the ECtHR to make an 'appraisal of this type – in this instance a unilateral and negative one – of a religion or religious practice' and that she could not see 'how the principle of sexual equality can justify prohibiting a woman from following a practice which, in the absence of proof to the contrary, she must be taken to have freely adopted'.[27]

Here we can observe the two fundamentally contradicting approaches at work: on the one hand, maintaining a balance between the necessities of public order and the essence of individual rights and, on the other hand, drawing a rigid line between the 'antagonistic' spheres, thus avoiding individual societal conflicts by glorifying homogeneity but stigmatizing private plurality and difference in the public realm. The latter approach might have been an appropriate measure after the religious wars in Europe; nowadays it seems to be too rigid and not sensitive enough to provide equality for believers of different faiths and/or non-believers in a proportionate and pluralistic fashion.

Nevertheless, the case law of the ECtHR seems to be covered by the normative reference to the wording of Article 9 of the 1950 ECHR and to its distinction between the public and the private realm. However, this simple distinction between spheres is challenged nowadays (Loenen 2006; Cohen 2002: 52–6). The European Charter of Fundamental Rights, the 'constitutional' document of the

European Union, contains in Article 10 a guarantee of the 'freedom of thought, conscience and religion' without such limitation for religious manifestations in the public sphere as is still part of Article 9 of the ECHR.[28] This can be interpreted as an improvement, which facilitates religious pluralism. Although the European Charter does not change the actual legal situation in the EU member states but only defines the basic rights of the citizens of the Union vis-à-vis European institutions and legislation, it can be taken as an indication of the direction the EU intends to steer and as evidence of a trend towards more individualistic and diverse approaches to granting religious freedom rights in the future.

Conclusion

This chapter has shown that the legal regulations towards veiling make up the normative setting that steers political and everyday practice, whilst mirroring collective attitudes and their apparent or hidden political motivations. The legal tradition, particularly the constitutional frame of each country that has been shaped in historical processes, influences headscarf restrictions or accommodation. The legislative bodies and the courts of most states used to regulate in a path-dependent way. Only in parts of Germany is the situation paradoxical, as the ban against teachers wearing headscarves contradicts the German legal tradition of an 'open' understanding of state neutrality and of a wide legitimate scope of religious manifestations of individuals. Within the legal tradition of each country, the relationship between state and church/religion plays a major role: the laic states (France and Turkey) tend to prohibit all signs and symbols worn in the public sphere. At the same time these measures create a problematic tension between the distinction between the public and the private realm on the one hand and the international and European requirements of basic and human rights for individuals on the other. In the non-laic states more conciliatory and pragmatic policies prevail. Some measures, however, have been taken in this group of 'tolerant' countries that express prohibitive tendencies. They can be qualified as contradicting the liberal and pluralistic legal traditions of these countries. In Germany, the ban on teachers' headscarves actually affects the professional chances of a number of good qualified female Muslims, whereas in Denmark and the Netherlands the legal restrictions have less actual impact and serve mainly symbolic purposes. Nevertheless, all these restrictions tend to infringe on individual freedom and equality rights of headscarf wearing women who want to participate in the labour market and in the political sphere.

Hence we can conclude that prohibitive regulations against Muslim women wearing headscarves often suffer from a lack of proportionality and fairness against immigrants. Not all the countries of our analysis manage to find the adequate balance between collective attitudes that express the wish to demarcate against Muslim immigrants and to justify this by 'modern', 'national' or 'European values' on the one hand, and the legislative tolerance and universalism required by the same ideas shaped in the form of 'principles' on the other. While national or European 'values' are vague, the rights which follow from the

corresponding 'principles' – freedom of religion and faith, gender equality and self determination – are more precise and enshrined in constitutional rights, European anti-discrimination laws and human rights declarations. Therefore, regulations have to respect these guaranteed universalistic rights. Otherwise states run the risk of practising a legal double standard.

Notes

1 I would like to thank Helen Ferguson for her patient reading of the text and correcting my language.
2 State of regulation as of 10 July 2010.
3 Turkish Constitutional Court, 7 March 1989, 1989/1, 1989/12.
4 BVerfG (FCC), 24 September 2003, Az. 2 BvR 1436/02, BVerfGE 108, pp. 282.
5 It refers to the right not to be bothered by religious manifestations of others in institutional situations when the person is compelled to visit the public institution. This 'negative freedom' is part of the basic right to religious freedom in Germany, Article 4 of the Basic Law.
6 See § 57 sec. 4 sen. 3 Schulgesetz-NRW (Education Law of North Rhine-Westphalia) and § 38 sec. 2 sen. 3 Schulgesetz-BW (Education Law of Baden-Württemberg).
7 The first court was the Federal Administrative Court (Bundesverwaltungsgericht), BVerwGE 121, pp. 140 (24 June 2004, 2C 45.03).
8 Law 2683/1999, updated and replaced by Law 3528/2007.
9 'Leidraad Kleding op Scholen', 2 June 2003, WJZ/2003/23379.
10 'Constitutional Rights in a pluriform society'/'Grondrechten in een pluriforme samenleving', TK 29614, nr. 2 (2003–2004).
11 See policy recommendation for the judiciary by JSB/ETAC 2007, Chapter 3.3. Religious dress: Judicial Studies Board/Equal Treatment Advisory Committee (JSB/ETAC) (2007): Equal Treatment Bench Book, online, available at: www.jsboard.co.uk/downloads/ettb_veil.pdf (accessed 24 March 2009); concerning school uniform, see policy recommendation: DCSF (Department for Children, Schools and Families) (2007): guidance to schools on school uniform and related policies, last update: 4 October 2007, online, available at: www.teachernet.gov.uk/management/atoz/u/uniform/ (accessed 24 March 2009).
12 Council Directive establishing a general framework for equal treatment in employment and occupation.
13 Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
14 2002/73/EC, Directive of the European Parliament and the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; 2004/113/EC, Council Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services; 2006/54/EC, Directive of the European Parliament and the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
15 Based on Article 234 TEC Amsterdam Treaty, Article 267 EC Lisbon Treaty, named Treaty on the Functioning of the European Union.
16 ECJ, C-54/07, 'Feryn', 10 July 2008, online, available at: http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en (accessed 22 July 2010).
17 For example: BAG (Federal Labour Court) 20 August 2009, Az. 2 AZR 499/08 (case of the school social worker wearing a pink beret); BVerwG (Federal Administrative Court), 16 December 2008, Az. BVerwG 2 B 46.08, case of Doris Graber.

18 ECtHR, *Lucia Dahlab* v. *Switzerland*, No. 42393/98, online, available at: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Dahlab%20|%2042393/98&sessionid=73177788&skin=hudoc-en (accessed 6 July 2011); all EctHR decisions online, available at: http://cmiskp.echr.coe.int/tkp197/search.asp (accessed 6 July 2011).

19 ECtHR, *Kurtulmuş* v. *Turkey*, No. 65500/01.

20 ECtHR, *Leyla Şahin* v. *Turkey*, No. 44774/98, 10 November 2005, Grand Chamber. Online, available at: www.menschenrechte.ac.at/orig/05_6/Sahin.pdf (accessed 23 March 2010).

21 ECtHR, *Kevanci* v. *France*, No. 31645/04; *Dogru* v. *France*, No. 27058/05; *Köse et al.* v. *Turkey*, No. 26625/02.

22 ECtHR, *Leyla Şahin* v. *Turkey*, No. 44774/98, see endnote 20.

23 ECtHR, *Şahin* v. *Turkey*, Françoise Tulkens, dissenting vote in the case, pp. 42–52, see endnote 20.

24 ECtHR, *Dahlab* v. *Switzerland*, No. 42393/98.

25 ECtHR, *Dahlab* v. *Switzerland*, No. 42393/98, p. 11.

26 ECtHR, *Dahlab* v. *Switzerland*, No. 42393/98, p. 12.

27 ECtHR, *Şahin* v. *Turkey*, Françoise Tulkens, dissenting vote in the case, pp. 42–52, 47; cf. endnote 20.

28 Article 10 European Charter of Fundamental Rights: Freedom of thought, conscience and religion

  1 Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

  2 The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

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6 Regulating religious symbols in public schools

The legal status of the Islamic headscarf in Bulgaria

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One of the key questions underlying the various headscarf debates in Europe is whether or not women freely choose to wear the headscarf or whether they are forced to do so by their families and/or communities. Perhaps more interestingly, in cases where there is no overt social pressure to be covered, what influences women who decide to cover themselves anyway? In other words, what are the intrinsic and extrinsic factors that shape decision making about the headscarf? Some would argue that it is faith alone; others claim that it is politics and still others would argue that the headscarf could be viewed as a fashion statement. The various meanings of the headscarf significantly differ depending on the local context within which it is worn and the particular constellation of social, cultural and historical factors at play. This chapter specifically examines the case of contemporary Bulgaria and argues that the decision to cover one's head in the Bulgarian context is often influenced by the presence of international Islamic charities and the discourses they produce about what is 'proper' behaviour for a Muslim woman.

Indeed, much attention has been paid to the headscarf debates in Western Europe, but few scholars are aware that this issue has also had its own iteration in Eastern Europe. As one of the European Union's two newest member states, Bulgaria is actually the EU country with the largest Muslim minority, estimated between 13 and 15 per cent in a country of 7.9 million as of 2001 (National Statistical Institute 2001). Perhaps more significant is the fact that Bulgaria has a very low overall birthrate; however, the birthrate among the Muslim population is higher than that of the Orthodox Christian population (ibid.), thus fuelling local nationalist anxieties about the 'Islamicization' of the country (Kalkandjieva 2008). These fears were fuelled in 2006 when several complaints regarding the ability of girls to wear their headscarves to public schools were filed with the Bulgarian Commission for Protection from Discrimination (Комисия защита от дискриминация or KZD), the national body in charge of adjudicating human rights violations.[2] This chapter discusses the two key cases that came before the Commission in 2006 and 2007, the circumstances leading up to these cases and the arguments made both for and against religious symbols in schools.

The aim of this chapter is to briefly explore the local politics informing the headscarf cases in Bulgaria, a country which names Eastern Orthodox Christianity as its traditional religion but simultaneously claims that public education

should be secular (Republic of Bulgaria Grand National Assembly 1991). Methodologically, I conduct a detailed discourse analysis of the texts of new Muslim magazines targeted towards young Slavic Muslims. These magazines are excellent examples of the kinds of discourses used to convince young women to wear the headscarf, even when these women come from families where their mothers and older female relatives are completely uncovered. The two magazines that I focus on were first published in the Smolyan region just one year before the first headscarf case in 2006, and it was the editors of one of the magazines that actually filed the complaint on the aggrieved girls' behalf. I then turn to a close reading of the written texts of the two key decisions on the wearing of headscarves in public schools. I show that the language of these decisions explicitly relies on language and rationales from the European Court of Human Rights (EctHR) in order to unofficially ban the headscarf in Bulgaria, while still leaving plenty of ambiguity for individual headmasters to circumvent the ban if they wish. This reflects Bulgaria's uneasy position vis-à-vis its Muslim minority population, as well as intra-Muslim rivalries between the ethnic Turkish population and the Bulgarian-speaking Muslims.

The next section of this chapter explores the demographics of the Muslim community in Bulgaria and the shifting contours of Muslim belief and practice. In particular, I focus on two new Islamic magazines, *Ikra* and *Myusyulmansko Obshtestvo*, which contain articles arguing that it is mandatory for Muslim women to wear the headscarf in public. I also explore the growing influence of recently established Islamic organizations with ties to international Islamic organizations in Saudi Arabia and Jordan. In the third section, I look at the first headscarf case in 2006 and the political context of Decision #37 of the Anti-Discrimination Commission, a decision which effectively banned the headscarf in public schools. I then examine the second headscarf case in 2007, which seemingly reversed this decision but in effect gave individual headmasters the power to discriminate against the headscarf without any fear of repercussions from the state. In the final section, I briefly discuss the legislation that was formally proposed in 2009 that would have officially banned all religious symbols in public schools and offer some speculation as to how the issue may play out in the future. Interethnic rivalries among the Muslim minority, and a local perception that wearing the headscarf is evidence of an imported 'Arab' (rather than Turkish) Islam, have undermined the government's ability to have a clear policy on these religious symbols in public schools.

This chapter is based on over 11 months of ethnographic fieldwork in Bulgaria between 2005 and 2008, the period when the two major headscarf cases were being adjudicated by the KZD. During this time, I collected relevant articles and commentaries that appeared both in local and in national newspapers (*24 Chasa*, *Trud*, *Ataka*, *Sega*, *Otzvuk* and *Rodopi Vesti*) and conducted informal interviews with religious leaders (the Deputy Chief Mufti, the regional Mufti of Smolyan, local imams in the Madan and Rudozem *oblasts*, etc.) and human rights activists in the country. Furthermore, I sought out and collected a wide variety of materials published by Bulgarian Muslims regarding the headscarf and

whether Muslim women were required to wear it, in particular copies of the Muslim magazines *Ikra* and *Myusyulmansko Obshtestvo* (published in Smoylan). Through a special petition, I was also able to obtain transcripts of the KZD's deliberations as well as copies of their written decisions (Commission for Protection against Discrimination 2006, 2007). This chapter is primarily based on an analysis of these primary Bulgarian sources.[3] This chapter is mainly a description of the events in Bulgaria leading up to the two headscarf cases, with the purpose of understanding the local political context and how it differs from the headscarf debates in the other European countries discussed in this volume.

The Bulgarian Muslim community

Although the majority of ethnic Bulgarians are nominally Eastern Orthodox Christians, they share their country with several smaller ethnic groups. Bulgaria's Muslim population consists of ethnic Turks, Roma and some ethnic Bulgarian Muslims (sometimes called 'Pomaks') (Eminov 1997). More importantly, these Muslims are not recent immigrants but descendants of Muslim populations that lived in the lands that are now Bulgaria during the 500 years of Ottoman imperial presence in the Balkans (Ghodsee 2010). Between 1946 and 1989, the communist government in Bulgaria heavily persecuted all religions (Hopkins 2009), but it was Muslim women who were singled out as being particularly in need of socialist emancipation (Neuburger 2004). Over the four-and-a-half decades of communist rule, Muslim women were actively encouraged to leave the home and to work in the formal economy. Girls' education in secular schools was mandatory, and Muslim women (like all Bulgarian women) were expected to contribute their labour to the building of communism. Although there was always gender segregation in employment (with men working in the most lucrative sectors), Muslim women earned their own wages and were fully integrated into Bulgarian society as both workers and mothers. As part of their ongoing efforts to modernize Bulgaria's Muslim populations, the communists had imposed certain sartorial restrictions on traditional Muslim dress including the headscarf, which was considered a symbol of women's oppression (Ghodsee 2010; Neuburger 2004; Neuburger 1997).

After the collapse of communism in 1989, religious freedoms were restored and some Muslim women began to demand the right to wear headscarves once again (Ghodsee 2007). Throughout the 1990s, however, few Muslim women in Bulgaria felt that it was a necessary religious requirement to wear the *hijab*. Most ethnic Turkish and Romani women left their heads uncovered. The women and girls who decided to cover themselves primarily lived in regions where new and widely circulated Islamic publications promoted the supposedly correct interpretations of Muslim belief and practice. Most Bulgarian Muslims are Hanafi Sunni Muslims and practice a relatively liberal form of 'Turkish Islam', which does not insist on various practices considered mandatory to other Muslim communities around the world. Bulgarian Muslims have also traditionally read the Qur'an in the Bulgarian or Turkish language and have a variety of heterodox

practices often considered forbidden by those who regard themselves as being more 'orthodox' Muslims, such as the Islamic reformers in Duomato's (2000) excellent study of Wahhabism in Saudi Arabia. The official Muslim publications of the Chief Mufti's office in Sofia (the highest national spiritual authority of the Muslim community in Bulgaria), for instance, were all written in both Bulgarian and Turkish, since ethnic Turks make up the majority of the Muslim population. These official publications, such as the magazine *Myusyulmani*, promoted a form of 'Bulgarian Islam', one that reflected the diversity of Muslim practice in the country (which includes small Shi'a and Sufi populations) (Eminov 1997).

These new magazines, such as *Ikra* and particularly *Myusyulmansko Obshtestvo* (*Muslim Society*), began publication in 2005 and were written entirely in Bulgarian and specifically targeted the Pomaks. They were not officially vetted through or sanctioned by the Chief Mufti's office, and, as such, they represent a different view of what is 'proper' Islam from that promoted by the Chief Mufti's office. Because these magazines were written by and for Muslims living in the same region where the two headscarf complaints originated, it is essential to examine these texts in detail. The articles in these magazines aimed to convince Bulgarian believers that their practice of Islam was incorrect and that they must follow a stricter interpretation of their religion if they are really to be considered 'true' Muslims (see, for instance, Ali 2006 and Hodzhova 2005). These prohibitions include not drinking alcohol, not eating pork, as well as injunctions to attend Friday prayers and to abandon heterodox practices such as fortune telling, making amulets or visiting the shrines of local Muslim saints. Many of the articles in these new magazines also stressed the moral duty of women to obey God and not provoke the attention of men. They emphasized the sinful nature of remaining uncovered and warned that there would be divine sanctions against women who did not wear the headscarf. They also juxtapose the modesty of the properly covered Muslim with the shameless immodesty of both Christian and Muslim women who 'expose their beauties' (Hodzhova 2005: 21).

The following extended quotation is from an article in *Myusyulmansko Obshtestvo*, a magazine published by an Islamic nongovernmental organization (NGO) called the Union for Islamic Development and Culture (UIDC). This organization was founded in the southcentral city of Smolyan in 2005, and brought the first headscarf complaint to the KZD in 2006. The quote demonstrates well the rhetoric deployed to convince Pomak women that it is their moral and religious duty to wear the *hijab* if they are to be 'true' Muslims:

> Today, when young women can be seen in the streets dressed in clothes that barely cover their underwear (and this is taken as normal), when the lifestyle lures women to appear as sexually attractive as possible, when girls and women are disappointed if no one turns their head to look at them, women who do not want to behave in this manner are looked down upon as abnormal. This is an offending case of discrimination. Indeed, a great number of girls and women are modest by nature, do not want to expose themselves and do not feel miserable if leering eyes are not fixed upon them.

> Strange as it may seem, wearing the hijab is one of the problems that society has thrust upon girls and women who profess Islam and who want to change the 'dress code' and use the headscarf. Ironically, these modest and shy women have to feel uncomfortable for having changed their previous habits of attracting excessive attention. […]
>
>   The clothes that a Muslim woman wears are not punishment nor ordeal; they give her the chance to look noble and lady-like without any arousal of carnal desires. … The hijab is not an attribute of fake modesty. It delivers a certain message to people. First, the message is that the woman has decided to submit all aspects of her life to the will of God; and second, that she wants to be judged on the basis of her virtues and deeds and not her beauty, elegance and sex appeal.
>
> (Raad 2006: 28f.)

Similar types of arguments appeared in the magazine *Ikra*, a publication launched in 2005 in the city of Madan, just 12 kilometres to the east of Smolyan, and home to the largest mosque built in Bulgaria since 1989. *Ikra* also circulated widely in the region where young girls lived, and was produced by men with business connections to the UIDC in Smolyan. The magazine published a series of articles extolling the virtues of Islam for women while at the same time threatening that they will face divine punishment if they do not obey. An article entitled 'The veil: A categorical imperative' lays out a strict Islamic dress code for Muslim women:

> Guarding their virtue is one of the major tasks for both men and women. A veiled woman will not attract the eyes and hearts of the men around, as they [the men] are forbidden to look. […] What parts of the body shall be covered? The whole body, except for the hands and the face. The hair must be covered completely. The over-garment is ankle-length and its sleeves leave only the hands exposed. It is a two-piece garment: the one covers the hair, neck, shoulders and bosom and the other covers the whole body. […] The over-garment averts bad rumor and consequence in this world and will protect against the Fire in the World Beyond. It should be known that when the Almighty asks the question, 'Why didn't you cover your body in your earthly existence?' it will be very difficult for a woman to give an answer.
>
> (Ali 2006: 31ff.)

Yet another article in a different issue of *Ikra*, 'The code of conduct for the Muslim woman', repeats the same imperatives about women's clothing, emphasizing that women who dress appropriately are more precious and valuable than those who do not, and warning that there will be consequences for those who do not comply:

> A Muslim woman must cover her body. […] When a woman goes out in the street dressed in a garment of which Islam approves, she will not provoke

lechery because the Islamic dress code recommends loose garments that do not suggest the shape of the female body. […] In order to protect the Muslim woman, Allah commanded that she should stay at home earnestly and with dignity and that she should not go out uncovered like the women in the pre-Islamic time of ignorance and that she should not expose her beauties. […] Hopefully you understand the situation that a woman would face if she shuts her eyes and ears to these words. Let both men and women know that there is a path to follow and those who go astray shall be punished accordingly.

(Hodzhova 2005: 21f.)

These articles were supplemented by a series of lectures and seminars held by Islamic NGOs like the UIDC, which also promoted the idea that the headscarf was mandatory for Muslim women. A new cohort of young imams (congregational leaders) speaking in newly built mosques throughout the region also impressed upon Muslim men the necessity of having their wives and daughters wear the *hijab*. Not surprisingly then, a growing number of women, and particularly young women, began to cover their heads in public. In 2006, two young women who had been attending the Islamic lectures held by the UIDC decided that they must wear their headscarves to their public secondary school (Cholakova 2006: 6).

The first headscarf affair

In early 2006, a teenager attending the Karl Marx Professional High School for Economics in the city of Smolyan (the home of the UIDC) decided that in order to be a true Muslim she should cover her head in public at all times, including in school. This 15-year-old befriended another student, a like-minded young woman who had also embraced a more 'orthodox' version of her family's faith. Although Fatme and Mihaela were raised as Muslims, their mothers did not wear the headscarf because their families practised the rather traditional form of Bulgarian Islam that interpreted the Qur'an liberally.[4] Despite this, the two girls added headscarves to their mandatory red and black school uniforms. The headmaster of the school, a secular Christian woman, told the girls that they were in violation of the school's uniform policy and that they must remove the headscarves. Fatme and Mihaela insisted that it was their religious duty to remain covered, and refused. The director of the school then told them that they were not allowed to attend school unless they removed their headscarves. The girls were sent home.

The two girls then filed a complaint against the headmaster of the school with the local authorities in Smolyan, claiming that the headmaster had violated their religious rights. The Regional Inspectorate of the Ministry of Education (RIE), which is the local representative of the national Ministry of Education in the Smolyan *oblast*, upheld the decision of the school, and told the girls that they must remove their headscarves if they wanted to continue to attend the

secondary school (Kanev 2008). Soon thereafter, the UIDC interceded on behalf of the two students and brought an official complaint directly against the national Ministry of Education. Invoking Article 13 of the 1991 Bulgarian constitution, which states that 'religious institutions shall be separate from the state',[5] the Minister of Education, Daniel Vulchev, responded by arguing that Bulgarian education was secular and, adopting the terminology of the recently passed ban on headscarves in France, claimed that conspicuous religious symbols had no place in public schools. The Minister of Education further argued that the Bulgarian constitution guaranteed religious freedoms and that there were three accredited Islamic high schools in Bulgaria where the girls could both receive a public secondary school education while wearing their headscarves. (It is important to note here that secondary school is not mandatory in Bulgaria and that acceptance into secondary schools is through a competitive process.) Vulchev claimed that it was not a violation of their religious rights if the girls insisted on wearing their headscarves to a non-religious school to which they had voluntarily applied. Once accepted, they had decided to attend, knowing that the school had a mandatory uniform that did not include the headscarf (Nova Televizia 2008; Kanev 2008).

The leaders of the UIDC, Arif Abdullah and Selvi Shakirov, then proceeded to file a grievance with the newly established national KZD.[6] The Islamic NGO filed this complaint on behalf of the girls, for the sake of protecting the rights of all Muslims in Bulgaria. The UIDC argued that the girls should be allowed to attend any school they wished while wearing the headscarf. The girls had a constitutionally protected right to freedom of religion that had been violated; Bulgaria had a responsibility to uphold the democratic principles it had embraced after the collapse of communism in 1989.

The anti-discrimination commission announced that it would consider the headscarf case. This ignited a heated national debate in Bulgaria. As more details emerged about the case, the Bulgarian media[7] was filled with passionate editorials on both sides of the issue (see, for instance, Cholakova 2006: 6; Marinov 2006: 8; Hadzhiev 2006a: 5; 2006b: 10; Petrova 2006: 15; Tonchev 2006: 10; Buchakova 2006: 1; Borisov 2006: 20). Key in these media debates was the fact that the two teenage girls, and the members of the UIDC that represented them, were Pomaks.[8] It was believed that their ethnic and religious ambiguity, together with their less than harmonious relationship with the Bulgarian Turkish political establishment (Ghodsee 2010), led them to forge closer ties with religious communities in Jordan and Saudi Arabia. In trying to distinguish themselves from the Turkish-dominated Muslim community, some groups of Pomaks were embracing what they considered a 'purer' form of Islam, one that the mainstream Bulgarian press referred to as 'radical' or 'fundamentalist'. Indeed, due to this perception that the UIDC represented a foreign type of Islam, the Chief Mufti's office did not lend its support to the UIDC's case against the Ministry of Education.

It is also important to note that the chair of the Anti-Discrimination Commission was an ethnic Turk and a member of the Turkish political party, the Movement for Rights and Freedoms (MRF). Although most Turks in Bulgaria

culturally identify as Muslims, the leadership of the MRF was decidedly secular. Since there was already a headscarf ban in place in Turkey, many Bulgarian Turks were not sympathetic with the Pomaks' cause. After intense deliberations, the designated KZD subcommittee hearing the case eventually ruled in favour of the Ministry of Education, upholding the school's right to prevent the girls from attending class while wearing their headscarves. The Turkish head of the KZD, Kemal Eyun, upheld the decision of the subcommittee, lending implicit MRF support for a ban on headscarves in public schools.

The written KZD decision cited two paragraphs from a Parliamentary Assembly of the Council of Europe 2005 Resolution (No. 1464), 'Women and Religion in Europe'.[9] The first of these paragraphs read:

> It is the duty of the member states of the Council of Europe to protect women against violations of their rights in the name of religion and to promote and fully implement gender equality. States must not accept any religious or cultural relativism of women's human rights. They must not agree to justify discrimination and inequality affecting women on grounds such as physical or biological differentiation based on or attributed to religion. They must fight against religiously motivated stereotypes of female and male roles from an early age, including in schools.

By using this language, the Anti-Discrimination Commission was clearly protecting itself from any potential case at the ECtHR in Strasbourg. Since the ECtHR had already upheld the Turkish decision to ban headscarves in public schools (Saktanber and Çorbacıoğlu 2008), the Bulgarian commission most likely couched its own decision in the language of defending secularism and upholding a state commitment to women's rights.

But the decision of the KZD did not put the matter to rest. The UIDC sought counsel from local human rights NGOs with the hopes of appealing the decision to a higher court. The leaders of the Islamic NGO were told that they would have had a better case if the girls had filed the complaint on their own behalf.[10] The UIDC did not appeal. About a month later, there was another case at a medical university in Plovdiv where over 100 tuition-paying nursing students from Turkey said that they would attend school in Bulgaria only if they were allowed to wear their headscarves to classes. The students were trying to escape the Turkish headscarf ban, but the rector of the university decided to forgo the much-needed income and also banned headscarves on campus. While this was happening, the Minister of Education floated the idea of legislation that would ban all religious symbols in schools, including small crosses, in order to prevent a repeat of the French headscarf affair. The idea of banning all religious symbols in order to deal with the Muslim headscarf made many Bulgarians uncomfortable, and led one national daily newspaper to host an internet forum entitled, 'Who would ban wearing a cross in a Christian country?'[11]

No legislation was formally passed in 2006, but there was a consensus that there would eventually have to be some sort of official government policy

regarding religious symbols in schools. The Ministry of Education also issued a verbal order to the regional inspectorate of education in Smolyan advising all schools in the Smolyan *oblast* that headscarves should not be worn to classes. Any schools violating this policy would be subject to financial sanctions. The verbal order applied to all schools, even those without a formal uniform requirement. The ministry also proposed that any girls wishing to wear headscarves could continue their education by distance learning, where they studied at home and only came to school for the exams. This new policy had immediate impact in the Rhodope Mountain cities of Smolyan, Madan and Rudozem, where there was already a high concentration of girls wearing the headscarf.[12]

As a result of the new verbal policy, another complaint was filed with the Anti-Discrimination Commission, this time by the girls and their families, allegedly at the urging of the UIDC. The second major complaint to be filed with the Commission for Protection Against Discrimination on 23 February 2007 came from three tenth-graders from the village of Gyovren attending the Professional Electrotechnology Secondary School in Devin, a city just east of Smolyan. Like Fatme and Mihaela in Smoylan, these girls had just recently begun wearing their headscarves; they were keen to continue their secular education while remaining modest and covered. Ramzie Kemal Shaib, Fatme Kazimova Chanta and Ulia Alieva Shaibova filed these complaints against the advice of the Chief Mufti's office and the regional Muftiship in Smolyan. The official Muslim religious establishment feared that the new cases would also be struck down, hastening the need for formal legislation banning the headscarf altogether.[13]

In the Devin case, it seems that the headmaster of the Professional Electrotechnology Secondary School, Vasil Simeonov Vasilev, called the three girls into his office and warned them that there was a verbal order from the Ministry of Education and that they were technically not allowed to wear their headscarves in school. Although he did not make them take their headscarves off, he did warn that in the event of an official written order, they would have to comply and remove their head coverings or they would not be allowed to attend the school. The girls continued to attend school wearing their headscarves, and did not miss any classes or exams after this meeting with the headmaster, but they filed a discrimination complaint against him preemptively, assuming that the relevant authorities would eventually issue the written order.[14]

During the hearings about whether or not the KZD would officially hear the case, Radka Jeleva, a representative of the RIE, explained that following the KZD's first decision in 2006, all of the schools in the Smolyan *oblast* had been closely monitored for girls wearing headscarves. They found that there were five schools in the region where girls were wearing them. The headmasters of the schools in the Smolyan *oblast* collectively agreed that headscarves would not be worn in schools, but that students were free to wear anything they liked outside of school. The head of the regional inspectorate of the Ministry of Education, Todor Petkov, also confirmed that it was his office's position that the girls should not be allowed to wear religious symbols to secular schools. The Devin headmaster, however, had not implemented this rule,

although he had told the girls that he would have to if an official order came down from the RIE.

What is fascinating about the Commission's ultimate decision in this case is that the key issue hinged on the fact that the Devin secondary school did not have a uniform requirement. Because it did not have a uniform requirement, the commission claimed that the school was not under obligation to implement the verbal order of the RIE about the prohibition of headscarves in public schools.[15]

The formal text of the decision is quoted at length below:

> After evaluating all available evidence, the AD HOC committee of the KZD acknowledges the following:
>
> The handbook of the Professional Electro-technology High School 'A.S. Popov' [in] Devin does not require that students wear uniforms. The plaintiffs regularly attended classes and were not prohibited from doing so by their headmaster, Vasil Vasilev, or by the head of [Regional Inspectorate of Education in] Smolyan. … The three girls have been wearing headscarves in school for a year. … [The Commission] finds indisputable the statement that the plaintiffs' right to education was not violated in any way. It also considers the girls' claim that eventually they might have been forced to take off their headscarves … as insubstantial because it is not backed up by any evidence.[16]

Further on in the decision, the KZD argued that Vasilev, the headmaster of the girls' school, did not discriminate against the girls because he had the opportunity to institute a mandatory school uniform, but chose not to. It was for this reason that the Commission argued that neither the school nor the RIE were in violation of any anti-discrimination law, and therefore ruled there were no grounds for the complaint.[17] The complaint was officially dismissed.

By refusing to hear the complaint, the commission seemed to be advocating an odd set of policies regarding the headscarf. Based on the text of their written opinion, it seems that in schools with uniform requirements, the headmaster had a duty to uphold the ban on religious symbols. If the school had no uniform requirement, then the students were free to wear what they liked. However, the decision about whether a school has a mandatory uniform requirement is decided exclusively by the headmaster. This means that any individual headmaster could institute a mandatory uniform policy at his/her school specifically for the purpose of prohibiting girls from wearing headscarves. If a headmaster did this, the Commission for Protection Against Discrimination would not recognize the prohibition of headscarves as a violation of religious rights based on the precedent set by their own 2006 decision regarding the two girls in Smolyan.

Ultimately, then, the Commission created a situation in which there were different policies at different schools, and no clear guidelines for students as to whether or not they could wear headscarves to class. Students applying to schools with uniform requirements could expect that they would not be able to wear their headscarves. Students applying to schools without uniform

requirements would be able to attend their classes with their heads covered. If, however, some young woman applied to a school without a uniform requirement and then the headmaster instituted such a requirement to prevent her from wearing her headscarf once she had been admitted, she would have no grounds upon which to claim discrimination.

Recognizing this ambiguity and the specific targeting of Muslim girls, a dissenting opinion was issued by one of the members of the ad hoc committee of the KZD. Once again, I quote the official legal text again at length, to present the counter argument in its original form:

> The analysis of the testimony of the two sides shows that when RIE inspected schools in the Smolyan district following decision 37 [in 2006], it did not look for religious symbols in general but was solely interested in the headscarves worn by Muslim girls. Undoubtedly, the RIE believes that the normative order concerning the secular character of education pertains only to headscarves. … It is confirmed that after RIE's inspection, the headmasters of the five schools in the district of Smolyan (including [the school] 'A.S. Popov') were told to observe the normative order as interpreted by RIE. As a result [the headmaster of the school] 'St. Kliment and Metodii' agreed to prohibit headscarves, while the headmaster of [the school] 'A.S. Popov' was not convinced that the normative order actually prohibited the wearing of scarves in school. Even though he risked getting reprimanded, he did not forbid the three girls from wearing headscarves, but only warned them that if there was an official order by RIE, they might have to stop wearing headscarves to school.[18]

In this opinion, the dissenting KZD representative argues that since the Regional Inspectorate sent representatives to the schools in Smolyan only to look for evidence of headscarves (and not religious symbols in general), this constituted clear discrimination against Muslims. Also, the Regional Inspectorate did not deny that there was a verbal 'normative' order issued to the headmasters that they should not allow girls to wear headscarves to school. The headmaster in Devin made it clear that he was aware of this order, but chose not to enforce it unless it was an official written order. In other words, the Regional Inspectorate specifically singled out headscarves, but because one particular headmaster chose not to enforce the verbal prohibition, there was no discrimination.[19]

The dissenting opinion continues by pointing out that all parties in the dispute also agreed that the girls were Muslims and were raised in a religious tradition that considers the headscarf a mandatory outward expression of their faith. The opinion states that:

> Headscarves are worn in the name of Islamic faith and the *Qur'an*-inspired tradition that women should cover themselves in order to preserve their chastity. … [R]eligious rules demand that women cover their hair and bodies when they are outside their close family.[20]

After citing a wide variety of laws protecting religious freedoms, relevant articles from the Bulgarian constitution and the mandate that established the Anti-Discrimination Commission, the opinion concludes:

> Education [in Bulgaria] is secular … according to which schools are not allowed to force ideological and religious doctrines on students, although religious classes can be taken if they are approved as part of the curriculum. I do not believe that the wearing of headscarves can be compared to the forcing of ideological/religious doctrines on students because there is no evidence that this explicit expression of faith hurts other students' rights. Also, this conduct in no way threatens national security, social order, or national health and morals. … [Therefore] the warning addressed toward the plaintiffs displays an equivocal and unequal approach toward the outward expression of faith and therefore violates the principles of non-discrimination.[21]

Although the KZD accepted the 'special opinion' as part of its internal records (which I obtained through the Bulgarian Freedom of Information Act), they did not overturn their 2006 decision and created a situation of great legal ambiguity regarding religious symbols.

Conclusion

Despite the legal ambiguity and the possibility of expulsion from their schools, the number of young girls wearing the headscarf to school began to increase after 2007, particularly after these cases had garnered such national attention. In the 2006 case, the two girls, Fatme and Mihaela, were almost instantaneous celebrities, being interviewed by the national newspapers as well as on the radio and on television (Cholakova 2006: 6.) The girls were articulate and framed the headscarf issue as one of personal choice and religious freedom. Both Fatme and Mihaela proclaimed that they were doing something which hurt no one and which reflected their inner commitment to Islam. With these girls in the local newspapers and on the national news, there was bound to be a ripple effect among other young Muslim teenagers in the region.

Perhaps as a consequence of this, the local authorities may have realized that prohibiting headscarves might actually be giving girls more incentive to wear them. Few headmasters instituted mandatory school uniforms in order to ban the headscarf, even though many of the headmasters in the Smolyan region were atheists or nominally Bulgarian Orthodox Christians.[22] Furthermore, there was a major demographic catastrophe taking place throughout the Rhodope Mountain region, part of a larger demographic collapse happening in Bulgaria. The country already had one of the lowest total fertility rates in all of Europe, but Rhodope cities, towns and villages were particularly affected by emigration of young people of childbearing age to the bigger cities in Bulgaria and abroad. As a result of this steady out-migration since the early 1990s, many primary and

secondary schools throughout the region had been closed down for lack of students, putting both local teachers and headmasters out of work. It is widely known that the birth rate among Bulgaria's Muslim population is considerably higher than among the Orthodox Christians (National Statistical Institute 2001); headmasters know that attracting and accommodating Muslim students remains an important strategy to keep rural secondary schools open.

These ongoing accommodations at the local level, however, did nothing to undermine the political will of Daniel Vulchev, the Minister of Education, who still wanted national legislation banning all religious symbols in schools. In the following years, Vulchev spearheaded a comprehensive overhaul of the law regarding Bulgaria's public education system. The details of the bill were worked out in a parliamentary committee, and the Bulgarian government, under Prime Minister Sergei Stanishev, approved the draft bill in March 2009. The language of the bill officially referred to 'religious symbols', but it was clear that its main target was the Muslim headscarf.[23] The education bill, however, still had to be approved by the parliament. In July 2009, Bulgaria held parliamentary elections that brought a new government to power. The bill had never been voted on, and was tabled indefinitely.

As of 2010, there is still no official prohibition of headscarves in public schools, although individual headmasters can still ban them by instituting new school uniform policies at will. The language used to justify this informal ban on headscarves is that of secularism and gender equality, but politically it is at least partly the result of the ethnic Turkish–Pomak split and the local perception that wearing the headscarf is a symbol of a foreign type of Islam not traditional to the country. As long as the Muslim communities in Bulgaria remain divided on the issue of the headscarf, the legal ambiguity will remain, even as individual headmasters choose not to enforce it. As Western European countries become more heavy-handed in regulating forms of Islamic women's dress, it will be important to keep abreast of the situation in Bulgaria, the EU country where the Muslim population makes up the largest proportion of the population. For now, the situation remains in legal limbo, but with a new government with nationalist allies in place, the proposal to ban religious symbols in schools may find itself on the parliamentary agenda once again.

Notes

2 Law on the Protection Against Discrimination. Online, available at: www.stopvaw. org/sites/3f6d15f4-c12d-4515–8544–26b7a3a5a41e/uploads/anti-discrimination_law_ en.pdf (accessed 7 February 2007). See also: 'Reshavat dali momicheta ot PGE da nosyat zabradki v uchilishte', *Otzvuk*, 26–28 June 2006, 50 (1100): 6.

3 Unless otherwise noted, all translations from Bulgarian to English are the author's own and/or that of the Bulgarian research assistants under the author's supervision.

4 The Pomaks in Bulgaria were forced to remove their veils by the Bulgarian Communist Party between 1946 and 1989. Through a wide variety of measures, beginning with incentives for those who de-veiled and ending with an outright ban on the Muslim headscarf, the Bulgarian Communist Party was effective in suppressing the tradition of veiling for most Muslim women (see Neuburger 1997).

5 Article 13 (2) of the Constitution of the Republic of Bulgaria. Online, available at: www.parliament.bg/?page=const&lng=en (accessed 23 November 2007).

6 Law on the Protection Against Discrimination. Online, available at: www.stopvaw. org/sites/3f6d15f4-c12d-4515–8544–26b7a3a5a41e/uploads/anti-discrimination_law_ en.pdf (accessed 7 February 2007). The chairperson and members of the KZD are official appointments of the ruling party in parliament and theoretically have the power to make legally binding decisions.

7 'Reshavat dali momicheta ot PGE da nosyat zabradki v uchilishte', *Otzvuk*, 26–28 June 2006, 50 (1100): 6; 'Zabradki sreshtu krustcheta', *Politika*, 7–11 July 2006, 116: 48; 'Zabranyavat feredzhetata v uchilishte, DPS e protiv', *Ataka*, 26 June 2006, 1 (211): 6.

8 However, it is important to note that this is contested by some of the Saudi-influenced Pomaks who believe themselves either to be a completely distinct ethnic group or the descendents of Arabs who settled in the Rhodopi before Tsar Boris I Christianized the Slavs in the eighth century, a very controversial position to mainstream Bulgarian historians. See, for instance, Kabakchieva 2006 and Todorova 1997.

9 Commission for Protection against Discrimination, *Reshenie* (Decision) No. 37, Sofia, July 27, 2006 (an internal document obtained by the author in hard copy from the Commission).

10 Interview with Krassimir Kanev, President of the Bulgarian Helsinki Commitee in March 2007.

11 'Koi zabranyava noseneto na krast v hristiyanska darzhava?' *Internet Izdanie*, 31 August 2006. Online, available at: www.segabg.com (accessed 19 September 2006).

12 Interview with Krassimir Kanev, President of the Bulgarian Helsinki Committee in March 2007.

13 Interview with Hairaddin Hatim, Region Mufti of the Smolyan oblast in March 2007.

14 Commission for Protection against Discrimination, *Reshenie* (Decision) No. 38, Sofia, 2007 (an internal document obtained by the author in hard copy from the Commission).

15 Ibid.

16 Ibid.: 1.

17 Ibid.

18 Ibid.: 3.

19 Ibid.

20 Ibid.: 6.

21 Ibid.: 7.

22 The Bulgarian Communist Party was quite fervent in its quest to eradicate religion between 1945 and 1989. Since schools were seen as essential vehicles for communist indoctrination, the position of headmaster was usually reserved for 'politically clean' members of the communist party, which often entailed a public commitment to atheism. After 1989, many headmasters continued in their positions and therefore are likely to be a subset of the population most committed to upholding the secular nature of the public school.

23 'Bulgaria to Ban religious symbols in Schools', *Balkan Insight*. Online, available at: www.balkaninsight.com/en/main/news/17752/ (accessed 12 May 2010).

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7 The limits of populism

Accommodative headscarf policies in Austria, Denmark and the Netherlands

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Introduction

While 'multiculturalism' was once positively associated with a political ideal of a diverse society, Europe has in the past years witnessed a backlash of multiculturalist discourses and the rise of political actors that call for a reduction of or even a stop to immigration. In public debates the idea that immigrants have a right to maintain their culture is replaced by the idea that some cultures contradict with liberal universal values, and many countries have therefore introduced stricter immigration rules and obligatory civic integration tests for immigrants. Cultural diversity is no longer regarded as an asset, but as a problem for social cohesion and collective identity. In particular, Islam and immigrants from Islamic countries are often perceived as posing a threat to Western European societies defined by liberal values such as individualism, secularism, and gender equality (Parekh 2006; Joppke 2007; Zúquete 2008; Betz and Meret 2009). The Netherlands shifted from a multicultural approach to assimilation (Entzinger 2005). Likewise, Denmark moved towards one of the most restrictive European immigration and integration laws (Mouriten 2006), while Austria has never considered itself as an immigration country and already had an exclusive approach towards the rights of immigrants, which has even been strengthened in the last years (Mourão Permoser and Rosenberger 2009). In particular, right-wing populist parties have been engaged in politicizing Islam and Muslim immigrants, stigmatizing them as the alien and backward 'other' (Zúquete 2008). Most notably, veiling has been portrayed as a sign of the oppression of immigrant women and, eventually, restrictions on the wearing of the Muslim headgear have been claimed by both the radical right and feminists alike (see Chapter 1). In some countries, this change in attitudes and policy positioning went together with a change towards more restrictive measures regarding veiling (see Chapter 8), but it did not in others. Decision makers in Austria, Denmark and the Netherlands, three countries with electorally strong radical populist parties, took a different path. Despite increasing politicization of immigration and Islam, these countries continue to pursue an accommodating veiling policy.[1]

This chapter explores the structural and discursive factors which influence the continuity of accommodating veiling policies despite heavy populist challenge

for restrictions. Focusing on specific policy decisions in Austria, Denmark and the Netherlands, we identify and discuss both institutional arrangements and frames of references within these three countries which are similar in regard to the major independent variable, the strength of populist parties proposing an anti-veiling agenda. The puzzling question examined in this chapter is how it can be understood that despite the increasing political contention over immigration and Islamic issues, policy makers in these three countries stand out among our eight cases of the VEIL project as having kept to their accommodating policies regarding the wearing of headscarves in the public realm (within the time frame from the 1990s to 2004). For clarification, we define accommodating policies as policies that explicitly allow wearing the headscarf in public institutions (schools, universities, health care institutions).[2]

In our search for an explanation we will investigate the underlying mechanism of the political debate on veiling that preceded policy formation: we assume that policy outcomes depend on configurations of political power (e.g. the governmental status of political parties) and to a large extent on long-standing institutional arrangements (in our case the relationship of religion and politics). It is expected that political decisions follow a path dependency in this respect, which leads to the argument that the demands for policy change launched by populist parties are confronted with institutional limits to challenging and mobilizing against rights of immigrants and their religion (Fetzer and Soper 2005). Moreover, our research is led by the idea that in order to explain policy outcomes we must reflect upon the discursive construction of social problems in the political sphere by political actors, whether as constituting policy or as communicating (or even legitimizing) (future) policy. Translated to the subject at hand, this means that we expect the important factors to explain the continuation of accommodating regulation of headscarves in Austria, Denmark and the Netherlands to be: the established state–church relationship, the status of the given populist party within parliament and government, prevalent political principles with respect to anti-discrimination and equality, and whether debating the headscarf issue is aimed at communicating and legitimizing restrictive immigration policies or producing policy change within the area of religion and politics. By comparing three countries with similar policy outcomes, we identify which factors are most relevant for explaining the accommodating policy in these countries.

The chapter is structured as follows: the following section describes the accommodating policies and explores how these policies became contested by populist parties; the next and central section comparatively analyses how and why accommodating policies stayed in place, that is what the institutional and discursive limits of populist parties are; and the final section summarizes and concludes the analysis.

Accommodation despite populist contention

The year 2004 was a remarkable year in the history of policing the headscarf. It was the year the French law banning any ostensible religious symbols in public

schools was passed. Yet, in the very same year Austria, Denmark and the Netherlands (in different ways) all confirmed pro-veiling policies. The Austrian Federal Ministry of Education and Culture issued an administrative decree confirming that the wearing of the headscarf by Muslim pupils is a religious clothing instruction and is, therefore, protected by the freedom of religion as enshrined in the Basic State Law and by Article 9 of the European Convention of Human Rights (A40). In addition, it stated that school bodies are not entitled to interfere into subjects which belong solely to the sphere of governance of religious organizations, as the headscarf is considered to belong to that sphere. Also, in spring of 2004, the populist anti-immigration Danish People's Party presented its first motion to 'prohibit culturally determined head coverings' of public employees in Parliament.[3] This proposal was, however, rejected by all other political parties as it would violate the right to religious freedom protected by Article 67 of the Danish constitution as well as Article 9 of the Human Rights Convention. Finally, in the same year, the Dutch government issued a policy report in which it institutionalized the right of women to express their faith by covering their hair in regular public service functions and in public schools. It thereby confirmed the standing practice that public officers may wear a headscarf provided that the clothing does not form a safety risk, as might be the case with certain gym exercises, or blatantly harm the officer in fulfilling her function. The only public functions for which the government did consider it legitimate to restrict this right were the police force and the judiciary because, according to the government, these jobs required that they avoid all appearance of partiality.[4] All accommodating policy statements were made in a period during which veiling was already a contested issue in all three countries. They were a reassertion of accommodation in the face of contention.

The political landscape of Austria, Denmark and the Netherlands is characterized by strong populist radical right-wing parties with a relatively large electoral base. In 1999, the *Freiheitliche Partei Österreichs* (FPÖ, Freedom Party of Austria) attracted 26.9 per cent of the vote in general elections, coming second behind the Social Democrats; in early elections in 2002, the party gained 10 per cent of the vote (Luther 2005). In Denmark the *Dansk Folkeparti* (DFP, Danish People's Party) won 12 per cent of the vote in the general elections in 2001 and became the third largest party, providing the parliamentarian support for the new liberal–conservative government coalition. In the Netherlands the *Lijst Pim Fortuyn* (LPF, List Pim Fortuyn), named after its founder who was killed by an animal rights activist nine days before the elections, gained a vote share of 17 per cent in the parliamentary elections of 2002, thereby becoming the second largest party in the country. What these parties, often labelled as radical populist parties with regard to their exclusive communication style and ideological positioning (Mudde 2007; D'Amato and Skenderovic 2007) have in common, among others, is their opposition to immigration in general and to Muslim immigrants in particular.

Having highlighted the strength of the radical populist parties in the three countries at the time of policy making, we turn to the broader framework in

which populist parties started to contest the right to wear a headscarf. In Austria, the administrative decree, emphasizing that wearing a headscarf in schools is a religious right, was initially triggered by a controversy in a junior high school about a veiled pupil in 2004. The headmaster of the school had instituted a general prohibition of head coverings to which the father of the Muslim schoolgirl objected. When the regional school council declared that a prohibition was unlawful because of the right to express religious freedom, the conflict was solved very quickly as the pupil was permitted to attend school wearing a headscarf. Despite this quick settlement of the dispute, in order 'to prevent discrimination for Muslim girls' and 'to make aware of the legal situation',[5] the officially recognized representative body of Muslims, the Islamic Religious Community in Austria (IRCA), pushed the Federal Minister of Education and Culture to clarify that the headscarf is identified as an expression of religious freedom by launching a decree. In the beginning, the minister was hesitant to issue a decree, arguing that the principle of religious freedom is already enshrined in the Austrian constitution. Finally, the minister agreed with the president of the IRCA on a respective action (Gresch *et al.* 2008). Both the minister and the representatives of the IRCA continuously framed veiling as related to religion; no reference was made to migration or integration. Most notably, this decision was taken during a period in which the Austrian Freedom Party was an influential political actor both in government and parliament. After its electoral gain in 1999, it moved into a coalition government with the Christian conservative *Österreichische Volkspartei* (ÖVP, Austrian People's Party), which lasted from 2000 to 2005. The FPÖ had begun its campaign against Islamic issues in 1999 and took up the debate against the headscarf in 2003 in the context of the French and German debates (A24). Yet, what is most remarkable, the FPÖ refrained from protesting against the headscarf decree issued by a ministry held by its coalition partner, the ÖVP. In 2004, the party introduced an anti-Muslim mobilization strategy on regional levels but not on the federal level. At this time the topic was taken up by the then Viennese FPÖ leader, Heinz-Christian Strache, who called for a comprehensive ban on veiling by civil servants in all public buildings, especially schools and universities. The headscarf was marked as conflicting with religious neutrality and viewed as being a political rather than a religious symbol, contradicting with gender equality (A23, cf. also A20, A21, A22). It was only in the wake of the split in 2005 of the FPÖ into two parties, the *Bündnis Zukunft Österreich* (BZÖ, Alliance for the Future of Austria) and the FPÖ, that Islamic issues were put centre stage to a substantial degree at the national level, too. Since then, the radical populist right parties have been continuously addressing the issue of veiling in the policy area of migration and deficient integration on the side of migrants. In sum, it was the FPÖ and later also the BZÖ (A25) that actively took up the issue, while other political parties referred to veiling as a religious or a women's right only as direct or indirect reaction to populist claims to ban the headscarf (A16, A26, A30) (cf. Rosenberger and Hadj-Abdou 2012).

In Denmark, politicization of the headscarf issue was part of an overall immigration debate, which intensified during the 1990s. The opposition parties on the right (the Liberal and Conservative Parties) demanded a more restrictive legislation and the Social-Liberal leftist government defended the relatively liberal Danish approach to immigration. The immigration issue was central in the 2001 elections where the right won and the Liberal and Conservative coalition government with the support of the Danish People's Party replaced the previous government of Social-Democrats and Social-Liberals. From 2004, veiling became a hot issue in public and political debates (Siim and Skjeie 2008).[6] In April 2004, the Danish People's Party presented a parliamentary proposal to ban the headscarf in the public sector (DK1). This was rejected by all the other political parties (DK2, DK3, DK6, DK7, DK9). In March 2006, there was an intense media debate when Asmaa Abdol-Hamid, who wears the *hijab*, was hired to host a talk show on the national Danish public service channel, DR, sparked by the recent cartoon controversy. This was strongly opposed in a press release by the Women for Freedom organization stating: 'Women for Freedom takes distance from the hostile use of the religious headscarf' (DK19). In spite of many protests, the editor of DR2 news, Anne Knudsen, declared that the hiring was not to be reversed (Andreassen and Siim 2007). In the spring of 2008, a new debate about the right of elected politicians to wear the *hijab* when speaking in parliament erupted. The issue was raised because this same Asmaa Abdol-Hamid was elected as a substitute candidate for the Red–Green Alliance, and therefore would be likely to appear and speak in the national parliament. The parliament had to take a decision on this issue, because the Danish People's Party demanded a ban against veiled politicians speaking in Parliament. This case ended with an accommodating regulation, when the Danish Parliamentary Presidium issued a resolution stating that there was nothing to prevent parliamentarians from wearing a veil when speaking from the podium as long as the face is visible and the person can be identified. The rationale behind the resolution was to protect the right of a veiled parliamentarian to speak from the podium no matter what religious affiliation as well as the citizens' democratic right to be represented. Finally, a controversial debate concerning rules for religious and political garments for legal judges erupted in April 2008. It was inspired by a public announcement by the independent Board of Governors of the Danish Court Administration (*Domstolsstyrelsen*) stating that there was no legal basis for a ban against Muslim judges wearing the *hijab* in Danish courts. This case ended with a government decision to propose a bill aimed at securing the neutrality and impartiality of the court by prohibiting religious and political attire for legal judges. The bill was adopted by a large majority in May 2009, despite massive criticism by the majority of the legal and academic community.[7] The bill expressed a more restrictive Danish approach to veiling in the public arena, although it was explicitly limited to legal judges in the courtroom. DFP's demand to extend the ban to jury and lay judges was rejected by a large majority, arguing that these groups should be representative of the civilian population (Andreassen *et al.* 2008).

In the Netherlands it was the List Pim Fortuyn (LPF) which in 2004 requested a parliamentary debate on headscarves in the public service that eventually led to the government issuing the above-mentioned policy report. Fortuyn had explicitly reacted against Islam – according to him Islam was 'a backward culture' – as well as against the politics of toleration by the 'left-wing Church' and against the continual influx of immigrants and asylum seekers (Poorthuis and Wansink 2002). From 2004 onward veiling became a highly politicized issue within the context of a wider political debate in which Islam became framed as hampering integration and also Muslim women's emancipation (Roggeband and Vliegenthart 2007; Prins and Saharso 2008). Relevant political actors at that time were Rita Verdonk, the Minister of Integration, who later established her political movement 'Proud of the Netherlands' (*Trots op Nederland*) and Geert Wilders, leader of the Freedom Party (*Partij voor de Vrijheid*, PVV). Moreover, Ayaan Hirsi Ali, at that time a member of the Liberal Party, aimed to combat what she considered to be instances of gender oppression in Islam (Hirsi Ali 2007, NL6). Together with Theo van Gogh she produced the film *Submission*, which led to a radical Islamist murdering van Gogh in 2004. However, it was not so much head-scarves (*hijab*) but face veils (*niqab* and *burqa*) that were the object of discussion (NL11, NL24).

So, in Austria, Denmark and the Netherlands – with the exception of Ayaan Hirsi Ali, who saw her struggle in global terms – it was the populist right-wing parties that politicized the headscarf issue within a broader framework of a nationalist anti-immigrant and anti-Islam political platform. Despite contention, the three countries have kept to a largely accommodating policy regarding the headscarf. In legal terms, Austria places no limits at all, in Denmark legal judges are not allowed to wear a headscarf in court and in the Netherlands the headscarf is forbidden in certain functions in the judiciary and the police force.

The limits of populist challenge

This section of the chapter discusses several mechanisms which can contribute to the understanding of why the populist challenge to restrict veiling did not lead to the implementation of restrictive public policies. One of the relevant findings is that anti-veiling claims were formulated as a part of symbolic politics in the

Table 7.1 Regulation of the *hijab*

	Austria	*Denmark*	*Netherlands*
Arena	Schools, public health sector	Public arena, parliament	Schools, police, courts, ministries
Instrument	Decree	Parliament presidium decision	Directive (governmental policy document)
Limits	No	Courts	Courts, police

broader framework of opposition to migration, rather than being used instrumentally in terms of policy making. Other explanatory factors are the party configurations within the parliament and specific political principles that are prevalent in the particular versions of liberal democracies. Last, but not least, the institutionalized state–church relationship that impacted on the framing employed by mainstream political parties and pro-veiling advocates has been decisive for the policy outcome.

Veiling as symbolic politics

In all three cases observed, claims to restrict veiling can be characterized as a discursive tool of symbolic politics rather than a policy goal itself. According to Edelmann (1964), symbolic politics can be understood as part of the expressive dimension of political action, which signifies the presentation of political action to the public.

One striking commonality in the three national cases investigated in this chapter is that it was the populist right-wing parties who after 2004 were agenda setters in the political debates on veiling. When these parties gained electoral support and became strong political actors in the parliamentarian arena, veiling was not framed as an isolated religious issue but was used more broadly as a symbol to present and legitimize concerns about immigration, national belonging and, in the case of Austria, Turkey's membership to the EU (A19, A21, Rosenberger and Hadj-Abdou 2012). Most importantly, the populist right-wing parties evoked images of 'parallel societies' with Islamic immigrants unwilling to integrate and respect the basic values of the national communities (A19, DK4, NL14, NL15). In other words, veiling was actually more of a side issue, a communicative strategy used instrumentally to push through other political agendas in adjacent policy areas such as immigration control and civic integration, rather than being an issue that in itself needed to be tackled.

In Austria, the FPÖ presented itself as a defender of the national identity coined as '*Leitkultur*' (dominant culture), which consisted of Christian values and modernity and protected women from 'archaic tribe structures' (A20). Illustrations of the headscarf were used as the visible proof of the incompatibility of Muslim immigrants in general and of Turkey with Europe in particular with its presumed value order. In election campaigns the party ran on anti-Islamic sentiments by using placard slogans such as 'Free women instead of forced headscarf' ('*Freie Frauen statt Kopftuchzwang*'). The popular initiative launched by the FPÖ against the accession of Turkey to the EU in 2006 employed the headscarf as a campaign motive: a woman veiled with an EU flag was meant to symbolize future developments opposed by the initiative. Already these few activities illustrate that the references to veiling were in the first place intended to create a hostile public opinion both against Muslims residing in the country and Turkey's accession to the EU rather than to legally restrict veiling as such (Bunzl 2007). Although veiling has become a hot issue in the mass media, in parliament it has been rarely debated. Compared to Denmark and the

Netherlands, the FPÖ never proposed or drafted a bill to ban or restrict wearing the headscarf. Restrictions on veiling were only mentioned in interpellations to the government, and it was referred to in the context of a variety of other issues such as the danger of terrorism and security issues, failed integration, not complying with Austrian values and cultures, and gender inequality in migrant families. The actions taken by the FPÖ were mainly addressed to the media during election campaigns (Hadj-Abdou and Rosenberger 2009). In sum, in Austria there was no parliamentarization of the veil debate, it remained outside the parliament. This also holds true for the liberal decision itself, which was a government policy beyond the parliamentarian arena.

In the 2004 Danish parliamentary debate on the Danish People's Party's proposal to ban 'culturally determined headgears' ('*kulturbestemt hovedbeklædning*') in the public sector, Louise Frevert, the then DFP spokesperson, said:

> Muslim women's headscarves are expressions of a gender coercion which does not at all belong in a modern society like the Danish society. Head coverings, especially a *hijab* [represents] precisely a person who is against the Danish norms and against the values in Denmark and in our culture.[8]
>
> (DK4)

In the 2004 debate most parties regarded the headscarf as a symbol of female oppression but perceived it to be an individual religious choice and thus rejected banning as the solution (DK3, DK5, DK7, Andreassen and Siim 2007: 39–42). In the 2008 debates about veiled politicians' right to speak in parliament and legal judges' right to wear a headscarf, the DFP filled the cityscape with a poster depicting a *burqa*-wearing judge entitled 'Submission'. In this way the party presented Muslim judges, and with them Islam, as being equivalent to Sharia, and Muslim judges and Islam were claimed to be a threat to Danish legislation (Andreassen *et al.* 2008; Betz and Meret 2009).

The Dutch LPF and its populist successors framed accommodation of the headscarf as a threat to Dutch democracy and its principles of secularism by referring to a fundamentalist Islam that undermined Western liberties. In a discussion about public morality, MP Mat Herben of the LPF argued:

> We have been liberated ages ago from inquisitors and Ayatollahs, and we would like to keep it like that. Even the pope respects the separation between religious and civil law. That's why I would like to ask our Prime Minister to constitutionally lay down the formal separation between church and state.[9]

The *burqa* and *niqab* – the debate had come to focus more on these garments – were seen as symbols of this increasing polarization and segregation. This concern could not be ignored by the other political parties and hence they began responding to these claims. Similar to Austria and Denmark, controversies over veiling thus became a form of symbolic politics linked to other political issues

and goals. The 'problem of veiling' was framed strategically in highly emotional terms. The underlying issue seemed to be raising fears about immigration and about Islam tearing apart the fabric of society.

Thus in all three countries veiling debates raised by populist parties were symbolic politics aimed at triggering exclusive notions of national belonging or at pushing through stricter regulations in the policy fields of integration and immigration control; or, as in the case of Austria, at mobilizing public opinion against Turkey's future accession to the EU.

The political power structure and prevalent political principles

The populist right was apparently not strong enough to win a parliamentary majority for their attempts to restrict the right to veiling. Moreover, it could not prevent pro-veiling decisions. Against this background, we look at the political actors advocating accommodating decision making. Surprisingly, stakeholders outside the parliamentarian arena, religious communities and experts played a decisive role in the pro-veiling decision-making process in 2004.

When looking at the actors involved in the launch of the Austrian accommo- dating regulation, we see that the IRCA in cooperation with responsible state authorities was indeed the decisive player for decision making in the field of reli- gious clothing. With regard to schools, the actors who were involved in the decision of 2004 included the Federal Ministry of Education and Culture and the IRCA. At the time, the launch of the executive decree attracted neither media attention nor political contention. The minister was not confronted with signific- ant opposition expressed by rival political parties. As for intra-coalition dynamics, the FPÖ was part of the federal government and was expected to be loyal to its partner, the Christian-conservative Austrian People's Party, which has been in favour of a strong position for the Catholic Church within Austrian society. Former president of the Austrian National Council and mandatary of the Austrian People's Party, Andreas Khol, aptly expressed this position when he circumscribed advocates of prohibition as 'enemies of any religion, who are also hostile against the ring of church bells and steeples'[10] (cf. also A16). Given this governmental constellation, only regional FPÖ branches let their voice be heard in the mass media and framed the headscarf as a symbol of an alien culture and the oppression of women within immigrant communities (A24). All other polit- ical parties represented in parliament remained silent. They neither protested publicly nor expressed consent to the policy (Gresch *et al.* 2008).

Moreover, the chosen policy tool indicates that the policy makers aimed at preventing political protest: an administrative decree was to be characterized as a binding governmental instrument implemented without the involvement of the parliament. In fact, the main purpose was to meet the religious claim made by the IRCA to settle the case and regulate in an explicit manner, albeit without any significant public consultation and dispute.

In the Danish case the parliament played a key role in policies on veiling in the public sector. The current centre-right government coalition of the Liberal

Party (*Venstre*, V) and the Conservative Party (*Det Konservative Folkeparti*, KF), confirmed by the most recent election in 2007, represent a minority government supported by the populist Danish People's Party. The government used this majority to adopt a highly restrictive anti-immigration legislation including the infamous 24-year rule, citizenship tests and an integration agenda close to assimilation (Emerek and Bak Jørgensen 2009). From this perspective, it is a puzzle that the Danish approach to veiling has been relatively accommodating. A look at the arguments with which the other parties rejected the 2004 DFP proposal to ban all forms of veiling in public institutions gives an indication why a prohibition was prevented. The then conservative Minister of Employment, Henriette Kjær, legitimized the dismissal of the proposal as follows. First, it was targeted at one specific religion, second, it would violate the Law against Discriminatory Behaviour in the Labour Market (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet)* and the Law on Ethnic Equal Treatment (*Lov om etnisk ligebehandling*). Finally, the proposal would be against the law because it differentiated between citizens.[11] The minister further explained that a realization of the proposal would go against § 67 and § 70 of the Danish constitution (i.e. freedom of religion and prohibition of religious discrimination), and would be in violation of the Convention of Human Rights' Article 9 (i.e. freedom of religion) and Article 14 (i.e. prohibition against discrimination). In Danish democracy and political culture individual rights stand in high esteem, and despite the existence of the state church, religion is considered to be a private matter. Thus, the most powerful arguments in favour of non-regulation referred to principles of 'equal rights', 'freedom of choice' and 'freedom of religious expression' (Andreassen *et al.* 2008). These arguments refer to political principles supported by the liberal conservative government, which on this issue chose to side with the opposition and not with its parliamentary support party, the Danish People's Party.

The Dutch political system has been dominated for over a century by the Christian parties. In 2010, the government was a coalition of the Social Democrats, Christian Democrats and the Christian Union, a small strict Christian party. The Christian parties traditionally favour an active role of religion in society. Curtailing the right to wear a headscarf would amount to curtailing religious freedom and would thus eventually backfire on the parties' own rationale of existence. Other political parties, like the left-wing Greens, were and still are against a ban on headscarves, because their ideal of a multicultural society includes the right to express one's religion through dress. The Social Democrats were against a ban because they believed that would hamper Muslim women's participation in society (Lettinga and Saharso 2009). Yet, it is not only political parties that are pivotal for the Dutch regulation, but also the judgements of legal expert commissions. The Commission on Equal Treatment is an autonomous body of nine experts that tests whether cases do not contravene equal treatment legislation. The Commission considers veiling as protected by the freedom of religion. The Commission's basic position is that religious freedom is a fundamental right that can only be outweighed by a second party's fundamental rights.

Although the judgements of the Commission are not legally binding, it has great authority and parties usually voluntarily accept them. The policy report of 2004 in which the government institutionalized the right of women to wear a head-scarf was also derived from the Commission's judgements. Legal experts also played a key role when it came to the *burqa*. When parliament in 2005 had decided on a ban on *burqas*, the then responsible Minister, Rita Verdonk, installed a legal commission to investigate the legal grounds for such a ban. This commission (Vermeulen 2006) advised against a ban, because it would infringe on several constitutional principles, notably the principle of religious freedom and of equal treatment. The government then refrained from further action.

We see that in Austria and the Netherlands the influence of the Christian parties was important to retain or even strengthen liberal policies, while this was not the case in Denmark. Another major difference is the role of democratic institutions in the three countries. In the majoritarian Danish democracy (Kelstrup *et al.* 2008), the parliament played a key role in policy making compared to the executive and judiciary powers, while in Austria and the Netherlands legal commissions and representative bodies were important actors. Still, many questions remain unanswered. What explains the deafening silence over headscarves in Austria? Why did the majority in the Danish parliament believe that equal rights demanded that veiling be accepted? Why was the tolerant ruling of the Commission on Equal Treatment in the Netherlands so widely accepted and even taken over by the government? To answer these questions we turn to the national institutions, particularly to historically established church–state relationships and liberal rights.

National state–church relations and liberal rights

As Islam is a religion that is introduced in Western Europe through immigration and veiling is a gender-specific religious prescription, three types of institutional arrangements may thus contribute to explain headscarf policies: regimes for handling immigration and integration, gender equality policies and state–church relations. As explained in the introduction of this chapter, in the past years all three countries have shifted towards a more restrictive immigration and integration policy, and in the Danish and Dutch cases emancipation policies for immigrant women play a central role. This makes it highly unlikely that these three countries' accommodating policies regarding headscarves can be explained by their immigration and integration regimes or by their gender equality policies. The main explanatory factor is the countries' state–church relations.

Austria's state–church relations are based on the principle of 'religious pluralism' and the recognition of Islam as one out of 14 recognized religious faiths. The Austrian model guarantees equal treatment to all recognized religious communities as well as church autonomy, i.e. specific autonomous domains in which the state may not interfere. The range of domains of internal affairs of churches and religious communities into which state intervention is not allowed is extensive (Robbers 1996). One example is religious confessional education in public

schools, which is mandatory for all pupils within each confession. Islam has been recognized as an official religion since 1912, when after the annexation of Bosnia-Herzegovina in 1908 Muslims formed part of the citizenry of the Austro-Hungarian Empire and were given a parallel legal status with members of other religious minorities. In 1979, the IRCA was recognized by Austrian state authorities as a legal corporate body serving as official representation for all Muslims residing in Austria. The IRCA is – alongside other such institutions – included in political decision-making processes in matters of concern to religious communities and has due to this status an influential public voice. As religious communities are granted relative extensive autonomy in religious affairs and because the headscarf is a religiously demanded dress code, the state has determined that the handling of the headscarf is a matter for the IRCA and does not belong to the realm of other state institutions. The institutionally enshrined religious pluralism explains why Austria can hold restrictive citizenship and integration policies which marginalize parts of the (Muslim) immigrant population with regards to economic, social and political participation (Fassmann 2007), while at the same time entitling Muslim immigrant minorities to comprehensive religious rights. This historical tradition moreover contributes to explain why veiling was politicized so little and so late in Austria (Mourão Permoser and Rosenberger 2009). As the status of the religious communities and their far-reaching autonomy in religious affairs is regarded as a political taboo, religious matters are usually kept outside politics. In addition, veiling has been constantly considered as a matter of religion by the majority of politicians. Only the populist parties attempted to signify the headscarf as a matter of unwanted immigration and a symbol of failed integration.

Religion plays a more ambiguous role in Danish democracy. On the one hand, the country has an established state church, but on the other hand the church plays a limited role in politics, and religion is generally perceived to be an individual or personal matter. The political institutions and political culture are based upon the belief that there is a close relation between Lutheranism and national Danish belonging (Østergård 2003; Christoffersen 2010). The Evangelical-Lutheran state church called the Danish People's Church (*Den Danske Folkekirke*) is inscribed in the Danish constitution, and the Danish version of religious pluralism[12] dates back to the first democratic constitution in 1849. This model formally guarantees freedom of religion and protects religious minorities (§ 67), but there is no equality between religions (Christoffersen 1998). The constitution states that the Danish National Evangelical Lutheran Church has special privileges, but Denmark has signed several international laws that guarantee equal rights for religious minorities. The country is relatively homogeneous in relation to religion and about 80 per cent of the population are members of the People's Church. Despite this, the country has a strong semi-secular tradition and the majority of members of the Danish Protestant Lutheran Church are what can be labelled 'cultural Christians' who may not even define themselves as religious.[13] Islam, which recently has become the second largest religion, has formally, although not in practice, an equal position with other

denominations. To sum up: although the critique of veiling in the public arena does resonate with the secular Danish political culture, the major parties have preferred dialogue, as the prohibition of the headscarf goes against the individual right to freedom of religion, which is a strongly adhered to principle in Danish democracy.

The Netherlands has a long history of religious tolerance that can be traced back to the final decades of the sixteenth and seventeenth centuries, the Dutch Golden Age. Tolerance was guaranteed in the Union of Utrecht (1579). Minority religions were tolerated provided that their religious practices stayed private, and many persecuted religious minorities from other countries found shelter in the Netherlands (van der Burg 1998). Religious pluralism is a strong Dutch tradition that was further revived in the late nineteenth century by efforts to protect the freedom of religious minorities against the liberal state. Catholic and Calvinist minorities had established local and regional politically organized religious sub-cultures to oppose the liberals' secular nation building project, later joined by the Social Democrats that likewise had begun to organize parties, professional and leisure-time associations (Kersbergen and Manow 2008). Secular (leftist) liberals in the Netherlands were forced to make a compromise about social and political life. This resulted in the segmentation of Dutch society along confessional lines, known as pillarization. Under the system of pillarization religious communities (and the socialists and liberals) had, and to a large extent still have, the right to set up their own institutions, such as schools, hospitals and broadcasting companies. The Dutch corporatist pillarized model of secularism also means that the state finances schools, social welfare activities or broadcasting agencies of religious communities, without interfering with the religious life of the adherents (Bijsterveld 2005). The religious communities moreover were included in the political decision-making process on specific policy issues through consultative bodies. The institutions of pillarization were extended to the new religious and cultural minorities. The Netherlands therefore has an elaborate system of representation of delegates of ethnic and religious organizations. In sum, the Dutch pluralist tradition grants a large space to live according to (and to be recognized on the grounds of) particular identities and traditions of groups in the public sphere. Given the Dutch tradition in which religion is highly visible in public life, it would go against the established custom to ban headscarves. And thus the Equal Treatment Commission's judgements that offered headscarves strong protection by making the right to religious freedom almost paramount could for a long time count on broad consensus.

So we conclude that in both Austria and the Netherlands, the state–church regime is one of religious pluralism, giving Islam the same rights as other (recognized) religions with an 'open' and 'cooperative' understanding of neutrality. Neutrality is achieved through even-handed treatment of all (recognized) religions. The state supports and encourages the activities of the religious communities to a certain (albeit different) extent. In Austria, the state cooperates even more strongly with churches than in the Netherlands, but religion is allowed to play a visible public role in both countries. Denmark also has a long

Table 7.2 Factors in favour of accommodation

	Austria	*Denmark*	*Netherlands*
Decisive institutional factor	Recognition of Islam	Political pluralism	Pillarization
Political principles	Religious pluralism	Recognition of religion as private matter	Religious tolerance
Pivotal party	Conservative	Liberal, Conservative	Christian

established religious pluralism, but here the state does not act in a neutral way towards religions. The model secures freedom of religion but not equality of religion. The Danish/Lutheran state church has a strong tradition of semi-secularism. Visible religious symbols are perceived to be a challenge to the secular political culture, but dialogue is generally presented as the preferred solution. The prohibition of the headscarf would go against the strong adherence to individual rights in Danish democracy, which includes the right to freedom of religion. In light of this it seems reigning state–church relations combined with specific interpretations of liberal principles are the key factors in explaining the three countries' accommodating headscarf decisions.

Conclusion

The chapter started off by questioning why, despite the increasing political contention over immigration and Islam in particular, Austria, Denmark and the Netherlands kept to their accommodating policies regarding the wearing of headscarves in public institutions.

We suggested, first, that the political contention around veiling is to a considerable extent symbolic politics, used instrumentally by the populist right to make and legitimate claims about restricting immigration, or has been used by other political actors challenged by the populist right to position themselves on the issue of national identity and migration, rather than being an object of policy making in itself.

Second, we noted that in Austria and the Netherlands the Christian parties played a pivotal role in politics. The behaviour of the parties in that matter indicated that they have no interest in limiting the role of religion in public life. While in theory they could have claimed a public role for Christianity, but not for Islam, they did not do so. For historical reasons – in Austria, Islam has been inherited by the Habsburg Empire, and the Netherlands has a tradition of religious tolerance – they chose to include Islam into their understanding of religious pluralism. In Denmark, by contrast a secular country with no important religious political parties, other concerns inspired the Danish political parties to vote against restrictions on the right to wear religious headgear. They were influenced, we suggest, by a strong notion of individual rights, which is deeply ingrained in Danish democracy and political culture combined with the fact that

the country's version of Lutheranism considers religion to be an individual, personal matter into which the government should not interfere.

Last, we emphasized the institutionalization of state–church relations. Austria and the Netherlands have a regime of open neutrality that includes cooperation with religious communities and a tradition of religious pluralism that demands that Islam is treated on a par with other religions. This explains why in both countries Islam gained the same rights as other religions and why in Austria the IRCA could successfully exert influence on policy making. Their historical tradition of open neutrality and the presence of religion and its symbols in the public sphere is not considered as contravening public neutrality. Therefore, in both countries religious symbols are accepted in public life, and their understanding of equality between religions demands that also Islamic religious symbols are accepted. Moreover, in the Netherlands the legal expert commissions, which have no formal power but great authority, were crucial. In Denmark, in turn, the strong adherence to people's individual religious rights and the principle of non-discrimination between all worldviews linked to an understanding of religion as a private matter even when expressed in the public sphere, played a pivotal role.

While political power relations and discursive use of veiling as constituting or legitimizing policy change are important factors, we have argued that they only gain meaning within the context of political institutions and state–church relations. In the Austrian and Dutch cases, historically established institutions support an inclusive state–church system. Powerful political actors interpret liberal principles like state neutrality in accordance with their institutional traditions. Therefore, when weighing religious freedom against other principles and interests, the balance tipped off to religious freedom. Headscarves were not considered as conflicting with public neutrality or not enough to justify major restrictions of religious freedom and the right to wear a headscarf. In the Danish case, religious freedom was not combined with religious equality and state neutrality but is perceived as an individual right that the government has no right to interfere in, even when exercised in the public sphere. As underlined, this resonates with the Danish democratic institutions and political culture in which, next to equality, individual freedom and rights are highly valued. This is why, despite heavy political pressure from the radical populist right to curtail the right to veiling, political parties across the political spectrum paid respect to these national traditions and kept to the historical ways of regulating expressions of religion.

These observations illustrate that there are limits to what is politically possible, that is limits to populism. In the political struggle across Western Europe the rhetoric 'defence of liberal values' is used as a strategy against Islam. However, this chapter demonstrates that liberal democratic values may also contribute to the defence of democratic diversity.

Notes

1 By the end of 2009, in the Netherlands a law was being prepared which, if accepted by the second and first Chamber, will forbid all types of face covers in education; the government sent a directive that face veils are forbidden for public servants (TK Kamerstuk 2007–2008, 31200 VII, no. 48, 19 February 2008). All policy documents discussed in the Dutch *Tweede Kamer* (TK, Second Chamber) can be accessed through the electronic search engine Parlando http://parlando.sdu.nl by referring to the parliamentary year, date and document number.

2 The focus is on public institutions; as for private institutions, European anti-discrimination legislation applies for all EU countries.

3 Proposal entitled: 'B201 *Forslag til folketingsbeslutning om forbud mod at bære kulturbestemt hovedbeklædning*' ('B201 proposal to parliament bill about the prohibition of wearing culturally determined headdress'). See the Danish frame analysis of document DK1. The proposal spoke of 'culturally determined head coverage', that is 'any kind of veil or head coverage which is not included in the Christian-Judean culture'. Christian symbols or Jewish *kippa*s were not to be banned. It argued 'that headscarves have become a growing problem, which has become offensive to ordinary people' ('*hovedbeklædning, specielt tørklæder, er blevet et stigende problem, der virker stødende på mange almindelige mennesker*').

4 TK Kamerstuk 2003–2004, 29614, no. 2, 7 June 2004.

5 Online, available at: www.derislam.at/haber.php?sid=39andmode=flatandorder=1 (accessed 18 April 2006).

6 Danish debates on veiling included employment debates, about the right of private employers to prohibit a headscarf for their employees, media debates and parliamentary debates. Denmark is exceptional in terms of regulation of religious dress of employees in the private labour market. According to Supreme Court decisions from 1999 and 2005, prohibition of headscarves is legal when it is in accordance with a company dress code and does not violate the anti-discrimination act.

7 The legal experts argued that the veil is not a problem in Danish courts (in *Berlingske Tidende*, 16 December 2008). Other experts argued that the bill may be in conflict with the Danish constitution, Human Rights Convention and EU law. Finally, the bill was perceived as an attack on the separation of powers and Danish democracy. The Minister of Integration and Church, Birthe Rønn Hornbech, publicly warned that a ban on religious dress for legal judges would be against the Danish version of Lutheran Protestantism characterized by a separation between religion and law. In addition, a ban would interfere with the basic tenet of (Danish) liberalism; 'Frihed for Loke såvel som for Thor', 'Dommertørklædet og de to regimenter', *Politiken*, 14 May 2008.

8 Original text:

> tørklæder er et udtryk for kønslig tvang, som overhovedet ikke hører hjemme i et moderne samfund som det danske […] et tørklæde, det er lige præcis en person, som er imod de danske normbegreber, værdibegreberne I Denmark og I vores kultur.

Parliament debate re. B210. Online, available at: www.ft.dk/?/samling/20031/beslutningsforslag_oversigtsformat/B201.htm (accessed 1 August 2009).

9 MP Herben, LPF, TK Handelingen 2004–2005, no. 73, 14 April 2005, p. 4471.

10 *Die Presse*, 21 September 2007.

11 Parliament debate re. B210.

12 The Danish version of religious pluralism is divided between the old recognized groups – Christian and Jewish denominations who receive special treatments – and the more recent Muslim and Eastern denominations who are accepted but not recognized on par with the old denominations (Christoffersen 1998).

13 The information is from the Ministry of Church's website, online, available at: www. km.dk/kirkestatistik.html (accessed 1 August 2009). See also Christoffersen (1998).

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8 In the name of *laïcité* and neutrality

Prohibitive regulations of the veil in France, Germany and Turkey

Sabine Berghahn, Gül Çorbacıoğlu, Petra Rostock and Maria Eleonora Sanna

Introduction

In this chapter we will focus on the debates related to the *prohibitive* regulations adopted in France, Germany and Turkey. We will elaborate the various factors explaining a specific prohibitive regulation (e.g. federal legislation in Germany, state–churches regime in France and the constitution in Turkey). Methodologically, we will compare the three countries to (re)interpret the situation of each country in light of the analysis of the two others. The results of the comparison of the prohibitive regulations of France, some German federal states and Turkey will 'unveil' the ways in which the impartiality of the state is advocated not only for determining the boundaries of state–religion/church relations, but for accommodating a dominant discourse on religion and at the same time reproducing gendered fantasies of colonialism, nationalism and 'modernity' (Varikas 2007).

In the first section of this chapter, we briefly describe the main features of the prohibitive regulation in the three countries. In the second section, we will focus on factors which might explain national, regional and local prohibitions, and court decisions. The chapter considers the state–religion regimes, the political opportunity structures such as the citizenship and migration regime, aspects of the political culture and anti-discrimination machineries including social movements (especially feminist ones). Our approach focuses on (a) the multiple interpretations of state neutrality within each country, (b) the instrumentalizations of the gender equality issue in public and political debates and (c) the conflicting interpretations of citizenship, naturalization and assimilation both across and within France, Turkey and Germany (Fetzer and Soper 2005; Scott 2007).

Prohibitive regulations in France, Germany and Turkey: setting the stage

Brief sketch of prohibitive regulations

In France, the principle of *laïcité* applies to all public institutions and services (including teachers) as well as to courts. It appeals to the first article of the

French constitution (4 October 1958) affirming the secularity of the Republic, and it was formally stated in the Law of 9 December 1905 separating churches and state. The Law of 1905 imposes several rules: no religion may be supported by the state, either financially or politically; everyone has the right to practise a religion, but no one has the obligation to do so; religious education at school is strictly forbidden. The Law of 1905 forbids teachers' proselytism, either by speech or by wearing religious and political signs. Advocating the Law of 1905 for enforcing *laïcité* in school, the Act of 2004 prohibits the display of any religious and political signs in both primary and secondary schools but not for universities (Article 141-5-1, Law of 15 March 2004). Therefore, wearing the headscarf is forbidden for pupils but it is allowed for university students.

Before 2004, a 'soft' implementation of the principle of *laïcité* was promoted. The then Minister of Education, Lionel Jospin (Socialist Party), referred to a more 'open' interpretation of the principle of state neutrality, and in 1989 the Council of State (*Conseil d'État*, CE) decided in favour of a 'differentiated approach' to the headscarf of pupils: they were allowed to wear it as long as they did not use it in an aggressive and proselytizing way (CE, report no. 346,893, 27 November 1989). François Bayrou, member of the conservative UDF (*Union pour la Démocratie Française*, Union for French Democracy) broke with his predecessor's policy and introduced a circular for fostering a 'hard' version of *laïcité*. After some new headscarf controversies[1] and after 11 September 2001, President Jacques Chirac (*Union pour un Mouvement Populaire*, Union for a Popular Movement, UMP) set up an experts' group under the heading of Bernard Stasi.[2] The result of the Stasi Commission's discussions was the Law 'on *laïcité*'[3] banning pupils' veils.

In Germany, pupils and students are free to wear the Islamic headscarf. The prohibition concerns teachers – and partly other public servants – in eight federal states (*Bundesländer*). The opportunity to ban religious signs and clothes in school was opened by the Federal Constitutional Court (FCC). Until its judgement on 24 September 2003, the requirements of neutral behaviour concerning teachers and civil servants in general had been uniformly interpreted in Germany at large: civil servants had to behave impartially and to abstain from proselytism according to the constitutional principle of neutrality interpreted as the 'non-identification' of the state with a religion or denomination. In contrast to the French and Turkish situation, state employees did not have to keep their religious or philosophical convictions out of the public sphere since the German neutrality of the state is considered to be an open and comprehensive one. The situation changed when in 2003 the FCC stated in the case of Fereshta Ludin that if a federal state (*Bundesland)* wanted to prohibit teachers from wearing headscarves, this must be prescribed by a law of the *Bundesland* which restricts the wearing of religious signs and clothes. Thus, the FCC itself opened up the possibility of interpreting the required personal attitude of teachers in different ways: either in an 'open' and pluralistic way, or, more restrictively, similar to a *laic* approach. The only condition provided by the FCC was: all religions

and denominations have to be treated equally.[4] As a result, the competence to regulate the headscarf shifted from the national to the federal level. Thus, in Germany rather different patterns of regulating the wearing of a headscarf are in effect. Eight out of 16 German *Bundesländer* introduced prohibitive regulations. Five of them (Baden-Württemberg, Bavaria, Hesse, North Rhine-Westphalia and Saarland) introduced bans with exception clauses in favour of the display of Christian-occidental values and traditions. Three of these eight *Bundesländer* (Berlin, Bremen and Lower Saxony) prohibit the wearing of any religious signs in schools.

The most severe prohibition of the headscarf in public institutions is in effect in Turkey. At the beginning of 2008, almost a state crisis was caused by the attempt to lift the headscarf ban concerning university students. On 9 February 2008, Turkey's ruling AKP (*Adalet ve Kalkınma Partisi*, Justice and Development Party) tried to amend the Turkish constitution in an attempt to create the legal framework for lifting the ban that prevents veiled women from entering universities. The amendments were passed by the parliament with 411 to 103 votes. Two articles of the constitution were changed: Article 10, which guarantees equality before the law irrespective of language, race, colour, sex, political opinion, philosophical belief, religion or sect, was amended to include a commitment to ensure that all citizens have equal access to all public services; and Article 42 on the right to education was changed to include a phrase preventing anyone from being denied the access to education except for a reason openly stated in law. It is important to note that no written laws preventing veiled students from entering the university exist, except for an implicit regulation of the Council of Higher Education. Although in 1989 the Constitutional Court decided that 'headscarves in universities are against the principle of secularism that is the most important pillar of the Turkish state and constitution',[5] no prohibition law came into force. Thus, it is only in the name of the constitution that headscarves are banned from universities. After the president, Abdullah Gül, had signed the amendments of Article 10 and 42, the main opposition CHP (*Cumhuriyet Halk Partisi*, Republican People's Party) applied to the Constitutional Court for their annulment. On 5 June 2008, the Constitutional Court consisting of 11 members annulled the amendments to the constitution with nine to two votes. In this decision, the court stated that the two amendments were invalid as they violate the principle of secularism enshrined in the constitution as one of the unchangeable characteristics of the Turkish Republic (Saktanber and Çorbacıoğlu 2008). As a consequence, in Turkey prohibitive regulations for pupils, students and civil servants are still in effect.

Similarities among the three prohibitive country cases

In Turkey, although the majority of citizens are Muslim, the headscarf was banned because modern Turkey followed the historical model of France proclaiming a strict form of secularism. Religion and its formerly powerful institutions should be excluded from the public sphere. The main difference is that the

target of neutralization in Turkey was and is Islam as opposed to Catholicism in France. As a consequence, the idea of curtailing the influence of religion also greatly affects the prohibition of the headscarf in Turkey and France.

Even though the EU member states France and Germany represent completely different state–church regimes and ideologies concerning 'state' and 'republic', at first glance we find some similarities in dealing with the headscarf in the public sphere or parts of it. One common feature in France and Germany is that the institutional traditions of combating discrimination are rather weak in both countries. In both societies, Muslims are a growing minority and are mainly immigrants. The sociological structure of the Muslim population differs: while the majority of Muslims in France belong to French ex-colonies, principally from Maghreb, and own French citizenship, Muslims living in Germany have mainly immigrated from Turkey and most still do not hold a German passport (Open Society Institute 2007: 15). It is no surprise that there are a lot of differences concerning religious customs and observance, covering practices and styles, political and ideological implications of female Muslim attire, etc. (Sintomer 2009: 139). Differentiations derive from the specific colonial history, from different legal traditions of access to citizenship (France, *ius soli*; Germany, *ius sanguinis*), and from a distinctive societal experience of being accustomed or not to a multicultural society and to fellow citizens of Islamic faith. Despite racism, xenophobia and the political stigmatization of the female Muslim covering practice, French society seems to be less dismissive of Muslims than German society. The Pew Research Center revealed in its survey of 2008 that in Germany a significantly larger group has a negative attitude towards Muslims in Europe (50 per cent) than in France (38 per cent) (Pew Global Attitudes Project 2008). Sinus Sociovision found in Germany a high percentage of consent to very critical association chains that identify religion immediately with Islam and 'its ubiquitous negative image' (2008: 137), with backwardness, fundamentalism, a threat to 'our' (the German) culture and other sentiments of disassociation. While the widespread image of Islam is qualified as backward and Muslims are identified as being fundamentalists (Brettfeld and Wetzels 2007: 232), Germans 'of all social milieus, not just the educated ones', are 'proud of the "occidental" achievements of the secular state which grants people to pursue their own beliefs while ensuring that public life and societal institutions remain unaffected by religion' (Sinus Sociovision 2008: 135). Here a convergence of German and French constellations on a *laic* level can be detected: although in Germany religion is not banned from the public sphere, there is a trend to declare religion to be a 'private matter' and to define religiously affiliated persons 'to be the problem'.

Considering the wide spread aversion to Muslims and Islam in Germany and France, visible personal attributes of this religion are often stigmatized even in the private economy. Hence it is no surprise that despite anti-discrimination laws Muslims face many disadvantages in the labour market. Though no legal prohibition of the headscarf is in effect outside the public sector, the principle of not being allowed to show one's religion is tacitly advocated to ban the headscarf even in private employment in France (cf. Dumas 2002) and also in Germany

(*Senatsverwaltung für Integration, Arbeit und Soziales Berlin und Landesstelle für Gleichbehandlung – gegen Diskriminierung* 2008). Formally, in France as well as in Germany, private employers may not prohibit the wearing of headscarves, but they can impose prescriptions about the suitable outfit for doing a job, since dress codes are part of the employer's rights. The dress codes, however, must not violate employees' human rights.

In Turkey, veiled women are not members of a religious or national minority but nevertheless are not protected by human rights or anti-discrimination institutions, on the contrary: a court decision (Council of State, 26/10/2005, 2004/4051, 2005/3366) supports penalties for civil servants who wear the headscarf even beyond their work place. In the private economy there is no regulation prohibiting any kind of veil in private businesses, but many private employers prefer to employ unveiled women, especially for high-profile jobs; this can also be said for 'Green Capital' companies (owned by Islamists). Even they prefer unveiled women in high-profile positions. In this sense, very religious people and especially veiled women constitute a Muslim minority within the Muslim majority population, and are excluded or disadvantaged in state professions and private mainstream economy (Saktanber and Çorbacıoğlu 2008).

Explaining prohibitive regulations: political opportunity structures and political culture

This chapter explores the most salient explanatory factors for prohibitive regulations: first, the role of anti-discrimination institutions, state–church relations, citizenship regulation and migration policies which might be labelled as political opportunity structures (Fetzer and Soper 2005) and, second, the dimension of political culture, that is images and traditions, which shapes political institutions and policies.

Anti-discrimination institutions

To begin with the perhaps least salient but functionally closest factor: as the last passage indicates, strong and effective anti-discrimination institutions could possibly exercise a correcting influence on legislation if they exist and if they are powerful enough. In EU member countries, anti-discrimination institutions have to be established according to EC directives. In 2004, *France* changed its existing legislation according to the European Council's anti-discrimination directives[6] establishing the High Authority for the Struggle Against Discrimination and for Equality (HALDE; cf. FR16). In Germany, the adaptive act, the General Equal Treatment Act (AGG), was passed only in 2006, and the national anti-discrimination body, the Federal Anti-Discrimination Agency (ADS), was set up with even more delay. In contrast, *Turkey* only has legal norms prohibiting discrimination based on religion, sex or ethnic origin (Article 10 of the constitution); but no anti-discrimination institutions exist that are in charge of mediating conflicts or assisting victims of discrimination.

In *France* and *Germany*, the anti-discrimination machineries have only short histories of existence and have not – until now – established any principle critical objections against the legal headscarf prohibitions. In France, the dominant prohibitive interpretation of *laïcité* and religious symbols in public spaces, especially schools, can be assumed as a promotion of such a reserved and cautious approach by HALDE; in Germany, the widespread anti-Islamic atmosphere in political debates and among large parts of the population seems as well to foster the inactivity of the ADS, which is situated in Berlin and only has very few human resources to act on across the national level against all kinds of discrimination. In both countries, this lack of critical and advocatory performance by these institutions might be supported by the fact that also courts have not opposed the dominant (collective) interpretation of *laïcité* and neutrality of the state in relation to the headscarf matter and to the individual basic rights of teachers and applicants. Therefore, the anti-discrimination institutions in both countries have not yet touched the issue of head covering because of religious duties, either for the public education and employment sector or for the private labour market. Specifically for the headscarf affair, however, the French HALDE intervened following allegations of discrimination coming from veiled mothers who were not allowed to accompany their children to a school outing upon the teacher's request for parents' help (FR16). HALDE's mediation and 'recommendations'[7] represent a rather low level of intervention in favour of non-discrimination on religious grounds and are a telling example of the modest binding power and ambition of this authority.

State–church relations, citizenship and migration policies

Of course even for France and Turkey the state–religion regime alone cannot explain the adoption of such prohibitive laws, but it does explain a great deal. In France, the Law of 2004 must be considered instead as an overall configuration of state–church relations, of the citizenship and migration regimes, and of political culture. The regulating actors seek refuge in the historically handed-down remedy against conflicts emerging from religious groups and denominations. The Law of 2004 seems to be a converging strategy to renew the unifying power of the 'Republic' and the 'Nation' which asks for a specific commitment by citizens, even immigrated citizens. They should have obtained citizenship by a complex process of naturalization, meaning the assimilation to the French national culture self-defined as being a secular and egalitarian civilization (cf. Balibar 2004). Since the Sarkozy presidency in 2007, religion, ethnicity and 'race' are introduced as underhanded criteria to prevent access to French citizenship (*Herald Tribune* 2008). Regardless of its unconstitutionality, the current strengthening of racism in immigration and naturalization policies (Delphy 2008a; Keaton 2006) goes back to the second Chirac presidency in 2001. It is related to the growing racism developing from the mid-1980s and to the normalization of extreme-right parties and ideologies (Eribon 2009: 127–60), which are reactivating the imaginary and assumption of a colonial legacy never confronted

(Dorlin 2006; Varikas 1998). 'The Muslim veiled woman' has become 'the other' par excellence, who is called upon to neutralize herself and her gendered and racialized particularity (or forced to do so by law) in the public space (Delphy 2008b; FR25) as a condition for participating in the French secular society (cf. Bracke 2009), and even more when she applies for citizenship. Here the state–church regime comes into play. During the policy making of the Law of 1905, the presence of Islam in the metropolitan territory was totally erased, tacitly setting the state–church regime as a relationship between the state and mainly Christian faith (although Judaism was formally included) (cf. Bauberot 2000). From the Law of 1905 to the ban of 2004, the legacy of the Empire has shaped the failure of French authorities to appeal to the principle of *laïcité* in order both to institutionalize and to improve a real equality among French citizens regardless of their origins or religious beliefs. In this context, republican neutrality does not only mean state impartiality vis-à-vis religion in the name of freedom of thought; it also represents the will of the state to reaffirm 'the unity' and 'the indivisibility' of the French nation through the 'neutralization' of any expression of the origins of French citizens, residents and immigrants (Balibar 2004). The ban on the headscarf suggests that the status of the Muslim community in France has been and still is the main target: Muslims are seen as the main if not the only transgressors of both *laïcité* and gender equality (FR28). Indeed, the argumentation according to which the principle of *laïcité* is able to protect veiled women from Islamic fundamentalism and patriarchy was largely used by policy makers. Left-wing and right-wing parties in power during the policy-making process shared the gender equality objection. They instrumentalized the mainstream feminist rhetoric of Western women's emancipation (FR3) for defining a measure of the degree of modernity and democracy of the state on the one side, and on the other, for the purpose of a self-serving image of the Republic as the modern, rational protector of gender equality threatened by the irrational, archaic use of the headscarf (FR22).

Concerning *Turkey*, the state–religion regime and institutionalized configurations of the political system – the party system and the balance of powers – embedded into the historical development of the modern Turkish nation in the twentieth century are of crucial relevance to the prohibitive regulation. It is important to underline that with Islam being the religion of the majority and Turkey not being an immigration country, the headscarf is a question of 'the majority' and not of minorities. Although Article 10 of the constitution guarantees equality before the law to all citizens, Article 2 underlines that secularism is the most important pillar of the state and that it has to prevail. The ban of the headscarf is thus justified by this Article. Secularism is interpreted here as the most important constitutional principle, and it is advocated to institutionalize the separation between the state and religion in an overwhelmingly Muslim country. But after the emergence of a new generation of religiously motivated leaders challenging the dominance of secularized politics after the military takeover in 1980, Islam has become visible in all spheres of life. Due to this fact, the headscarf has been mainly perceived by a large, secular section of the population

as a political symbol representing the revival of Islam (Saktanber 2006). Finally, in 2008 the Constitutional Court decided that lifting the ban and accepting veiled students at universities was against secularism as a major principle of state.

Concerning *Germany*, the regional and local regulations in eight federal states – among them are city states such as Berlin and Bremen – are the result of a very specific judgement of the Federal Constitutional Court and therefore a product of the strong position of the Court within the German political system. As the FCC had to decide in the case of Fereshta Ludin in 2003, the majority of judges chose a surprising compromise that changed the constitutional landscape of Germany regarding the national competences regulating the right to freedom of religious expression of civil servants of the *Bundesländer*. The court emphasized on the one hand the right of a teacher to wear a headscarf as long as there is no restricting law; on the other hand, it strengthened the anti-headscarf approach by opening up the possibility of prohibition by federal state law. Until this moment of decision, all the experts had expected a clear decision for all of Germany. Hence the responsibility for new regulations and solutions of the headscarf problem was handed over from a powerful but disagreeing court to the politicians and parliaments of the federal states. Due to Germany's federalism, its party system and its ponderous decision-making mechanisms, the competing political parties try to enforce their controversial interpretations of state neutrality and of Germany's future as a society of immigration (cf. Rostock and Berghahn 2008). The different regulations in the 16 German states can be explained mainly through these competing interpretations, which are not only divided along party lines but also along regional ones. The Christian-occidental camp, consisting of politicians mainly of the Christian Democratic Union (CDU) and Christian Social Union (CSU) in the southern, Catholic-oriented German *Länder*, wants to hold on to the old German 'ethno-cultural' model of citizenship while rhetorically it accepts Germany as a multicultural society. Therefore, reforms on citizenship status and immigration[8] work hand in hand with policies of demarcation against Muslim immigrants. In contrast, Social Democrats and other mainly secular-oriented political forces try to push forward a more consequent separation between state and churches or religious communities. The fact that Germany has become a country of immigration was finally accepted at the turn of the twenty-first century when the red-green government of SPD and *Bündnis 90/ Grüne* (Social Democrats and Greens) initiated fundamental reforms of the citizenship and immigration laws. But while the religious and cultural feature of Germany is becoming more manifold, large parts of the German population still perceive this diversity rather sceptically (Rostock and Berghahn 2008; Pew Global Attitudes Project 2008; Sinus Sociovision 2008). For many politicians this means a strong incentive to compete in policies of restricting actual immigration and making clear that their own party is most successful in getting an assimilation strategy through. Since the headscarf is interpreted as a symbol of Muslims showing 'too much' difference and self-confidence, this symbol is also the point of departure for regulating activities in order to discipline the societal 'newcomers'.

One can say that, in addition to the power of the FCC on the one hand and federalism concerning educational and cultural affairs on the other hand, the two other factors having an impact on Germany's prohibitive regulations are its ambivalent migration regime and – in a paradoxical way – its state–church regime. As far as migration issues are affected, the question is how assimilated immigrants have to be. Concerning religion, the dispute (initiated by the crucifix decision in 1995)[9] is about how much the German society – the Christian majority in general and the Muslim minority in particular – should be allowed to be a religious one and in which sense. Is it a Western Christian society or a multi-religious one? Will it copy the French example where all religious signs and symbols have to be banned from the public sphere? Does the frequent reference to an 'occidental' culture, to 'Christian-occidental' values and constitutional principles mean, as Nikola Tietze suggests, that it is a strategy to avoid the topic of 'national' unity but confirm it indirectly – in opposition to the 'foreign' Muslims and their faith (1998: 191). Shirin Amir-Moazami draws the conclusion that these 'constitutional' questions of Germany's religious and cultural identity are questions of the norms, values and symbols of the nation and are therefore questions of the very foundations of the German Republic – in reference to the moral burdens of the past (2007: 155). In this situation of a burdened past and doubts about the definition of the 'very own' characteristics of the nation, it seems to be easier to achieve certainty about oneself by demarcation from others. Besides the religious difference between Christianity and Islam, the difference between 'modern' gender relations and patriarchal and backward ones presents itself as an easy pattern of justification for the widespread anger and indignation towards accepting Muslim immigrants as fellow citizens.

While gender relations may play an important role for the self-definition of societies, and equality arguments were indeed used in the public and political debates, social movements – and especially women's movements – played a subordinate role in policy making. Although the headscarf debate has given a bit more voice to Muslims (Spielhaus 2009: 414; G9, G24, G25), these few voices of Muslim women in defence of the right to wear a headscarf could not exert power to influence decision-making processes (Rostock and Berghahn 2009: 10).

So far we have examined factors of the national political opportunity structure or political culture of the three countries that work in favour of prohibitive measures against the headscarf. Now we shall take a closer look at the structure of the main argument, namely that the headscarf as a symbol of religious affiliation of pupils, students, teachers and other public servants would infringe the major principles of *laïcité*, secularism or neutrality and thus undermine the very foundations of state and society in France, Turkey and Germany. In France and Turkey, a *laic* configuration of state–religion relations can be identified as a salient factor explaining the headscarf bans. Contrary to this, German federal prohibitions cannot be explained by the state–religion regime which is embedded into the open and pluralistic neutrality of the national constitution. Starting from this incongruity across three countries, all adopting prohibitive regulations

but not sharing the same model of state–religion relations, the cross-comparison of different state–religion regimes could provide further insights into factors that matter within the system of fundamental values and beliefs that constitute the political culture of countries and therefore influence the policy making of national and local regulations.

In *Turkey*, religion does not regulate public life nor does it play a role in jurisdiction. Nevertheless, although regulated by the state, Islam is culturally established (Saktanber and Çorbacıoğlu 2008: 10). There is no official state religion in Turkey and secularism is referred to as both the fundamental and foundational principle of the Turkish Republic, as much as the principle of *laïcité* is referred to as a fundamental French Republican principle. Secularism is thus advocated as the state ideology supporting the national effort of development and modernization. In this context, the headscarf is construed as the very symbol of the Ottoman past and of religious fundamentalism, a threat to the Turkish modernization project defended by Turkish nationalism (Saktanber and Çorbacıoğlu 2008).

Focusing on the relations between state and religion for explaining the adoption of restrictive regulations in *Germany*, we are able to enlighten that the prohibitive policies of some *Bundesländer* contradict the national legal tradition.[10] This holds especially true for those five states where a 'Christian-occidental clause' was passed saying that the exhibition of 'Christian-occidental educational and cultural values or traditions' (cf. § 38 sec. 2 sen. 3 school act of Baden-Württemberg and § 57 sec. 4 sen. 3 school act of North Rhine-Westphalia)[11] does not contravene the duty of teachers to maintain neutrality. Here 'Christian-occidental' traditions and customs were equated with 'state neutrality'. The contradiction in itself is obvious: the principles of equal treatment, pluralism and fairness towards minorities were neglected.

The differentiation of regulations from *Land* to *Land* in Germany leads to an unequal guarantee of religious freedom rights within the territory of Germany, and this is reflected in the conflicts not only about the headscarf but also concerning the crucifix and Islamic religious education in schools (Rostock and Berghahn 2008). Although in Germany state and religion/churches are officially separated, a special relation – going back to the German Empire which lasted until 1918 – has existed and still exists between the state and religious communities, in particular Christian churches. The Christian churches have had, and still have, the status of publicly recognized corporations; while today Jewish communities hold this status too (Rostock and Berghahn 2008), no Muslim community has obtained this status. After the end of the Second World War, the dominant interpretation of state neutrality as open and inclusive prevailed in Germany. This interpretation enabled the Catholic and Protestant policy makers to coexist with secular agencies. It was also a guarantee of national unity despite federalism. This compromise held until the FCC judgement of 2003 in the Ludin case. But even the legal ban itself – the prohibition to show one's own religious affiliation as a teacher – infringes the individual guarantee of basic rights in those federal states which have not passed a Christian-occidental exception

clause, as the ban in all eight prohibitive *Bundesländer* does not ask for reasons given by the person, not for misbehaviour or actual dangers to anyone, but it stigmatizes the Islamic clothing as such. This is indicated by the fact that the amendments to the school acts were intentionally made for no other reason but to ban the headscarf.[12] The common ground of federal states that prohibit all religious signs (three) and those that privilege Christian and possibly Jewish signs (five) is the ban of the headscarf because this is the major and almost only religious sign actually worn by teachers or other pedagogical staff.

In *France*, in spite of the formally strict separation between state and churches, the implementation of the Law of 1905 reconstituted an important state source of funding different worships, in particular Catholicism, Protestantism and, to a lesser extent, Judaism (Bauberot 2000). In contrast, Muslims do not dispose of state-owned buildings, mosques and other property funded by the public authority. In order to construct or maintain mosques, Muslims are obliged to appeal to sponsors (including the sponsorship of Muslim countries like Algeria or Morocco – the former French colonies – and even Saudi Arabia) (Bowen 2007). Thus we can say that the legacy of colonial relations emerges as one of the major factors responsible for targeting the headscarf as the very threat to the *cultural* unity and indivisibility of the French Republic (FR27; Bouyahia and Ramdani 2011; Kian 2011; Sanna 2011). It should be noted that *laïcité* is not currently construed as the separation of churches and state; on the contrary, the very notion of *laïcité* is historically and theologically related to the Christian idea of a private religion nurtured in 'the heart of hearts' (Balibar 2004; Nancy 2004). With this in mind, we should realize once more that religion was never banned from school totally. The Catholic faith's privileges are visible at least in the departments of Alsace and Moselle. In these departments, Christian traditions and practices are considered to be *local* customs that are perfectly compatible with the national, modern and secular culture. The existence and acceptance of these historical privileges reveals the Christian fundament of the republican *laïcité* (Beumier 2006: 13). The exception proves the rule banning the headscarf as a religious sign ostentatious of *Islam*. In metropolitan France as well as in Germany, the exception may only be a Christian one. The ever present assumption that 'minority' religions and cultures (Islam in particular) are the problem, that they are threatening individual liberties and more particularly the liberties of women, therefore reveals an aporetic conception of 'toleration' (cf. Bayle 1992; Mairet 1991) according to which it is the dominant religion's privilege to tolerate (or not) the others.

But why do we find this lack of pluralism and universalism in the three countries to this extent? Only a comparison with more 'tolerant' states in our sample would help explain the latter. But again we may assume that the laic basis of state–religion relations influences the lack of liberal pluralism. In favour of a peaceful 'republican' realm and a clear-cut separation between the private and the public sphere, individual freedoms and liberties have to be cut back.

Instrumentalizations of gender equality issues

Another characteristic of the situation in the three prohibitive countries is the intensity of proclaiming the 'gender equality' objection. In the Turkish modernization process, the topic of women's emancipation has been adopted as a criterion for evaluating the realization of the process itself, and the idea of equality between men and women has been advocated to legitimate nationalism encouraging the development of the Republic. From the foundation of modern Turkey in 1923, the image of a secular and emancipated woman has been depicted in a binary opposition to the veiled woman; the latter has been considered as being the symbol of religious fundamentalism and thus representing the legacy of the Ottoman past, while the former has been idealized as the emblem of 'the Turkish woman'. In this context, women have been usually referred to as a 'comrade-in-arms' for achieving secularization and modernization (Kandiyoti 1988). From the 1980s onwards, the headscarf began to symbolize the progressive return of religiosity within Turkish society. This re-emergence is paradoxically embodied today by modern, highly educated veiled women fighting for free access to university, political activity and the labour market (Saktanber and Çorbacıoğlu 2008).

This analysis, in turn, calls our attention to the image of 'a modern and emancipated woman' evoked in the *French* public and political debates in order to legitimate French Republicanism while marginalizing feminist movements and Muslim women's groups. Women's emancipation has been referred to as a 'universal shared value' in the discourses of a large spectrum of politicians and mainstream feminists (FR3). Moreover, women's equality has been assumed as an 'already existing reality in European societies' by these same actors (e.g. the authors of the feminist petition to president Chirac; FR3). This instrumental use of the idea of gender equality is underscored by the utter invisibility of the feminist and Muslim actors themselves (FR7). Muslim women are referred to as 'oppressed victims' of fundamentalism who have to be saved by the secular Republic, or as the embodiment of 'their' culture who have to be tolerated within the French multicultural society. Focusing on this instrumental exploitation of the value and importance of women's emancipation provides us with a further insight into the factors explaining the French prohibitive regulation. During the political debate and despite ideological differences, there has been an overall consensus between the party in power and the opposition (Sintomer 2009). Both basically seemed to agree on the necessity 'to save' oppressed veiled women from (Islamic) domination and, more precisely, from their male kin (FR9, FR14). Gender equality, referred to as a 'modern norm', has become a one-sided political instrument able to split the modern (Christian) nation from backward (Muslim) migrants, and thus refuse migrants' claims to equal treatment as citizens and subjects of the democratic process.

The French instrumental advocation of gender equality sheds light on the *German* context. While feminist movements are split over the headscarf question (G2, G4, G12, G15, G28) and anti-racist feminist positions are rarely mirrored in

the mainstream media, it is remarkable how often and intensely the gender equality objection is used by German politicians, judges and persons in administrative functions – almost irrespective of the political party they belong to or sympathize with. Many actors – reaching from representatives of the Catholic Church to judges of the FCC who gave a dissenting vote in the Ludin case – argue that the headscarf expresses the subordination and oppression of women in Islam. Among the three dissenting judges of the FCC who assessed the headscarf worn by a teacher as a clearly unconstitutional symbol was Udo di Fabio, who opposed the idea of affirmative-action measures in favour of women and its compliance with the German constitution for a long time. As a famous conservative intellectual he still describes the role of women and men in society as very essentially opposite (Di Fabio 2005: 144), but within the dissenting vote in the Ludin case of 2003 he and his two colleagues attributed a high priority to the achievement of gender equality, whereas these judges condemned the headscarf as a symbol of Islamic oppression and fundamentalism. By this we may assume that those German conservatives mainly inspired by Catholicism, whose ideas about ideal gender relations resemble those of conservative Muslims, want to dissociate themselves strongly from the socially deprived group of Muslim immigrants. And of course, an efficient way to keep mental and social distance is to promote a legal prohibition for the very symbol that connects Islam and 'backward' gender relations.

Migration and integration questions

Comparing the Turkish case with France and Germany sheds light on the fact that, in these latter states, the governance of migration and integration issues is crucial to the adoption of prohibitive regulations. In Germany, those who are seen as 'cultural aliens' do not have easy access to citizenship. Here cultural assimilation is a precondition for naturalization, and the headscarf ban is supported as a political instrument of demarcation against Muslim 'foreigners'. This is indicated by the fact that the headscarf decision of the FCC in the Ludin case was followed by vehement debates and a restrictive law-making process in half of the German *Länder* and coincided with heated political debates preparing a completely new immigration law during the years after 2001. This reform became necessary because the red-green government had proclaimed in 2000 that Germany had become – now and finally – an immigration country. Thus the debates about the headscarf ban for teachers perfectly fit into the discourses on the terms immigration and integration. The conservatives demanded assimilative behaviour of immigrants as a precondition for naturalization and rights of residence (for examples see Rostock and Berghahn 2008: 350; Schiffauer 2008: 11; Lanz 2007).

   The analysis of the *German* situation reminds us that in France cultural assimilation is also at stake in current immigration and naturalization policies. The last Council of State's ruling of 27 June 2008 upheld immigration officials' refusal to grant citizenship to a woman in full body veil by stating that 'she was not

assimilated' (*Herald Tribune* 2008).[13] This could be interpreted as a telling example of the current French administration's intention to strengthen and frankly introduce the up to now tacit and, after all, unconstitutional criteria of religion, 'ethnicity', 'cultural belonging' and 'race' in the enforcement of citizenship policies. Meanwhile, the prohibition of full body and face coverings in the streets, called the *burqa* ban, has been discussed in France and is about to be passed by parliament in the course of 2010 – following the example of Belgium.[14] These decisions and propositions seem to illustrate the inveterate fear of and intolerance towards Islam in French society. Spreading mass anti-immigration attitudes date back to the 1980s (Eribon 2009: 127–60). During this period, the rhetoric that made the immigrant – mainly from the Maghreb – the scapegoat for unemployment and every other social evil became a common or at least a legitimate political language (Etcherelli 1977). Policies of the late 1970s and 1980s contributed to how the government dealt with the 'question of immigration', but 'the question' was meant as 'the problem' and was treated as if it was a separate issue totally independent from the political context and the attitudes of the French society towards the immigrants (Sternhell 2000). Ultimately, immigrants are always the troublemakers. This way of coping with immigration promoted a segregationist rhetoric and neo-colonial stereotypes of the French empire and colonial wars (Sintomer 2009: 136; Tribalat 1995).

Conclusions

The prohibitive regulations in France, Turkey and in German *Bundesländer* can not be explained by a single feature but by a combination of factors rooted in path dependent constitutional determinations and in actual decisions of the relevant politicians of legislative or judicial institutions. Many aspects of the national developments therefore can be explained by the contingency of the political opportunity structures; others are caused by the dynamics of the political culture, they are rooted in traditions of a common value system and of national identity perceptions which are then on occasion picked up by politicians competing for voters in elections. In the case of France and Turkey, the most salient influence is of course the constitutionally determined relation between state and religion/church (see Chapter 5). Secularism as the most important pillar of the Kemalist conception of state has prevailed in Turkey over the careful attempt of the governing AKP to open the public sphere for religious manifestations. While in Turkey the political opportunity structure offered in 2008 a chance for the governing party to take this step regarding headscarves, the counter strike came from the constitutional court, which is traditionally a guardian of the secular forces. Within the political culture of the country, the values of national unity, republicanism and especially of the paradigmatic role of women as an indicator of modernity and progress have so far been victorious; more tolerance towards religious plurality and diversity would have obviously been too big a venture. In France, the pragmatic approach of the *Conseil d'État* of 1989 has been pushed back and the legislation of 2004 finally took over the role of

sharpening the profile of *laïcité* in a prohibitive way. In both countries, the decisions maintain and strengthen the laic logic and therefore stay within the conservative value system of being ignorant to requirements of inclusiveness and anti-discrimination. The pattern of development in Germany is different insofar as half of the federal states are now on the way to a new, less tolerant and less pluralistic relationship between state and religion. In light of the unclear and awkward decision of the constitutional court, some of the competing political parties and politicians have tried to use this chance to (re)define a populist policy of demarcation towards multiculturalism in the era of Islamic terrorism and the war against it. Instead of a liberal notion of integration and diversity, the requirements of assimilation to the majority religion and culture are presented as solutions for the immigration society. Despite the similarities concerning the resentments of the mainstream population between France and Germany, the constitutional principles and the state ideologies are rather different. Germany has chosen the far more deviating way of dealing with the headscarf matter, deviating from its own traditions and constitutional norms. If we compare France with Turkey, both *laic* countries, from a legal and liberal pluralistic point of view the case of France is more serious, since the French legislation should have taken into account the anti-discrimination laws of the EU and could have opted for a regulated continuity of the 'soft form' of *laïcité* but decided in favour of a confronting approach; whereas in Turkey the constitutional court only restored the *status quo ante*, that means the stage before Islamic inspired political leaders of the AKP dared to touch the dogma of strict secularism in the headscarf question.

Both in France and Turkey the debate about the headscarf has led to such a disagreeable and confronting solution due to the lack of integration of religiously affiliated persons and milieus by state institutions. *Laïcité* and secularism have been used as a shield to protect from being forced to deal pragmatically with the demands and claims of religion in public institutions and to take into account the rights of the individual. This ideological shield, which only can pretend to protect the 'unity and indivisibility' of the French and Turkish nations, tends to fail nowadays as it becomes apparent that inequality, unequal treatment, social and economic disadvantages, and conflicts about metaphysical questions do not vanish by keeping religious issues out of the citizens' public encounter. Instead of de-dramatizing such religious expressions of persons in the name of plurality and individual human rights, they were instrumentalized to demarcate the collective 'us' from the deviating 'them'. This effect is part of a political argumentation about the conditions of living together, but it is not a democratic and inclusive way of argumentation among citizens and political elites.

While in Turkey female Muslim covering is not a marker of immigrants, it is in France and Germany; and while in France the political need seems to be dealing with religious diversity in the public sphere and not that much with getting accustomed to immigration and naturalization, it is a new experience for the German public to be asked to accept Muslim 'foreigners' as (equal) German citizens. By looking at these political and social dynamics we may gain the

impression that the socio-psychological need of the majority society for demarcation is sometimes stronger than the systematic and normative determination by constitutional and other normative principles (Berghahn 2010). Although there is no doctrine of *laïcité* in Germany and no need to keep religious affiliations and symbols strictly out of public institutions, some German *Länder* parliaments have 'invented' such a new doctrine of differentiating the public from the private sphere, but have at the same time created a double standard to combat exclusively the Muslim headscarf. Although courts did not accept this infringement of equal treatment of religions, they nevertheless approved of the ban against religious signs as a new way of interpreting neutrality (Berghahn 2009: 46). Hence the model of *laïcité* or secularism might be copied by a country with a totally different tradition of relations between state and religion – not in spite of the problematic political effect and of the anti-Islamic double standard but probably just because of it. Thus the utter explanation for the headscarf ban in Germany where *laïcité* and strict secularism actually fail to justify the prohibitive regulations then seems to be the stubborn assertion of unwillingness to accept long approved 'foreigners' as equal co-citizens.

Notes

1 Especially after the Levy sisters' case (cf. Giraud and Sintomer 2004).
2 In 2003, President Jacques Chirac commissioned an experts' group whose role was to reflect on religious signs in schools. Officially, the Independent Commission of Reflection on the Application of the Principle of *laïcité* in the Republic began to work on multiple issues and recommendations, such as fighting discrimination at work or recognizing state holidays for Jews and Muslims. In fact, only the headscarf issue was taken for immediate legislation. It finally advocated for a prohibitionist act on 'conspicuous religious signs at school and in public administration'.
3 *Loi n° 2004–228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics* (Law no. 2004–228 of 15 March 2004 concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garments which show religious affiliation in public primary and secondary schools).
4 The decision of the FCC can be found online, available at: www.bverfg.de/entscheidungen/rs20030924_2bvr143602.html (accessed 28 January 2010).
5 Turkish Constitutional Court, 7.3.1989, 1989/1, 1989/12.
6 Cf. EU directives 2000/43/EC and 2000/78/EC.
7 Concerning this complaint, the HALDE stated that, because veiled mothers are not pupils or civil servants, they are not concerned by the application of the Law of 2004 nor by the application of the Law of 1905.
8 In 2000, the access to citizenship was newly defined by a change from the ethnic definition of citizenship to a mixture of '*ius sanguinis*' and '*ius soli*'; in 2005 the immigration law changed from a prohibitive policy concerning immigration to a controlled and officially accepted admission.
9 Cf. Rostock and Berghahn (2008). The FCC declared a Bavarian act about the Christian crucifix in all classrooms in primary schools as being unconstitutional (1995). The decision nearly caused a rebellion against the FCC among Christian-conservative politicians and clergy officials in the southern parts of Germany.
10 § 38 sec. 2 of the school act of Baden-Württemberg states that teachers are not

allowed to 'to exercise political, religious, ideological or similar manifestations that may endanger or disturb the neutrality of the Land [=federal state; the authors] towards pupils or parents or the political, religious or ideological peace of the school'. As 'particularly illegitimate' the act considers 'a behaviour that can appear to pupils or parents to be a teacher's demonstration against human dignity, non-discrimination, the rights of freedom or the free and democratic order of the constitution'. In § 57 sec. 4 of the school act of North Rhine-Westphalia almost the same wording is used.

11 Sentence 3 of § 38 sec. 2 of the school act of Baden-Württemberg and also of § 57 sec. 4 of the school act of North Rhine-Westphalia states: 'The exhibition of Christian and occidental educational and cultural values or traditions' however does not contradict the duty of neutral behaviour.

12 This intention was declared by the explanations within the drafts of the bills saying that the ban shall not be applicable to Christian-occidental signs and clothes (for the state of Hesse, see Sacksofsky 2009: 279). As in reality the only banned religious clothes are Muslim headscarves, we can conclude that the headscarf is almost the only target of regulation. See the parliament document of North Rhine-Westphalia LT-Drs 14/569, p. 9, LT-Drs 13/4564, p. 8 and parliament of Baden-Württemberg, LT-Drs 13/2793, p. 7.

13 According to the Council of State:

> X adopted a radical practice of *her religion* incompatible with the *essential values* of the French community, notably with the principle of the equality of the sexes and therefore she does not fulfill the conditions of *assimilation* listed in the Civil Code as a requirement for gaining French citizenship.
>
> (*Herald Tribune*, 17 July 2008)

14 The Belgian parliament passed a so-called *burqa* ban on 29 April 2010; before the law comes into effect the Senate has to agree to it as well.

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9   Non-regulation

Opportunity for freedom of religion or sedimentation of existing power structures?

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Why 'non-regulation'? Introduction

Recent political science literature developed country typologies in order to highlight and explain differences and similarities between countries in regulating Muslim women's head and body coverings in European countries (Skjeie 2007; Joppke 2009; Sauer 2009). An increasing number of European countries, as for instance France, Turkey and some German federal states, have introduced restrictive regulations for specific forms of Islamic apparel. Other countries such as Austria, the Netherlands and the UK have adopted tolerant or permissive approaches, which explicitly allow head covering despite the fierce debates over the headscarf. While there are quite a few indicators which support this twofold typology (see Chapter 5), it is difficult to distinguish a clear-cut restrictive approach in one country, which forbids the wearing of religious attire, from tolerant arrangements in other countries, which allow body covering (Skjeie 2007: 138). Rather, there is also evidence of 'mixed' or 'selective' regulation (ibid.). However, even this threefold typology of headscarf policies in Europe might not analytically grasp the complexity of headscarf regulations. The VEIL project rather suggests that regulations differ, especially within so-called tolerant countries, depending on specific sites such as schools, courts, public service and private business. Also, regulations do not only depend on different styles of religious clothing (e.g. *hijab*, *burqa* or *niqab*), but also on the diversity of covered women (such as teachers or pupils).

The research puzzle of this chapter refers to the complexity of 'mixed regulations' within so called tolerant countries. In four tolerant countries of the VEIL sample, Austria, Denmark, Greece and UK, we find islands of – what the VEIL project suggests labelling – 'non-regulation' of headscarf conflicts. Non-regulation does not describe the general absence of regulation but points to the fact that sometimes conflicts over head and body covering are solved rather selectively. Non-regulation reflects the observation that despite a more or less tolerant climate and despite some tolerant regulations for specific cases, only few policy debates in these countries resulted in comprehensive policy decisions and in general norms concerning the wearing of head and body covering. Moreover,

it is noteworthy that despite huge mobilization against Muslim immigrants and a growing hostility towards Muslim head and body covering in these countries of tolerant or mixed headscarf approaches, not many prohibitive regulations are in place. It seems that non-regulation is an appropriate way to react to conflicts over Muslim headscarves – and it seems to be a 'rational' way of dealing with these conflicts by not putting these conflicts on the agenda for a general decision.

A non-regulation approach is characterized by the absence of an explicit general rule, i.e. legally binding norms such as laws and decrees, for dealing with veiling practices at a specific site or with reference to specific body covering. Non-regulation is an informal way of governing religious difference and diversity where conflicts over head and body covering are regulated from case to case. A non-regulatory approach towards head and body covering stresses that a specific regulation only relates to a particular case of a specific person at a particular time and place, while other situations are not regulated. The judgements and decisions (for instance by courts) made in one case are decisive only for that particular situation, but are not binding for future decisions on veiling practices and do not establish a direct obligation on actors involved in future cases. However, in specific conflict situations about veiling practices the non-regulation approach might come under contestation and has to be argued for, reconfirmed or changed. As the chapter will show, this is not only the case in legal systems with a common law tradition based on case law created by courts like in the UK, but also for legal systems in the civil law tradition, where binding rules are created by parliaments or issued by the ministerial administration, such as Austria, Denmark and Greece.

Although the four countries under scrutiny can be characterized as applying non-regulation approaches, some general laws and regulations for religious practices, which directly or indirectly impact on the regulation of the wearing of headscarves, are in place, such as the right to religious freedom. These general regulations include, first, the European Convention of Human Rights (ECHR), which provides the 'right to freedom of thought, conscience and religion', including the right of freedom to manifest one's religion or beliefs (Article 9). Second, some countries codified this recognition of religions in their constitutions, which also guarantee the freedom of religion. Third, European countries have developed specific forms of state–church relations, which impact on the interaction of a dominant church with state institutions as well as on the relation of state institutions with minority religions. Fourth, some European states have developed institutional settings to support majority as well as minority churches. Fifth, general regulations of anti-discrimination policies, e.g. EU anti-discrimination directives,[1] as well as national anti-discrimination laws and institutions build a framework for dealing with conflicts over Muslim headgear.

This chapter explores the possible rationale of this non-regulation approach. Although the chapter cannot explain why the four tolerant countries of the VEIL sample refrain from generally regulating the headscarf issue in specific situations of conflict and follow a policy of non-regulation, we want to give some appropriate explanation why the four countries share this similarity – for different sites

of society and for different forms of body covering. The chapter argues that non-regulation occurs due to the fact that in some conflicts, which are not generally decided on, actors try to avoid the mobilization of bias around the headscarf. Hence, we assume that non-regulation is a problem solution, which aims at not openly offending the freedom of religion and non-discrimination laws. The chapter wants to give examples by which governance mechanisms and frames specific actors are invested with power. Also, we want to show how specific frames and, hence, problem or conflict solutions become crucial in this form of governance of religious difference in order to explain the different consequences of non-regulation policies in the four countries.

More specifically, the aim of the chapter is, first, to show that non-regulation in so-called tolerant countries does not automatically support tolerant regulation practices, i.e. that non-regulation does not (always) foster the freedom of religion and the free choice of women to wear the veil. On the contrary, non-regulation of specific conflicts in countries labelled as 'tolerant' might also lead to – informal – prohibitive regulations as in the cases of Denmark and UK. Non-regulation might also maintain the status quo of a conflict without tolerant or prohibitive decisions as in the cases of Austria and Greece. It may also lead to a prohibitive climate and practices towards Muslim head covering as in the two latter countries. Hence, non-regulation is a form of muddling through, which however, might lead to case-by-case prohibition and involves powerful decisions that infringe upon the rights of the individual.

Second, non-regulation runs the danger of reproducing existing power settings and re-establishing either the power of state institutions, dominant churches or private business to decide against veiling without mobilizing too much bias. Third, non-regulation effects individualization of the problem of religious freedom, because the avoidance of mobilization of bias around headscarf conflicts also prohibits collective mobilization against the infringement of the right to religious freedom and forces individualistic solutions of the conflict.

In the next section we will set out our research approach. We then describe examples of a policy of non-regulation in the four countries. Third we analyse the governance setting, that is the established state–church relations in the country sample which impact on the framing of headscarf issues in the context of religious freedom. This 'governance setting' – i.e. the institutions and the frames – helps to understand the rationale of non-regulation politics in the four countries.

Non-regulation as governance: nondecision, discourse, and power

The theoretical background to explain non-regulation politics is informed by four strands: first, the concept of governance, second, the framework of nondecision and power, third, a discursive-institutionalist perspective and, fourth, the impact of new forms of conduct and subjectivation in Michel Foucault's (2008) notion of 'governmentality'. The chapter suggests, first, that non-regulation is a

specific form of governance (Pierre and Peters 2000), namely a regulative form of governing religious difference and diversity. In contrast to hierarchical, state-centric methods of governance which employ codifications such as laws or binding court decisions as their steering technology, regulative forms of governance are characterized by informal mechanisms of decision making on social and political issues. These informal processes of governance especially vest non-state actors with power who then are enabled to enforce specific claims in such negotiation processes (Koenig 2007: 915). Governing through nondecision is a way to deal with highly contested issues in order to include the whole diversity of actors, but also to exclude actors, and to keep conflict solutions open for future decisions. Hence, non-regulation may not be a (power) neutral process of self-governance of people and – in our case – of religious freedom and choice, but to the contrary, a powerful setting, located in well established powerful institutional structures and discursive constellations. Non-regulation as governance of religious diversity is embedded in institutional settings of long established state–church relations (Fetzer and Soper 2005) as well as country-specific forms of regulating anti-discrimination policies for instance on the labour market.

Second, a non-regulation approach can be understood according to Bachrach and Baratz's concept of the two 'faces of power'. While the first face of power refers to the power (of political institutions and actors) to make decisions on issues, the second face of power is a 'covert power' through 'nondecision'. This covert power is exercised by confining the scope of decision making to relatively 'safe' issues and excluding other issues from discourse and decision (Bachrach and Baratz 1962: 948). Nondecision strategies aim at exploiting 'some kinds of conflicts' and suppressing others in order to mobilize or demobilize bias (Schattschneider 1960: 71). This 'organizing out' of some issues in the realm of politics and decision making – such as not deciding on headscarf issues – is, following Bachrach and Baratz, a powerful process. Limiting decision making to 'relatively non-controversial matters, by influencing community values and political procedures and rituals' is an 'extremely important' face of power (Bachrach and Baratz 1962: 949), because it prevents 'a latent issue from becoming a question for decision' (Bachrach and Baratz 1963: 641). Nondecision is a 'decision that results in suppression or thwarting of a latent or manifest challenge to the values or interests of the decision maker' (Bachrach and Baratz 1970: 9). The power of nondecision is exercised by 'shaping or reinforcing predominant norms, precedents, myths, institutions, and procedures that undergird and characterize the political process' (Bachrach and Baratz 1975: 900f.). Power in nondecision processes is exercised 'by manipulating the dominant community values, myths and political institutions and procedures' (Bachrach and Baratz 1963: 632). With reference to this approach, the chapter intends to explain the non-regulation approaches in the four countries less as a sign of tolerance towards minority religion but more as a 'face of power' in the new forms of governance of religious diversity and difference.

Third, in accordance with Bachrach and Baratz, new directions in policy studies emphasize that the construction of meaning through ideas and hence the

formation of a policy problem and solution (Bacchi 1999) in governance processes are important features in policy making (Schmidt 2010). The chapter suggests that non-regulation might be accompanied by specific meanings and interpretations of the headscarf corresponding with specific institutional settings of state–church relations. Put differently: state–church relations and the framing of religious freedom in headscarf debates might explain similarities and differences of non-regulation in the four countries. Therefore, this chapter will detect the 'norms' and 'myths' (Bachrach and Baratz 1975: 900) in selected headscarf conflicts.

Fourth, and finally, non-regulation of headscarf issues can be conceptualized as a new form of self-government of Muslim women. Non-regulation puts the burden of dealing with the 'unsecured', i.e. non-regulated situations and with possible infringements of the right to religious freedom and to cover on the individual. It is the woman who has to choose to uncover in an unclear situation of non-regulation. Hence, non-regulation might be understood as governmentality in the Foucauldian sense – that is as a way of regulation by indirectly pushing the individual to behave in specific ways (Foucault 2008).

The next section will describe non-regulatory settings in Austria and Greece and focus on substantial legal cases in Denmark and the UK concerning appeals of veiled Muslim women for defending their choices to wear the veil. While non-regulation did not lead to prohibitive decisions in Greece and no formal prohibitive decision was made in Austria at all, in Denmark and the UK, the women lost their court appeals, forcing them to uncover while the non-regulatory approach was explicitly confirmed.

How does non-regulation work? The case-by-case approach as characteristic for governing through non-regulation

Until 2009, there have been very few publicly discussed cases of headscarf conflicts in *Austria*, as for instance in schools at the turn of the century, which at that time were solved at the school level. However, a conflict at a school in Linz resulted in a decree of the Minister of Education in 2004 explicitly allowing teachers and pupils to wear a headscarf. Also, the city of Vienna follows a tolerant approach, allowing the *hijab* for public servants in Vienna. Not least due to the involvement of the Islamic Religious Community of Austria (IRCA) in these decision-making processes, Austria is still rather accommodative towards headscarves despite the right-wing mobilization against Islam (see Chapter 7).

However, the country also applies a non-regulatory approach with respect to other social sites and to other styles of clothing (Gresch and Hadj-Abdou 2008). One prohibitive Austrian case occurred which ended in non-regulation: during the proceedings of the so-called Viennese-Terror process in April 2008, the senate prohibited the attendance of the defendant Mona S., unless she removed her *niqab*. Mona S. refused to unveil and was thus expelled from the courtroom. The case did not result in a general prohibition of body covering in the courtroom, but in non-regulation there seems to be a consensus that body covering

should not be allowed in courtrooms. Also, no specific general norm exists for other domains, and a general practice of tolerating the headscarf and full body covering still characterizes the Austrian situation. One could conclude that non-regulation is a way of silencing the issue and avoiding the mobilization of bias by the parties in government and by religious communities as part of the consensus democracy. Despite a tolerant self-understanding and despite summoning a tolerant history, the country refrains from actively supporting veiled women, for instance on the labour market (Rosenberger and Sauer 2011). Hence, the status quo of discriminating practices in a chilly climate towards migrants and Muslims is maintained through a policy of non-regulation.

Greece has no general law or decree regulating the wearing of headscarves. In Western Thrace, the Greek region with an autochthonous Turkish Muslim minority, the headscarf is allowed in all public and private institutions. School directors are authorized to decide on pupils' dress code – including headscarves. No headscarf cases have been brought to the courts to date; however, some publicly debated conflicts have occurred. Headscarf issues emerge; the Muslim minority population of Western Thrace, as well as the position of Muslim migrant women in Greece, are being discussed. In Western Thrace, these conflicts are conflicts between the Orthodox population and the Muslim minority. For instance, in 2006 the owner of a cafeteria banished a veiled woman. After a public debate, the owner of the cafeteria changed his policy towards veiled women, allowing them to visit the place (Avramopoulou 2008: 14f.). This conflict did not attract much public debate (ibid.: 25). Another headscarf conflict occurred in the Muslim minority secondary school of Komotini in 2004 where veiled pupils provoked the rejection of parents and teachers (ibid.: 14f.). As there is no prohibitive legislation, the school's headmaster, who issued recommendations against veiling, decided on this conflict. Nevertheless, some students continued to wear the veil. Outside the area of Western Thrace no issue has been raised considering the employment of veiled migrant women in the public sector, where only Greek citizens are eligible to be employed.

The *UK*'s tradition of tolerance towards Muslim body covering in the last years is accompanied by a non-regulatory approach in conflict situations, mainly over the *niqab* and *jilbab*. The effect has been to create a climate which has accommodated the wearing of various forms of Islamic dress without feeling any need to legislate against them. Positively, this has allowed for much freedom of expression and religious freedom for Muslim women, and room to manoeuvre for schools and other local institutions in drawing up dress codes appropriate to their members and employees. Disputes tend to be handled case by case and in a pragmatic way. However, the situation changed. In 2002, Shabina Begum sued Denbigh High School in Luton/London. The school administration had rejected her request to wear the *jilbab* and insisted that she wear the approved school uniform for Muslim female pupils. In the two years that followed, Begum did not attend school and in September 2004, she was admitted to a different school which permitted her to wear the *jilbab*. The Judicial Committee of the House of Lords held that the school's refusal to allow a Muslim schoolgirl to wear a

jilbab, after it had formulated its uniform policy so as to include options of Muslim dress code, was not a breach of the pupil's human rights under Article 9 of the ECHR. Again, in 2007, a 12-year-old pupil in Buckinghamshire girls' grammar school legally challenged the school's uniform policy, which did not allow the *niqab*. The girl, again, finally went to an alternative school where the *niqab* was allowed. Again the High Court ruled that her rights under ECHR Article 9 were not violated. The schools' 'infringement' of the right to wear a *jilbab* or *niqab* were justified, under the provision of the ECHR, because of their need to protect the rights and freedoms of others, that is, non-covered pupils. In his judgement, Justice Silber stressed that he was dealing with one particular case – not the broader issue of whether the *niqab* should be worn in schools or anywhere else (Kılıç 2008).

What is important to draw from these two cases is that while school uniform policy provides a guide to schools it does not in any way inhibit a pupil from challenging it in a court of law. The judgements in these two cases are not a 'blanket rule' on the *jilbab* or the *niqab* but rather they only concern the cases that were before the bench and did not bind future decisions on the *jilbab* or the *niqab*. However, the judgements do create a precedent for how other schools and pupils might deal with similar cases, i.e. the results of the judgements might result in fewer pupils trying to challenge their school's uniform codes. In both cases the claimants failed to convince the judiciary that the school breached their right to manifest their religion because there was a place available at an equivalent school that would let the girls wear the *jilbab* or *niqab*. It seems like this British case-by-case approach might lead to prohibitions of veils and headscarves in decentralized situations, thereby allowing for prohibitions in areas where general national prohibitions could not have passed.

Denmark still has explicit tolerant regulations, allowing the *hijab* in schools and in parliament; no national prohibitions exist. However, the country has moved towards restrictive regulation in the public sphere in the last years, as for instance a law from 2009 which prohibits the wearing of a headscarf for judges in the courtroom. Also, some high schools have passed a code of conduct prohibiting female students from wearing *niqab*s and *burqa*s. Most likely, it would never be possible to pass a general national ban for students as it would be considered religious discrimination (Andreassen 2007: 156ff.). However, in the late 1990s and early 2000s, women's right to wear headscarves while working in retail was heavily debated (Andreassen 2005). Back then, several actors argued that headscarves were not acceptable in Danish retail, while at the same time the country applies a non-regulatory approach on the labour market.

In 1999, Denmark had its first publicly disputed headscarf case. Amin Baktyar, a 14-year-old female intern in the retail store Magasin was fired because she did not want to unveil. She made her case public and it was taken to court by the Documentation and Counselling Center for Racial Discrimination (DRC) (*Dokumentations og rådgivningscenter om racediskrimination*) and in 2000 Magasin was convicted of indirect discrimination and sentenced to pay 10,000 Danish crowns (€1,350).[2] The Magasin sentence led several stores and

companies to change their previous practice of not hiring veiled women and to give up previous requirements prohibiting headscarves and veils.[3]

A similar case occurred in the department store chain Føtex, part of Dansk Supermarked, which was brought to court twice by the labour union HK (*Handel og kontor*, i.e. commercial and clerical employees). The first case was held at the High Court, which acquitted Føtex of charges in 2003. This sentence was appealed and the case was taken to the Supreme Court, which in 2005 also acquitted Føtex. The judges ruled that Føtex's headscarf prohibition was not a question of discrimination but rather a question of uniform clothing. According to the fired employee's contract with Føtex from March 2001, the claimant had agreed that her employment was based on 'the rules and duties described in the staff regulations', including clothing regulations, which prohibited wearing the veil for employees who are in contact with costumers.

Today, a decade after these disputes, the debate has died and *hijab* covered women are visible in several stores and sectors of the labour market. Most likely, it would never have been possible to pass a general national ban on headscarves on the labour market in Denmark (Andreassen 2007: 156ff.), but the legal outcome of the Føtex case makes it possible to continue discrimination against women with headscarves and veils. The Danish approach of deciding case by case, instead of a general national decision, can therefore be interpreted as a means to maintaining the status quo – and this is maintaining the discriminatory attitude towards headscarves. Moreover, the Danish court cases show that freedom rights are explicitly conceptualized as individual rights by the employers who argue against centralized legislation and for their right to determine the dress codes in their companies (Andreassen *et al.* 2008). Moreover, these cases show that the right of Muslim women to wear the veil depends on where they are employed. The Føtex case proved that employers' rights to decide their employees' dress code and codes of conduct outweighed the women's right to express their religion.

We can summarize that tolerant countries apply non-regulation in situations where the right to religious freedom runs danger of being infringed through prohibitive decisions. Not breaching this right openly but nevertheless limiting the right to cover, the countries refrain from general decisions but go towards non-regulation. The section also showed that the four countries apply two different forms of non-regulation: Austria and Greece go towards non-regulation in conflict situations without generally moving towards prohibitive solutions of these conflicts. However, the two countries show prohibitive tendencies in a general tolerant surrounding. The UK and Denmark decided for general non-regulation but for a prohibitive approach in specific cases of conflict.

Having explored the ways that the four countries deal with conflicts over veiled Muslim women following the non-regulatory approach, we will describe the institutional and discursive setting by focusing on state–church relations, which influence the framing of the right to religious freedom, and on the dominant framing strategies in the veiling debates of the four countries in the next section of the chapter. We will identify framing strategies that foster

non-regulation and this form of power and legitimize the denial of the individual right to religious expression.

The governance of non-regulation: church–state relations and the framing of religious freedom

The tolerant but non-regulatory countries share one common feature which is decisive for the regulation of the accommodation of religions and the governance setting of non-regulation, namely a close relation between the state and the churches and/or the dominance of a particular church. Nevertheless, the four countries differ in the framing of the right to religious freedom. The aim of this section is to depict the multifaceted and ambivalent ways by which a non-regulative approach is reaffirmed without necessarily implying a tolerant headscarf regime. For this reason, we explore how a 'rights language' is used so as to mediate values, perceptions, power structures and institutional arrangements. We would like to explore how this language of rights is characteristically incorporated in certain contexts so as to demarcate the limits of tolerance and inclusion towards the threatening spectre of a female Muslim-religious subject.

The basic principle regarding *Austrian* state–church relations, which is often categorized as 'cooperative' (Brocker *et al.* 2003: 14), can rather be characterized as a 'pluralistic inclusion' of religion into the public realm (Kalb *et al.* 1996: 50; 2003: 42ff.; Gresch *et al.* 2008: 418). Islam was given the status of a 'public cooperation' in 1979 and recognized on grounds of the Recognition Law and the so-called Islam Law of 1912 that entitled people practising Islam to certain rights during the time of the Austrian-Hungarian Empire (Heine and Kroissenbrunner 2001: 22). The Islamic Religious Community of Austria (IRCA) has thus the same rights as the other recognized religious communities like Buddhism or the Catholic Church and it is included in the Austrian consensus democratic ways of political participation, consultation and negotiation processes. This way of governing religious pluralism is framed as the Austrian way of neutrality and liberalism (Gresch and Hadj-Abdou 2009). However, the dominant position of the Catholic Church is maintained by the concordat.

In Austrian headscarf debates, the right to religious expression is closely related to the country's institutionalized model of pluralistic inclusion of religions in the public realm by stressing the recognition and equal treatment of Islam. In 2003, Andreas Khol of the ÖVP, the president of parliament at the time, emphasized that the equal treatment of religions should be ensured (A15). Jürgen Wallner, a jurist from the University of Vienna, stressed that the principle of neutrality is stronger than the separation of state and church (A33). Furthermore, the privileged position of the Catholic Church would come under scrutiny and be affected if religious rights of other religious communities were to be infringed upon, as stated by the social-democratic youth organization SJÖ (A31). Also, Carla Amina Baghajati, the public relations officer of the IRCA stresses that wearing the headscarf is 'a very personal decision' which symbolizes a 'part of the lived identity' of an individual (A5). Representatives of the Islamic

Religious Community specifically refer to the fact that Islam has been recognized as a religion in Austria since 1912, and hence has freedom of religious expression and autonomy (A4).

In a similar vein, representatives of the Catholic Church refer to the right of religious expression by arguing that wearing the headscarf is protected by the ECHR, and thus a prohibition has to been seen as unlawful (A2). Thus, the argument of legal recognition as well as the interpretation of veiling as religious expression and personal religious obligation – as stated by the ÖVP Minister for Education Elisabeth Gehrer for instance (A37) – and, hence, a perspective that prohibition would breach human rights, is carried in this framing.

This framing is also embedded in the gender related arguments that a prohibition would not prevent oppression or discrimination of women. The importance of the self-determination of Muslim women is especially emphasized by Muslim groups (A5, A12, A13, A14). Representatives of the women's movement criticize the argument that veiled women diminish the achievements of majority women and stress that Muslim women are self-determined, but can only be emancipated if they work or have the opportunity to work, while they are still discriminated against on the Austrian labour market (A39).

In Austria, veiling is perceived by most of the actors as a religiously commanded clothing instruction and protected in the name of universal human rights. In Austrian headscarf debates, the framing of the individual right of freedom of religious expression is linked to the institutionalization of church–state relations and embedded in the legal recognition of religious communities. State neutrality is understood as a way to accommodate equal treatment of all religious communities. Austrian actors stress the right to religious freedom and the country's tolerant approach to religious diversity. Hence, this framing makes it discursively impossible to regulate headscarf conflicts in a prohibitive way. However, the tendency towards curtailing the right to veil prohibits accommodative practices and regulation in public conflicts and leads to non-regulation in order not to mobilize too much bias, which might then provoke further restrictive claims by right-wing politicians for instance (see Chapter 7).

Greece is a country in which Orthodox Christianity is the official state religion, deeply entangled with the process of nation building since the period of the War of Independence of 1821. A series of administrative, institutional and fiscal practices support this tight relation between the state and the church and the privileges of the Greek Orthodox Church despite a slow process of secularization since the 1980s (Avramopoulou 2008: 43f.). In particular, the Ministry of Education and Religion pays for the salaries and the religious training of the Greek Orthodox clergy (a regulation that was implemented by law in 1952) and also finances the restoration and maintenance of churches (ibid.: 44). A national law guarantees the freedom of expression of civil servants and forbids discrimination on grounds of religious belief (ibid.: 51).

The Muslim minority of Western Thrace has been officially recognized as a minority since the Lausanne Treaty of 1923. Muslims of Western Thrace are therefore entitled to religious rights with reference to their status as Greek

citizens (ibid.: 7). Different from that, the rights of religious minorities are marginal. For instance, only in 2006 was the authority to establish 'Houses of Prayer' (mosques) transferred from the local orthodox bishop to the Ministry of Education and Religion through the law 3467/2006 Article 27. Thus, even if during the last years a slow process of separation between the state and the church has begun, it has still not resulted in any practical measures.

Greek discussions over veiling practices are mainly dominated by debates concerning other European countries, namely France and Turkey. One important framing is anti-secularism. These voices positioning themselves explicitly against European secularism stem either from the Christian Orthodox Church as expressed by its former Archbishop Christodoulos (GR10) or from intellectuals of Christian affiliations (GR16). According to them, even if modernity and Enlightenment have played an important role for the development of humanity, the need for humans to belong to a group is crucial and thus the headscarf should be perceived as a resistance symbol against individualism like it is lived or enacted within the European cultural model (GR16). By arguing for the right of freedom of religious expression and hence for the possibility to veil, Orthodox Christian voices, such as the Christian conservative intellectual Christos Giannaras (GR18), try to safeguard the authoritative primacy of Christianity as national religion. This is due to the fact that in such arguments Muslim 'otherness' does not yet seem to appear as threatening 'at home'; hence, expressing solidarity towards other religions and supporting the manifestation of religious symbols in other countries (like in France) secures a safe position for religious presence within Europe and in Greece. On the other hand, Muslim voices such as the theologian Cahide Haseki (GR19), member of the Western Thrace University Graduates Association, and the Mufti of Komotini Metso Cemali (GR9), also deploy the rhetoric of rights and the discourse of freedom of religious expression, while they depict a need to reconceptualize state–church relations, both in Europe and in Greece. They argue for state neutrality. Hence, a paradox occurs: the Muslim representatives advocate for secular neutrality, whereas the Orthodox Christian representatives are positioned against any process of secularization in Greek society and therefore argue against restrictions of veiling. In Greece, freedom of religious expression is used by actors affiliated with Orthodox Christian identification so as to strategically protect a homogeneous national religious image against secularist claims. On the other side, it appears that the same demand is voiced by Muslim representatives who argue that in order to protect the accommodation of non-Christian religious practices, a form of state neutrality should be implemented.

Denmark is defined as a Protestant Lutheran country. The Danish National Evangelical Lutheran Church is a state church and enjoys special privileges according to the Constitution. While the Constitution grants freedom of religion, the hierarchy of religions is not questionable. The Danish National Evangelical Lutheran Church is therefore quite powerful and is integrated into several institutions in Denmark. In the Danish headscarf debates, the right to freedom of religious expression is used in a multifaceted way. On the one hand the religious

freedom frame supports a universalistic understanding of rights, but at the same time this right is connected to values stemming from the particularity of adhering to a national identity. This particular Danish identity is constructed as interrelated to Christianity. As in the Danish People's Party's argument, the freedom rights are nationalized; they are 'Danish freedom rights' (DK4). Furthermore, it carries pre-constructed images of who can be positioned as a democratic and emancipated subject. In a parliamentary debate about headscarves, the Conservative Party's spokesperson, Else Theill Sørensen (DK5) as well as the populist right-wing Danish People's Party's spokesperson, Louise Frevert (DK4) argued that headscarves are a sign of female oppression which is therefore 'against Danish norms, Danish values and our culture' (DK4).

This might be explained by reference to the Danish state–church relations. Since Christianity is an integrated part of the Danish constitution and Danish society, 'Danish' freedom rights and freedom of religion become limited to Christian expressions of religion. This creates a paradox in the Danish headscarf debates, where most actors are not arguing for a general national prohibition of headscarves but rather frame headscarves as oppressive, as for instance authors in the leftist liberal daily *Politiken* (DK14, DK15, DK16). Freedom rights are reduced to rights of particular subjects with clear connotations of national and religious characteristics. Because the wish to veil is interpreted as an individual preference and not as a right or religious obligation, the right of freedom of religious expression does not appear as being violated: not least of all because a violation would negate the self-portrayed image of Danishness as liberal and all-inclusive, and it would controvert laws supporting anti-discrimination and human rights declarations. As a result of this strategic framing, it is possible to argue simultaneously that individual rights should be protected while restricting the individual right of religious freedom and excluding women who want to follow veiling practices.

In the *UK*, both England and Scotland have established Christian 'state churches', whilst Wales and Northern Ireland do not, but have histories of establishment. The privileges accorded to the state churches, namely the Church of England and the Church of Scotland are residual and include: the monarch is the supreme governor of the Church of England, some church legislation has to go through parliament, politicians have some say in election of senior clergy, the Archbishop of Canterbury and the Moderator of the Church of Scotland have prominent cultural positions, and a number of seats in the House of Lords are reserved for bishops.

Also, religious pluralism and freedom has been an essential part of British society due to the country's history of immigration. It is based on a strong liberal focus on individual rights. Moreover, the country has a long and active tradition of equal treatment and anti-discrimination institutions. The Muslim Council of Britain (MCB), for instance, receives government funding. State funding of Islamic schools is also available. The promotion of British citizenship lessons for Muslim children while they are attending mosque schools is also part of the government's new agenda on community cohesion (Kılıç 2008: 443).

The normative values stressed in the British headscarf debate are the religious rights argument, the importance of religious pluralism as well as the British values of liberalism, fairness and politeness. The reference to liberalism is discussed in terms of individual rights and choices as well as being tolerant as key components for the definition of British self-understanding within the veil debate. Here, the established church of state that enjoys significant privileges in comparison to all other religious communities, serves as the standard against which equal treatment can be claimed on the basis of fairness (Kılıç 2008). The right of religious expression is thus understood as a human right of the individual that can claim equal treatment in regard to its individual choices and as a part of a group, which is framed as a principle of liberalism and British values.

The value of tolerance is also referred to by Muslim actors in the sense that the intolerance they experience in British society represents an infringement on their human rights (ibid). These values, on the other hand, are the crucial reference points to argue for regulations of the full veil, because communicating with women in a full veil contradicts politeness and is interpreted as concealing behaviour from the community and is contrary to the democratic principle of openness (UK20). Thus, in the British debate it is the identification of the British self-definition as a liberal, fair and tolerant society as well as the emphasis of not identifying as a secular state that is linked to the framing of the right to freedom of religious expression. Religious representatives and Muslim groups (UK14) argue for their right to religious expression without the interference of the state. In particular, the Muslim community argues that veiling is a prerequisite of religious faith and that it is a woman's right to follow Islamic ruling (UK14). In Britain, Muslim women stress that the veil empowers them and that veiling stands for freedom of religious expression (UK15). In a similar vein, Rowan Williams, the Archbishop of Canterbury and leader of the world's Anglicans, argues that the UK is not a secular country and that religion is a core facet of British institutions (UK18). Intellectuals also defend the right of women to religious expression and trace correlations between nuns and Muslim women rather than between terrorists, fundamentalists and veiled Muslims (UK11). However, equal treatment of all individuals meets its limits when faced with a woman wearing a *niqab*. This is actually the only iconic status that could easily jeopardize the entrenched borderlines of democracy, national citizenship and gender politics in the UK as it appears to negate, in practice, the well cherished values inherent in the self-perception of 'Britishness'.

To sum up: the frame analysis of policy documents from the four countries (see introduction to the book) shows that 'religious freedom' appeared to be one of the most frequent frames used by actors of different ideological and political affiliations in the non-regulation countries.

Understanding politics of non-regulation: conclusions

In this chapter we have argued that in countries with a non-regulatory approach concerning Muslim head and body covering specific actors in the governance

settings are invested with power through governing by nondecision. A non-regulatory approach as a form of governing religious differences is oscillating between the poles of taking the individual rights seriously on one side, but on the other side simultaneously using the framing and granting of these rights to solidify the respective dominant power relations in the field of state and church relations in Austria, Greece and the UK, namely the dominant Churches, and in the field of state and market relations in Denmark, namely the employers. By non-regulation, Austria tries to balance growing mobilization against the Muslim veil by right-wing parties with the claim for national traditions of tolerance towards Islam. The country avoids tolerant regulations in order not to mobilize bias on the issue of veiling. In Greece, the non-regulatory approach legitimizes refraining from introducing restrictive measures because this would have secularizing consequences for the dominant Orthodox Church.

Court decisions, as in the conflicts described in Denmark and UK, stall the political process. In Denmark, governing through non-regulation is a way *not* to grant religious freedom rights and to prevent the enforcement of anti-discrimination laws on the labour market. Here, non-regulation legitimizes the existing mode of regulation between the state and the market, enabling employers to discriminate against employees due to their religious practice. UK authorities in the school conflicts over the Muslim veil give privilege to the dominance of Christian norms as well as of school authorities to decide on the access to schools. It seems as if the four countries do not want to run the risk of being accused of practising double standards by privileging the majority church or not complying with EU anti-discrimination directives.

While institutional arrangements of close state–church relations explain the claim-making leverage of actors advocating for the protection of the right to freedom of religious expression in the four countries, these references to freedom of religious expression are contextualized and related to the very particular national context and respectively national governance settings. The analyses of the headscarf debates in Austria, Greece, Denmark and UK demonstrate that the arguments about 'rights' and the legitimizing strategies of religious freedom are interconnected to particular historical, cultural, religious and national contexts and institutional settings and, again, cannot be easily detached from the authoritative powers that these interrelations carry.

Freedom of religious expression appears to be debated in terms of granting rights to particular religious groups, as is the case in Austria and Greece. The two non-secular and dominantly Christian countries grant religious minority communities certain rights and embrace religious alterity. However, looking at the headscarf debates as an example of how close church–state relations are conducive to the enjoyment of individual participatory and recognition rights, the full participation of the religious 'others' as national citizens is an issue of contention in these two countries as well. In Austria, it is less the right to religious freedom rather than claims of neutrality and the reference to the historic tradition of tolerance that illustrate a pluralistic model of religious governance. In Greece, anti-secularism actually indicates a strong reaffirmation of national homogeneity.

Nevertheless, Muslim women both in Greece and in Austria face problems of integration and have to struggle to gain their right to be fully included in society as equal citizens (Gresch and Hadj-Abdou 2009). Austria avoids curtailing individuals' rights to religious freedom and to cover or to break with the history of religious plurality by introducing restrictive legislation or a general prohibitive ruling and hence reacts with non-regulation.

In Denmark and the UK, freedom of religious expression is debated as the right of the individual, who can claim equal treatment in regard to her/his individual choices. However, to grant rights in Denmark in the name of individual protection might lead to exclusion by claiming 'Danishness' as a prerequisite of rights on the one hand or by interpreting veiling not as a right but as an individual choice on the other hand. Non-regulation supports this framing and hence the exclusion of veiled women from the right to religious freedom. Similarly in Britain, individual rights have to comply with so-called 'British values'. Hence, in both latter countries, non-regulation is exclusive in framing the right to religious freedom as a 'national' right.

We can conclude that due to these mechanisms the mode of non-regulation of veiling issues does not initiate and foster anti-discrimination legislation that would support the choices of Muslim women. Non-regulation runs the danger of prohibiting veiled women from claiming their right to cover in order to strengthen the dominant church as in Austria, Greece and UK, or the 'free' market as in Denmark. Moreover, the examples show that non-regulation becomes a practice of governmentality, which individualizes women. Non-regulation seems to be a technology of the self through which covered women have to find their own individual solutions, for instance to find new schools or new job opportunities. These women have to decide how to clothe and to behave in order to fit to the 'we' without having the right to claim rights. Moreover, non-regulation is a practice that makes it difficult to organize against the infringement of the right to religious freedom through collective action because accountability in non-regulation cases is absent.

Notes

1 Directive 2000/78/EC: Council Directive establishing a general framework for equal treatment in employment and occupation; this directive forbids discrimination on the grounds of religion.
2 Foreningen Nydanskers newsletter, September 2000, online, available at: www.foreningen-nydansker.dk/brevet/2000/sep/septema.html (accessed 28 February 2011).
3 Månedsbrevet (Foreningen Nydansker, January 2001), online, available at: www.foreningen-nydansker.dk/brevet/2001/jan/janart1.html (accessed 28 February 2011).

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10 Muslim women's participation in the veil controversy

Austria and the UK compared

Leila Hadj-Abdou and Linda Woodhead

As this book explores, female Muslim dress in Europe has become a symbol of much wider issues, including gender relations, migration policies, national identities, secularism and multiculturalism. The veiled Muslim woman has become something to see through rather than to see. As Birgit Sauer (2008) stated, 'The bodies of Muslim women became a battlefield of conflicts over values and identity politics.' The veil is good to think with – or at least to argue and contend with.

An unintended consequence is that Muslim women themselves are frequently ignored: positioned as passive victims of more important intra-Western debates, the effect is to discount their agency or influence. This reinforces the widespread assumption that the veil is something imposed by patriarchal Islam on passive, defenceless and oppressed women – and that it should consequently be banned for the sake of female emancipation. However, the growing politicization of Islam in Europe (Brown 2006) does not exclude women (Silvestri 2008). They work within local, national and transnational associations, not least in trying to counter dominant anti-Muslim discourses about themselves and Islam in general (Hadj-Abdou 2011).

In relation to veiling, Muslim women are active participants in ongoing Qur'anic and intra-Islamic debates about veiling and the nature and extent of the obligation. In addition, many have become active participants in the wider public controversies over veiling, as well as in political action in support of the right to veil. These forms of participation are the focus of this chapter. Since there is little research on such participation (or indeed on the public and political engagement of migrant women in general; Martiniello 2005; Maussen 2007), we attempt to render Muslim women more visible in academic analysis by examining the forms such participation takes, and exploring how they can be explained in terms of wider opportunity structures, resources, alliances and constraints. Our interest is not in intra-Muslim debates, but in women's participation in public square debates conducted in European languages. We are interested in the degree to which, and the ways in which, Muslim women have entered the public sphere in relation to the issue of veiling. How visible are they in such disputes? What interventions and demands are being made? What strategies are used to push through their demands? What resources are drawn upon, and what obstacles are faced?

These questions are pursued within a comparative perspective. We have chosen to look at Muslim women's participation in public debates and political action in relation to veiling controversies in Austria and the UK. These countries were selected because they are both relatively tolerant of veiling: neither has seriously debated a ban on veiling in public places or for particular categories of state officials. Nevertheless, public debates on the rights and wrongs of veiling – in these countries and in the rest of Europe – are lively and are not diminishing. We are of the opinion that this combination of circumstances might be favourable to Muslim women's participation. Furthermore, we are also aware of interesting *prima facie* differences in women's participation between the two countries, with individual female Muslim actors being more vocal and visible in the debates in the UK than in Austria. Our aim is to investigate, document and explain the apparent similarity-in-difference, and in doing so lay the grounds for further, much needed study of the neglected topic of Muslim women's participation in state politics and civil society in Europe.

The research on which this chapter is based stems from the VEIL project, especially its quantitative media and frame analysis of the public voices of female Muslim actors. We drew on internet items and publications, press articles, published position papers by Muslim actors and some major radio and TV broadcasts by Muslim women. We paid particular attention to the voices of Muslim women who were advocating the freedom to veil (and who were often veiled themselves). We also carried out interviews with representatives of key Muslim organizations in each country, particularly those that had taken a stand on the veil issue (details given in the text below).

We proceed by outlining the salient contexts in which Muslim women in each country operate, and go on to consider the nature of Muslim women's participation in headscarf controversies in Austria and the UK. Finally, we try to explain different forms of participation in each country, and draw some conclusions. We consider four main explanatory approaches to try to make sense of our findings: a political opportunities approach (as developed by Kriesi *et al.* (1995) and extended by Koopmans *et al.* (2005), and in the expanded form which Bengtsson (2008) proposes for studying the political integration of immigrants); a resource mobilization approach, which considers what resources, including financial and organizational ones, are available to Muslim women (Zald and McCarthy 1987); a values/ideology approach, which considers the ideological resources available to women and how their ideological framing of the issue of veiling relates to values and beliefs of non-Muslim majorities; and an expanded state–church approach, which considers how existing religious majorities and minorities and their incorporation by the state help or hinder participation and accommodation (Fetzer and Soper 2005).

Three clarifications are necessary before we proceed. First, we are interested in Muslim women's participation both in state politics and in civil society, including media debates. We concentrate on national-level debates (whilst recognizing the need for more research on women's participation at the local level). Second, our interest in the most public and prominent forms of Muslim women's

intervention in the veiling debates may reinforce a false picture of Muslim women as a homogeneous group. In reality, of course, Muslim women display a variety of political attitudes, different attitudes to veiling (some being opposed to it) (Dwyer 1999), different degrees and types of religiosity and secularity, and come from diverse socio-economic, cultural and ethnic backgrounds. However, given that we are looking at interventions in national public and political debates, educated, middle class women are most prominent and tend to play a representative role, and those who take the step of intervening on the veiling issue are largely those who support and defend the practice and follow it themselves (though, as we will see, most understand it as a free choice rather than an obligation). Third, although we use the terms 'veiling' and 'covering' in this chapter, the latter word is more accurate insofar as it encompasses the fact that not only a headscarf but also a face veil and/or some additional form of body covering may be at issue. Generally speaking, the debates in Austria concern the headscarf, and in the UK concern any form of covering, though in recent years the focus of controversy in the UK has shifted from headscarf (*hijab*) to face covering (*niqab*), and occasionally to certain forms of encompassing body covering like *jilbab*.

Contexts

It is estimated that there are currently around two million Muslims living in the UK – around 3 per cent of the population.[1] A total of 48 per cent of British Muslims are women. Islam is the second largest religion in the UK. The vast majority of British Muslims – between 80 and 90 per cent – have formal citizenship status (Koenig 2005: 232). Many immigrants were entitled to citizenship rights because of their country of origin's colonial association with Britain. Children born of a parent settled in Britain attain citizenship status automatically. Naturalization can also be applied for after living in Britain for five years or, in the case of the spouse of a British citizen, three years.

Despite relatively easy access to full citizenship, Muslims in the UK lag behind other minority groups in terms of educational attainment and employment. A total of 66 per cent of Muslim women are economically inactive, compared with 26 per cent of women in the UK as a whole, and almost one-third of Muslims of working age in Great Britain have no qualifications, the highest proportion for any religious group (Botcherby 2006). Young Pakistani, Bangladeshi and Black-Caribbean women are apparently almost three to four times more likely than white women to take a job at a lower level than the one they are qualified for (Botcherby 2006), and recent research has shown that the intersections of religious, ethnic, national identities and discrimination in the UK are complex and significant (Khattab 2009). Nevertheless, growing numbers of young Muslims, including women, are entering higher education and professions.

In Austria, according to the 2001 census, 4.2 per cent of the resident population is Muslim, and 44 per cent of this proportion is female (Statistik Austria

2006: 55). Immigrants of Muslim faith mainly settled in Austria within the framework of labour migration starting in the 1960s, or, as in the case of Bosnians, as war refugees in the 1990s.[2] Initially, their stay was conceived as temporary: integration was not intended by the government. Today, 72 per cent of Muslims living in Austria still do not possess Austrian citizenship (Schakfeh 2005: 155). Non-citizens are excluded from formal political citizenship rights, and the socio-economic participation of people with an immigrant background is limited relative to that of the Austrian majority (Fassmann and Reeger 2007). Women with headscarves face particular problems of discrimination in the labour market. They have difficulties finding and maintaining work because of being veiled (Heine 2005: 105; Potz and Schinkele 2005: 632). If they are employed, they often hold rather non-prestigious and/or invisible positions. This holds true even for second generation veiled immigrants (Heckl 2007: 33).

Turning to veiling policies, in the UK there is no nationwide regulation or legislation dealing with Muslim covering, and the presumption is, therefore, that women are free to cover in all spheres of private and public life. As mentioned above, it is the *jilbab* and *niqab* that have become the focus of controversy and public and legal debate rather than the *hijab* in the UK, particularly since 2001. The Shabina Begum legal case, involving a pupil who sought to defend her right to wear the *jilbab* in her state school (McGoldrick 2006; Malik 2008), and the public comments made by Labour politician Jack Straw against the face covering of Muslim women in October 2006, are the two particularly salient and well-publicized controversies (Kılıç 2008). Yet despite these very public disputes and hostility to the *niqab* in the popular right-wing press, there has been no serious move to regulate face covering. Recent guidelines for schools and courts about the wearing of the *niqab* by teachers and legal officials in the courtroom have indicated that toleration should be the rule (on the grounds of multicultural inclusion), except where the fulfilment of duty is inhibited or security is infringed.[3]

Like the UK, Austria has one of the most liberal regulation regimes in Europe concerning the expression of religious beliefs and practices in the public realm. Muslim girls and women are entitled to wear the headscarf in educational institutions and public offices as well as in photos for public documents if the face is clearly identifiable.[4] The headscarf is framed as a religious practice and presented as a non-issue by the majority of politicians. However, the media and the far right party *Freiheitliche Partei Österreichs* (Freedom Party of Austria; FPÖ) have taken a leading role in generating headscarf disputes by raising the topic in the public sphere, despite a limited number of cases of actual conflict (Rosenberger and Hadj-Abdou 2011).

Muslim women's participation in the veiling controversy in the UK

Muslim women have been active in the veiling debate in the UK, particularly in three areas: in social mobilization and political lobbying around the issue, in participation in media debates and in bringing legal cases concerning covering.

We do not review the latter area in detail, since it is treated by Kılıç (2008), Malik (2008), and McGoldrick (2006, 2009a, 2009b). The locus of most of the legal cases in the UK has been schools and places of employment. Regarding the former, the Begum case in 2006 concerned the wearing of the *jilbab* in a school which already had a uniform policy that allowed the wearing of the *shalwar kameez*. The case was fought under human rights law, and it was finally settled by the House of Lords, which ruled that neither freedom of religion nor of education were violated in this case, for various local reasons concerning uniform policy and alternative schools. In this case and another brought under human rights law, a margin of discretion is allowed for schools to make their own decisions (McGoldrick 2009b). More recent claims by veiled Muslim women have been brought under the new legislation on religious discrimination (Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006), and several cases have been brought by women claiming discrimination in the workplace, including Bushra Noah, a *hijab* wearer who was not employed by a hairdresser because she would not display her hair (successful); a *hijab* wearing Muslim barrister, Saleca Faisal Parkar, who was harassed by a senior colleague (successful); a *niqab* wearing schoolroom assistant who claimed unfair dismissal when she was asked to remove the *niqab* in order to be effective in teaching (unsuccessful).[5]

As for mobilization, political protest and lobbying, only one major organization has arisen in the UK which is dedicated to the issue of covering: the Assembly for the Protection of Hijab (originally Protect Hijab). Organized by Muslim women, it was founded in 2003 as a response to the French moves to ban veiling. It was led by an Arab British Muslim woman, Abeer Pharaon, and mobilized internationally through personal contacts and snowballing. In an interview held with Pharaon in the course of research for this chapter, she reported emailing contacts throughout the world with a call to support the 'French sisters', and quickly received a huge response.[6] As a result of this initiative, in January 2004 protests of various sizes were held in 35 countries around the world against the French ban, most taking place outside French embassies. In London, around 5,000 people picketed the French embassy, whilst an estimated 30,000 marched in France.

Pharaon and her supporters also lobbied British politicians. They gained the support of the London Mayor, Ken Livingston, and organized a press conference on the day of the French vote, gaining extensive media coverage, much of it favourable to the cause of veiling and with an anti-French emphasis. The support of some British MPs and other organizations was also secured.[7] A large conference was held in London in July 2004. The next step taken was to lobby members of the European Parliament. All 732 members were contacted and 70 signed a declaration 'on religious rights and freedoms in France and throughout the EU'. This called on member states to allow outward expression of faith in educational and other state establishments, to urge France to rethink its ban, to hold a debate in the European Parliament and to forward the declaration to the Commission, Council and member governments. The largest proportion of the

70 signatures was from British MEPs, but the 300 signatures needed to present the declaration to the parliament were not achieved.[8]

Despite this significant activity between 2003 and 2005 and a good deal of political support from inside and outside the Muslim community in Britain, Protect Hijab was unable to attract sufficient resources to continue to campaign actively. Pharaon explained that all its work was carried out by volunteers, mostly women working from home. Attempts to secure an office or funding from Muslim organizations, trade unions or the government failed, and there was no fixed structure – as opposed to charismatic leadership – to continue the movement. Protect Hijab is no longer active, and its original website was removed before this chapter went to press. Pharaon finds it regrettable that the campaign failed to establish a dedicated campaigning group for Muslim women. She had hoped that the 'Muslim Women's Society' in which she was involved would become representative, but thus far it is largely for the Arab community. She also suggested that the existence of Protect Hijab may have actually inhibited the larger, male-dominated Muslim organizations' willingness to take women's issues seriously, as they saw Protect Hijab as carrying out that work successfully. No other organizations dedicated solely to this issue have developed in the UK, and no representative national Muslim women's organization has emerged. Muslim women's organizations are usually metropolitan or local rather than national, often represent particular ethnic and religious communities, and are frequently affiliated branches of a wider, male-dominated organization.

Despite this limited amount of legal and political action, the single most significant way in which Muslim actors have been active and visible in the UK in relation to the covering issue is by having a presence and a voice in national media. Such actors fall into two categories. First, those 'symbolic' individuals who are selected by the media to represent the covering issue – often because they have chosen to wear the *niqab*; and, second, Muslim actors who themselves speak out on the issue and obtain media exposure. To give an example of the first category, when Jack Straw's comments criticizing the *niqab* were made public, BBC Radio 4 carried a half-hour documentary on 12 October 2006 which included a brief interview with a *niqab* wearing citizen of Mr Straw's Blackburn constituency. The interviewee remarked that Jack Straw's comment was unhelpful because 'people who don't have an opinion will form one and no doubt it will be a biased opinion'.[9] It is mainly educated, middle class, highly articulate women who make up the second category of Muslim actors. Their claims are varied, but generally amount to a plea for greater understanding and tolerance of covering. The number of such voices heard in the mass media has grown as the controversy on covering has continued, first in relation to the French ban, then the Begum case, then the Straw controversy, then cases, debates and bans elsewhere in Europe (including the debated 'total ban' in France in early 2010). Public interventions by Muslim actors have generally been reactive rather than proactive – or at least the limited opportunity to appear in national media seems to have brought this about as a consequence. In other words, it appears that Muslim spokeswomen are more often invited to take part in news features,

debates and so on, rather than actively engineering a media presence, an impression confirmed by our questions to key radio and TV producers in the UK.[10]

The amount of media appearances by Muslim women speaking on the veiling controversy allowed for an analysis of the debates and how they were framed. In order to do so, we sampled internet items and publications, press articles, published position papers by Muslim actors and some major radio and TV broadcasts. In order to limit the amount of material, we looked at interventions defending not only veiling in general but also its most controversial forms, particularly the *niqab*.

The major finding was that in terms of the way the debate is framed by Muslim women, the most frequent values invoked were 'freedom' and 'rights', particularly freedom of expression and of religion. For example, Protect Hijab's slogan was: 'Our Choice, Our Freedom, Our Right'. Interestingly, other Muslim organizations which have spoken out on the issue also adopt the language of individual rights and freedom of choice. To give just two examples, in response to Jack Straw's comments the Muslim Association of Britain (a mainly Arab association) issued a statement saying, 'There may be a difference of opinion on *niqab*, but we have to respect a woman's right to choose to adopt it',[11] and the joint statement issued by a number of different Muslim associations, including the Muslim Council of Britain (MCB) and the Islamic Human Rights Commission, which 'urged people to be supportive for a woman's right to wear the veil as this complies with the values upon which western civilization was founded – the protection of human and religious rights'.[12]

This stress on freedom was also evident in an important public appearance in the UK by a *niqab* wearing British Muslim woman, who broadcast the 'alternative Christmas message' on Channel 4 TV in 2006 (alternative to the traditional Queen's Speech, which is broadcast at the same time on BBC). Her real name was withheld and she was called only 'Khadija'. She began by saying that Britain was the best country in which to live for people who wish to practise their religion freely, and went on to mention that her great-grandmother had been a suffragette – thus making an implicit link to an earlier struggle for women's rights. 'We are seen as oppressed', she said, but 'since I've started covering I feel much more liberated, which I know a lot of people probably won't be able to understand'.[13] Thus, the argument that women have a right to cover because it is their free choice to do so links closely to the argument that covering is itself liberating. This linking counters accusations that women are forced to cover against their will and that it is a form of patriarchal oppression. Freedom is sometimes extended beyond that of the individual, as when one Muslim woman says 'the *niqab* is not about oppression, it means freedom, of faith, of self, of state'.[14] After freedom, our analysis found that the values most frequently invoked by Muslim women in defence of covering, especially the *niqab*, were gender equality (covering was represented, for example, as a way of protecting against the male gaze), social and civic integration (covering was defended as being compatible with being a loyal *British* Muslim) and religious reasons (including obedience to scripture and commitment to Islam).[15]

Muslim women's participation in the veiling controversy in Austria

In the veiling controversy in Austria, according to the quantitative media analysis conducted for the VEIL project, 27.5 per cent of the voices represented are Muslim. Whilst men dominate in the public debate on covering in general, within the group of Muslim actors female voices dominate. On the basis of this analysis, two main types of actors can be distinguished in the debate. The first and dominant type is the official national representative of Muslims, the Islamic Religious Community in Austria (IRCA). The IRCA includes 'Recognized Religious Communities' in the political process in a corporatist manner (Schakfeh 2005; Abid 2006; Mourão-Permoser and Rosenberger 2009). The second type consists of 'symbolic' individuals who are selected by the media to represent the covering issue – often because they wear headscarves themselves.[16] This type of actor, however, is rather marginal compared to the first, and is positioned as a subject rather than an active agent, confirming a criticism levelled against the Western media representation of Muslim women in general (Macdonald 2006).

Women's sections within Islamic associations are growing in Austria (Kroissenbrunner 2003). Although the IRCA is the officially recognized body for all Muslims in Austria, a distinct association for Muslim women was initially informally founded in the wake of a headscarf conflict in Vienna. A Muslim woman wearing the *hijab* was discriminated against at work and turned to the *Wiener Integrationsfonds* (Vienna Integration Fund) for advice. This incident galvanized local Muslim women into coming together and creating Islamic Austrians for Mutual Tolerance in order to combat stereotypes against Muslims and develop counter strategies. The women most active in this initiative, Andrea Saleh and Amina Baghajati, then became involved in the IRCA, and, in a further step in 2004, the Forum of Muslim Women was created as a branch of the IRCA.[17] The Forum aims to foster the integration of Muslim women, increase visibility and promote the participation of Muslim women.[18] It has approximately 30 active members. Meetings are held monthly, and include seminars, lectures and workshops. Excursions and other activities are also arranged. The majority of women active in the Forum of Muslim Women have Austrian citizenship. Although their social backgrounds are mixed, according to Saleh (head of the Forum), they generally come from the higher social strata. So far cooperation with other women's groups is not very significant, and takes place only at the margins of those groups. There is some exchange with the Catholic Women's Movement *Anima*. Greater exchange takes place with women who are active within the various mosque associations.[19]

Interestingly, there are hardly any alliances between feminist organizations and Muslim women's organizations in Austria, with one exception: the Forum of Muslim Women did invite the Vienna-based feminist association *Frauenhetz* to meet. However, no other exchange has taken place yet. In fact, occasional ideological conflicts dividing feminist associations and Muslim women's organizations have become publicly visible (cf. also A8, A9).[20]

In statements on the headscarf question by the IRCA, Andrea Saleh, together with the current press officer for the IRCA, Amina Baghajati, has actively and repeatedly taken a position against a prohibition of the headscarf.[21]

In general, the majority of actors of a Muslim background who speak out on the issue of covering come from within the IRCA. Other collective actors who have produced public declarations on the issue belong to the Initiative of Austrian Muslims. There is, however, a lot of overlap between the leadership of the Initiative and the IRCA. With the exception of the Muslim Youth of Austria,[22] which comprises mainly second generation Muslims and which has published two documents on the headscarf issue, no other Muslim association has publicly raised its voice on the matter of headscarf conflicts. Two (male) representatives from Muslim organizations interviewed[23] stated that they consider this the job of the IRCA, as the legally recognized representative body for Muslims in Austria.

Thus the way in which the veiling 'controversy' is pursued in Austria illustrates how Muslim action is most often carried out through institutionalized exchange with authorities and political decision makers as a result of the legal and political recognition of the IRCA. The IRCA has been a leading actor in negotiating and strengthening the right to wear the headscarf in public institutions. It lobbied for an official statement on school education, delivered in 2004, clarifying that the headscarf is part of religious freedom.[24] The IRCA likewise intervened effectively when a member of the Austrian government, the Minister of Interior Liese Prokop, spoke publicly against the right to wear the headscarf. She subsequently withdrew her statements.[25] This 'informal' channel of exchange with political elites was also employed when the feminist Austrian journalist, Elfriede Hammerl, wrote in public against the Muslim headscarf. Representatives of the IRCA complained to the second president of the National Council, who in turn addressed the journalist and asked for a dialogue between her and the IRCA (Fischer 2003).

So far visible Muslim actors, in particular female actors, in headscarf debates have generally been representatives of the IRCA, and belong to a higher social and educational stratum. They are also likely to have Austrian citizenship. Growing political participation from the younger generation is likely to be tied into a growing sense of national belonging. Nevertheless, those who currently take a prominent role in the Austrian public sphere are de facto first generation Muslim immigrants. But one indication that change is underway is that more women are becoming aware of their rights and are beginning to invoke anti-discrimination legislation. Official complaints due to discrimination in employment are increasing and several proceedings are in progress.[26]

When we consider the framing of the issue by those actors who do take part in public debates in Austria, we find that, as in the UK, statements produced by Muslims tend to be in reaction to opposition to the right to cover. Looking specifically at discursive strategies employed by female Muslim actors in Austria, veiling is frequently framed as a religious practice or obligation. Associated with this, a 'collective rights' frame is the one predominantly drawn upon by Muslim women, but also by male Muslim representatives, in headscarf controversies.

Accordingly, prohibitions on covering are argued to act against the basic right of religious freedom. Furthermore, through the repeated emphasis on the recognition of Islam in Austria, a strong reference to collective rights has been used to defend and praise the status quo, which enables covering in public (A4, A5, A13).[27]

Explaining the different participation patterns

How can we explain the similar and different patterns in political action and framing of veiling debates in these two countries, which are characterized by general toleration of covering?

Political opportunity approach: institutional structures

A political opportunity approach highlights the way in which existing institutions structure the openness of a state towards specific (collective) actors, and shape opportunities for voices to be heard and claims to be made. The most salient difference here is that whereas Austria has a recognized corporate body for the representation of Muslims, in the UK Muslims do not have a single officially recognized representative body.[28] In Austria, the fact that debates on veiling have been muted and tolerance has been maintained can be explained, in part, by the dominant role of the IRCA in mediating between Muslims and the state. In the UK, by contrast, the absence of such an authorized body may help explain why debates take place in a wider variety of arenas, including the media, and why individual Muslim women are more likely to raise their voices in public on the issue, rather than being represented by an official body. The lack of an officially recognized body may also partly explain why the variety of female Muslim protest is stronger and louder in the UK than in Austria. Thus corporatism (Koenig 2005) and the existence of legal Muslim representation on the one hand assist dialogue and effective interest representation in Austria. On the other hand, they seem to limit the quantity and diversity of Muslim women's political engagement. This confirms Nancy Fraser's observation (2003) that recognition may in fact diminish the chances for minorities within minorities to speak and be heard.

The different citizenship regimes in Austria and the UK may also play some role in shaping Muslim women's participation in the veil debate. The fact that Muslims in the UK tend to have full citizenship because of the imperial and post-imperial context of high migration, liberal naturalization procedures and a multicultural policy orientation, may be part of the explanation for why Muslim women are more visible and more vocal, and why many younger Muslim women wear more controversial and 'extreme' forms of religious dress, particularly the *niqab*. Their citizenship may give them not only the right, but also the feeling of security to do so. In Austria, a much more restrictive, exclusionary nationality act prevails, where an immigrant is legally only entitled to nationality after 30 years of residence in the country (Çinar and Waldrauch 2007). This particularly

places women at a disadvantage by rendering female immigrants more dependent upon male breadwinners and the state. This insecure status, limited national belonging and lack of material independence may partly explain the relative lack of protest compared with the UK, despite the persistence of discrimination against Muslim women, especially in the labour market. Thus both the UK and Austria support the contention that the degree to which actors are able to exercise 'active citizenship' (Lister *et al.* 2007) or 'civil citizenship' (Cesari 2009) is related to citizenship status and existing rights.

Resource mobilization

The political opportunities approach shades into a resource mobilization approach insofar as the latter considers organizational opportunities as a major resource for the empowerment of minorities. The overlap is even more apparent in relation to the availability of citizenship status and accompanying material resources, including full access to a state's welfare provision, and educational opportunity. But a resource mobilization approach also invites us to take account of the significance of actor alliances and configurations in helping to explain the different patterns of female participation in Austria and the UK.

In Austria, the IRCA's representative status, along with the way in which male representatives dominate the organization in practice, means that matters of inequality within the Muslim community, and in particular issues to do with the status and welfare of women, may be regularly ignored in public discourse and rendered less prominent in the framing strategies of Muslim women themselves in headscarf controversies. This may be one reason why the headscarf debate in the West tends to obscure genuine socio-economic disadvantage (Macdonald 2006). The existence of the IRCA makes it much less likely that Muslim women will be able to organize their own political representation or mobilize politically on issues of concern to them. Moreover, strong alliances between the Austrian Social Democratic Party (SPÖ) and the IRCA, along with the aggressive and successful politicization of the headscarf matter by the far right, reduces the possibility of Muslim women with a critical stance towards veiling from forming an alliance with the political left and thereby gaining constructive political support.

In the UK, the absence of a single, official body for the representation of Muslims may, by contrast, mean that there is both more need and more opportunity for Muslim women to give voice to their particular individual and collective concerns and claims, to organize in order to do so (as in the formation of Protect Hijab) and to form alliances with other political organizations. However, it is noticeable that British Muslim women who wish to defend covering have not been able to establish strong and supportive alliances with other organizations, whether Muslim, trade unionist or feminist.[29] We noted the failure of Protect Hijab as a direct result of its failure to secure sufficient financial resources to continue, and its failure to secure office space or other material support from organizations like the MCB. As one Muslim woman commented, 'What has the MCB done for us? Nothing – they're all men!'[30]

There is a clear contrast here between the success of Sikh and Jewish (mainly) men in winning legal protection for their religious dress, often in alliance with other organizations, including religious-political ones and trade unions, and the failure of Muslim women to gain the same protection for covering. A notable example would be the success of Jewish and Muslim men in securing protection for wearing the *kippa* and turban, respectively, under The Race Relations Act 1976 (a struggle in which an alliance with other organizations, including trade unions in the case of the Sikhs, was an important feature (Singh and Singh Tatla 2006)). The new protection of religion under equality and discrimination law (Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006) opens an opportunity for Muslim women to take individual cases forward for legal protection and to build up case law on the issue. But it does not afford the same level of general protection to covering as Sikh and Jewish men enjoy. Human rights law at both national and European level has also failed to protect the rights of veiled women to veil, as in the Begum case in the UK and the Sahin case in the ECHR (McGoldrick 2006, 2009a, 2009b).

Thus it seems that the 'freedom' of Muslim women in the UK from incorporation into official organizations, and their failure to forge powerful alliances, may enable them to speak 'with their own voice', including in the media and political rallies and in the legal arena, whilst at the same time militating against this voice having lasting or extensive political influence. There are some recent examples of active attempts by the Labour government to listen to Muslim women's voices, leading most notably to the formation of a National Muslim Women's Advisory Group.[31] The latter has a merely consultative status, and we are not aware that it has intervened in relation to the veiling issue.

Values and ideologies

In terms of prevailing policies, an exclusive, ethno-cultural understanding of nationality in Austria, contrasted with a more multicultural approach in the UK, may play a role in determining which voices are viewed as legitimate in public debate, and in influencing Muslim women's ability to speak out. In the UK it is common for Muslim actors to stress that they are 'British Muslims', loyal to their country but with a clear identity of their own. In Austria, Muslim women also sometimes make reference to a coalescence of being Austrian and Muslim as a strategy in defence of veiling,[32] but this is a less common framing than in the UK. A widespread 'civil' ethos of tolerance and liberalism in the UK may also play a role, and here a long tradition of liberalism which privileges individual freedom of speech and religious expression may be significant, even if it is problematic to characterize the UK as liberal in relation to the veil debate as Koenig (2005) does, without making important qualifications about the limits to such liberalism, especially as compared with the USA (for example, the existence of a state church).

Widespread value commitments and political ideologies also help explain the ways in which Muslim women frame the covering debate in their public and

political interventions in the UK and Austria. As we have noted, in the UK discursive strategies invoking individual freedom prevail, whereas in Austria arguments invoke corporate rights rather than individual rights. Moreover, in the UK Muslim women go so far as to argue that the right to cover the face and body and to reject any ban exemplifies 'British principles of freedom and liberty'.[33] The nature and strength of opposition to veiling in each country also seems salient, not least the nature and extent of secularist opposition, particularly for the way in which Muslim women frame their defences of veiling (for example, insisting that it is *not* a patriarchal imposition, nor a form of religious 'oppression' of women).

State–church relations

The importance of historic church–state relations and their contemporary forms in shaping different forms of accommodation of Islam and Muslims in different European countries has been demonstrated by Fetzer and Soper (2005). Church–state relations also help explain different forms of national regulation of veiling. They do not, however, appear to be as salient in explaining the different ways in which Muslim women participate in the veiling controversy in Austria and the UK. They may have some indirect significance: for example, the widespread existence of state-funded church schools in the UK allowed Muslims to claim the same privilege and has led to the opening of some Muslim schools; many church schools are tolerant of all religious beliefs and dress, and may be a significant resource for Muslim women and their empowerment to speak out in defence of veiling. More important than state–church relations, however, seem to be church–religion relations and the official ways in which religion is 'governed' and related to the state. Thus we have repeatedly noted the significance of the historic incorporation of Islam in Austria by way of the IRCA, and the corresponding significance of the fact that the UK does not officially register religions or have established forms of incorporation for any religious bodies except the established churches.

Conclusions

This study of participation in veil controversies in Austria and the UK has found that Muslim women in both countries are visible in the veil controversies. Female Muslim actors tend to be of high socio-economic and educational status and hold the respective country's citizenship. The visibility of both individual and collective female actors is greatest in the UK, whilst in Austria official representatives of the IRCA are most visible. Only in the UK has a campaigning organization dedicated to the issue been formed (Protect Hijab), and it was founded, run and resourced by Muslim women. Its failure to attract wider support, including from male-led Muslim organizations, was a factor in its inability to sustain its activities for more than a short period. In the UK individual action is more common than in Austria, and both the media and law courts are key

arenas in which Muslim women who defend veiling make their voices and claims heard. Their counterparts in Austria rely more heavily upon exchange and alliances with political decision makers.

The claims made by Muslim women in the debates tend to be rather modest. We have not come across many actors in the UK calling for legal protection of Muslim dress, despite the fact that such protection is accorded in the UK for some other forms of religious dress (particularly Sikh and Jewish). Not all Muslim women agree that veiling is required or even desirable, and there is a lively debate over this issue in Muslim circles. This is one factor which may inhibit claim-making and which may make it harder to mobilize within the Muslim community. Rather than calling for protection, individual, non-organized actors in the UK tend to explain the practice of covering, defend it and make general claims for toleration, understanding, respect and freedom of expression, rather than making specific political demands. In both countries framing strategies mirror and appeal to the dominant frames in wider public discourses on covering. As a result, framing strategies differ: in the UK individual rights and free expression are the values which are invoked most in defence of covering, whereas in Austria debates are more often framed in terms of the collective rights of religion and religious participation.

We have suggested that these national differences can be explained by a number of coordinating factors. In the UK, dissonance between Muslim women's full citizenship and a perceived lack of respect for them and their choices, a church–state settlement in which religious (or at least Christian) actors have an accepted voice in public life, a lack of 'official' representation of Islam to the state, and a liberal ethos and multicultural policy strategy all emerge as salient factors leading to higher levels of protest and a greater number of female Muslim voices being heard – particularly in civil society – and to more 'extreme' forms of covering, most notably the *niqab*, being worn and defended, including by younger Muslim women. In Austria, limited access to citizenship combined with a corporatist approach which channels Muslim voices and claims through a single official 'representative' organization serve to dampen individual voices and mute protest, but also serve to diffuse controversies and win some direct access to the political process. In both countries Muslim women have the potential to launch political campaigns for the defence or protection of covering (in their own countries and more widely in Europe) by virtue of having a clearly defined 'single issue' which is of deep concern to many. However, mobilization is inhibited by a lack of unity amongst the Muslim community and amongst Muslim women (including between different ethnic communities, different understandings of the value of veiling and different political priorities), and by a failure to attract support and resources from potential allies, including feminist organizations, male Muslim organizations, trade unions, other religious bodies or civil liberties organizations.

This chapter represents a first step in gathering more knowledge and gaining a greater understanding of the factors that influence the political action of Muslim women. Empirical studies at the local level are now needed in order to

research the gendered dimension of political opportunity structures and available resources more fully, since opportunities for Muslim women's participation may be greater at the local level. The effect of recent developments, including the introduction of EU equality and anti-discrimination legislation rendering religion a protected ground, also needs to be considered. More research on this topic can help counter a stereotype of Muslim women as passive victims rather than active members of European societies, and correct gender-blindness in the study of immigration and political mobilization. This chapter suggests that when it comes to a controversy like that over the veil, which has a direct bearing on Muslim women's lives and wellbeing, the direction of influence is not simply top-down. Muslim women's opportunities for political engagement are shaped and limited by wider opportunity structures, resources and historic settlements, but they are nevertheless exercising agency in important ways within these constraining and enabling frameworks.

Notes

1 The UK census of 2001 included a question on religious affiliation for the first time, and 1,591,000 people recorded themselves as 'Muslim', which is 2.7 per cent of the population (72 per cent self-identified as Christian).
2 Though, as will be seen below, a sizeable Muslim group had already been incorporated into the Austro-Hungarian Empire in the late nineteenth century.
3 See Judicial Communications Office: New Guidance Issued on the Wearing of Veils in Court (24 April 2007), online, available at: www.judiciary.gov.uk/publications_media/media_releases/2007/1607.htm and DfES Guidance to Schools on School Uniform Related Policies (2007), online, available at: www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1468 (both accessed 1 June 2008).
4 Parliamentary response by the Interior Ministry 4104/AB XXI GP, 2002.
5 For details see McGoldrick (2009a, b) and the legal case database online, available at: www.law.cf.ac.uk/clr/networks/lrsncd.html (accessed 1 March 2010).
6 Information in this paragraph is derived from a telephone interview between Linda Woodhead and Abeer Pharaon on 10 October 2008.
7 Caroline Lucas MEP, Fiona McTaggart MP, George Galloway MP, Muslim Association of Britain, National Assembly against Racism, Federation of Islamic Organisations in Europe and the human rights group Liberty, all gave support.
8 Information from Protect Hijab website, accessed 1 June 2008, no longer available.
9 For a citation see, for example, Hilary Keenan, 'Veiled smbitions', *21st Century Socialism*, online, available at: http://21stcenturysocialism.com/article/veiled_ambitions_01263.html (accessed 1 July 2009).
10 E-mail and face-to-face conversations by Woodhead with Robert Piggott (BBC Religion Correspondent) and Aaqil Ahmed (Channel 4, then BBC Commissioning Editor).
11 Muslim Association of Britain, 6 October 2006, online, available at: www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-News/NWELayout&cid=1160816912631 (accessed 1 March 2010).
12 Joint statement about the veil from Muslim groups, scholars and leaders, 17 October 2006, online, available at: www.hizb.org.uk/hizb/in-the-community/working-together/joint-statement-about-the-veil-from-muslim-groups-scholars-and-leaders.html (accessed 1 March 2010).
13 The broadcast is available on YouTube, online, available at: www.youtube.com/watch?v=Wlz9Dc6wMKo&feature=related (accessed 1 March 2010).

14 *Arts London News*, 'Veiled issues', 10 October 2006, online, available at: www.art-slondonnews.co.uk/index.php?opt=article&siid=1464 (accessed 1 July 2009).

15 For more details, see Woodhead (2009).

16 *Der Standard*, 9 February 2007.

17 Information from an interview with Andrea Saleh, 8 August 2008.

18 See online, available at: www.derislam.at/islam.php?name=Themen&pa=showpage&pid=145 (accessed 1 July 2009). Further goals are to foster cooperation among Muslim women and with non-Muslim women organizations, to document discriminations against Muslim women, to expose discriminatory structures and mechanisms for Muslim women and to enhance counter-strategies, to work against stereotypes of women in Islam, to claim for Muslim women rights and a gender-equal interpretation of Islamic law, to develop strategies against women hostile traditions, to offer educational training for social groups which deal with Muslim women such as hospitals, to provide advice for Muslim women who experience violence or suffer other individual or societal problems, to offer an intercultural platform for leisure activities for women and girls, to foster inter-religious and inter-feminist dialogue and, finally, to support the IRCA.

19 Information based on interview with Andrea Saleh, 8 August 2008.

20 In a discussion on 'arranged marriages' between non-Muslim feminists and Muslim women, moderated by Hadj-Abdou in the framework of a seminar called 'Islam in Sicht' on 'Muslim Women' on 10 January 2009, hosted by the Danube University Krems, this ideological conflict and lack of cooperation became quite apparent.

21 For example, IRCA 2003; *Die Bunte Zeitung*, November 2003.

22 In addition to the Forum, the women's section of the Young Muslims in Austria is an active women's group. Their current head is Amani Abuzahra. According to their self-definition they follow the goal of gender equality and they aim to equip Muslim women for a self-determined life. They define themselves as Islamic feminists and stand for a European-Islamic identity. There are also other Muslim religious associations, which host women sections and are active in educational, religious concerns. The Islamic Union, the Islamic Centre, the League of Culture and especially Millî Görüş Austria have large women's sections, for example. However, according to Andrea Saleh, the women's representative in the IRCA, the women within these associations rarely take action in a broader, political sense. They are moreover organized along ethnic lines (interview with Andrea Saleh, 8 August 2008). Finally, there are some individual immigrant women who are active in the Women's Movement and who spoke out in the headscarf debate, such as Leila Kececi Arzu, a journalist for the immigrant journal *Bunte Zeitung*.

23 Interviews on 2 and 4 April 2008.

24 *Die Presse*, 17 May 2004.

25 'Kein Kopftuchverbot für muslimische Lehrerinnen! Aussprache mit Bundesministerin Liese Prokop', online, available at: www.derislam.at/islam.php?name=Themen&pa=showpage&pid=198 (accessed 1 January 2008).

26 *Die Presse*, 23 September 2008.

27 For example, IRCA, 24 November 2003.

28 Most successful to date is the Muslim Council of Britain. There are also national organizations representing federations of mosques, political and religious campaigning organizations, and a Muslim parliament. However, there is no official partnership of any with the state.

29 The feminist Fawcett Society did stage a debate on the issue; see Fawcett Society (2006).

30 Muslim Women's Network (2006) 'She who disputes: Muslim women shape the debate', November 2006, London, 19.

31 For the official description of the group see online, available at: www.communities.gov.uk/communities/prevent/communityengagement/nmwag/ (accessed 1 March 2010).

32 For example, *Der Standard*, 9 February 2007.
33 Debate on BBC2 *Newsnight*, with Myriam Francois, 21 January 2010, commented on by Dominic Lawson in the *Sunday Times*, 24 January 2010, online, available at: www.timesonline.co.uk/tol/comment/columnists/dominic_lawson/article6999908.ece (accessed 1 March 2010).

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Conclusion

The veil as a case of value diversity and European values

Sawitri Saharso

Introduction

We have seen in various chapters of this book that in national debates on the Islamic headscarf, or veiling in general, reference is made to European values (see Chapter 4). Immigrants, Muslims in particular, should realize that these values form the core of 'our' identity and are non-negotiable, so is said in these debates. A document on the integration of immigrants by the European Council states the following:

> Integration implies respect for the basic values of the European Union. Everybody resident in the EU must adapt and adhere closely to the basic values of the European Union as well as to member State laws. … They include respect for the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Furthermore they include respect for the provisions of the charter of fundamental rights of the union, which enshrine the concepts of dignity, freedom, equality and non-discrimination, solidarity, citizen's rights and justice. Member States are responsible for actively assuring that all residents, including immigrants, understand, respect, benefit from, and are protected on an equal basis by the full scope of values, rights, responsibilities and privileges established by the EU Member State laws.
>
> <div align="right">(Council of the European Union 2004: 8)</div>

Immigrants are asked to integrate into Europe and adapt to European values. In the above statement, European values are *ex cathedra* proclaimed. Yet, what are these European values? Already a cursory glance at the above quote reveals that what are referred to as European values are in fact the values of liberal democracy. There is, however, nothing particularly European about liberal democracy. When liberal morality is claimed as European, it is because in all European countries the legitimacy of the state is derived from it, and public institutions must be organized in accordance with liberal principles.[1] European countries and also the EU feel bound by liberal principles – and Muslims should learn to feel bound to them, too. That is the message of much of current political talk on the subject (e.g. Chapter 4).

While the other chapters in this book discuss the reference to values as they are used in political strife around veiling, in this chapter I want to offer a more philosophically inspired reflection on liberalism and value diversity. This will, first, serve as helpful background information when in other chapters it is discussed how values are figured in national debates, or institutionalized in legal regulations, so that we are better able to see how these values are used in the debates or instantiated in regulations is in fact a specific interpretation of the liberal tradition or a specific way of solving a case of conflicting cultural values.[2] Secondl I found the legal regulations on veiling to contain a tension. On the one hand, as countries in the European Union express their allegiance to shared European values, held to be universalistic and constitutive of liberal democracies, they therefore expect immigrants to obey the norms based on these values. On the other hand, differing legislation on the headscarf reveals that countries across Europe have a different understanding of this common tradition. In this chapter, I want to look back and discuss how selected countries, namely France, the Netherlands, the UK and Norway, have understood core liberal values, in order to suggest how we can understand that it is possible that countries can all claim to be bound by the same values and yet institutionalize these in radically different, if not opposite, legislation. Last, I also want to look forward by discussing the implications this may have for a Europe that aspires to become united in a cultural sense as well. How 'united in diversity' is Europe?[3]

Liberalism and value diversity

The classical liberal solution to guarantee the peaceful co-existence of people with different worldviews in one polity is by protecting each individual's freedom to live according to his or her own views of what is 'good' to the extent that his/her freedom is compatible with a like freedom for all. Liberal democracy, as Bellamy aptly summarized it, is characterized as follows: 'Equal rights to liberty are secured through universal, general laws produced by a constitutional framework, democratic institutions and an economic market embodying the requisite balance between freedom and equality' (1999: 1).

The historical roots of this institutional solution (of individual religious tolerance) lay in the European Wars of Religion in the sixteenth and seventeenth century, when both Catholics and Protestants realized that in order to guarantee peace within the nation, instead of the *cuius regio, eius religio* principle (the religion of the ruler is the religion of the people) it might be better to coexist and to consider religion as a matter of individual conscience. In Michael Walzer's words: 'People kill one another for years and years and then, mercifully, exhaustion sets in, and we call this toleration' (1983: 10). One might infer from this that tolerance is about pragmatic compromise (people let the other be because they realized they could not win) or moral indifference (they let the other be because after so many deaths they no longer cared what the other believes).

We speak of tolerance when we find other people's beliefs or ways of life deeply unacceptable, yet feel that we should put up with them on good *moral*

grounds (cf. Heyd 1996: 4). This is what differentiates tolerance from either pragmatic compromise (we respond with restraint to another's belief or action, because we fear the consequences) or indifference (we do not care enough to react) (ibid.). Why should we tolerate what we find morally wrong? The classical moral ground for tolerance is respect for personal autonomy, which refers back to the Lockean argument that beliefs are internal attitudes and must therefore be acquired in freedom, as coercion cannot lead to sincere convictions, and to the Millian argument that individuals themselves determine what is in their best interest without being interfered with by others. Tolerance is then considered as a precondition for this self-rule. Both lines of arguments thus lead to the idea that we may find certain beliefs or lifestyles wrong, yet think it undesirable to deploy the power of the state to suppress them (cf. van der Burg 1998).

Out of the respect for personal autonomy evolved the liberal conception of a pluralist, supposedly impartial and neutral state, which affirms the rights of all citizens to equal consideration, including an equal right to form and express their personal beliefs (Williams 1996: 22). From this follows the separation between state and church and the neutrality principle. The first means that believers should be free to practise their belief without state interference, but also that the church does not interfere in state politics. Public authorities should base their actions on values and principles – that is a common political conception of justice – which people can identify with irrespective of their particular worldviews. So, neutrality does not imply that the state should abstain from any reference to values, but that it abstains from identification with one specific worldview. Otherwise it could not fulfil its function of ordering a pluralistic society, for it would then not treat all worldviews as equals (Musschenga 1991). Public policy should not have the *aim* to promote a specific conception of the good, nor should it in its *effect* favour one worldview over the others, and public authorities should not in their *justification* of their actions refer to the values of one specific worldview. We can differentiate, hence, between neutrality of aim, neutrality of effect and neutrality of justification (Galston 1991). The aim of a liberal state is thus to create the circumstances that give citizens the freedom to live according to their own beliefs, provided that their way of life does not restrict the freedom of others. This freedom to devise one's own life is what the right of autonomy refers to. In a liberal society there is, therefore, also a place for non-liberal individuals and non-liberal groups. The only restriction is that in a liberal polity citizens have to abide by liberal norms in their public life. In their private life, however, they are free to choose other belief systems, provided that they do not harm the freedom of others, including other group members. This short historical digression shows that liberalism of old aspires to provide a moral framework that is able to deal with value diversity. It is its *raison d'être*.

Liberalism: a toolbox, not a recipe book

I observed that in the countries studied, the presence of Muslim immigrants led to a reconsideration of existing rules and arrangements and gave rise to new

legislation. I will come back to this shortly, but the question I want to address, first, is how it is possible that countries have different, sometimes even opposite justifications of rules and regulations? How can the wearing of a headscarf in one country be considered as a human freedom right and count on state protection, and in the other be considered as an attack on freedom and therefore be banned? And both are done in the name of liberalism? The explanation is that liberal theory is not a recipe book that tells us what to do. Liberal principles are generic and hence there is a range within which they can be interpreted. The Canadian philosopher Joseph Carens explains it thus: 'Every liberal democratic political community must recognize certain principles … but there are many different ways of interpreting these principles and many different forms of practice among liberal democratic states' (2000: 7). This observation leads Carens to suppose 'that there is a range of reasonable disagreement about what the principles of democratic justice require, and that within that range different political communities are morally free to adopt different institutional arrangements and policies' (ibid.). Therefore, according to Carens, national contexts can and sometimes should be morally decisive, so that what may be a defensible solution in one national context is, given the differences in history and political culture between liberal states, not necessarily a defensible solution in the context of other liberal democratic regimes (ibid.).

Second, general principles are too indeterminate to reach a judgement in specific cases (cf. Parekh 2000). Moreover, as Melissa Williams (2005) argues, justice arguments provide strong foundations for tolerating and accommodating cultural minorities, but they also provide strong reasons for drawing limits to toleration. When we look at particular cases, liberal principles often pull against each other and there are often freedom and equality arguments on both sides of the issues (ibid.). We saw in the analysis of national headscarf debates in the chapters of this book that in the name of equality (between the sexes) a ban on headscarves was issued in France, while in the Netherlands the Commission on Equal Treatment ruled that equality (between religions) required that public school teachers should be allowed to wear a headscarf. Liberal principles must be applied in a specific context. The weighing of different principles may differ between nation states and thus lead to different policy outcomes.

Universal rules, national regulation

In Chapter 5, the various ways the headscarf is regulated in the eight countries under study were examined. Let us now return to exploring the question of how different national ways exist to regulate the headscarf despite the fact that they all pay tribute to the liberal tradition. The main argument of this analysis is that as liberal values are generic and hence underdetermined, they leave room for interpretation. In this interpretation there are differences in national history and culture. In other words, there are national differences in regulation, because there is no one right way to instantiate liberal principles into concrete institutions and norms; every liberal democracy is inevitably culturally specific (Carens 2000:

11). The examples of France and the Netherlands are used to illustrate this argument.[4] These two countries were chosen because Dutch regulations represent a tolerant model and French regulations a prohibitive model regarding the wearing of headscarves.

On 15 March 2004, in France the law banning conspicuous signs of religious affiliation was passed. How did this come to pass? In 2003, French Socialists submitted a law-proposal to ban all religious, political and philosophic symbols from schools (Law proposal no. 2096; quoted in Lettinga and Saharso 2009: 257). Donning the headscarf was framed as a 'contestation of French values and culture' (referring to gender equality and the freedom of individual conscience), and 'a rejection, often imposed on young girls, of the Republican and laic model of integration' (ibid.). The problem analysis was that a growing communalism in the suburbs would contribute to this fundamentalism that fragmented the nation in separatist and possibly violent communities where the rights of women were being undermined. While the 'right' and other parties on the 'left' had already made this diagnosis before, now the socialists also believed that both teachers and secular parents who wanted their children to be free from religious manipulation in public schools needed to be supported. Strict compliance with *laïcité* was necessary to safeguard gender equality to protect the unity of the nation and to uphold the equality and liberty of all citizens (ibid.).

At about the same time (2004) in the Netherlands, a parliamentary research committee that had been established to study the integration of migrants in Dutch society (the Commission Blok) (TK 28 689, no. 8, March 2004) advised against a ban on headscarves. The chair of this Commission, the liberal Stef Blok, explained why the Commission did not favour a general ban on headscarves for the civil service at large, but only for certain public functions that require a uniform, such as the police force, or for functional reasons of communication or safety: the Dutch approach

> is different from, e.g., the French approach. We find it the responsibility of the woman in question and hence not of her husband or of imams. Also the consequence [of covering] is her own responsibility. … On my view, it is very irresponsible to be dogmatic in this regard, because each case should be judged on its own. The main point is that it is someone's own choice. If you want to restrict it, you need to show good reasons for it.
>
> (TK 28 689, no. 14, 16 March 2004, pp. 4245, 4255,
> quoted in Lettinga and Saharso 2009: 247)

Obviously, public neutrality was not a good enough reason. This is because the Dutch, in contrast to the French, saw no imminent conflict between the headscarf and public neutrality. In specific cases a ban might be warranted. We see that for the Dutch the autonomy of the woman was made paramount without further questioning her freedom to decide for herself. The French, on the other hand, saw the headscarf as conflicting with public neutrality and wanted to protect the autonomy of girls (to choose not to wear a headscarf) against their communities

(on the presumption that the latter were pressuring them into wearing a head-scarf). The key to understanding these different applications of liberal values is both countries' national histories. Both in France and the Netherlands the conflict over who would shape the loyalties and values of the citizenry is particularly centred on education and welfare. French Republican nation building was an anti-clerical project. French secularism developed not only as a mechanism to free the state from religious influence, it also became a tool to emancipate individual citizens from (religious) communities seeking control over their members (Scott 2007). The French concept of secularism, therefore, strictly separates a political religious free sphere from a private sphere (*laïcité*). The public school in French republicanism is considered as an anti-social institution, whose aim is to free children from their communal ties and to instal in them an idea of universal citizenship that does not differentiate according to gender or religion. Muslim girls who wanted to cover, thus marking their body as gendered, fundamentally contradicted the Republican ideology in both ways. In contrast to France, Dutch secularism sought to protect the freedom of religious minorities from the liberal state. In the Netherlands' school struggle the orthodox Protestants' credo of 'sovereignty within one's sphere of life' and the Roman Catholic subsidiarity principle demanded that it was the right of intermediary groups, like the family and church, and not the state, to socialize children. The Dutch pillarized school system therefore is a dual system of public and, mainly religious, private schools that are both fully state funded (Monsma and Soper 1997). Moreover, in pluralist Netherlands with its history of pillarization, the task of the school is not to teach pupils a common morality, but to teach them to respect the different moral values that exist in Dutch society (Dutch Law on Primary Education, section 8.3, The Hague, 2 July 1981). In the Netherlands, schoolgirls wearing a headscarf are not perceived as a problem, since school education was and is supposed to link up with the first socialization milieu. So, we see that both countries' different reaction to the veil is at least in part explained by their different understanding of the principle of the separation of state and church. As explained above, the separation of state and church contains a double meaning: the state should not interfere in the religious life of its citizens and the church should not interfere in state affairs. Historically, the French placed the emphasis on the latter meaning, the Dutch on the first: the state is not to interfere in citizens' private (religious) life. The differences in regulating the veil between France and the Netherlands can then be traced back to their different historical institutionalization of state–church relations, to Republicanism and pillarization, respectively.

The aim of this short comparison was to illustrate the point that national traditions determine the institutionalization of liberal principles (for a more extensive discussion see Chapter 7).[5] This leads to the next issue, namely, what does this mean for the European level? Harmonization clearly requires a reconsideration of current national interpretations of liberal values. I believe there is such a need, but not necessarily only for reasons of harmonization. This will be explained first, followed by an examination of the European level.

Reconsidering current interpretations

Given its historical background it would seem that liberal morality is perfectly suited to deal with value diversity. Yet, obviously it is not or otherwise there would not be so much contestation over the Islamic veil or multiculturalism in general (Kılıç *et al*. 2008; Vertovec and Wessendorf 2010). There are two reasons why liberal morality might to be readjusted. *One reason*, frequently put forward in the debate on gender and multiculturalism, is that immigrant groups have brought with them traditions that are harmful to their members, while not being adequately addressed by current law (see Phillips and Saharso 2008). Prototypical examples are female genital cutting and forced marriage; this argument is also made with regard to the headscarf (as it is suspected that young girls are forced by their communities to wear a headscarf). Those who believe that existing laws fail to offer minority group members adequate protection against their group culture, argue that these laws need to be changed. Liberal principles should be institutionalized in a more restrictive way so as to prevent oppression of vulnerable minority group members. A *second reason* to reconsider liberalism is argued by defenders of multiculturalism (e.g. Parekh 2000). They argue that when the rules were made, these immigrant groups were not present, and therefore their point of view and their needs could not be taken into consideration. Now that liberal states have become more diverse due to migration, it can no longer be taken for granted that the values and principles on which state legislation is based are shared by all. Current rules may betray an identification with the worldview of the majority population that no longer befits the multicultural society. Legal rules may *nolens volens* promote or favour the dominant worldview or rest on justifications that refer to values that are no longer shared by all. This also points to the need to reconsider public values and principles. How should they be interpreted in a diverse society so that they also do justice to the cultures of the newly immigrated groups? This is also necessary, because when minority groups have the feeling that the general operational values of a society (ibid.) discriminate against their (religious) culture, they will not identify with society and feel excluded and/or exclude themselves. An example is the Rushdie affair in the UK. Many Muslims at that time took offence to Salman Rushdie's novel, *The Satanic Verses* (1988).[6] Muslim leaders in the UK felt that their religion deserved equal protection against libel as offered to the Anglican Church. The existing anti-blasphemy law applied only to the Church of England and they now demanded that this law should also extend to their religion. This gave rise to a public debate. Some argued that the anti-blasphemy law should not be extended to other religions than the Church of England, because Christianity is constitutive for Britain's identity. Christianity therefore rightly enjoyed a special political status. Others, however, believed that the principle of equality required either disestablishment of the Anglican Church (and with it the abolishment of special protection like the anti-blasphemy law) or extension of the anti-blasphemy law to other religions (see Parekh 2000: 258–60 and Parekh chapter 10 for a reconstruction of the Rushdie affair). The arrival of immigrants with

different religions required the British to rethink their institutionalized state–church relationship and anti-blasphemy law. Immigration may require European countries generally to rethink their legal institutionalization of liberal values and principles, be it as some believe because current laws offer too little protection against newly imported illiberal traditions or because the current legal institutions are biased towards the way of life of the dominant population.

A common European standard?

Immigrants are asked to adapt to European values, which are in fact, as argued in this chapter, liberal democratic values. Liberal political morality developed to provide a moral framework that is able to deal with value diversity. Yet, why then does the Islamic headscarf form a problem? The headscarf is heavily debated because some believe it compromises central liberal values. Liberal theory, I argued, is not a recipe book that tells us what to do, as liberal principles are generic and therefore offer room for interpretation. This chapter also covered that differing legislation on the headscarf reveals that countries across Europe have a different understanding of the liberal tradition. Let us now look forward by discussing the implications this has for a Europe that aspires to become united in a cultural sense. If different member states have interpreted the liberal tradition differently, what does this make of the ambition already formulated in the 1996 European Commission First Report on the Consideration of Cultural Aspects in European Community Action to develop a 'European model of society built on a set of values common to all European societies' (CEC 1996: 102, quoted in Shore 2000: 40). Both the European Court of Human Rights in the Council of Europe context and the EU have afforded a wide 'margin of appreciation' to countries for detailed adjustment of their national regulations, leading to the adoption of many different approaches in striking a balance between the values, principles and interests at stake (see Chapter 5). Politicians on the European level thus seem to want to leave the discretion over cultural and religious matters to the individual member states. This may be understandable, as the issue touches upon the question of how citizens should be united in the nation. Countries have developed in this their own national traditions and commitment to their own traditions runs deep, as they are a matter of national identity. They may therefore not be inclined to give up these traditions. Nevertheless, if one wants to develop a common standard, addressing the issue on a European level is unavoidable, and the issue has entered the European agenda anyway through the back door of the European anti-discrimination directives and case law from the European Court of Human Rights (ECtHR). EC Directive 2000/78 forbids discrimination on the grounds of religion and belief. So far no national headscarf cases have been submitted to the European Court of Justice (ECJ), but as Berghahn (in this book) already explained, the EJC would most likely judge that laws restricting employees' right to wear a headscarf constitute discrimination. As national legal regulations must comply with EU directives, countries with restrictive regulations would have to reconsider their regulations. This might

lead to harmonization, were it not for the fact that the ECtHR on the other hand has ruled in several headscarf cases that the countries concerned had rightly restricted the right to wear a headscarf. The ECtHR rulings, however, are based on the understanding that member states are free to interpret the neutrality principle and institutionalize state–church relations according to their own national traditions (the wide 'margin of appreciation'). As long as member states are allowed to keep this wide discretionary scope, this will work against the development of a common European standard.

Still, a European standard seems to be in the making. Head covering requires European countries to rethink how they want to understand the values of liberalism. This is in fact what is already happening because that is what the public debates are about. When we look at the content of the debates and the changes in legal regulation we can observe that in tolerant countries there is a strong pressure to tighten regulation and insofar as regulation has changed it has become stricter. While in the European context the French and Turkish strict understanding of neutrality is rather the exception than the rule, in the national debates in the other countries this strict interpretation is now often promoted as a regulative ideal. The judgements in the headscarf cases that were brought before the ECtHR (see Chapters 4 and 5) are often (mis)interpreted in a way that the strictly secular regulation could be taken for the dominant ideal on a European level.

The reconsideration of liberal values that is now taking place is not so much inspired then by a multicultural concern that current legal institutions are biased towards the way of life of the majority population, but rather by the fear that the current institutionalization of liberal values offers too little protection against illiberal cultures. Thereby the gender card is frequently drawn: across Europe the dominant frame is that the headscarf is violating gender equality (see Chapter 1).

National debates evolve around the question of what place a gendered Islamic religious practice should have in a liberal society. The answer is dependent on how one wants to interpret and balance liberal values. This makes the headscarf issue primarily an intra-liberal conflict, not a conflict of religious values against European liberal values. Against the idea that gender equality self-evidently requires the right to wear the *hijab* to be restricted, there are many counter arguments. First, it can and has been argued (by the Norwegian Ombud, see Siim and Skjeie 2008: 332) that as only women wear a headscarf, a ban on headscarves is a burden on women only and therefore an instance of indirect gender discrimination. One might of course object that here it concerns a self-chosen religious obligation (choice), the consequences of which the person should bear herself, and not a religious obligation per se (circumstance) in which case an exemption policy might be justified (cf. Dworkin 1989). The Norwegian Ombud, but also the Dutch Equal Treatment Commission has understood it as a religious obligation, arguing that it is not an individual idiosyncrasy but a large group of believers who interprets it as such. Second, it has been questioned whether the headscarf can be unequivocally understood as an expression of gender inequality and whether judges (or other outsiders) have the authority to decide this. The headscarf can have various symbolic meanings as, amongst others,

Seyla Benhabib (2002) has pointed out. And there are many statements from Islamic women who claim that for them the headscarf is not a symbol of gender equality (ibid.). In Austria, the *hijab* is considered as an internal religious affair that therefore falls under the authority of the religious organization only (Gresch *et al.* 2008: 421). Third, even if we accept for the sake of the argument that the *hijab* is an expression of gender inequality, what if women voluntarily choose to wear the symbol of their sexual submission? Prins and Saharso (2001) have argued that it is not at all evident why the value of gender equality should take precedence over the right of autonomy. Liberal values, therefore, allow far more room for alternative interpretation than is reflected in current public debates on the issue. While the narrowness of the debate risks running into a rather illiberal liberalism, the arrival of new cultures in Europe could also be an opportunity to self-critically interrogate current European interpretations of the liberal tradition and combine them with the desire to develop common European values. Instead of returning to a secular *cuius regio, eius religio*, let's not miss that opportunity.

Notes

1 A note of clarification. Values refer to what should be strived for from the idea that the good should be done, e.g. justice, freedom, equality. Principles are 'general moral and political propositions [that are derived from these values], like Do not inflict unnecessary suffering or Citizens must be treated equally' (Benhabib 2002: 107). Norms are concrete guidelines for behaviour. Norms connect values and principles (general) and behaviour (concrete) as they tell us how we should behave in concrete situations. Benhabib (2002: 107) again: 'Principles permit a plurality of normative concretizations; the same principle may be instantiated through different norms and institutions.'

2 Liberalism is but one moral doctrine. When groups that adhere to a non-liberal doctrine settle in liberal states this may give rise to conflicts of value diversity. These conflicts require a solution, e.g. governments adopt new legislation.

3 'United in Diversity' was adopted as the European Union's motto in 2000. The motto means that, via the EU, Europeans are united in working together for peace and prosperity, and that the many different cultures, traditions and languages in Europe are a positive asset for the continent, online, available at: http://europa.eu/abc/symbols/motto/index_en.htm (accessed 8 September 2010).

4 The following sections are based on Lettinga and Saharso (2009), translation by the authors.

5 There is also reasonably extensive research literature supporting the thesis that nation-bound traditions of citizenship are responsible for the fact that European countries have responded differently to the presence of migrants (Brubaker 1992; Castles 1995; Entzinger 2005; Koopmans *et al.* 2005).

6 *The Satanic Verses* is a fantasy about two actors from India travelling on an airplane. After a terrorist bomb blows up the airplane, they fall to Earth and survive. The controversial parts of the book centre on just two chapters. One of the Indian actors apparently is losing his mind. He dreams about God revealing his will to the Prophet Muhammad, who passes on the sacred words to humanity through the Qur'an, the holy book of Islam. But the novel refers to Muhammad by an insulting name used by Christians in the Middle Ages. As part of the dream sequence, a scribe called 'Salman' writes down God's commands that are coming from the lips of Muhammad. The scribe, however, decides to play a trick by changing some of the divine words. Since Muslims hold the Qur'an as the revealed word of God, they deplored Rushdie for ridiculing it. The title of the book refers

to an old legend retold by Rushdie. According to the legend, some of the Qur'an's original verses originated with Satan, and Muhammad later deleted them. By repeating this legend, Rushdie offended Muslims by associating the holy Qur'an with the work of Satan. One part of the novel probably outraged Muslims the most. It describes people mocking and imitating Muhammad's 12 wives. Muslims revere Muhammad's wives as the 'mothers of all believers'. See online, available at: www.crf-usa.org/america-responds-to-terrorism/blasphemy-salman-rushdie.html (accessed 25 August 2010).

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Appendix 1

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Appendix 2

List of major frames and subframes of the VEIL project's frame analysis

The VEIL project's frame analysis developed 11 major frames of the analysed material:

Citizenship
Europeanness/Westernism/modernity
Gender/emancipation
Identity
Islam as a political ideology
Participation
Protection
Rights
Racism
Religion (state–church relations)
State–market relations

These major frames are composed of subframes. The VEIL project identified 32 subframes, as shown in Table A.1.

Table A.1 List of frames and subframes

Major frames	Subframes
Citizenship	Recognition of difference Assimiliation Integration
Europeanness/Westernism/modernity	Culture History/future of Europe Secularity
Gender/emancipation	Equality Oppression Discrimination Victimization
Identity	National history/tradition National culture Belonging to a religion/culture
Islam as political ideology	Threat Separatism Security
Participation	Education Economy/labour market Society
Protection	Pupils Muslim women
Racism	Islamophobia Post-colonialism
Religion (state–church relations)	Neutrality Separation Privilege of one religious denomination
Rights	Human rights/women's rights Freedom of choice Freedom of religious expression Collective rights
State–market relations	Autonomy of the market State interventions

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