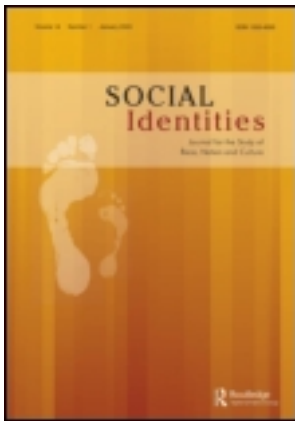


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The 'illegal covering' saga: what's next? Sociological perspectives

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CONCLUSION

The ‘illegal covering’ saga: what’s next? Sociological perspectives

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Over the course of the last thirty years, the publicly visible ‘otherness’ embodied by the Muslim population in the member states of the European Union has sparked movements of transnational moral panic mainly driven by the fear of the collapse of ‘national cohesion’. Generally however, these fears, shared internationally, always become more pronounced when women are at the center of their focus. Islamic women’s attire, whatever the terminology used to describe it – veil, scarf, and more recently, ‘burqa’, to designate a garment fully covering the body – is presented as an increasingly delicate problem, an issue at the center of legal battles and the subject of virulent political controversies in France, Belgium, Germany, the Netherlands and the United Kingdom. This conclusion is more specifically concerned with the ‘public texture’ of the discussions surrounding the recent ban on the wearing of the full veil in European public spaces as analyzed by the contributors to this special issue. It aims to engage in the conversation about the epistemological and political implications of the evaluation of daily, individual experiences through a legal framework and classifying them as problematic in secular contexts, or even criminalizing them.

Keywords: public; publicization; Islamic headscarves; burqa ban; non-intelligibility of religion; legal regulation

Over the course of the last thirty years, the publicly visible ‘otherness’ embodied by the Muslim population in the member states of the European Union (EU) and on some occasions in Canada (most specifically in Quebec) has sparked movements of transnational panic mainly driven by the fear of the collapse of ‘national cohesion’ (Morgan & Poynting, 2012). Generally, however, these fears, shared internationally, always become more pronounced when women are at the center of their focus, a phenomenon equally evident in the language used in reference to other communities of belief, such as Mormons, the Amish and Jews. Islamic women’s attire, whatever the terminology used to describe it – veil, scarf or, more recently, burqa, to designate a garment fully covering the body – is presented as an increasingly delicate problem, an issue at the center of legal battles and the subject of virulent political controversy in France, Belgium, Germany, and the Netherlands. The Islamic headscarf and, by extension, the Muslims who wear it, has thus come to represent all the negatives associated with the presence of Islam in Europe, embodied by a demonizing iconography whereby the dark silhouette of the veiled woman, whether fully or not, now functions as a globalized *memento mori*. These occurrences of local friction, tension, disagreement, and

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sometimes violence, have emerged in different contexts, regardless of the national conventions with regards to immigration politics, the relationship between church and state and the wider construction of national identity.¹

This special issue can be seen both in a positive light – there are still new things, both empirically and theoretically, to be said on the question of religious garments in secular spaces and this applies to various disciplines – and as a discouraging testament to the times in which we live, given that the saga that began in the European countries in the 1980s and which led to legal rulings prohibiting the wearing of certain religious signs in public spaces is still something ongoing. The public discussions have been fuelled by many sources, at local, national and international levels. The contributors to the issue agree that defining the wearing of the burqa as a problem, to the point of criminalizing it, requires more than mere factual restitution or polemical indignation, whether for or against it. The argument, as restated by all, cannot be restricted to a position for or against the piece of clothing that is at stake, for, as all the authors here mention, illegal covering bans actually address far more than clothing; they address conducts and modes of being, without any specific designation of a particular religion.

Three lines of argument emerge transversally from the individual contributions, all of which I will follow in this concluding synthesis. First, all contributions point to the public texture of the argumentations that have come out of the national debates, whether parliamentary debates, legal discussions or aesthetic regimes. Second, they all point out the fact that religion, as an issue, is actually absent from the national public debates that are being had, identifying a quality that I am calling its unintelligibility. Third, they all attach their analysis to the specific juridical nature of the toolkits that are being promoted to serve the cause of national consensus for banning religious signs from certain public sites.

1. The public texture of the illegal covering debates

Whatever the context, whether North American or European, the authors claim that the discussions in various secular contexts about illegal covering reveal their public texture through the fact that they actually co-constitute the actual public. Nations and civic commitments are revealed unto themselves through the publicization of the debates. The legal prohibition of Islamic feminine garments, which is seen as necessary to corraling the behavior of individual Muslims and protecting national and cultural mores, is both the condition for a series of debates on covering the face that ‘reconstitute(s) the nation as secular and united’ (Leckey, this volume) and the illustration of the potency of certain narratives over others (Korteweg and Beaman, this volume). Indeed, the promotion of the ‘impossible law’, as Korteweg very accurately calls it, is more than a simple provocative move by an extreme right politician: around it, various types of publics are engaging (Hirsi Ali performs the role of the ‘testimonial figure’, of the ‘exceptional Muslim’; we also have the feminists, the anti-racists, the Green Left, even the fashionistas), aligning with the dominant frame, opposing it, validating it. These various publics, of social actors engaged in opposite political strands, contribute to making frames rather explicit (while usually, one of the problems faced by the frame analysis lies in their imprecise and tacit nature, in their volatility). The excerpts of interviews and articles Korteweg quotes are vital to understanding the ‘manufacture’ of frames that circulate in the Dutch public space and to making the ‘impossible law’ plausible (for instance as a rational answer to ‘cultural pollution:’ it works just as well with regard to the Burqa as it does with airplane taxes!).

What could be read as a racial penalty (taxing believers when they explicitly reveal that they are practitioners) is encoded as being in touch with the reality of ‘discomfort’ (Korteweg, this volume).

The notion of ‘public texture’ that I see coming out of the five contributions is multilayered. On a first level, as in Leckey, Ford and Korteweg, it refers to the public sphere within which controversies, polemical discussions and deliberations take place, and within which public problems emerge and are established (Gusfield, 1981). This designation of course implies the idea that the ‘public problem’ did not exist prior to those ‘disturbances’ that brought individual citizens together in order to discuss and define what disturbed them (Dewey, 1927). The media, politicians, civil associations, lawyers, judges, and citizens in general all play a part in the process of publicizing a problem. On a secondary level, the term ‘public’ refers to the fact that the experiences of the population are herded down paths immediately linked to legal, political and civil contexts, which together form a rigid network that dictates both constraints and any ways around them, and that in turn creates this ‘public’. While many authors have highlighted the co-constitutive dimensions of identity, most notably in an approach focused on public policy and national contexts, suggesting a link between the constitution of public problems and the experiences that are at their root is a path that remains relatively unexplored and open for new perspectives to develop. This second dimension is more specifically addressed by Behiery and Beaman.

In the reflection on the public texture of the disputes over illegal covering, the authors aggregate various scales of analysis and observation as, for instance, in Behiery’s contribution, where her reading of the trope of the burqa from the perspective of the cultural history of vision relies on an interpersonal scale of analysis, with the consequence of said individual and personal choices also reliant on a more social-political-legal scale of analysis. This interaction, between the multiple scales through which public texture is being woven, is another common feature of this special issue’s contributors. From this perspective, the publicization process around the illegal covering discussions is for instance composed of the way people feel about sharing a common space in a pluralist neighbourhood (whether a courtyard, a sidewalk, a mall, a playground, or a line at the bank or post office), and the ways in which they react to the constant exposure to otherness and difference (Goffman, 1963). This broader framing brings us to the unspoken and silent social routine in which hate, love, rejection, or isolation emerge, impact social life and eventually degenerate into strong hostility towards those who gradually come to embody differences. Pluralism, and democracy, to which it is linked, are often primarily addressed as philosophical issues or legal objects of study (Ford, this volume; Patrick, 2002). In the Netherlands, it is not the ‘impossible’ solution invented by Wilder that matters per se but the way the powerful grammar that sticks to it has entered, as Korteweg says, the Dutch lexicon (for instance the idea of ‘pollution’), therefore supporting the stabilization of a social problem as a common political concern about which everyone has something to say, but which no one, in the end, properly disapproves. The various contributions to this volume invite us to connect the present global ‘time of anxiety and suspicion’ (Nussbaum, 2012) with aspects of social interaction in our daily lives, as well as with the meanings and emotions that spring from these interactions at a more global political level. This repositioning circumvents us from entering into abstract discussions about whether multiculturalism or interculturalism are right or wrong – which would be normative assessment that none of the authors wishes to engage with – or better or worse than secular republicanism; such arguments

only further entrench the artificial juxtaposition between, on the one hand, the threat of radicalization and extremism and, on the other hand, the ideals of justice and equality.²

When talking about Islamic and Western visual cultures, Behiery alludes to the 'void' and its visual enactments. Her contribution speaks to the current interest both in political philosophy and sociology, first on *transparency* as a mandatory norm of policy in contemporary liberalism, and second on *visibility* as an emergent form of social capital.³ Transparency here does not refer to publicity (as do the works on deliberative democracy) but rather to the idea that it has become an essential pillar of democracy in practice: the liberal individual performs the role of a good citizen because he/she is being transparent to his/her co-citizens. Visibility, on the other hand, is related first to recognition (both as cognitive recognition and as social recognition), and second to asymmetry (between those being seen and recognized because they wear specific religious signs, and those who look at them, i.e., the majority societies). Here, North-American and European scopis regimes, or visual cultures, are particularly potent in their contribution to the maintenance of asymmetry/dissymmetry in the context of the dominant iconography and the obsession with the burqa-clad female figure, especially when we consider that this takes place within a context where the social reality of the burqa is limited to only a few hundred people in each country. Personal recognition is always reciprocal and unmediated while with the burqa, as with movie stars for instance, the cognition is made almost automatic as the image is multiplied by transnational media diffusion (Amiriaux, *forthcoming*). With the burqa, the situation is even more complex. First, the subjective person is hidden. Second, the burqa is rarely experienced directly (people see it on TV, but very few individuals have actually met a wearer).

This solidification of representation, the one we have come to at present, contributes to fixing the parameters of what we may refer to as a field of vision. Everyone knows what a burqa looks like. The garment is immediately recognizable, independent of the context in which it appears, and recognizable despite the fact that you or I may have never been to Afghanistan and encountered one in real life. They are, in this and all respects, comparable with celebrities, whom Heinich recently proposed to study in terms of visibility, designated as the ability to be seen by others, an 'objective quality of people, very unequally distributed according to the capital of visibility' (2012, p. 493). This recent work is particularly relevant to reading the burqa as a social phenomenon, which consistently draws the gaze of those who do not wear it (Muslims and non-Muslims alike); it is at once excruciatingly obvious and forcibly, permanently exposed to the view of others. The decision to legislate against 'concealment of the face' gives the collective a hold on said legislation's political future, despite the fact that the consequences of that decision, most notably in terms of the distribution of rights and responsibilities between the involved parties (the women who wear the burqa and the multitudes of the engaged public) have not been systematically envisioned in terms of the nature of the initial 'trouble', that is, the remote experience of visible religious otherness. To a certain extent, contemporary Western secular societies are stages where regimes of compulsory visibility/visuality are being implemented, impacting on the public perception and social management of Muslim female bodies by criminalizing some of their gestures and attitudes. The main hypothesis in Beaman and Behiery's contributions is that specific forms of injustice affecting Muslim women are embodied through the specific politics of aesthetics, drawing borders around who is to be included (desired) and excluded (rejected). In this respect, religious Islamic garments operate as transnational 'synecdoches' (Jiwani, 2010, p. 65) and gender, ethnicity, race and religion intersect in mapping

the boundaries along which desired and rejected icons are produced and circulated in the Euro-Atlantic imaginary, making power relations visible.

2. Religion as a non-intelligible social fact

If the process of the criminalization of the burqa, as it has occurred in various North American and European contexts, makes the women who wear it, no matter how insignificant their number, visible to the eye of the majority, its ultimate outcome is to confront secular societies with their incapacity to make sense of religion both as a social fact and as intimate conviction (*foro interno*). All five contributions, whatever the discipline of their author is, point to the extreme difficulty, particularly for judges, of deciphering religious meanings and attributing a social ‘position’ to them in secular contexts. Religion remains largely unintelligible to most social actors, to the extent that erasing its public evidence seems to have become the most unanimously adopted posture, as Beaman, referring to Leckey, so succinctly states: ‘by forcing women to unveil, public evidence of their Muslim-ness is erased’ (Beaman, this volume). The reality of religion’s physical presence is simultaneously, by effect of the prohibition, both acknowledged and repudiated but hardly understood *per se*. The difficulty of understanding the whole concept of ‘religion’ is part of a larger, general failure to make sense of religious belonging outside of its accompanying symbols, through practical accomplishment (Benhabib, 2002; Claverie, 2003). It’s this non-symbolic aspect of religious garments and gestures that accompany them that I want to address now, for it seems largely ignored – almost entirely disregarded, in fact – probably because it forces the observer to come too close to a reality that ‘secular, enlightened and modern citizens’ and liberal enthusiasts generally prefer to keep at a good distance (At Home in Europe, 2011; Parvez, 2011). It also connects with the public texture I briefly described in the first section of this conclusion, in that it points to the immaterial dimension of public order and to how the minimal requirements for social life, that is, the reciprocal expectations that guarantee it, are defined. The entire volume carries an implicit question: What is the place of those who want to live piously in secular democratic liberal societies?

The answer to that question is far from easy. Behiery elaborates on the idea of the ‘untranslatability’ that intersects with what I suggest to be the unintelligibility of religion in secular contexts (Behiery, this volume). The impossibility of this translation (that is, decoding, reading, understanding and interacting with), is based, in her contribution, on the reading of Aranda’s photo to show that the image upholds some form of cultural translatability as it evokes a powerful theme in Euro-American visual culture. I would here suggest that the photographer however ‘knows’, even if he is not entirely aware of them, what symbols he is playing with: ordinary knowledge allows us to make sense of the surrounding world, to decode-code-encode it (as Leckey briefly explains in the context of the anti-sodomy laws in the US and the ‘face-to-face’ argument). The ability to bridge between two visual cultures through a powerful image is embedded in the set of competences that ordinary people carry with them, those that help them to typify others so that they may relate to them (Boëtsch & Ferrié, 2001).

For Mahmood, who shared the controversies raised by the Danish cartoons in order to analyze the normative encoding of the ‘secular’ incapacity to understand religious insult, the moral impasse can be explained by the paradigmatic polarization around the ‘conflict between secular necessity and religious threat’ (Mahmood, 2009, p. 65). This rupture between secular liberal values (freedom of expression, the empowerment of women and

their bodies) and Muslim forms of religiosity reflects the normative view that Europe has of religion: only one specific form of the religious subject (and not of the agent) is ultimately tolerated. There is finally no room for 'Muslims as Muslims'. The binary model of secular vs. religious also explains how the veil is ultimately seen as antithetical to gender equality, to the emancipation of women and to secularism. Thus, 'the veil has itself become an iconic sign of difference, but a sign reified to such an extent that its strategic use, within Western understanding, completely obscures and overrides the intentions and motivations of the actors/agents who define it' (Jiwani, 2010, p. 66). The reduction of the wearing of the veil to a strictly personal decision (chosen by the wearer) ultimately becomes the only way to consider it, precisely because of the unintelligibility of religion in public space, which does not consider religion to be a proper choice for a reasonable individual. In fact, legally, 'the dignity and equality of women constitute the two foundational pillars of most arguments in favor of the prohibition' of the garment in question (Ford, this volume). These symbolic or functional interpretations of religious gestures hold up only insofar as to be able to validate the idea that personal beliefs (those of Muslims who cover) can be metamorphosed into something that can be legally determined. The limits of the European social and political imagination vis-à-vis all that is religious are also made manifest in the inability to consider the physical and material realities of daily piety and worship – things like symbols, but also ideas such as forms of engagement – their perspective having been shortened considerably by the secular liberal gaze (Bender, 2003; Lichterman, 2005; Parvez, 2011).⁴ Equally questionable is the sublimation of the term 'culture', used to define a wide range of attitudes, preferences and claims, a lot of which relate back, at least in part, to religion. Religious requirements are a matter of conscience, experienced as binding ethical commitments, and yet, from the perspective of European modernity, religion is understood only in terms of choice, an embodiment of personal freedom, with the believer free to choose from amongst a host of established propositions that he or she may also freely interpret. Just as Mahmood has highlighted, this manner of conceiving religion has become as normative as the relegation of the question of race to the sphere of pure biology.⁵

Moreover, the lived experience of the women underneath full veils and headscarves is for instance only being heard when framed as the result of a 'free choice'. This further illustrates the dead end secular societies face when having to rely on liberal language or rights to make sense (and then to defend Muslim women, 'saving' them from being excluded from societies) of pious citizens. Their voices only become audible when they comply with the rhetoric of rational free choice. As all other value-driven behaviors, in particular linked with identity affiliation, religious signs and ways of life are unstable and inconsistent. They vary all the time. From the insider perspective (here the believers), as well what outsiders are able to see. In the 2011 petition filed at the European Court of Human Rights against France by a French national who wears the niqab, the woman's case was set up around the fact and circumstance of her wearing it freely, as a personal choice, not coerced by anyone else. But the judges may have a difficult task before them. In fact, the plaintiff explained at length that she does not wear her niqab consistently, but only after assessing, according to her own criteria, the suitability of doing so, and this in both public and private situations. The filing of the request was motivated by her desire to continue to be able wear the niqab 'according to when she so chooses, particularly when the spiritual mood dictates' (*S.A.S. petition v. France*, n. 4385/11). We can clearly see the affirmation and concretization of the idea of freedom of thought, supported by the notion of a 'spiritual mood', which the plaintiff explains thus: 'the goal is not to create a

nuisance for others, but to enjoy accord with oneself'. This intersection between legal frames, spiritual realm, and notions of privacy and publicization relates very much to the sensual and emotional, to the private experience of the individual, just as much part of the public sphere as the collective experience. Behiery's analysis of the scopic regimes looks at the way two historical and cultural processes make possible or not to reconcile individual (citizen) belonging to a democratic society, and the freedom everyone has to decide individually to 'get out'/'exit' the societal and political world *because* of religion.⁶ The possibility for a liberal secularism is in fact based on the exercise of freedom of thought: everyone may believe (or not) what one wishes in the private sphere, without suffering any public consequences. Public space is therefore seen as a sphere that exists through cultural consensus and that enjoys priority over individual liberties – all while clinging to the idea that religious practice can be reduced to private preference and personal choice. It becomes therefore a 'third space', that is, a space where belonging to the political community and citizenship are realized (Amiraux & Koussens, [forthcoming](#)).

Understanding religion as lived but also as potentially inconsistent is a theoretical imperative that all authors implicitly point to. While this may appeal to ethnographers and sociologists of culture as a potentially rich endeavour, it may also pose quite a challenge for scholars who tend to associate religion exclusively with institutional affiliation and rituals, or who stick to the idea that religion exists first hand in what is said about it. 'Rather than normalizing religion as one identity point among many, or as a complex category that often defies easy characterization, it becomes fetishized such as the identification of religion becomes the beginning point from which social relations are enacted and from which institutional policy is developed' (Beaman, 2013, p. 147). Insiders are expected to perform accordingly while outsiders expect specific behaviours to be related to clearly identified religious groups. Indeed, the margin for manoeuvre grows ever smaller. As a sociologist, I suggest thinking for a moment about the implication of this 'tension between the discursive and the phenomenological' as Tavory and Winchester have labelled it (2012, p. 353) in relation with the issue of illegal covering. As the plaintiff in the above-mentioned case pending at the ECHR mentioned when referring to her 'spiritual mood', religion is first hand an experience in which the presence of the divine is felt by people, intimately. There are no visible and specific practices, including covering for women in our case studies, that act as sites for such an experience, however routine these acts have become after a certain period of time, they cannot refer to the experience of the presence of the divine?

Certain acts of physical violence against women wearing a burqa or niqab that have started to pop up in Sweden and France over summer 2013 have been moderately publicized, usually by anti-racist groups. The public discretion surrounding these acts of violence, these manifestations of disapproval of an individual's appearance in public, through for example tearing the veil off her head, can be filed under the same silence that falls around the insults, threats, harassments and molestations women have reported experiencing on public transport, whether they are Muslim or not, wearing the burqa or not. These acts of physical aggression are easily overlooked, or at best seen as anecdotal, dwarfed as they are by the public drama of the 'battle' for secularism and all its players: its advocates, its flagship institutions and, by proxy, the national history of the countries at stake itself. It is therefore not surprising to see, in keeping with the same idea, the little interest shown in the several young Muslim girls, who, in trying to comply with the letter of the March 2004 law, made the choice to shave their heads, thus radically endorsing the

idea of the ‘mask of citizenship’ model of equality (Bilsky, 2009). Two paradoxes emerge in correlation with this last idea. First, the liberal democratic context proposes recognition as both the fundamental condition for co-existence and a certain form of social visibility, gaining legitimacy at the expense of those others who are publicly disavowed. Second, there is the question of which forms of activism and public action (including legislative and juridical) would be most likely, today, to make the connection between the prohibition of the wearing of religious garments and the more general situation of the Muslim population in the country. It is to this line of reasoning that I wish now to turn.

3. The role of law

In this last section of the concluding remarks, I wish to elaborate on a last transversal dimension offered by the contributors, which, by focusing on the juridical aspect and legal mechanisms of the bans, expands their analysis so that what seems to be an anecdotal social issue related to cultural differences can be related to the general question of equality. In this context, what is the law’s capacity to help and how can it be amended or improved for the sake of Muslim women among other groups and individuals?

From a legal perspective, religion enjoys, on the one hand, constitutional protection under the right to freedom of religion in the various states studied in the contributions to this special issue, and, on the other, protection under the right to equal treatment, whether through the reasonable accommodation perspective in Canada or the anti-discrimination provisions framework in the European Union.⁷ Beside religion and gender for instance, racial and ethnic origins are also protected under several provisions relating to equality, especially in terms of protection against discrimination, at both national and international levels. The possibility for a liberal secularism is also based on the exercise of freedom of thought: everyone may believe (or not) what one wishes in the private sphere, without suffering any public consequences for these private choices. Public space is therefore seen as a sphere that exists through cultural consensus and that enjoys priority over individual liberties – all while clinging to the idea that religious practice can be reduced to private preference and personal choice. It becomes therefore a ‘third space’, that is, a space where belonging to the political community and citizenship are realized.

The centrality of law and legal regulation in the Western regulation of religious diversity has been extensively studied over the last two decades, both in European and North American contexts. This interest has been expressed at different levels, from studies looking at governance and institutional settings (in particular looking at the role of secularism), but also at internal juridical issues (McGoldrick, 2006). In this perspective, research has been mostly looking at the effects of the alleged tensions between multiculturalism and cultural/religious rights of minorities, in particular when dealing with Muslim women (Meer & Modood, 2009; Mookherjee, 2009; Mullally, 2011; Shachar, 2001). Comparatively, work conducted on discrimination on the basis of religious belonging, what Adida, Laitin, & Valfort (2010) have labelled ‘the Islam penalty’ are still rare (Bribosia, Ringelheim & Rorive, 2010; Forstenlechner & Al-Waqfi, 2010). This type of discrimination is nevertheless unanimously condemned, both within the internal laws of the European Union member states and in international law. In fact, the analyses related to the place of the religious factor (whether the belonging is real or supposed) in the issue of discrimination against the Muslim population confront us with a categorical difficulty (distinguishing religion of origin from ethnicity as, for example, in the British context) and with a comparative problem: ‘The choice of comparing the

religious with the non-religious barely makes any sense: comparing someone wearing Bermuda shorts in a workplace with an employee in Salafist dress is verging on complete illogic, since the alleged discrimination is not infringing on the same individual right... Comparing the presumed victim of religious discrimination to someone who merely comes from a numerical or cultural minority sect, often contributes to negating the reality of discrimination itself' (Calvès, 2011, 16).

Most cases of discrimination are treated through the lens of an infringement on the right to religious liberty, without making any real link between prohibition movements (of the headscarf, of the full veil) and the larger situation of Muslims or women in Europe, as Ford and Beaman invite us to do in this issue. Their proposal supports a more general invitation by researchers in the social sciences to situate the episodes related to the illegal covering saga within a wider perspective, some would say here into a more global 'narrative', by stripping them of everything that makes them exotic and incomparable with other situations of patently unequal treatments. In the case of women, it means to question the conditions under which agency is attributed to them in general, not only to religious and pious individuals. In the case of Muslim women, it means connecting the law banning the hijab and the niqab to the way they may affect the position of Muslims in society at large. We should take a few steps back from seeing civil rights laws as individual rights and look at the wider frame encompassing the integration of minority groups and members of these groups, says Ford. That is, putting the headscarf ban in the context of its broader signification for the integration of the individuals who wear it and the minority that is associated with it.⁸ This is what Korteweg suggests with his impossible project of levying a 'headrag tax' on women wearing the headscarf as a 'levy for their pollution of the public'. A tax that places a cost on wearing the headscarf has neither the same purpose, nor the same cost as prohibiting it from being worn entirely.

In that context, Ford and Leckey, two legal scholars, both interrogate the productiveness of legal interventions in regulating what are considered to be deviant and reprehensible behaviours, the former by inviting us to reflect on the problem of 'joint costs', i.e. suggesting we look at the ban without losing sight of the broader issue of integration and by remembering the hidden costs of accommodation (see Fournier, this volume); the latter by following up on the work of certain legal categorizations outside of the juridical arena. For both of them, the ban on the hijab is not some ordinary regulation. These legislations qualify specific behaviours and codes of conduct as either excessive or reasonable with rather unexpected and worrisome consequences. The impact these categorizations have on the way a central principle, such as neutrality, is implemented is a good illustration of those consequences. Laws passed to ban specific religious coverings end up encouraging a misinterpretation of neutrality by shifting their burden from the State to the individual citizen. Indeed, secularism relies on two principles to achieve equality among citizens and among various religions: State neutrality towards religions, and the separation of Church and State. These institutional structures result from a democratic process founded on the recognition of the sovereignty of the people. A secular state is defined by the fact that its legislative and judicial processes are out of religious control and that its actions and decisions are neutral towards all religions (Kuru, 2009, p. 7). Neutrality of the State must be ensured in order to guarantee and enable freedom of conscience. In France, when entering State schools and taking off their headscarves, young Muslim girls are being asked to perform neutrality, which is a significant distortion of the historical meaning of the principle as it refers to the State, not to the citizens. This perspective places the headscarf and full veil ban in connection with a broader

constellation of situations in which the question of participation (in market life and in civic life) emerge as main concerns for most actors. Indeed, to take the French context as an example, the March 2004 law that was specifically addressing State schools, gave rise, probably through some kind of capillarity, to a wild and uncontrolled implementation of similar prohibitions in sites where they should not have been present (the bride being asked to take her headscarf off so that the mayor could proceed and properly identify her before the wedding; refusal to give naturalization certificate to Muslim women wearing headscarves in certain city halls; not allowing mothers wearing the headscarf to help teachers during extra curricular school activities; implementation of the law during summer 2004 in *Centres de loisirs*, that is, places where kids are sent to during holidays when the parents still work, etc).

Similar deviating pathways can be observed in Beaman's contribution where, as a sociologist, she looks at the hidden costs of prohibition. She in particular illustrates how narratives become constructed in ways that render them seemingly unable to be linked to each other at all. For instance what she calls the 'fine-tuning of feminism that created sensitivity to difference' is absent from a systematic association between hijab or niqab-wearing woman and the threat they are said to pose to the nation's values. While this link inevitably resorts to feminism for assistance, it obliterates other dimensions of the broader problem of women's inequality, in particular the role of paternalism and the fact that gender equality law has failed to transmute formal equality into substantive equality. If what matters is avoiding the domination of individuals, then the conditions under which autonomy is granted to women must be actually assessed. Is agency granted to every woman? When dealing with girls at school, the situation becomes even trickier for, to some extent, State paternalism regarding religious dress code upholds the autonomy of the individual with the support of a 'republican philosophy of education' in which the state is considered the key to and guarantor of the ideal of autonomy. As I mentioned earlier about neutrality and the shift of its burden from the State to the citizen, 'Within schools, pupils do not only learn about autonomy, they are expected to practice' (Laborde, 2012, p. 400). But, as Laborde explains, autonomy is more an instrument to achieving a good life rather than an end per se, and by mixing up the meaning of autonomy as it is applied to girls wearing the headscarf and later with women wearing the full veil, the state promotes a certain type of religious freedom, and not a generic one.

4. What's next?

As a conclusion to the brief presentation of transversal issues covered by the contributors to this special issue, I am tempted to follow Beaman's suggestion to take on the conflicting normative assessment of women's attire by judges as an invitation to think of strategic action that might reconstitute women's equality in new ways, things that echo what Malik suggested some years ago when dealing with the issue of anti-discrimination frameworks that are applied to religious women by calling for a definition of a substantive 'complex equality' (2008). What are the political ways out of the infinite saga of the illegal covering movement?

On the whole, these bans seem to generate as much consensus among the politicians as they do in the court of public opinion.⁹ They create political consensus. Politics are indeed never far from these discussions, notwithstanding their legal technicalities and populist imaginaries. As we are sending this special issue to the publisher for its final step of production (August 2013), Quebec, France and probably other European contexts in

the course of the 2014 European parliamentary elections or other national and local ones are bubbling over with nauseating, regurgitated discussions about ‘national values’ and the necessity of mapping secularism (*‘charte de la laïcité’*). The rich contributions that compose this special issue show that theoretical input can still bring us scholars to dig further into the complexity of the topic. As citizens though, this stimulation may cause some discomfort, especially as it indicates that the saga does not end with legislation. The terms of the discussions are far from gentle (pollution, impurity, incapacity) and can lead to other concrete actions, such as in August 2013 when the city of Bremgarten in Switzerland, close to Zurich, decided to restrict asylum seekers to a local army barracks, forbidding them from accessing specific public spaces (swimming pools and sport facilities mainly).

This is probably the strongest conclusion of this special issue: the ‘illegal covering’ phenomena does not take place in a void, isolated from other manifestations of unequal treatment. The discourse on the integration of Muslim minorities in secular Western contexts has to be linked with the constellation of elements feeding the general perception that certain groups of citizens or citizens-to-be are not equipped with the right cultural competencies and can therefore not perform their roles properly, neither under the feminist, nor the civil rights, not the secular gaze. Many examples can be quoted here such as the more systematic recourse to language tests or to cultural training. Working on the centrality of the questions in the ‘encoding’ of very nationalistic, and to a certain extent, racist, arguments into ‘acceptable’ discourse is a central milestone and, I would suggest, the first one we, as scholars, should try to address theoretically with more accuracy and depth. The decent grammar of that phrase ‘religious difference’, in connection with a national defence of gender equality and women’s emancipation – feminism is thus enmeshed within the project of nation and national values – is of clear immediate electoral gain for any parties running for local, national and European elections. It touches upon many related implicit connections between race, culture and religion that need to come out of the social sciences closet.

Notes

1. In addition to the ban on wearing the headscarf and full veil in public, which is the topic of this special issue, we may also cite and recall the Danish caricatures, the laws on blasphemy, the Rushdie affair, religious tribunals and family law, the wearing of the Islamic veil in public schools, the construction of minarets, but also, beyond the Muslim minority, questions of polygamy, new religious movements, public financing of religious schools, sects, abortion, etc.
2. We are alluding to the ‘multiculturalism gone wild’ discourse that has become a key issue in the European Union since 2001, especially in Great Britain and the Netherlands. This trend of equating multiculturalism with a series of problems, assumingly related to religious diversity, somehow reflects the impact of 9/11 (Lentin & Titley, 2010).
3. The concept of ‘capital’ here refers to the idea of visibility as *property*: something some have while others do not.
4. The same reasoning applies to other groups of believers, when it comes to polygamous practices or other sectarian differences.
5. See Beaman quoting Mayanthi L. Fernando (2010) about how secular assumptions about freedom, authority, choice and obligation preclude public intelligibility of particular kinds of religiosity.
6. This recalls the civil death of the women that, under the Ancien Regime rule, entered cloisters and stopped going public, as an illustration of the long historical process that led to the stabilization of a ‘Western’ visual culture sustaining a particular regime of citizenship (Saint-Bonnet, 2012).

7. Directive 2000/78/CE of 27 November 2000 establishes a framework for equal treatment in employment and occupation.
8. *En passant*, while the discussions were intense and passionate during the preparation of the French law prohibiting conspicuous religious signs in public schools (Law n. 2004-228 of 15 March), its implementation as of September 2004 did not create any 'specific' problem (as for instance massive collective reactions by pupils or their parents). It resulted in 47 exclusions from State schools out of roughly 5–6 million pupils potentially going to secondary public schools.
9. On 8 July 2010, the Pew Research Center published the results of a survey (*Global Attitudes Project*) that indicated that the prohibition of the wearing of the full veil in Western Europe enjoys massive popular support. The respondents declared themselves overwhelmingly in favor of this ban in public spaces (schools, hospitals, buildings, government offices): in France (82%), in Germany (71%), in Great Britain (62%) and in Spain (59%). In contrast, most respondents in the US (65%) said they were opposed to such a ban (Pew Research Centre, 2010).

References

- Adida, C., Laitin, D., & Valfort, M.-A. (2010). *Les Français musulmans sont-ils discriminés dans leur propre pays? Une étude expérimentale sur le marché du travail* [Are French Muslims discriminated against in their own country? An experimental study of the job market]. New York and Paris: French American Foundation/Sciences Po. Retrieved from <http://equality.frenchamerican.org/publications/are-french-muslims-discriminated-against-their-own-country-experimental-study-job-marke>
- Amiriaux, V. (forthcoming). Le port de la burqa en Europe: comment la « religion » des uns est devenue l'affaire publique des autres [Burqas in Europe: How the religion of some became the public concern of others]. In D. Koussens & O. Roy (Eds.), *Quand la burqa passe à l'ouest: enjeux éthiques, politiques et juridiques* [Burqas moving to the West: Ethical, political and juridical challenges]. Rennes: Presses universitaires de Rennes.
- Amiriaux, V., & Koussens, D. (forthcoming). From principle to narratives: Unveiling French secularism. In G. D'Amato & F. Colom (Eds.), *Religions in the public sphere: Accommodating religious diversity in the post-secular era*. RECODE working papers. Retrieved from <http://www.recode.info/>
- At Home In Europe. (2011). *Muslims in Paris*. London: Open Society Foundations.
- Beaman, L. G. (2013). The will to religion: Obligatory religious citizenship. *Critical Research on Religion*, 1(2), 141–157. doi:10.1177/2050303213490040
- Bender, C. (2003). *Heaven's kitchen: Living religion at god's love we deliver*. Chicago, IL: University of Chicago.
- Benhabib, L. (2002). *The claims of culture: Equality and diversity in the global era*. Princeton, NJ: Princeton University Press.
- Bilsky, L. (2009). Muslim headscarves in France and army uniforms in Israel: A comparative study of citizenship as mask. *Patterns of Prejudice*, 43, 287–311. doi:10.1080/00313220903109193
- Boëtsch, G., & Ferrié, J.-N. (2001). Du daguerréotype au stéréotype: Typification scientifique et typification du sens commun dans la photographie coloniale [From the daguerreotype to the stereotype: Scientific typification and common sense typification in the colonial photography]. *Hermès*, 30, 161–167.
- Bribosia, E., Ringelheim, J., & Rorive, I. (2010). Reasonable accommodation for religious minorities: A promising concept for European Antidiscrimination Law? *Maastricht Journal of European and Comparative Law*, 17, 137–161.
- Claverie, E. (2003). *Les Guerres de la Vierge: Anthropologie des apparitions* [Virgin Mary's wars. An anthropology of apparitions]. Paris: Gallimard.
- Calvès, G. (2011). Introduction. Les discriminations fondées sur la religion: Quelques remarques sceptiques [Introduction. Religious discrimination: Some skeptical remarks]. In É. Lambert Abdelgawad & T. Rambaud (Eds.), *Analyse comparée des discriminations religieuses en Europe* [Compared analysis of religious discriminations in Europe]. (pp. 9–23). Paris: Société de législation comparée.

- Dewey, J. (1927). *The public and its problems*. Chicago, IL: Swallow.
- Fernando, M. L. (2010). Reconfiguring freedom: Muslim piety and the limits of secular law and public discourse in France. *American Ethnologist*, 37, 19–35. doi:10.1111/j.1548-1425.2010.01239.x
- Forstenlechner, I., & Al-Waqfi, M. A. (2010). 'A job interview for Mo, but none for Mohammed': Religious discrimination against immigrants in Austria and Germany. *Personnel Review*, 39, 767–784. doi:10.1108/00483481011075602
- Goffman, E. (1963). *Relations in public. Microstudies of the public order*. New York, NY: Transaction.
- Gusfield, J. (1981). *The culture of public problems. Drinking-driving and the symbolic order*. Chicago, IL: The University of Chicago Press.
- Heinich, N. (2012). *De la visibilité. Excellence et singularité en régime médiatique* [On visibility. Excellence and singularity in the context of mediatic regime]. Paris: Gallimard.
- Jiwani, Y. (2010). Doubling discourses and the veiled other: Mediations of race and gender in Canadian media. In S. Razack, M. Smith, & S. Thobani (Eds.), *States of race: Critical race feminism for the 21st century* (pp. 59–86). Toronto: Between the lines.
- Kuru, A. (2009). *Secularism and state policies toward religion*. France and Turkey, NY: Cambridge University Press.
- Laborde, C. (2012). State paternalism and religious dress code. *International Journal of Constitutional Law*, 10, 398–410. doi:10.1093/icon/mor059
- Lentin, A., & Titley, G. (2010). *The crisis of multiculturalism. Racism in a neo-liberal age*. Dublin: Zed Books.
- Lichterman, P. (2005). *Elusive togetherness: Church groups trying to bridge America's divisions*. Princeton: Princeton University Press.
- Mahmood, S. (2009). Religious reason and secular affect: An incommensurable divide? In T. Asad, J. Butler, S. Mahmood, & W. Brown (Eds.), *Is critique secular?: Blasphemy, injury, and free speech* (pp. 64–100). Berkeley, CA: Townsend Center for the Humanities, University of California.
- Malik, M. (2008). Complex equality. *Droit et Société. Revue Internationale de Théorie du Droit et de Sociologie Juridique*, 68(1), 127–152.
- McGoldrick, D. (2006). *Human rights and religion: The Islamic headscarf debate in Europe*. Oxford: Hart Publishing.
- Meer, N., & Modood, T. (2009). The multicultural state we're in: Muslims, 'multiculture' and the 'civic re-balancing' of British multiculturalism. *Political Studies*, 57(3), 473–497. doi:10.1111/j.1467-9248.2008.00745.x
- Morgan, G., & Poynting, S. (2012). *Global Islamophobia: Muslims and moral panic in the West*. Aldershot: Ashgate.
- Mullally, S. (2011). Civic integration, migrant women and the veil: At the limits of rights? *The Modern Law Review*, 74(1), 27–56. doi:10.1111/j.1468-2230.2010.00835.x
- Mookherjee, M. (2009). *Women's Rights as multicultural claims: Reconfiguring gender and diversity in political philosophy*. Edinburgh: Edinburgh University Press.
- Nussbaum, M. (2012). *The new religious intolerance: Overcoming the politics of fear in an anxious age*. Cambridge: Harvard University Press.
- Parvez, Z. F. (2011). Debating the burqa in France: The antipolitics of Islamic revival. *Qualitative Sociology*, 34, 287–312. doi:10.1007/s11133-011-9192-2
- Patrick, M. (2002). Rights and recognition. Perspectives on multicultural democracy. *Ethnicities*, 2(1), 31–51. doi:10.1177/1469682002002001521
- Pew Research Centre (2010). Retrieved from <http://www.pewglobal.org/files/pdf/pew-global-attitudes-report-on-veil-ban-july-8.pdf>
- Saint-Bonnet, F. (2012). La citoyenneté, fondement démocratique pour la loi anti-burqa. Réflexions sur la mort au monde et l'incarcération volontaire [Citizenship as democratic ground for anti-burqa law. Some reflections on civic death and voluntary incarceration]. *Jus Politicum*, 7. Retrieved from <http://www.juspoliticum.com/La-citoyennete-fondement.html>
- Shachar, A. (2001). *Multicultural jurisdictions: Cultural differences and Women's Rights*. Cambridge: Cambridge University Press.
- Tavory, I., & Winchester, D. (2012). Experiential careers: The routinization and de-routinization of religious life. *Theory and Society*, 41, 353–373. doi:10.1007/s11186-012-9170-z