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A contemporary history of Islam within the EU: a case study of France and Islamic veils

Do and if so to what extent, the 2016 bans on the burkini in
France show an alteration in the attitudes towards Muslim
women in the country?

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This paper engages in the debate on the banning of the burkini in coastal resorts in France in 2016. It uses this case study to assess whether there has been a change in attitudes towards Muslim women in the country. The findings suggest that whilst perceptions remain similar there is now more open opposition towards women wearing Islamic veils. The history of France's relationship with Islam, especially in regards to women, is used to put into perspective the 2016 bans. The differences between these prohibitions in comparison to previous laws regarding Islamic veils in France, but also the underlying similarities are analysed. Furthermore, the case study of France will be expanded EU-wide and will deliberate on the future of such restrictions to female Muslim dress.

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Introduction

The debate surrounding Islam in the EU has been growing post 9/11. It is has been even more in dispute since 2015, when boats filled with refugees fleeing Middle Eastern conflicts began to arrive on European shores. These events have thrown into contention the idea of a European identity.

With regards to this thesis, France has been chosen as a case study into the view the place Islam should hold within the setting of the EU. It will be, more specifically, the perceptions of Muslim women which shall assessed. In this context ‘veils’ can refer to all Islamic female head or face covering, from the Niqab to the Hijab. France has a long history with Islamic countries and the largest Muslim population out of all EU states. The most recent debate in France on religious attire, the burkini bans, focuses on the swimwear of adult Muslim women. The introduction of this prohibition on clothing differs greatly from any other of the previous restrictions to religious dress. They were introduced at a local level, without a vote in the National Assembly and without the judgement of a court. The bans targeted the burkini, an item designed for women to cover the hair and body of the wearer whilst swimming. It was innately different in scope from the two previous French prohibitions which will be discussed. The ‘headscarf affair’ of 2004 covered only the wearing of veils in schools and so affected girls/young women in a specific place. The 2010 ‘burqa ban’ involved veils which covered the whole face, leaving only a slit for, or a mesh over the eyes; they are items which obscure identity. The reasons given behind the bans were also different; there was not the questioning of gender equality in the burkini bans but a justification for security reasons.¹ Because of these obvious differences, in both scope and reasoning of the burkini bans to previous prohibitions, this question seeks to assess whether this is because the

¹ *Règlement de police, de sécurité et d'exploitation des plages concédées pas l'état a là commune de Villeneuve-Loubet* (2016), accessed 24/05/17 < <http://cabinet-lac.eu/wp-content/uploads/2016/08/Arr%C3%AAt%C3%A9-2016.08.05-Villeneuve-Loubet-No-2016-42-Police-et-s%C3%A9curit%C3%A9-des-plages.pdf>>.

attitude towards Muslim women in France had changed. By utilising the precludes to these prohibitions the significance of the reasons given behind the bans will be evaluated.

Although the catalyst of security, influenced by migration and terrorist attacks was important, the build-up of these views towards Islamic dress can be traced back further and to more than just security motivations. As such the given reasoning behind these prohibitions cannot always be taken at face value. If, for public security, it is necessary for Muslim women who wish to wear the burkini to either not go to a beach or pool, or dress as their non-Islamic counterparts there is a strong suggestion that their belief of modesty does not correlate with modern French society. These ideas of identity, especially the social construction of female identity are central to this debate. By assessing the history of and existing French views on religion and women more of an insight will be gained into why it was France that made the first steps into the prohibition of religious attire for Muslim women. What will be further discussed is how these bans reflect the attitude towards Islam as a whole, both in France and in the EU and why it is women who are disproportionately affected.

Literature review

There are three main points of discussion which need to be assessed in order to contextualise the clothing bans and attitudes towards Islam in the EU and specifically Muslim women in France. The first is that of the secularisation of Europe, the second is the uniqueness of France and Laïcité and lastly how these relate to Muslim women and the perception of those who wear a veil. As this thesis is a contemporary history, relevant literature will also be assessed throughout the text, as is customary in the practice of historiographical writing.

The Secularisation of Europe

Recent discussions on the place of Islam in the EU, especially within political discourse tend to focus on negative views and ostracise European Muslims. Whilst the immutability of Islamic culture in Europe is written on by some scholars the reasons behind this are not often addressed.² According to Esra Özyürek, there are two schools of thought regarding Islam in

² Sabet, A.E. (2008). *Islam and the Political: Theory, Governance and International Relations*. (London: Pluto Press)

the EU. The first of these being the ‘right wing’ idea that Europe is Christian; for this he quotes Pope Benedict XVI saying that to include Turkey in the EU would be a mistake, it would be more suited to a Muslim environment.³ The second idea is that the EU is secular and in such some practices of Islam are seen to be contrary to secular humanitarianism.⁴ This idea is furthered by Jürgen Habermas in his book ‘Europe the faltering project’, here, he dedicates one chapter to Islam in the EU, or rather uses Islam as a case study to discuss whether Europe can be constituted a ‘post-secular’ society.⁵ For a society to be a ‘post-secular’ it first has to be secular. In coming to the conclusion the EU is such and the church and state separated, he fails to point out this church was overwhelmingly Christian. So although it holds a valid argument that the EU itself is secular he does not consider the religious roots of the Union. Sometimes on discussing secularisation in Europe, Islam is not mentioned at all. Steve Bruce noted a decline in religious practices within Europe but only researched with regards to Christianity. The modernisation and industrialisation of the continent is seen here to fragment religion and move away from it, ‘secularisation is seen as a prerequisite for democracy and modernity’.⁶ This kind of statement draws a line between religious conviction and modern society, it essentially creates the narrative that Islam is not as developed. Whilst more recent discussions combine the ideas of Christianity and secularism as the creation of Europe today they tend to focus on the far right rather than a wider belief.⁷

The literature on Islam in Europe tends to focus on Europeans and uses Islam as a tool to create a community culture, either secular or religious within Europe. The secularisation and assimilation of Islam is deemed necessary for existence in European society which gives a clear backdrop to the banning of religious clothing.⁸ Whilst modern issues such as securitisation are covered by some authors such as G. Lazaridis and K. Wadia these are

Clifton, J. (2014). “I’m not anti-Muslim, I’m anti-Islam”. *Islamophobia as a members’ accomplishment in political debate on talk radio*, accessed 07/11/2016
 <https://www.researchgate.net/profile/Jonathan_Clifton/publications>

³ Özyürek, E. (2005). ‘The Politics of Cultural Unification, Secularism, and the Place of Islam in the New Europe’ *American Ethnologist*, 32, 4, p.510.

⁴ Id.

⁵ Habermas, J. Translation by Cronin, C. (2009). *Europe the faltering project*, (Cambridge), p. 59.

⁶ Bruce, S. (2010). ‘Secularisation’ in Turner, B. ed. *The new Blackwell companion to the Sociology of Religion*, (Blackwell, Malden), p.126.

Roy, O. (2006). ‘Islam in the West or Western Islam? The disconnects of religion and culture’ in *The hedgehog review*, 8 p.129.

Roy, O. Translated by Holoch, G. (2007). *Secularism confronts Islam*, (Columbia University press)

⁷ Brubaker, R. (2017). ‘Between nationalism and civilizationism: The European populist moment in comparative perspective’ in *Ethnic and Racial Studies*, pp 1-36.

⁸ Scott, J.W. (2007). *The politics of the veil*, (Princeton, Oxfordshire), p.182.

pinpointed to 9/11 and pre-existing social debates are quashed under current security problems.⁹ Even though 9/11 is often stated, research on this topic for the most part, was written before the rise of IS and the migrant crisis in Europe. These topics are essential to this thesis to assess the notions of security that were present in the bans. The burkini bans were replaced with the ‘aim of protecting order and public security’.¹⁰ What really does need to be further examined is the current climate of fear within the EU in regards to Islamic extremism and to link this with already perceived difference in culture and how this is disproportionately affecting Muslim women.

With regards to France

Laïcité is unique to France and this point will be furthered in its own chapter. In this regard France and the ‘secular-ness’ of the country are different to that of the rest of Europe. Literature on Islam in France tends to focus on it being an incompatible tradition to the values of Laïcité. For people, such as R. Kastoryano, Laïcité has not adapted to modern France but it is agreed that the concept ‘embodies the national identity’ of the country.¹¹ It is this national identity which is most prevalent in literature on the subject, from both French nationals and other writers. Yet although this idea of identity is written about, little insight is given into what this identity is and what it means for Muslims in France. Unlike the literature on Islam in Europe, within France the colonial history is given more weight.¹² Talks of North African migrants dominate the subject and the visibility of Islam is negated as the problem.¹³ However, most post 9/11 literature and French political and public discourse now pushes the securitisation. This means there is a clear difference between pre and post 9/11 texts. Whilst the traditional discrepancies were present in the original discussions on veils, although they were shown as an afterthought to gender equality, more recently, both of these debates have been overtaken by a preoccupation with security.

⁹ Lazaridis, G. & Wadia, K. eds. (2015). *The securitisation of migration in the EU. Debates since 9/11* (Palgrave Macmillan)

¹⁰ [Translation] *Le port de la tenue vestimentaire dénommée "burkini" sur les plages de Villeneuve-Loubet* (August 2016), accessed 11/11/2016 < <http://nice.tribunal-administratif.fr/A-savoir/Communiqués/Le-port-de-la-tenue-vestimentaire-dénomme-burkini-sur-les-plages-de-Villeneuve-Loubet>>

¹¹ Kastoryano, R. (2006). ‘French secularism and Islam’ in Modood, T. Traindafyllidou, A. & Zapata-Barrero, R. eds. (2006). *Multiculturalism, Muslims and Citizenship. A European approach*, (Routledge, London), p.60.

¹² Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, (Cornell, London), p.208.

¹³ Deltombe, T. (2005). *L’islam imaginaire. La construction médiatique de l’islamophobie en France, 1975-2005*, (La Découverte, Paris), p. 45.

With regards to women and the choice to wear the veil

As just mentioned, secularisation is seen as the modern form of society. In such religion and traditions that relate to it are old fashioned. In one paper, 'Sexularisation', Joan Scott writes in detail of women's place in the secularisation of Europe. She writes that whilst the assumption of secularism is that it gives freedom to women, this is not the case.¹⁴ Instead secularisation, as a political entity, pushed women further from a place of agency. In mentioning France and la révolution she explains that in the absence of religion women's inferiority was explained as a natural phenomenon.¹⁵ However, there is still a gap between 'European' women and 'Muslim' women. Although some authors have touched upon the subject of 'feminists' against the veil, they criticise it as a 'form of misogyny', the overwhelming objections to such clothing come from men.¹⁶ This can be intrinsically linked with the burkini bans as French Muslim women were not consulted on the decisions. Aside from the lack of Muslims in power, the Christian domination of what constitutes secularism is lightly skipped over. In fact, aside from Scott there is very little popular literature on the subject of Muslim women and the veil. One book, edited by M. Yamani, 'Feminism and Islam, legal and literary perspectives', a collection of essays by female Muslim writers, discusses the place women have in Islamic society. However, although useful in giving the view of Muslim women, which is sorely missing from most discussions, it focusses on Islamic countries so does not show the counter play between Islam and the EU. This debate over the wearing of the veil is not new, especially within the French context, but it tends to stay within the sphere of political and public discourse. Writers such as Todd Shepard do draw links between the original issues between France and the wearing of veils but more current literature, post Burqa ban, focus on Islam as an entity, rather than on discrepancies towards Muslim women. Yet it is the sexuality of women which has been thrown into the public forum during these bans, the notion that being too covered-up is un-feminine. This is rarely mentioned in literature, it is a taboo topic to mention the (male) perception of what women should wear, yet is clearly very important to this debate.

¹⁴ Scott, J. W. (2009). *Sexularism*, accessed 12/03/17
<http://cadmus.eui.eu/bitstream/handle/1814/11553/RSCAS_DL_2009_01.pdf?sequence=1&isAllowed=y>, p.1.

¹⁵ Scott, J. W. (2009). *Sexularism*, p. 4.

¹⁶ Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, (Cornell, London), p. 189.

Methodology and theory

This thesis uses qualitative research. Although some statistics are used as evidence, quantitative data would not be sufficient to assess the reasons behind the views it might show or be able to contextualise them into the larger debate. The main methodological practice used is that of Contemporary history.

As this thesis seeks to find further reasoning behind recent laws prohibiting religious attire, it is important to look into the history of the attitudes surrounding them. This is why contemporary history was chosen: it is a history that ‘ends in the present’ and that seeks ‘to identify the forces which set the new trends in motion’.¹⁷ If we focus on the most recent bans on the burkini, because of the major differences between this and other bans and the different reasons given behind them, it would be difficult to pinpoint underlying reasons without looking back at the history of such prohibitions. Traditionally, the studying of the immediate past is often ‘sparked by a specific crisis’ such as the Russian revolution or the cold war.¹⁸ This creates an interest in finding out the reasons behind such events. In regards to this thesis, the ‘crisis’ would be that of the increase in demands for bans, and the already emplaced laws affecting Muslim women’s right to choose their clothing. Although Muslim women themselves acknowledge that there are those who are pressured into wearing veils, it does not mean this is the case for all wearers.¹⁹

Contemporary history is not a new practice, it gained most notoriety during the 1960s. Since then it has gained in popularity because of the many fast changing events and the will to understand them.²⁰ It is often criticised for its European centred view on the world, but as this thesis is EU centred, it is not a criticism that will affect the validity of my findings.²¹ The study of contemporary history has no specific timeframe, it is flexible. Because of this, it fits perfectly with my research design which extends from the early twentieth century until the present day with no set beginning or end. It also encompasses more of a theoretical and political nature, and steps closer to social science than history in its conventional form.²² As

¹⁷ Thane, P. (2015). ‘Contemporary History’ in *International Encyclopaedia of the Social & Behavioural Sciences*, 2.4, p.762.

Barracough, G. (1964). *An introduction to Contemporary History*, (Basic books inc, New York) , p.17.

¹⁸ Thane, P. (2015). ‘Contemporary History’, p.763.

¹⁹ Karmi, G. (1997). ‘Women, Islam and Patriachalism’ in M. Yamani ed. (1997) *Feminism and Islam legal and literary perspectives* (Garnet Publishing, UK), p.69.

²⁰ Thane, P. (2015). ‘Contemporary History’, pp.763-764.

²¹ Barracough, G. (1964). *An introduction to Contemporary History*, pp.22-23.

²² Thane, P. (2015). ‘Contemporary History’, p.766.

this topic is highly political and linked to the social structures in our society, by incorporating these elements into its history more insight is given into its *raison d'être*. It allows me to understand all the dimensions surrounding the attitudes towards Islam in Europe, both recent and past and view previous events from the vantage point of seeing how they have now progressed.

Within the design of contemporary history, discourse analysis is used when assessing the sources to find further meanings. The media plays an important role in the material used by contemporary historians and as such the study of the linguistics is important to this research which relies heavily on news, reports and speeches.²³ There is not simply one design to discourse analysis. Here I will follow critical discourse analysis (CDA), a conception of Norman Fairclough. CDA identifies that discourse cannot be looked at in isolation; instead it shows the interplay between discourse and its surrounding context.²⁴ This allows for the deeper analysis of texts or speech and a greater understanding the environment in which they were said or written. It is a cross disciplinary method - much like the study of International Relations itself, which encompasses 'linguistics, politics, sociology' among other aspects.²⁵

Another detail which sets CDA apart is that it is normative. 'It focuses on what is wrong with a society' and its current ideologies and power relations.²⁶ It therefore allows me to assess the current European, specifically, French norms and create a critical social analysis. CDA is not just descriptive, as its name suggests it requires a critique, and also suggestions on the way to change the social structures critiqued.²⁷ It is for these reasons I will use CDA rather than simple discourse analysis. As this topic is about gender equality and religion, a lot often goes unsaid or is omitted from the debate. Therefore it is not just the language I will study, but the context, the history and underlying causes.

Although traditionally history and theory have not always been the closest allies, the theoretical framework of feminism will be used here.²⁸ The bans on religious attire were stimulated by and disproportionately affect Muslim women. Therefore it seems only natural to assess the situation from a feminist perspective and to analyse why it has been possible to restrict women's right to choose their dress. Feminism too often is given bad press. It is

²³ Thane, P. (2015). 'Contemporary History', p.767.

²⁴ Fairclough, N. (2013). *Critical Discourse Analysis: The Critical Study of Language*, (Routledge), pp.4-5.

²⁵ Ibid, p.4.

²⁶ Ibid, pp.7-8.

²⁷ Ibid, pp.8-11.

²⁸ Fay, B. Pomper, P. & Vann, R. T. eds. (1998). *History and Contemporary readings*, (Blackwell, UK), p.1.

branded as man-hating or women wanting more than men, literature written by women about women's issues is labelled feminist before anything else.²⁹ The reality is feminism is about trying to demolish the institutionalised inequalities within our societies which stretch even into the legal practice; 'it is a methodological expression of women's situation'.³⁰ Within the context of this thesis, the western desired sexuality of women is assessed, alongside the legal aspects and the lack of representation of women in political decision making, especially when it concerns their rights. By using feminist theory, especially legal theory, the 'state as a gender hierarchy' is analysed.³¹ As both laws and court cases are used to express the main issues, it is important to acknowledge the male domination in this field. Elizabeth Beaumont in 2016 said that cases regarding women's rights contain 'superficial judgments, rhetoric, or commitments that result in ignoring, legitimating, and perpetuating patterns of gender hierarchy'.³²

Within the context of prohibitions on Muslim women's dress, there are links to 'historic inequalities' and the 'stereotypical male perspective'.³³ Feminist theory helps to understand how ideas of sexuality based on 'male control over women's sexuality' are normalised.³⁴ It helps to understand that even when required by law, or by the desire to avoid discrimination, discrimination still occurs.³⁵ Feminist law would require 'the affected parties themselves conduct public discussions in which they articulate their needs, interpret their rights, and take responsibility for the law making process about issues that affect them'.³⁶ This was not present in the researched prohibitions. By looking at them from a feminist perspective what could have been done instead is more obvious. Feminist theory links with discourse analysis and the differences between the language used by men and women. In political forums such as parliament, the dominant male speaking style is used to speak over women's which profits men in policy discussions.³⁷ There are the ideas of intersectional feminism which are most

²⁹ Bottomley, A. (2004). 'Shock to Thought: An Encounter (of a Third Kind) with Legal Feminism' in *Feminist Legal Studies*, 12.1.

³⁰ MacKinnon, C.A. (1983). 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence' in *Signs*, 8.4, p.637.

³¹ Ibid, p.643.

³² Beaumont, E. (2016). 'Gender Justice V. The "Invisible Hand" of Gender Bias in Law and Society' in *Hypatia* 31.3, p.670.

³³ Ibid, p.676.

³⁴ MacKinnon, C.A. (1983). 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence', p.644.

³⁵ Beaumont, E. (2016). 'Gender Justice v. The "Invisible Hand" of Gender Bias in Law and Society', p.673.

³⁶ Sorial, S. (2011). 'Habermas, Feminism, and Law: Beyond Equality and Difference?*' in *Ratio Juris*. 24. 1, p.31.

³⁷ Sorial, S. (2011). 'Habermas, Feminism, and Law: Beyond Equality and Difference?*' in *Ratio Juris*. 24. 1, p.34.

important in regards to the rights of Muslim women. Muslim female writers assess the notion that western ideas of feminism do not fit for all women.³⁸ This is a useful tool in understanding how gender equality and the presentation of feminism were used in the enactments of the bans. Therefore by studying these bans through a feminist theoretical perspective, the underlying inequalities in society and traditional discriminations, together with the institutionalised male domination of legal and political practices can be given weight alongside the reasons that were given for enacting the prohibitions.

A brief history of Laïcité

Although Islam in the EU as a whole will be discussed, this thesis focuses on France. Therefore it is necessary to acknowledge the irregularity of the country in regards to religious practice.

Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'État is the basis of France's stance on religion and the anomaly which sets France apart from other secular states. France is not secular; it is Laïque. Whilst secularism is a separation of church and state, France's version is in its own category.³⁹ The law of 1905 does not specifically mention the word Laïcité; it was not until 1946 and the IVe République that France as a Laïque state appeared written in French law.⁴⁰ The main difference between France's ideal of a separation of the church from the state, which scholars agree on, is the focus on identity and the idea of being French before being a religion. Michael Troper wrote that the difference in France is that the state 'has the right and the duty to create and reinforce social cohesion and, thus, to contribute to the forging of citizenship'.⁴¹ Kastoryano agrees that Laïcité is 'ambiguous about the boundaries between culture and religion'.⁴²

Yet what is obvious in French secularism is the tie to the country's religious past. The republic was 'constructed in opposition to the Catholic church'; it began as a desire to put an

³⁸ Yamani, M. ed. (1997). *Feminism and Islam legal and literary perspectives*, (Garnet Publishing, UK)

³⁹ Troper, M. (2000). 'French secularism or Laïcité' in *Cardozo Law Review*, 21, p.1271.

⁴⁰ *Constitution de 1946, IVe République* (1946), accessed 12/06/17 < <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-de-1946-ive-republique.5109.html>>

⁴¹ Troper, M. (2000). 'French secularism or Laïcité', p.1268.

⁴² Kastoryano, R. (2006). 'French secularism and Islam', p.61.

end to the religious conflicts that plagued the country.⁴³ The separation of church and state can be seen as heavily influenced by ‘l’affaire Dreyfus’. Here, French Jewish Captain Dreyfus was wrongly accused of passing secrets to Germany, in a clearly anti-Semitic episode.⁴⁴ The event ‘merely revealed with disturbing clarity the division’ within France and the influence Catholicism still had.⁴⁵ The affair can be seen as a catalyst that brought public attention to the religious division and helped to bring about the re-writing of the existing secularising laws.⁴⁶ Because of this, Laïcité was introduced largely as a result of clashes between Catholicism, Protestantism and Judaism and although there were discriminatory rules that affected Muslims, these for the most part were in colonies rather than the Republic. As a former colonial power over large parts of North Africa, France now has the largest Muslim population of all EU countries. The Stasi Commission *de réflexion sur l’application du principe de Laïcité dans la république*, which was created alongside the discussion on the headscarf in schools in 2003, stated, Laïcité is the neutrality of the state in public.⁴⁷ It is seen to be ‘in a position of superiority’ over other religions and is the foundation of France as a modern state after its revolutionary past.⁴⁸

As Laïcité is so rooted into the history of the country and the identity of its citizens, the religious environment is seen as being ‘challenged from above by European integration’.⁴⁹ In the Stasi Commission it is explained that other religions have adapted and made the effort to conform to Laïcité.⁵⁰ It makes the assumption that Islam too should ‘adapt’ in order to be neutral in public spaces as is required. The question that remains is whether the problem for Laïcité is Islam or whether it is all religions. Olivier Roy believes that ‘there is in French Laïcité a specific fear of Islam’ and it links to the influx of Muslims from North Africa and the idea of seeking to ‘de-Islamize immigration or, on the contrary, to reject immigration’.⁵¹

⁴³ Roy, O. translated by Holoch, G. (2007). *Secularism confronts Islam* (Columbia University press), p.18.

Troper, M. (2000). ‘French secularism or Laïcité’ in *Cardozo Law Review* 21, p.1271.

⁴⁴ Larkin, M. (1974). *Church and State after the Dreyfus Affair*, (MacMillan, London), p.72.

⁴⁵ *Ibid*, p.63.

⁴⁶ *Ibid*, pp63-64.

⁴⁷ [Translation] Stasi, B. (2003). *Commission de réflexion sur l’application du principe de Laïcité dans la république*, accessed 03/05/2017 < <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/034000725.pdf>,>,p.16.

⁴⁸ Troper, M. (2000). ‘French secularism or Laïcité’, p.1271.

⁴⁹ Roy, O. (2007). *Secularism confronts Islam*, (Columbia University press), p.16.

⁵⁰ [Translation] Stasi, B. (2003). *Commission de réflexion sur l’application du principe de Laïcité dans la république*, p.16.

⁵¹ Roy, O. (2007). *Secularism confronts Islam*, (Columbia University press), p.33.

As Islam has a strong visible and community culture and Laïcité is seen as the defender of and inherent to French identity, Islam is seen as incompatible to ‘Frenchness’.⁵²

The main theme running through this thesis is gender equality - it is Muslim women who bear the brunt of new laws inciting Laïcité. It is therefore important to examine how secularism and women’s rights fit together in France. The French revolutionaries were not adamant fighters for equality; in fact they banned women from all political meetings.⁵³ Women and religion were both assigned to the private sphere and they were not viewed as political entities.⁵⁴ The new Laïque secularism carried on in the same manner and said that women were domestic and still inherently sexual.⁵⁵ Although secularism is seen as a champion of equality, this is not necessarily the case.⁵⁶ Throughout the next chapters the utilisation of gender equality in the French battle with veils will be further explored, ‘it is as if the arrival of secularism had solved the problem of sexual difference’ and by removing women’s veils in order to be religiously neutral gender bias would be eliminated.⁵⁷ The assumption secularism gives freedom to women needs to be assessed because it has always and ‘still is- troubled by sexual difference’.⁵⁸ This can be viewed in the Laïcité of France which is so clearly troubled by the attire of religious women.

The following chapters will advance on the roles Laïcité and gender equality have played in France’s ongoing battle with Muslim women’s dress. Laïcité is an overtly French concept and one which sets France apart from other EU countries. It is because it has a strong conception of French citizenship that it is difficult to expand, exactly, the findings to here to the rest of the EU. However, as will be advanced in the final section, where France has led on this crusade against the veil, other countries have slowly followed or called for similar measures.

⁵² Roy, O. (2007). *Secularism confronts Islam*, (Columbia University press), p.31.

⁵³ Scott, J.W. (2009). *Sexularism*, p.4.

⁵⁴ Id.

⁵⁵ Ibid, p.8.

⁵⁶ Brubaker, R. (2017). ‘Between nationalism and civilizationism: the European populist moment in comparative perspective’ in *Ethnic and Racial Studies*, 40.8. p.12.

⁵⁷ Scott, J.W. (2009). *Sexularism* ,p.1.

⁵⁸ Ibid, p.3.

A history of France's relationship with Muslim women and the veil

Algeria and the preoccupation with Muslim women

The 2010 ban on wearing the Burqa or Niqab in public places was not the first attempt by the French government to 'un-veil' adult women. The fear of the headscarf does not just date back to 9/11 as is often discussed, but has a complicated history with France and its identity. It would be difficult to ascribe an exact date to France's preoccupation with Muslim women and their wearing of veils although it can be seen emerged into every day and political life during the Algerian War of Independence. Here there was the continued confusion of a desire for assimilation coupled with the thought that Algerians were not able to assimilate; it became France's 'civilizing mission' with no desire or belief it would work.⁵⁹

Muslim or Arab women were seen as a spectacle by the French throughout the period of colonialization; their private quarters seen both as brothels and prisons, both sexual and restricted. Joan Scott describes them as places which intrigued the French as areas of 'sensuous indulgence', but also as in the confinement of 'tyrannical men'.⁶⁰ Catharine MacKinnon, writing on feminism in law describes the concept of 'eroticized desexualization', the process of sexualising women whilst simultaneously desexualising them; that is to say creating the idea of an erotic, but silent 'un-sex'.⁶¹ This fits with the view of veiled women. The veil is an item that covers a women's sexuality, it denies it whilst also creating intrigue.⁶² It can be seen as part of the history of sexuality, which is not inherent and biological as was once believed, but is a 'cultural production' with society creating what is sexual.⁶³ 'Women were assumed to be objects of male sexual desire and thus inherently provocative' and the veil provoked the French desire to see beneath it.⁶⁴ In 1912 Aldolphe Jourdan wrote a report focusing on the 'Arab Woman' in Algeria.⁶⁵ Page after page describing their clothing and jewellery show this fixation with the appearance of Muslim women. He wrote that in Algeria women were seen as 'a weak being, who cannot accomplish

⁵⁹ Scott, J.W. (2007). *The politics of the veil*, (Princeton, Oxfordshire), p.46.

⁶⁰ Ibid, p.58.

⁶¹ MacKinnon, C.A. (1983). 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence' in *Signs*, 8.4, p.639.

⁶² Scott, J.W. (2007). *The politics of the veil*, p.157.

⁶³ Halperin, D.M. (1998). 'Is there a history of sexuality?' in Fay, B. Pomper, P. & Vann, R. T. eds. (1998) *History and Contemporary readings*, (Blackwell, UK), p. 253.

⁶⁴ Scott, J.W. (2007). *The politics of the veil*, (Princeton, Oxfordshire), p.153.

⁶⁵ Jourdan, A. (1912). *Revue Africaine; Société historique Algérienne*, accessed 29/05/17 <http://revueafricaine.mmsh.univ-aix.fr/Pdf/1912_284_000.pdf>.

any serious, important act'.⁶⁶ This was at a time when the exact same was thought of women in France. Even when French women were granted suffrage, which de Gaulle actually announced from Algeria in 1945, this right was not extended to Algerian women.⁶⁷ A divide was created between 'French' women and 'other' women, especially in regards to their sexuality. However, it would be wrong to say this discrimination applied only to women, the right of French men to vote had not been extended to Algerian men either, showing the problems was not just sex, but culture.

During the Algerian War of Independence, these differences between women were accentuated. Todd Shepard described that the war was as being fought on 'the minds and bodies of Algeria's 'Muslim' women'.⁶⁸ French 'feminists' called the veil 'a form of misogyny and... a means to oppress women'.⁶⁹ This fits in with Susan Okin's research on mid-nineteenth century feminism in regards to white middle-class women and their tendency to 'think only of women of their own class and race'.⁷⁰ Whilst intersectional feminism is now growing, at the time of Algerian independence gender was not such an important social cohesive as race. Therefore white 'French' women felt they had more in common with white 'French' men than they did with Muslim women. The taking off of the veil was a sign of progress, a way towards the enlightenment of France. De-veiling was used as a tool to gain support for France and 'modernity'.⁷¹ Propaganda, such as the film 'the falling veil', were shown across Europe and the US to underline how France had 'helped' Algerian women.⁷² However, this desire to help free Algerian women can be seen as just a weapon in the fight for the country. Women wearing veils carried arms or messages beneath the clothing, helping the nationalist cause.⁷³ Yet these women also took off the veils and dressed like Europeans to take messages to certain areas without attracting attention from French soldiers.⁷⁴ In this way, the wearing of the veil became central to the cause; it was the 'antithesis of the *tricolore*'.⁷⁵ Veiled women became a symbol of opposition. They went against the Governing of the

⁶⁶ [Translation] Jourdan, A. (1912). *Revue Africaine; Société historique Algérienne*, p.114.

⁶⁷ Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, (Cornell, London), p.191.

⁶⁸ Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, pp.186-187.

⁶⁹ *Ibid*, p.189.

⁷⁰ Moller Okin, S. (1994). 'Gender Inequality and Cultural Differences' in *Political Theory* 22.1, p.6.

⁷¹ Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, p.187.

⁷² Scott, J.W. (2007). *The politics of the veil*, p.62.

⁷³ *Ibid*, p.65.

⁷⁴ *Ibid*, p.65.

⁷⁵ *Ibid*, p.66.

French and refused to assimilate with the French women. It became common for French soldiers to unveil women - a way of humiliating rather than freeing them.⁷⁶

Because of this episode, we can understand the beginnings of the French un-veiling. The French colonial and protectorate rules were studded with the fascination of Arab women, as viewed by Aldolphe Jourdan as well as the numerous postcards available depicting harems and Muslim women in a sexual manner.⁷⁷ The Algerian war revealed two things: France's attitude towards assimilation in order to be modern and 'French', and how easy it was to utilise women's rights as a weapon for other purposes. Women were forcefully de-veiled and the wearing of such clothing was not seen as a sign of religious expression, but as a stand against the French. Of course in many ways it was; women fighting for the cause chose when to wear veils based on their situation and location in order to transport messages and weapons. As France wanted women to take off the veil, continuing wearing it, even without strong religious commitment, was a sign of nationalism. It shows the starting point of the idea that to be French one could not wear a veil. Scott described it as 'an impenetrable membrane, the final barrier to political subjugation', subjugation by means of assimilation but also of a woman's right to choose her own clothing.⁷⁸

The 2004 affaires des foulards

The main points surrounding the Algerian battle with the veil was that it was not on French soil nor did it concern French women. Since then, post-colonial conflicts have continued within France. Whilst Algeria had been an extension of France, Algerians were not 'French'. Because of this view on former colonies/protectorates, Moroccan, Tunisian and Algerian immigrants were not integrated into 'French' society. Left segregated outside the centre of cities, places like the banlieues sprung up with Muslim and Arab communities together, rather than mingled with French nationals. Even second, third generation immigrants, entitled to French nationality were seen as migrants. Within this, migrant communities wanted their children to understand and respect their culture and traditions and it is this visibility of the traditions which stood them apart, especially the women.⁷⁹ Although issues surrounding

⁷⁶ Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, p.190.

⁷⁷ Scott, J. W. (2007). *The politics of the veil*, p.58.

⁷⁸ J.W. Scott (2007) *The politics of the veil*, p.67.

⁷⁹ Deltombe, T. (2005). *L'islam imaginaire. La construction médiatique de l'islamophobie en France, 1975-2005*, (La Découverte, Paris), pp.44-45.

Islam as a whole in France are worth mentioning, it is this visibility of Muslim women in the country which became most politicised.

The wearing of the veil in France was not seen as religious, but cultural and it became a symbol of difference.⁸⁰ Sexuality prevailed as it did in Algeria, Scott described it as ‘the distance Muslims had to traverse if they were to become fully French’.⁸¹ The veil was seen as hiding sexuality, whilst Muslim men were seen as sexually threatening.⁸² The problems behind the ‘headscarf affair’, which involved the wearing of veils in public schools, were both of timing and of content. In 1989 a similar ban was proposed for public security but this reason was judged as disproportionate, there was also no mention of gender equality.⁸³ Whilst the official debate of the 2004 affair centred on Laïcité and the protection of girls, the timing and the new introduction of gender equality suggests this was not the whole case. The debate began in the aftermath of 9/11. The securitisation of Islam and the criminalisation of Muslims within France can be seen within the headscarf discussion. In November 2001 law *relative à la sécurité quotidienne* was introduced. This emphasised stronger security controls and the problem of ‘youth crimes’, which were largely connected with the higher crime rates in migrant (Muslim) communities.⁸⁴ The law received a lot of criticism, especially in regards to social gatherings of young people.⁸⁵ Whilst it was acknowledged that this happened often due to a lack of other locations, it skipped over the fact those most affected by a lack of other options were ‘young Muslims of migrant descent’ who were then seen ‘as a security threat rather than as casualties of socioeconomic deprivation’.⁸⁶ It was in 2003 that Nicolas Sarkozy insisted that Muslim women removed their veils for ID photos, this was for identification purposes but fuelled the debate on the wearing of the veil in France encompassed under the terrorism threat.⁸⁷ It was not until 2003 that France created the *Conseil Français du Culte Musulman*, which was the first official representation of Islam at the same level as other religions. However, this in itself was controversial as the Government saw it as a way to

⁸⁰ Scott, J.W. (2007). *The politics of the veil*, p.41.

⁸¹ Ibid, p.166.

⁸² Brubaker, R. (2017). ‘Between nationalism and civilizationism: the European populist moment in comparative perspective’, p.12.

⁸³ Scott, J.W. (2009). *Sexualism*, p.7.

⁸⁴ *LOI n° 2001-1062*. (2001), accessed 13/05/17

<<https://www.legifrance.gouv.fr/eli/loi/2001/11/15/INTX0100032L/jo>>

⁸⁵ Villanueva, J. (2017). ‘Pathways of confinement: the legal constitution of carceral spaces in France’s social housing estates’ in *Social & Cultural Geography*, p.8.

⁸⁶ Wadia, K. (2015) ‘Regimes of insecurity: Women and immigration detention in France and Britain’ in Lazaridis, G. & Wadia, K. eds. (2015). *The securitisation of migration in the EU. Debates since 9/11* (Palgrave Macmillan), p.92.

⁸⁷ Scott, J.W. (2007). *The politics of the veil*, p.30.

decrease foreign Muslim influence over Islam in France.⁸⁸ This shows how it was post 9/11 that Islam in France was being involved, officially, in politics even though this attention was not positive.⁸⁹

This sudden investment in Islam is easily viewed with the headscarf affair. Sikh turbans and other religious affiliations such as the yarmulkes, kippahs or crosses had always been allowed in classrooms. It was Islam that provoked the change.⁹⁰ Kastoryano wrote that Islam challenged France in ways Christianity or Judaism had not and instead of adjusting their idea of a Laïque community the headscarf affair simply passed as proof that Islam and the west were incompatible.⁹¹ Thus it was in 2003 that the Stasi report was commissioned, or the *Commission de réflexion sur l'application du principe de Laïcité dans la république*. This report went into detail on the 'wearing of religious symbols' and the 'incidents related to' this.⁹² Stasi wrote that Laïcité must be 'recognised and respected by all those who live in our territory'; this made the assumption that headscarves do not respect Laïcité.⁹³ Although the report supposedly takes into account all religious symbols and worship in the French Republic, it does acknowledge that it is the Islamic veil that is more often singled out.⁹⁴ This is intrinsically linked to the view, often written about, that the French desire assimilation and the idea that to be 'French' one must look and act 'French'.⁹⁵

However, the timing behind the report and the overall debate clearly played a huge role. The Commission talks of fundamentalists within schools and there is the underlying belief that women wearing the veil were coerced and it was a 'sign of a threatened takeover of France by Islamists'.⁹⁶ Of course, these ideas are not new; in 1985 *Le Figaro* published a special addition on migration entitled, 'Serons-nous encore français dans 30 ans?'⁹⁷ The Stasi report drew a link between the headscarf and perceived high levels of violence in banlieues.⁹⁸ It clearly linked these Muslim communities with the Islamic terror threat after 9/11, but also

⁸⁸ Fredette, J. (2014). *Constructing Muslims in France*, (Temple University press, Philadelphia), p.164.

⁸⁹ Kastoryano, R. (2006). 'French secularism and Islam', p.64.

⁹⁰ Scott, J.W. (2007). *The politics of the veil*, p.127.

⁹¹ Kastoryano, R. (2006). 'French secularism and Islam', pp.60-63.

⁹² [Translation] Stasi, B. (2003). *Commission de réflexion sur l'application du principe de Laïcité dans la république*, p.3.

⁹³ [Translation] Ibid, p.4.

⁹⁴ [Translation] Ibid, p.6.

⁹⁵ Kastoryano, R. (2006). 'French secularism and Islam', p.62.

⁹⁶ Ibid, p.60

Scott, J.W. (2007). *The politics of the veil*, p.71.

⁹⁷ [Will we still be French in thirty years?]

⁹⁸ Kastoryano, R. (2006). 'French secularism and Islam', p.65.

made the connection between this threat and young women wearing veils. The report focusses on the wearing of the headscarves in schools and stated that children should be able to attend school without political or religious interference.⁹⁹

The content of the ban was not as security focused as the context which allowed for its creation. 'History recalls the effort required in the past for religions to adapt to the secular framework' of France.¹⁰⁰ This phrase within the report calls for Islam to change rather than France. Kastoryano questions this concept and discusses whether Laïcité should be up-dated to reflect modern France, but concludes it would not happen as it so 'clearly embodies the national ideology'.¹⁰¹ One chapter in the report was named 'living together' which reads more like living like 'us'; it stated that different cultures are important, but that they can lead to exclusion.¹⁰² It was a statement that called for conformity. As Scott wrote 'one could not be both Muslim and French' - and the headscarf affair made that distinction.¹⁰³ Thus, whilst the banning of the headscarf in school was substantiated by the principle of Laïcité and for the defence of girls potentially forced into wearing it, these were not the underlying cause.

Olivier Roy describes the event as 'social control'.¹⁰⁴ It set out not to liberate, as was reasoned, but to impose conformity. The headscarves were referred to as 'ostentatious' and they were seen as standing out against the typical 'French' background. This concept is backed up by Scott who wrote 'racism was the subtext of the headscarf controversy, but secularism was its explicit justification'.¹⁰⁵ European secularism, as described by R. Brubaker, 'is not a deep or principled public philosophy; it is a transparently anti-Muslim populist stance. It is not religious symbols, arguments, or practices that are challenged; it is Muslim symbols, arguments, and practices'.¹⁰⁶ It is clear that it was Islam that caused the debate on religious symbols. In many ways Brubaker is correct to boil the support for the affair down to populism, especially with regards to France. Seventy-five percent of the French public agreed with the banning of religious symbols in schools and in 2006 seventy-eight percent said that they would agree with the banning of Muslim headscarves in general,

⁹⁹ [Translation] Stasi, B. (2003). *Commission de réflexion sur l'application du principe de Laïcité dans la république*, p.15.

¹⁰⁰ [Translation] Ibid, p.16.

¹⁰¹ Kastoryano, R. (2006). 'French secularism and Islam', p.60.

¹⁰² [Translation] Stasi, B. (2003). *Commission de réflexion sur l'application du principe de Laïcité dans la république*, p.17.

¹⁰³ Scott, J.W. (2007). *The politics of the veil*, p.135.

¹⁰⁴ Roy, O. (2007). *Secularism confronts Islam*, p.32.

¹⁰⁵ Scott, J.W. (2007). *The politics of the veil*, p.90.

¹⁰⁶ Brubaker, R. (2017). 'Between nationalism and civilizationism: The European populist moment in comparative perspective', p.11.

even though only thirteen percent of Muslim women in the country wore one every day.¹⁰⁷ Although 9/11 provided the background for the law, ‘the deep psychic investments revealed by the issue were less about fears of terrorism...than about defending French national identity’.¹⁰⁸

From the Algerian War of Independence the French problem with the veil transitioned onto French soil. There was still the belief women were coerced into wearing them and they did not show modernity or integrate with ‘French’ society. ‘Kif Kif les Française’ had been chanted in Algeria and this desire for females to be like the French clearly fed into the debate of the veils in schools.¹⁰⁹ The only change to the situation was the threat of terror. The increased securitisation of Islam within the country provided the backdrop needed to gain public support, with Laïcité providing the legal aspect.

The Burqa ban ou l’interdisant la dissimulation du visage dans l'espace public

Article 1 of *La Constitution de la V^e République* states that ‘Elle assure l’égalité devant la loi de tous les citoyens sans distinction d’origine, de race ou de religion. Elle respecte toutes les croyances’.¹¹⁰ The extent to which beliefs are respected by the French Republic will be discussed in the next two chapters in order to better understand the clash between Islam and France.

In 2011 France became the first EU country to enforce a law against the wearing of full face veils in public after an almost unanimous vote in the Senate in 2010. This conclusion was not an easy path. Court cases, judgements and years of pressure formed the background of the

¹⁰⁷ *Headscarf defeat riles French Muslims*. (2005), accessed 05/06/17 <<http://news.bbc.co.uk/2/hi/europe/4395934.stm>>, R. Morin & J. Menasce Horowitz (2006), *Europeans debate the scarf and the veil*, accessed 05/06/17 <<http://www.pewglobal.org/2006/11/20/europeans-debate-the-scarf-and-the-veil/>>

¹⁰⁸ Scott, J.W. (2007). *The politics of the veil*, p.171.

¹⁰⁹ [let’s be like the French women] Shepard, T. (2006). *The invention of decolonization: The Algerian war and the remaking of France*, p.187.

¹¹⁰ [The equality in front of the law of all citizens without distinction of origin, of race or of religion. She respects all beliefs.] *Constitution de la Ve République* (1958), accessed 15/05/17 <<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html#preambule>>

law. International reactions and those persisting to wear the items despite the law continue to cause problems. Previous examples have shown France's history with the veil and that the mainstream political view is the wearing of one is not compatible with the ideals of France. However, although these clearly fuelled the debate, they were not given as the main reason behind the desire for the prohibition.

The 2004 ban of religious symbols in schools was not without controversy, but it was small in scope and referred to children/young adults, or more accurately, girls/young women. They were a 'valiant action by the modern French state to rescue *girls*'.¹¹¹ This is where the burqa ban differed. The scope covers all public areas and concerns adult women, questioning their agency and the ability of Muslim women to make their own decisions. Since the 1970s there has been an increase in women choosing to wear a veil. It is a movement that 'appears to have originated among urban, educated, working, middle-class women'.¹¹² The main theories behind this phenomenon revolve around the increase of Muslim women in secular or male society. The act of veiling, Jean-Paul Carvalho surmises, is a 'religious commitment which substitutes for a religious environment'; it allows these women to interact in non-religious society whilst remaining true to their own beliefs.¹¹³ However, 'the political interest...has outpaced our understanding of why women veil' and the visibility of the practice has gained more politicisation than the belief behind it.¹¹⁴ Yet, the politicisation of the veil, especially in regards to adult women in France, was slower to take hold than the increase in veiling. The reasons behind this more open opposition will be explained in the next chapters.

The debate surrounding the eventual law began in 2008.¹¹⁵ A Moroccan woman, married to a French national, was denied French nationality due to the fact she wore a Burqa. The Case judged her choice as a 'radical practice of her religion, incompatible with the essential values of the French community and especially with the principle of gender equality'.¹¹⁶ Mona Eltahawy, an Egyptian born lecturer on Arab and Muslim issues, describes this utilisation as a way to gain popularity; they 'do not give a rat's ass about Muslim women or their rights: they are merely using the issue in an attempt to win votes'.¹¹⁷ Yet this issue of gender equality was

¹¹¹ Scott, J.W. (2007). *The politics of the veil*, p.125.

¹¹² Carvalho, J-P. (2013). 'Veiling*' in *The Quarterly Journal of Economics*, 128.1. p.338.

¹¹³ Ibid, pp.352-353.

¹¹⁴ Ibid, p.338.

¹¹⁵ Though as already mentioned the wider debate stretches back to France's colonial history.

¹¹⁶ [Translation] *Conseil d'État N° 286798*. (2008), accessed 15/05/17
<<https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000019081211>>

¹¹⁷ Eltahawy, M. & Street, S. (2010). *Is France right to ban wearing the burka in public?*, accessed 15/05/17
<<https://www.theguardian.com/theobserver/2010/mar/21/debate-on-french-burka-ban>>

central to the debate and will be furthered analysed as we progress. The case also talks of the need to ‘assimilate’ in order to become a French National.¹¹⁸ It is this very idea of assimilation which makes the assumption that the Islamic practice of wearing the integral veil is ‘un-French’; un-French enough to be the reason for disallowing a woman, who fit the other criteria, to become a French National. It begs the question what does it mean to look like a French woman and who makes this decision? It is this court case which threw the Burqa and Niqab fully into the political sphere.

Later on that year a proposition was made to outlaw the full face veils by Jacques Myard, a Republican male. He used the argument of gender equality calling those women who wear full face veils ‘only like anonymous objects’.¹¹⁹ In saying this he objectifies women and his concern for them is questionable. In 2012 Myard was involved in the catcalling of a female member of the National Assembly just days before a vote on sexual harassment. In an interview afterwards, the fact the women had chosen to wear a floral dress was given as the reason for Myard’s behaviour, with him justifying the action as homage ‘to the beauty of this woman’.¹²⁰ This answer does not demonstrate a concern for the rights of women. Instead it shows how the way women choose to dress is sexualised and seen as encouraging catcalls and that the wearing of a floral dress is pleasing to the male gaze. In his proposition, he said that wearing the full veil ‘is unacceptable’ and against the ideas of integration, here too we can view a desire for assimilation that undercuts that of gender equality.¹²¹ His actions in 2012 suggest that by assimilation, he means all women in France should dress, perhaps in floral dresses so that he can pay homage to their beauty.

This argument was pursued through political discourse, it was clear a ban was wanted by Sarkozy’s government. In 2009 André Gerin, demanded a Commission into the wearing of the Burqa and Niqab in public places. Gerin, similar in age and appearance to Monsieur Myard is politically different. As a member of the communist party Gerin’s views on Muslim women are far more similar to a French Republican than would be expected. This goes against the general view that it is the ‘rightwing xenophobes of Europe’ who wanted the veils

¹¹⁸ Conseil d’État N° 286798. (2008) .

¹¹⁹ [Translation] *Proposition de loi -visant à lutter contre les atteintes à la dignité de la femme résultant de certaines pratiques religieuses* (2008). < <http://www.assemblee-nationale.fr/13/propositions/pion1121.asp>>

¹²⁰ [Translation] Boitiaux, C. (2012). *Cécile Duflot sifflée à l'Assemblée ou la chronique d'un sexisme ordinaire*, accessed 29/05/17 < <http://www.france24.com/fr/20120719-sexisme-sifflets-huees-assemblee-cecile-duflot-robe-emoi-deputes-opposition-ministre-logement>>

¹²¹ [Translation] *Proposition de loi -visant à lutter contre les atteintes à la dignité de la femme résultant de certaines pratiques religieuses*.

banned.¹²² Perhaps it shows how France differs from the rest of Europe on the subject or that simply, it is easier to blame the right-wing than to except that it is normal in all political warps to find fault with the visibility of Muslim dress. Gerin's proposition was to have a similar Commission into the wearing of the Burqa or Niqab 'sur le territoire national', as had been instigated before the 2004 law.¹²³ The Stasi Commission was directly referenced as having a positive effect on young women, implying that this could have a positive effect on all women. Again this questioned the agency of women wearing these garments by implying they would be better without them. Just as Myard had, Gerin attempted to utilise feminism as a main cause for his concern. He wrote that it was 'intolérable' and women who wear either veil are 'completely at the will of men and her family'; he describes them as living in 'véritables prisons'.¹²⁴ Yet this rhetoric runs cold as he expressed that veils are 'an attack on...the assertion of femininity', essentially implying women should be 'feminine'.¹²⁵ By making this statement Gerin showed a desire for women to dress in a certain way, one that attained to his belief of femininity. Perhaps floral dresses? This directly resonates with colonial France and the de-veiling of women during the Algerian war; the idea that 'the veil was a denial' and that it was 'a natural right (a male prerogative) – to see behind' it.¹²⁶ It is difficult to believe the proposition was for the protection of women, when a desire for their femininity was continuously being demanded. It gives more weight to the argument that to assimilate and look like French women, one has to be feminine and sexually available to the male gaze.

The 'dignité de la femme' was continuously portrayed as a reason for needing a ban on the Burqa and Niqab and just as in the Algerian war, women who stopped wearing veils were seen as liberated.¹²⁷ Muslim writer, Karmi calls this a simple 'intrusion of the western debate about feminism, which has sought to apply itself and its own conclusions to the situation of Muslim Women'.¹²⁸ The French government were not willing to understand the

¹²² Eltahawy, M. & Street, S. (2010). *Is France right to ban wearing the burka in public?*

¹²³ *Proposition de résolution - tendant à la création d'une commission d'enquête sur la pratique du port de la burqa ou du niqab sur le territoire national*, (2009), accessed 16/05/17 < <http://www.assemblee-nationale.fr/13/propositions/pion1725.asp>>.

¹²⁴ [translation] Id.

¹²⁵ [translation] Id.

¹²⁶ Scott, J.W. (2007). *The politics of the veil*, pp 157&159.

¹²⁷ [dignity of women] Le Bars, S. (2009). *Pour Nicolas Sarkozy, "ce n'est pas un problème religieux"* accessed 16/05/17<http://www.lemonde.fr/societe/article/2009/06/23/pour-nicolas-sarkozy-ce-n-est-pas-un-probleme-religieux_1210262_3224.html#RVbMrWYMcmrDJFdY.99>

¹²⁸ Karmi, G. (1997). 'Women, Islam and Patriachalism' in Yamani, M. ed. (1997). *Feminism and Islam legal and literary perspectives* (Garnet Publishing, UK), p.72.

reasons behind the practice of women deciding to wear the veil. In 2009 Sarkozy, building up the ground work for support for this law, declared that ‘the problem of the burqa was not a religious problem’ but one of ‘enslavement’ and that such a garment ‘is not welcome on French territory’.¹²⁹ This statement made in front of parliament, shows clearly the then President’s stance on the subject and contains two key elements; one of equality and one of French identity. This public display gained much support. Shortly after, a republican group in l’Assemblée Nationale called for a complete ban, a sentiment echoed in right-wing news as ‘indispensable’ to France.¹³⁰ Thus a Commission was created to assess ‘la pratique du port de voile intégral sur le territoire national’.¹³¹ The report that was produced followed the same rhetoric as the calls for the ban: ‘the principle of equality between the sexes and that of equal dignity between human beings’.¹³² However, the report admits that for the most part women wore the Niqab or Burqa voluntarily, contradicting the idea that Muslim women wearing these were coerced.¹³³ It was this report which provided the foundations for the eventual law. However the Conseil d’État, after François Fillon, Prime Minister at the time, asked their advice on the subject, said that a ban on the veils would not be acceptable. After an inquiry they came to the conclusion that they ‘could not find any indisputable legal basis’.¹³⁴ Joppke and Torpey described the law as being ‘in defiance of practically the entire legal guild of France’.¹³⁵ Despite this clear legal dispute, Sarkozy pressed on: he announced that a law must be ‘adapted to the situation’.¹³⁶ The situation being one of a desire to prohibit clothing regardless of the consequences or legality – so adapted it was.

Loi n° 2010-1192 du 11 octobre 2010 did not mention the Burqa or the Niqab. Its official name was ‘loi interdisant la dissimulation du visage dans l'espace public’. The text prohibits

¹²⁹ [translation] Le Bars, S. (2009). *Pour Nicolas Sarkozy, "ce n'est pas un problème religieux"*

¹³⁰ [Translation] Copé, J. F. (2009). *Voile intégral : une loi indispensable*, accessed 16/05/17 <<http://www.lefigaro.fr/editos/2009/12/15/01031-20091215ARTFIG00654-voile-integral-une-loi-indispensable.php>>

¹³¹ I have included here the link to the list of Commissioners involved in this report <http://www2.assemblee-nationale.fr/instances/fiche/OMC_PO419519> As you can see they are overwhelmingly white and predominantly male.

¹³² [Transaltion] *Assemblée national, Sur la pratique du port de voile intégral sur le territoire national* (2010), p.87.

¹³³ [Translation] Ibid, p.96.

¹³⁴ *Étude relative aux possibilités juridiques d'interdiction du port du voile intégral* (2010), accessed 13/05/17 <<http://www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Rapports-Etudes/Etude-relative-aux-possibilites-juridiques-d-interdiction-du-port-du-voile-integral>>

¹³⁵ Joppke, C. & Torpey, J. (2013). *Legal Integration of Islam* (Harvard University Press), p.21.

¹³⁶ [Translation] *Voile intégral : Sarkozy veut "une résolution sans ambiguïté" avant un texte de loi* (2010), accessed 17/05/17 <http://www.lemonde.fr/societe/article/2010/01/13/voile-integral-sarkozy-veut-une-resolution-sans-ambiguite-avant-un-texte-de-loi_1291389_3224.html>

anyone from wearing, in public, ‘an outfit designed to cover their face’; this would then include balaclavas and motorcycle helmets.¹³⁷ This law was presented as an idea for identification and public security; an attempt to mask the two years of persistence it took to create. Although security had been present in the discussion, it hardly played a significant role. It was not just Gerin’s belief that integral veils were unfeminine, but also that they were a security concern. He believed that it was necessary for ‘public security’ and ‘identification’, yet women already removed their burqas for identification photographs.¹³⁸ This minimal and questionable reference to public security in the debate simple outlines the way the ban had to be twisted in order to become legal. In public discourse the law became referred to as the ‘Burqa ban’, a name that reflected its desired outcome more than the one it was given.

Although the Islamic veils are not mentioned by name, the reference to them is clear.

‘Anyone who forces another person to cover their face by, threat, violence, constraint, abuse of authority or power or because of their sex is punishable by imprisonment and a 30, 000€ fine’,¹³⁹

This is undoubtedly a reference to the previous discussion; the idea that women wearing such clothing are without agency and are coerced into doing so. Clearly there would be no instances of people being forced to wear a balaclava. Again this supposed feminist stance actually diminishes Muslim women. The law passed through the senate almost unanimously; the senate being overwhelmingly white and male.¹⁴⁰ Here we can view an expansion in scope of ideas that had been in the French political sphere for decades. As these ideas of incompatibility, especially with the male prerogative are not new, what needs to be discussed instead is why they were able to be progressed in such a manner during this time.

The number of women wearing these veils was so small it questions why there was such a strong backlash against them. In the Commission report, it was estimated just 1900 women wore the full veils.¹⁴¹ It seems odd that such a small number would create such uproar in society. Pew research in the months before the vote showed that of the French public, 82%

¹³⁷ [Translation], *LOI n° 2010-1192*, Article 1, accessed 12/04/17

<<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022911670&categorieLien=id>>

¹³⁸ [Translation] *Proposition de résolution - tendant à la création d'une commission d'enquête sur la pratique du port de la burqa ou du niqab sur le territoire national*, (2009).

¹³⁹ [Translation] *LOI n° 2010-1192*, Article 4,

¹⁴⁰ This is the list of all Senate members during the vote, accessed 17/05/17 <[https://en.wikipedia.org/wiki/List_of_French_Senators_\(2008%E2%80%932011\)](https://en.wikipedia.org/wiki/List_of_French_Senators_(2008%E2%80%932011))>

¹⁴¹ *Assemblée nationale, Sur la pratique du port de voile intégral sur le territoire national* (2010), p.29.

approved of a ban on the Burqa and Niqab, whilst just 17% did not.¹⁴² Therefore, the reasons behind the prohibition cannot be related to the number of women who wore the veils.

The ban did not go unchallenged. A case was brought to the European Court of Human Rights against the decision by a young Muslim woman. This in itself stands against all the arguments for the veils hiding women or women being forced into wearing them. She said that she wore the Niqab when she wanted, but showed her face whenever was required such as in Banks or at the Airport. Her argument against the ban was that it infringed her right to the freedom of religious expression which is codified under Article 9 of the European Convention.¹⁴³ She stated that she did not pose a security threat and neither was she subjugated by family or men.¹⁴⁴ However, in 2014 the Court decided that the ban itself was legal. What is most interesting is the significance that was put on the fact the law was ‘not based on the religious connotation of the clothing in question but solely on the fact that it conceals the face’.¹⁴⁵ This distance placed between the law and the religious garments, although they were clearly causal, works in favour of the law. Instead the Court regarded the choice to ban the veils as a ‘choice of society’, not as an infraction of religious freedom.¹⁴⁶ The main argument behind the decision was that a prohibition of such clothing could be legally recognised in regards to the notion of ‘living together’.¹⁴⁷ These two words epitomise this debate and the desire for assimilation. It is this very visible symbol of religious belief, so different to that of France’s laïcité idealism and identity, as well as views on how women should dress that can be seen as the underlying reasons for this ban.

The EU Commissioner for Human Rights, Thomas Hammarberg, wrote in 2011 that it had not been ‘possible to prove that women wearing this attire are victims of more gender repression than others’.¹⁴⁸ This is easily viewed by the backlash from women after the introduction of the law. One young Muslim woman told *Le Monde* that it was her ‘way of fighting, of saying no to a government which takes away’ her freedom.¹⁴⁹ This defiant action

¹⁴² *Widespread Support For Banning Full Islamic Veil in Western Europe* (2010), accessed 17/05/17 <<http://www.pewglobal.org/2010/07/08/widespread-support-for-banning-full-islamic-veil-in-western-europe/>>

¹⁴³ S.A.S. v. FRANCE no. 43835/11(2014), accessed 17/05/17<[http://hudoc.echr.coe.int/eng#{"itemid":\["001-145466"\]}](http://hudoc.echr.coe.int/eng#{)>

¹⁴⁴ Id.

¹⁴⁵ [Transaltion] Id.

¹⁴⁶ [Translation] Id.

¹⁴⁷ [Transaltion] Id.

¹⁴⁸ Hammarberg, T. (2011). *Human rights in Europe: no grounds for complacency, Viewpoints*, (Council of Europe publishing), p. 40.

¹⁴⁹ [Translation] Pascual, J. (2015). *Loi sur le voile intégral : « On a créé le monstre qu'on voulait éviter »*

can be seen as taking a stance against those who she believed were oppressing her right to religious practice. In 2015 it was reported that one woman had received 33 fines for continuing to wear the full veil.¹⁵⁰ This would add up to 4,950€ and a further 1,546 fines had been given out. This shows that money was not an issue when it came to standing up for their beliefs. Many of the women received multiple fines; in fact 908 women were reported as receiving fines, almost half of the number of women recorded as wearing such veils in the Commission report in 2010.¹⁵¹ This huge proportion shows how committed to the cause these women were. Nicolas Cadenne from France's *Sécularisation Observatory* stated that 'certain women who wear the veil just want to provoke'.¹⁵² This is perfectly understandable; it is traditional that when a freedom is taken away that people will fight against such restrictions. It is a concept the French are well known for and the spirit of revolution is normally celebrated in the country. This defiance goes against all that Politicians said of women who wore the full veils: that they were imprisoned, anonymous and unfeminine. These women showed strength and assertion that was not afforded to them by those who created the law. What can be most questioned here is the fact women came out to say they chose to wear the garments and they were not forced to do so. Yet their freedom of speech was suppressed and it was assumed they did not know their own will.

Since the ban was enacted there were a string of attacks on Muslim women wearing veils, including the hijab.¹⁵³ In this way the ban can be seen as enabling anti-Islamic rhetoric. In his report, Hammarberg insisted that the ban would lead to the 'further exclusion and alienation in European societies' of Muslims and those arguments in favour of it had been 'clearly Islamophobic in tenor'.¹⁵⁴ Agnès de Féo, a sociologist, said that France had 'created a monster' which had 'encouraged Islamophobia as well as given Muslim extremists more cause'.¹⁵⁵ Le Collectif Contre Islamophobie en France, a group supporting the rights of Muslims, said that it gave Muslims the 'feeling of being stigmatised' and that they were 'exasperated' with the attention they received without asking for or provoking it.¹⁵⁶ If it was

accessed 18/05/17 <http://www.lemonde.fr/religions/article/2015/10/10/loi-sur-le-voile-integral-on-a-cree-le-monstre-qu-on-voulait-eviter_4786934_1653130.html>

¹⁵⁰ McPartland, B. (2015). *Burqa ban five years on - 'We created a monster'*, accessed 18/05/17

<<https://www.thelocal.fr/20151012/france-burqa-ban-five-years-on-we-create-a-monster>>

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ McPartland, B. (2013). *Muslim woman loses baby after veil attack*, accessed 15/05/17

<<https://www.thelocal.fr/20130618/muslim-woman-miscarries-after-veil-attack>>

¹⁵⁴ Hammarberg, T. (2011). *Human rights in Europe: no grounds for complacency*, *Viewpoints*, p.39 & 41.

¹⁵⁵ McPartland, B. (2015). *Burqa ban five years on - 'We created a monster'*.

¹⁵⁶[Translation] *De la burqa à la polygamie, les musulmans de France exaspérés*, (2010), accessed 14/05/17

the goal of France to make women wearing full veils un-anonymous, they succeeded. The law threw further into the limelight any differences between Muslims and the rest of France. The law reflects the desire for assimilation, especially for women and the strong belief of France's ideological identity.

The international reaction to such a ban varied depending on the political leanings of the publishers. *The New York Times* wrote an article entitled 'The Taliban would applaud', stating that the banning of women from wearing the Burqa or Niqab was just as much of a violation as forcing women to wear such garments.¹⁵⁷ They described the cause, just as Ms Eltahawy did, as a vote-getter for right-wing politicians.¹⁵⁸ As if to illustrate this point, in the UK based right-wing newspaper, *The Daily Mail*, an article discussing the ban was integrated with a piece on a terror attack at the Eiffel Tower.¹⁵⁹ This causal link between terror and Muslim dress becomes ever more important in the discussion on restrictions to Muslim dress.

As mentioned the ban did not stop certain women from wearing the clothing; neither did it stop negative reactions towards Muslim women. Whilst the reasoning behind the prohibition was stated as gender equality, it is clear this was not the underlying issue. It was simply a more politically sound reason than the French national identity. This ban was deemed lawful, despite international backlash and the affirmation of their agency by women affected by it. However, Catharine MacKinnon argued that 'the law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender, through its legitimizing norms, relation to society, and substantive policies'.¹⁶⁰ MacKinnon says this is achieved 'through embodying and ensuring male control over women's sexuality at every level, occasionally cushioning, qualifying, or de jure prohibiting its excesses when necessary to its normalization'.¹⁶¹ This argument explains perfectly the calls for banning the Burka. It was said to hide femininity and the empowerment ideals of those asking for it was questionable. It showed an obvious desire for women to dress a certain way. It showed an obvious desire for women to conform to the created ideals of

<http://www.islamophobie.net/articles/2010/04/30/de-la-burqa-la-polygamie-les-musulmans-de-france-exasperes>>

¹⁵⁷ *The Taliban Would Applaud*, (2010), accessed 18/05/17 <

<http://www.nytimes.com/2010/01/27/opinion/27wed2.html>>

¹⁵⁸ Id.

¹⁵⁹ Allen, P. (2010). *France's Senate backs National Assembly and bans women from wearing the burka in public*, accessed 18/05/17 <<http://www.dailymail.co.uk/news/article-1312016/Frances-Senate-bans-women-wearing-burka-public.html>>

¹⁶⁰ MacKinnon, C.A. (1987). *Feminism unmodified: discourses on life and law*, (Harvard university press), p. 644.

¹⁶¹ Id.

French sexuality. It has been normalised that decisions can be made which determine what women can or cannot wear.

The Burkini ban ou l'interdiction du port du Burkini sur les plages

It was the introduction of these bans which differed so greatly from that of the Burqa ban or other previous conflicts with veils. Firstly this was not national; there was no vote in the National Assembly and no involvement of national lawmakers. Secondly, there was no political and legal discussion before the introduction of the first of these bans. Whereas the Burqa ban had a two year run up of requests, Commission reports, political statements and reference to judges, these bans happened consecutively with coastal resorts following each other like dominoes. This happened without the opinion of a wider national or legal audience. Thirdly, the reasoning for the prohibitions differed from the previous arguments which strongly pushed forward the idea of gender equality. What will be discussed in this case study is why the burkini bans happened as they did; what had changed between 2010 and 2016 to allow for this change and how they will influence the future for Muslim women in France.

The legality of the burkini ban has been discussed and tested in courts, with precedent being finally set on its illegality. However, it is not the legal aspect of it which is important here. It is the public attitude, the surrounding context and the reasons for this which carry more weight in understanding the attitudes towards Muslim women in France. The summer of 2016 saw further restrictions on the rights of these women: a further separation was wedged between 'French' women and 'Muslim' women. This ban on the right to wear the burkini swept around the Provence-Alpes-Côte d'Azur region of France after the first prohibition in Cannes in July. Over thirty coastal resorts in total put limitations on wearing the burkini. There were even incidences of Muslim women simply wearing a hijab and clothes that covered the rest of their body being targeted by these municipal laws.

The first ban, in Cannes in July 2016, was enacted by the Local Mayor David Lisnard. His reasoning behind doing this was because he believed that 'showing ostentatiously a religious affiliation, whilst France and places of religious worship are currently the targets of acts of

terror' was not in the best interest for public security.¹⁶² This discourse creates a direct link between Islam and acts of terror, implying that seeing an obviously Muslim woman could invoke fear of terrorism to others around. Also, curiously, hygiene was given as a reason for the ban, though this was not expanded on.¹⁶³ Bans in other resorts followed the same principles. The Villeneuve-Loubet ban on the fifth of August also applied security, hygiene and Laïcité as reasons enough to ban the swimwear; the subjugation of women was not included.¹⁶⁴ Here, a specified time limit from the fifteenth of June to the fifteenth of September was given. This is significant as the ban was enacted in August, making clear that it was seen to be a yearly enactment: a permanent restriction on the way Muslim women choose to dress.

It was this ban in Villeneuve-Loubet which sparked the first court case on the subject, in the late part of August 2016. The Ligue des Droits de l'Homme et autres, the Association de Défense des Droits de l'Homme and the Collectif Contre l'Islamophobie en France brought the case to the Tribunal Administratif de Nice: They argued that it restricted 'fundamental freedoms'.¹⁶⁵ The wearing of the burkini was judged as heightening the 'factors of tension' and beaches should be a 'religiously neutral place'.¹⁶⁶ It declared that it was the visibility of Islam that had increased the tension and again made the assumption that to see an actively practicing Muslim would incite fear. The Villeneuve-Loubet ban was justified as 'necessary, appropriate and proportionate to the pursued purpose of protection of order and public security, with regard to the impact, between the national and local population', stating that the impact on the 'population' of seeing a woman cover her hair is proportional to the impact on the woman fined or forced to remain indoors because of the ban.¹⁶⁷ The judgment also spoke about women's rights, unlike the Villeneuve-Loubet ban. The court said that the burkini led to subjugation 'of the woman and a diminishment of her place that does not conform to the status of those in a democratic society'.¹⁶⁸ Here, the same rhetoric as was used

¹⁶²[Translation] K..J (2016). *Le maire de Cannes interdit le port du burkini sur les plages*, accessed 24/05/17 < <http://www.nicematin.com/faits-de-societe/le-maire-de-cannes-interdit-le-port-du-burkini-sur-les-plages-70612>>

¹⁶³ [Translation] Id.

¹⁶⁴ *Règlement de police, de sécurité et d'exploitation des plages concédées pas l'état à la commune de Villeneuve-Loubet*, (2016), accessed 24/05/17 < <http://cabinet-lac.eu/wp-content/uploads/2016/08/Arr%C3%AAt%C3%A9-2016.08.05-Villeneuve-Loubet-No-2016-42-Police-et-s%C3%A9curit%C3%A9-des-plages.pdf>>

¹⁶⁵ [Translation] *Le port de la tenue vestimentaire dénommée "burkini" sur les plages de Villeneuve-Loubet* (2016), accessed 24/05/17 < <http://nice.tribunal-administratif.fr/A-savoir/Communiques/Le-port-de-la-tenue-vestimentaire-denommee-burkini-sur-les-plages-de-Villeneuve-Loubet>>

¹⁶⁶ [Translation] Id.

¹⁶⁷ [Translation] Id.

¹⁶⁸ [Translation] Id.

in Algeria came to justify the de-veiling of Muslim women on the beaches of France. However, it also links to the fear of fundamentalist Islam which is associated with the oppression of women. Thus, just as all Islam is often now associated with terrorism, all Islam is being further linked with the oppression of women.¹⁶⁹ As Scott wrote, Muslim women in France were being forced to make a decision; ‘either Islam or the Republic’ which in itself is compliant to the idea that Islam is not and cannot be ‘French’.¹⁷⁰ No Muslim women were consulted during the decision or before the implementation of the bans. This shows the difference between the burkini bans and the Burqa ban where reports and public debate were initiated.¹⁷¹

After the disappointment of the judgement by the Tribunal of Nice, the CCIF took the case to the Conseil d’État. They stated that the law was a ‘serious and manifestly unlawful violation of ... the freedom of expression, of freedom of conscience and the freedom to come and go’.¹⁷² In this decision the ban in Villeneuve-Loubet was overturned. The court judged that ‘it does not follow from the investigation that a risk of disturbing public order has resulted... from the clothing adopted for bathing by certain people’ and that public order and hygiene were not strong enough arguments for such an infringement of rights.¹⁷³ They also specifically referenced the attack in Nice the month before, saying the fear induced by such terror does not translate to a ban on Muslim dress.¹⁷⁴ This case was addressed to one town, but it set precedent for the others. Although this makes an effort to distance Islam and terrorism it was not a decision liked by all. ‘More than 20 mayors have defiantly kept in place decrees’ despite this precedent set on the illegality of them.¹⁷⁵ However, we can see how the high court influenced some decisions. On the 30th August the tribunal of Nice held a similar case as before, but this time came to the judgement that the ban in Cannes was not legal. This does not show the reaction of the people, only the legal view, which as we saw in the Burqa ban did not stop the eventual outcome.

¹⁶⁹ Afshar, H. (1997). ‘Islam and Feminism: An analysis of political strategies’ in Yamani ed, M. (1997). *Feminism and Islam legal and literary perspectives*, (Garnet Publishing, UK), p.197.

¹⁷⁰ Scott, J.W. (2007). *The politics of the veil*, p.35.

¹⁷¹ [Translation] *Interdiction des burkinis : la justice conforte l’arrêté de la mairie de Cannes* (2016), accessed 24/05/17 <http://www.lemonde.fr/societe/article/2016/08/13/le-tribunal-administratif-valide-l-arrete-municipal-bannissant-le-burkini-a-cannes_4982397_3224.html>

¹⁷² [Translation] *Conseil d’État Nos 402742, 402777*. (2016), accessed 24/05/17 <<http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-ordonnance-du-26-aout-2016-Ligue-des-droits-de-l-homme-et-autres-association-de-defense-des-droits-de-l-homme-collectif-contre-l-islamophobie-en-France>>

¹⁷³ [Translation] *Conseil d’État Nos 402742, 402777*. (2016)

¹⁷⁴ [Translation] Id.

¹⁷⁵ Chrisafis, A. (2016). *French mayors refuse to lift burkini ban despite court ruling*, accessed 24/05/17 <<https://www.theguardian.com/world/2016/aug/28/french-mayors-burkini-ban-court-ruling>>

As the previous chapter shows, the reasons given behind the introduction of the Burqa ban were largely based on gender (in)equality. Although public security was stated in the final law, it was not given much thought in the discussion that led to its introduction. However, public order was given as the main reason behind the banning of the burkini in the coastal resorts.¹⁷⁶ The subjugation of women was barely mentioned. To understand the difference in the introduction of the bans it is important to contextualise the burkini ban in the events between 2010 and 2016. Most literature on the subject of Islam in Europe tends to focus on 9/11 and an ‘accelerated progression of ‘securitisation’’ since then.¹⁷⁷ In 2002 Christopher Flood wrote that Islamic migrants were being linked ‘implicitly with the stereotype of the fanatical Islamist’.¹⁷⁸ This was 13 years before the migrant crisis and this view is more than visible today. In recent years, events have progressed further than the literature on the subject. Following the Arab Spring and the declaration by IS of an Islamic Caliphate in 2014, ‘Islamic’ terrorism is seen as the biggest threat to Europe. A string of attacks on the continent have increased this threat level, with many countries moving to red alert. In 2015 simultaneous attacks in Paris left 130 people dead and hundreds more wounded.¹⁷⁹ The explosions in Brussels March 2016 at the airport and Maelbeek metro station also caused many fatalities and increased security measures at the heart of EU politics. Other attacks in France such as Charlie Hebdo earlier in 2015 and a collection of other violent actions including a beheading have left France vigilant. These acts of terror greatly influenced the burkini bans. In July 2016, just weeks before the first ban a man drove a truck into a crowd during the Bastille Day celebrations in Nice, killing close to 100 people. These attacks, perpetrated by ‘Muslims’ has led to Islam being ‘considered the harbinger of a dangerous fundamentalism’, although how a burkini could be a sign of dangerous fundamentalism is questionable.¹⁸⁰

This issue of security cannot be easily ignored. Whereas the High Court judged the links between fundamentalists and burkinis not to be plausible, the fact people did give weight to this opinion shows how the issue of security has importance. Conflicts in the Middle East have left millions of people displaced and seeking asylum. These people from predominately

¹⁷⁶For an example see this introduction of a ban in Villeneuve-Loubet, accessed 24/05/17 < <http://cabinet-lac.eu/wp-content/uploads/2016/08/Arr%C3%AAt%C3%A9-2016.08.05-Villeneuve-Loubet-No-2016-42-Police-et-s%C3%A9curit%C3%A9-des-plages.pdf>>

¹⁷⁷ Wadia, K. (2015). ‘Regimes of insecurity: Women and immigration detention in France and Britain’, p.91.

¹⁷⁸ Flood, C. (2002). ‘Some European Thoughts in the Wake of 9/11’ in *South Central Review* 19. 2/3, p.52.

¹⁷⁹ *Paris attacks: What happened on the night* (2015), accessed 25/05/17 < <http://www.bbc.com/news/world-europe-34818994>>

¹⁸⁰ Roy, O. (2007). *Secularism confronts Islam*, p.4.

Muslim countries have come to Europe where there has been an accentuation of cultural differences. Incidents like the Cologne New Years's attacks on women which were perpetrated by 'men of Arab or North African appearance' have only increased the idea that Islamic migrants are a threat, especially to women.¹⁸¹ This issue is not new, but with the large and sudden increase in immigrants alongside the terrorist connotations that currently surround Islam, the topic has been thrown fully into public discourse. Politicians have 'felt obliged to talk tough about the alleged threat of swamping' and this was clear in the run-up to the 2017 French presidential elections.¹⁸² Immigration has become indirectly related to the issue of terror. This has led to tighter controls over Schengen borders. France re-introduced border control which in accordance to the treaty should be allowed only 'where there is a serious threat to public policy or internal security'.¹⁸³ The marginalisation and criminalisation of asylum seekers can be seen in the fingerprint databases which simply follow the Dublin rules, but this mass storage of finger prints would not be tolerated if they were those of EU citizens. This can be seen as a securitisation of migration and of migrants. Because of the incoming, predominantly Muslim migrants, there is seen to be an increased threat of radicalised Islamists entering the EU which has created the idea of 'bogus' asylum seekers and therefore has negatively affected others genuinely seeking refuge.¹⁸⁴

However, even though security played a leading role, it is not the only or even main issue behind the burkini ban. Clearly, what can be seen underlying these two prohibitions on Muslim dress is the idea of a French identity and a focus on women's sexuality. Not visually fitting in with this is a disruption to public order or against social cohesion. If this separation of 'French' and 'Muslim', which disproportionately affects women, is the causal desire behind these bans then this also needs to be contextualised. Scott writes that in France there is an idea that 'only by giving up all signs of belonging to the Islamic faith could these people become 'fully French''.¹⁸⁵ This strikes true with both of the bans. The Burqa was judged as 'incompatible with the essential values of the French community' and this rhetoric was followed for the burkini.¹⁸⁶ In 2015 France accepted only 110 asylum application per 100,000

¹⁸¹ *Germany shocked by Cologne New Year gang assaults on women* (2016), accessed 25/05/17 <<http://www.bbc.com/news/world-europe-35231046>>

¹⁸² Flood, C (2002). 'Some European Thoughts in the Wake of 9/11', p.52.

¹⁸³ *Regulation (EU) 2016/399*, Article 23.

¹⁸⁴ Karamanidou, L. (2015). 'The securitisation of European migration policies; perceptions of threat and management of risk', p.37.

¹⁸⁵ Scott, J.W. (2007). *The politics of the veil*, p.83.

¹⁸⁶ [Translation] Conseil d'État N° 286798 (2008).

of its inhabitants.¹⁸⁷ This is not enough to make a noticeable difference to its population or cause huge cultural disparities. It has been speculated by French politicians that an increase in migration will lead to a decline in French culture – a grand remplacement – if too many ‘others’ live in the country.¹⁸⁸ Olivier Roy agrees that for France ‘the underlying problem has always been immigration’ and this can clearly be seen in the lack of will to integrate migrants from former colonies.¹⁸⁹ Thomas Deltombe describes how for migrant communities it is important for their children to ‘respect their traditions’ and because this is most visible with women they become the target for this French identity crisis.¹⁹⁰ H. Afshar, a Muslim writer, describes western feminism, and therefore French feminism, as women marketing their ‘sexuality’, which is the opposite of the feminism enacted by many Muslim’s; she describes it as an ‘analysis which is all but irrelevant to the lives of the majority of women’.¹⁹¹ This links to the underlying issue of the burkini ban that it is right within French identity for a woman to show her body, but not to cover it. This is epitomised in an image, shown worldwide, of a woman in a bikini next to a woman in a burkini, only one of which was legal.¹⁹²

The attitude surrounding the burkini bans varies in reasoning, but tends to agree with the prohibition. A survey by the French Institute of public opinion at the end of August 2016, after the Conseil d’État had ruled dismissing the Villeneuve-Loubet ban, showed that 64% of the public were opposed to the wearing of the burkini on French beaches.¹⁹³ Support for the bans did not come only from the right-wing, though Marine Le Pen was quick to give her ‘strong support’.¹⁹⁴ Manuel Valls, the then Prime Minister of the Socialist government gave an interview on the phenomenon on the 16th of August. He said that the burkini was ‘based on enslavement of women’ and repeated the phrase used with the burqa that ‘it is not

¹⁸⁷ Connor, P. (2016). *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*, accessed 25/05/17 <<http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/>>

¹⁸⁸ Valerio, I. (2014). *Pour Marine Le Pen, la théorie du «grand remplacement» relève du «complotisme»*, accessed 25/05/17 <<http://www.lefigaro.fr/politique/le-scan/citations/2014/11/02/25002-20141102ARTFIG00145-pour-marine-le-pen-la-theorie-du-grand-remplacement-releve-du-complotisme.php>>

¹⁸⁹ Roy, O. (2007). *Secularism confronts Islam*, p.5.

¹⁹⁰ [Translation] Deltombe, T. (2005). *L’islam imaginaire. La construction médiatique de l’islamophobie en France, 1975-2005*, pp.44-45.

¹⁹¹ Afshar, H. (1997). ‘Islam and Feminism: An analysis of political strategies’, p. 200.

¹⁹² I have attached here the image, accessed 21/06/17 < https://static.independent.co.uk/s3fs-public/styles/story_medium/public/thumbnails/image/2016/08/20/13/gettyimages-590122088.jpg>

¹⁹³ Les Français et le port du Burkini (2016), accessed 25/05/2017 <http://www.ifop.com/?option=com_publication&type=poll&id=3460>

¹⁹⁴ Stothard, M. (2016). *Burkini ban splits opinion in France*, accessed 25/05/17 <<https://www.ft.com/content/0b90e0a0-661c-11e6-a08a-c7ac04ef00aa>>

compatible with the essential values of France and the Republic'.¹⁹⁵ He agreed that the bans were justifiable and the mayors 'in this moment of tension, had the reflex to find solutions to avoid disturbances to public order'.¹⁹⁶ He also stated that Islam should become more discrete like other religions in France and that it would be better for 'living together'.¹⁹⁷ Here he encompasses all reasons previously mentioned behind the ban: security, identity and gender equality. However, not all reactions were in favour of the bans. *Le Monde* said that, 'there is a real risk that a ban on wearing the veil will increase the community withdrawal' and so alienate Muslim communities which could be more dangerous.¹⁹⁸ The UN High Commission said that the ban added to the 'stigmatisation of people of Muslim faith in France, in particular the women'.¹⁹⁹ This stigmatisation of women is contrary to the views put forward by Valls et al that the ban is in fact better for Muslim women. Iman Amrani wrote that 'their cultures and religions are not going to be erased simply by banning burkinis or the hijab' whilst she suggests this erasure of culture is exactly what is wanted.²⁰⁰

Although the High Court set president for overturning the bans, their future is still in question. As previously mentioned, the Villeneuve-Loubet ban stated that it should run from June till September, even though it was introduced in August thus showing it believed it had longevity. In the first round of televised debates for the 2017 French presidential elections on March 19th, the burkini came up during a discussion on Laïcité. Madame Le Pen, when asked her view on Laïcité quickly jumped to 'fundamentalist Islam'.²⁰¹ She discussed how Muslims or 'they' had demands on everything from food to clothing and then led the discussion onto the burkini bans.²⁰² She asked Macron's view on the subject saying she knew he was against them. Macron said that Le Pen simply wanted to divide society by making the burkini an issue of Laïcité. However, he did agree that they were an issue of public order and that it should be up to the mayor to take the responsibility to make a decision on the wearing of the

¹⁹⁵ [Translation] Valls sur le Burkini : "Une vision archaïque de la place de la femme dans l'espace public" (2016), accessed 25/05/17 <<http://www.laprovence.com/article/politique/4078328/valls-sur-le-burkini-une-vision-archaïque-de-la-place-de-la-femme-dans-lespace-public.html>>

¹⁹⁶ [Translation] Id.

¹⁹⁷ [Translation] Id.

¹⁹⁸ [Translation] Gajdos, T. (2016). *L'interdiction du burkini, une arme à double tranchant*, accessed 25/05/17 <http://www.lemonde.fr/idees/article/2016/09/01/l-interdiction-du-burkini-une-arme-a-double-tranchant_4991093_3232.html>

¹⁹⁹ [Translation] *Les arrêtés anti-burkini pris en France favorisent la « stigmatisation » des musulmans, selon l'ONU* (2016), accessed 25/05/17 <http://www.lemonde.fr/port-du-voile/article/2016/08/30/les-arretes-anti-burkini-pris-en-france-favorisent-la-stigmatisation-des-musulmans-selon-l-onu_4989838_4987696.html>

²⁰⁰ Amrani, I. (2016). *France's burkini ban exposes the hypocrisy of its secularist state*, accessed 26/05/17 <<https://www.theguardian.com/commentisfree/2016/aug/24/france-burkini-ban-secularist-equality-muslim>>

²⁰¹ *Présidentielle: Revoir le Grand Débat* (2017), accessed 22/05/17

<<https://www.youtube.com/watch?v=VYXhy7Om0gs>>

²⁰² Id.

burkini. As now President, Macron's attitude, which is clearly not anti the bans, calls into question what will happen with the burkini during his time in office. What can be seen is that the Burqa ban was put in place after two years of planning and through a roundabout route. The opinion shown by the French mayors and that of the now President simply amplifies the idea that given time a ban on the burkini in France could also happen through a back door law, perhaps and again encompassing other items to make it seem less obvious.

These proceedings illustrate the ideas of the French cultural identity and the sexuality of women: the idea that many people in France do not feel comfortable with those different to them and that women should dress in a certain way, that is to say, not cover their bodies. The idea of a visually different culture is in some way alarming to the French – a potential to replace their identity. It shows that little separation can be made between Islam and radical terrorism. Therefore it can be seen that little has changed in the attitudes towards Muslim women by the 'French' public but that the current circumstances have allowed for a more open discussion on the subject and a more substantial argument to back up the ideas of assimilation. But what again is evident here is the subjugation of women and the assumption that women's bodies need to be governed for public order. When the Bikini was first invented women were stopped for showing too much skin; here women are prosecuted for not showing enough. This, as many scholars and journalists have written, simply leads to the alienation of Muslim Women. Carvalho theorises that 'bans on veiling aimed at secularization and cultural assimilation can be self-defeating, inhibiting social integration and increasing religiosity'.²⁰³ Therefore we can see that since 9/11 there has been an increase in laws that affect, disproportionately, Muslim women in France. These have progressed in scope and evolved from children to adults, from full face veils to swimwear. The burkini ban, intrinsically different to the other prohibitions, happened in the wake of multiple attacks on French soil and an increasing securitisation of migrants seeking asylum, allowing for it to be introduced so suddenly. Yet what can be linked through all the French history with the veil is the idea of what it means to be a French woman. This had not changed; it is only the context of these prohibitions which did.

²⁰³ Carvalho, J-P. (2013). 'Veiling*', p.340.

Expanding to other EU countries

France is not the only EU country which has introduced legislation on the restriction of religious dress, although it can be seen as a forerunner. A Pew survey into policy and law of 198 countries in 2012/2013 found that there were 12 countries which required women to wear religious clothing.²⁰⁴ However, there were 39 countries that had restrictions on the right to wear religious attire and the majority of these were in Europe.²⁰⁵ The other singularity found in the Pew survey was that there was a higher percentage of countries within Europe with reported cases of women being harassed for wearing religious clothing than in any other region.²⁰⁶ Therefore, issues with Muslim attire appear to be, not solely, but largely a 'European' problem.

Restrictions to religious dress in the EU overtly affect women, yet this issue of gender inequality is very rarely addressed. Gender equality in Europe is seen as having 'roots in the Christian tradition, while gender inequality and oppression are represented as inherent in Islam'.²⁰⁷ However, this popular view that Europe embraces women while Islam does not does not always stand up to scrutiny. Comments in March 2017 when a male Polish MEP stated that women were inferior and less intelligent than men showed that there are people in positions of power who believe women are not equal. In this case the EU stepped in, advocating women's rights and he was subsequently fined and suspended.²⁰⁸ However, it is specifically Muslim women who are being disenfranchised in the Union. Muslim women are consistently viewed as victims, in media, legislation, and social discourse. In the same month the ECJ ruled in favour of the right for employers to ban religious symbols in the work place. To introduce such a ban they must be held to be non-discriminatory and can only be enforced if the employee has a customer-facing role.²⁰⁹ The cases that brought about the ruling were in regards to Muslim headscarves. In one of the rulings a customer had specifically asked not to be served by a woman wearing one.²¹⁰ Clearly it is the attitude of some sectors of the public which is being allowed to influence and prompt bans on the way Muslim women are

²⁰⁴ *Restrictions on Women's Religious Attire* (2016), accessed 05/06/17

<<http://www.pewforum.org/2016/04/05/restrictions-on-womens-religious-attire/>>

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Brubaker, R. (2017). 'Between nationalism and civilizationism: the European populist moment in comparative perspective', p.12.

²⁰⁸ Rankin, J. (2017). *Polish MEP punished for saying women are less intelligent than men*, accessed 15/03/17 <<https://www.theguardian.com/world/2017/mar/14/polish-mep-janusz-korwin-mikke-punished-saying-women-less-intelligent-men>>

²⁰⁹ Cases C-188/15 & C-157/15

²¹⁰ Case C-188/15, Article 14.

permitted to dress. This can be viewed as a case of religious and gender bias being ingrained into EU law.²¹¹

The EU is a secular organisation, yet is difficult to hide its Christian background and the large majority Christianity holds among practiced religions.

‘Since Slovakia is a Christian country, we cannot tolerate an influx of 300,000-400,000 Muslim immigrants who would like to start building mosques all over our land and trying to change the nature, culture and values of the state’.²¹²

It would be more correct to call the secularism of the Union a Christian secularism.²¹³ The European monitoring centre on racism and xenophobia states that the EU must be ‘tolerant of their religious minorities’.²¹⁴ This statement ‘perpetuates the belief that Islam is completely exterior’ and puts the emphasis on tolerance, rather than acceptance.²¹⁵ It is often argued that the Christianity of the EU is the explanation as to why Turkey is not a Union member.²¹⁶ In 2002 Mr Giscard d'Estaing, the then Chairman of the Convention on the Future of Europe said it would be the ‘end of the EU if Turkey were to join’.²¹⁷ These negative views on the accession of Turkey due to its Muslim roots mark a clear difference between Europe and Islam. These ideas are not new and there have always been these ‘prevailing cultural prejudices’ with Islam being seen as ‘alien’ and ‘threatening’.²¹⁸ More recently, these perceived differences between Islam and Christian secular Europe have been exacerbated and the Islamic religion reduced to terrorism and global conflict.²¹⁹ Brubaker describes the current policies of EU countries as being furthered by a new embracing of both Christianity

²¹¹ Amrani, I. (2017). *The hijab ruling is a ban on Muslim women*, accessed 07/05/17 <<https://www.theguardian.com/commentisfree/2017/mar/15/hijab-ruling-muslim-women-religious-identity-european-court-of-justice-resistance>>

²¹² Quote by Slovak Prime Minister Robert Fico in Kern, S. (2015). *Is Europe Losing Control Over Its Destiny?*, accessed 05/06/17 <<https://www.gatestoneinstitute.org/6490/europe-control-destiny>>

²¹³ Brubaker, R. (2017). ‘Between nationalism and civilizationism: the European populist moment in comparative perspective’, p.10.

²¹⁴ Özyürek, E.(2005) ‘The Politics of Cultural Unification, Secularism, and the Place of Islam in the New Europe’, p.510.

²¹⁵ Id.

²¹⁶ Ibid, p.509.

²¹⁷ *Too big for Europe?* (2002), accessed 04/04/17 <<http://www.economist.com/node/1442045>>

²¹⁸ Habermas, J. (2009). *Europe the faltering project*, p.72.

Brubaker, R. (2017). ‘Between nationalism and civilizationism: the European populist moment in comparative perspective’, p.15.

²¹⁹ Habermas, J.(2009) *Europe the faltering project*, p.63.

and secularism in the EU ‘as a way of minimizing the visibility of Islam in the public sphere’.²²⁰

These ideas of incompatibility are not limited to France and their strong cultural identity. There is a wider level of mistrust of Islam throughout the Union and a notable lack of Muslims involved in EU policy making. In 2009 there were just 11 MEPs with a Muslim family background with just four being women.²²¹ In 2016 London voted for Sadiq Khan as their Mayor, making him the first elected Muslim Mayor of any western capital city.²²² Whilst this vote was important it simply shows how far Muslim women still have to traverse in politics. Despite the low numbers of Muslim women in European politics, it is their rights which are being debated. Shortly after the French ban on the Burka a similar law was passed in Belgium, and Germany also had a Kopftuchaffäre concerning teachers.²²³ In 2016 and 2017 there were calls in Germany, Austria and the Netherlands for bans on full veils. ‘The ruling coalition [in Austria] agreed...to prohibit full-face veils’ and Angela Merkel said they should be prohibited ‘wherever it is legally possible’.²²⁴

These reactions of EU leaders towards the full veils can be seen as reactions to the increase in right-wing support around the Union. The Austrian decision came after the very close defeat of the far-right party in the national elections. Merkel’s statement can be seen as a reaction to the increased support for the AFD who have doubled the number of states they hold seats in from 5 in 2015 to 10 in 2016.²²⁵ This popularity of the far-right coincides with the negative reaction to the influx of migrants and social unrest, as well as attacks perpetrated by a minority in EU states. In France, the Front National reached the last stage of the election, with a huge emphasis being placed upon migration and Islam. In the Netherlands, the Party for Freedom came second in the 2017 elections even after its leader, Geert Wilders, was convicted of hate speech for his views on Moroccans. He has, on many occasions, called for a banning of Islamic veils and in one statement said ‘our Judeo-Christian culture is far superior

²²⁰ Brubaker, R. (2017). ‘Between nationalism and civilizationism: the European populist moment in comparative perspective’, p.4.

²²¹ *Muslims in European Politics* (2010), accessed 08/06/17 < <http://www.euro-islam.info/key-issues/political-representation/>>

²²² Fishwick, C. (2016). *What the rest of Europe thinks about Londoners picking a Muslim mayor*, accessed 08/06/17 < <https://www.theguardian.com/politics/2016/may/14/europe-londoners-muslim-mayor-sadiq-khan>>

²²³ [Headscarf affair] Joppke, C. & Torpey, J. (2013). *Legal Integration of Islam*, p.19.

²²⁴ *The Islamic veil across Europe* (2017), accessed 06/06/17 <<http://www.bbc.com/news/world-europe-13038095>>

²²⁵ Schwartz, Y. (2016). *Germany’s Far Right Rises Again*, accessed 08/06/17 <<http://www.politico.com/magazine/story/2016/12/germanys-far-right-rises-again-214543>>

to Islam and we should not be afraid to say so'.²²⁶ This can be seen as populism pushing for anti-Islamic policy and influencing other parties to introduce into their manifestos anti-veil policy in order to draw votes away from the right-wing.²²⁷ This prohibition of veils shows that the public's fears are being acknowledged. Özyürek describes this as fear inducing 'institutionalised discrimination'.²²⁸

With the ongoing migrant crisis and migrants being continuously linked with 'terrorism, riots and social unrest' it seems likely that anti-Islamic rhetoric will continue within the Union.²²⁹ Headscarves and full veils are linked to gender inequality which in turn is viewed as intrinsic to Islam. However, it is interesting to note that EU countries remain free to restrict abortions for religious reasons (Catholicism) whilst restricting Islamic clothing on the grounds of sexism and 'secular' society. Reproductive health is an important issue worldwide but is still 'dominated and defined by men', just as the bans on veils are dominated and defined by men.²³⁰ It appears that to restrict a women's right to choose is acceptable on religious grounds if these restrictions are Christian based. Gender bias and the institutionalised Christian secularism of Europe, linked with the increase in support for right-wing parties which in itself is heightened by terror and migration has induced many EU countries to call for or introduce bans on veils. This fear of the 'other' is furthered by an acceptance of bans which target Muslim communities and emphasise differences so cause mistrust. These views on gender equality give more weight to the reasonings given for banning veils whilst obscuring other, more important, reasons such as the fear of Islam. It appears that the stigmatisation of Islam and the climate of fear within the EU will continue and allow for a further expansion on prohibitions which will disproportionately affect Muslim Women.

²²⁶ Vadum, M. (2015). *Geert wilders: I won't stop warning the West about Islam*, accessed 01/05/17 <<http://www.frontpagemag.com/fpm/256238/geert-wilders-i-wont-stop-warning-west-about-islam-matthew-vadum>>

²²⁷ Brubaker, R. (2017). 'Between nationalism and civilizationism: the European populist moment in comparative perspective', p.8.

²²⁸ Özyürek, E. (2005). 'The Politics of Cultural Unification, Secularism, and the Place of Islam in the New Europe', p.511.

²²⁹ Wadia, K. (2015). 'Regimes of insecurity: Women and immigration detention in France and Britain', p.91.

²³⁰ Sorial, S (2011). 'Habermas, Feminism, and Law: Beyond Equality and Difference?*', p.30.

Conclusion

The perceived problems with Islam in the EU are not new. Yet they are being progressively furthered not only by right-wing politicians, but in all warps of life and levels of society. Within France there are differences; it is exceptional in regards to religion. As such this thesis acknowledges that the views in France do not directly correlate with that of the rest of the EU. France is not secular but Laïque which calls for a removal of religion from the public sphere. Yet, when Laïcité was introduced Islam was barely a presence in the Republic. The religious conflicts and final outcome did not have to take into account Islam to such an extent, therefore for Laïcité, Islam is not natural. In the more recent past this has become a contention. Muslims have always been viewed as different: colonies were French but the nationals not. With migration and an introduction of North Africans to the country without integration, divides were created on French soil between the 'French' and the 'other'. The burkini bans are simply the most recent in France's history of battles with Islam.

The prohibition of veils for Muslim women in France can be regarded in two ways, one of religious restriction and one on the view of women's sexuality. Both link to French identity. The numerous prohibitions on veils did not all follow the same, given, reasoning, but what can be seen behind them all is a desire to assimilate, to force Muslim women to be like French women. As other male religious attires such as Kippahs had not previously been seen as a problem, it is the construction of female identity which is most important. From the Algerian independence to the current debates on swimwear, the ideas that women should dress a certain way are apparent. It is this westernised view of female sexuality which clashes with the concept of the Islamic veil. This thesis sought to assess if there has been a change in the perception of Muslim women in France: the conclusion being that in fact the only change occurring has been an increase in the stigmatisation of Islam as a terror threat. Thus the visibility of Muslim women wearing veils has been further linked to fundamentalist Islam. It is not that the perception of Muslim women in France has changed. They are still viewed as having little agency, subjugated by men and not conforming to the French ideals of femininity and sexuality which are seen as modern and progressive.

What can be seen instead is that there is a change in environment, one which is more open to discrimination. Islamic terrorism, uprisings in the Middle East and a displacement of millions of peoples, some of whom have come to Europe, combined with terror attacks on European soil have left Islam as an easy target to those who wish to spread fear or enforce more

‘European’ norms. There can be viewed, in other EU countries such as Austria and Germany, an utilisation of prohibitions on full veils as a sign that action is being taken against ‘radical Islam’. The lack of Muslim women in decision making - the lack of Muslims or women in general in decision making within the EU make Islamic veils an easy target. In the context of France the strong feelings of identity, bound in the ideals of Laïcité mean that laws targeting the wearing of religious attire have public support and are more easily justifiable. The 2004 affaires des foulards was able to, post 9/11, justify something that in 1989 could not be introduced. The burqa ban passed only when it encompassed all face coverings for reasons of security and the 2016 burkini bans began in the wake of the Bastille Day terror attack. This securitisation of Islam has allowed for the introduction of laws that clearly target Muslim women, yet the actual perceptions of the women choosing to wear these clothing has not changed. As it stands, the future for Muslim women in the EU does not look brighter. Countries aside from France are now introducing or calling for prohibitions and the French President has previously stated that bans on the burkini should be the choice of local mayors. Until European society stops the western male construction of sexuality and listens to the voices of Muslim women, the argument of gender equality will continue to be used in the prohibition veils. As it is, these views only reflect the stigmatisation of Islam and the attempt to utilise gender equality in order to induce assimilation.

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