Introduction: The Headscarf: A Political Symbol in Comparative and Historical Perspective

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The headscarf has become a cultural flashpoint, a freighted symbol of many of the central social, cultural, political, and religious tensions of this first decade of the twenty-first century. When I first began to research the French controversy surrounding the Muslim headscarf in 2001, it was little known in the United States. Since then, the issue has attained global prominence. In late 2003, the Stasi Commission, which Prime Minister Jacques Chirac had appointed several months earlier, recommended a ban on wearing the Muslim headscarf in public primary and secondary schools.¹ The legislature promptly passed such a ban, which became law on 15 March 2004.² Since then, Germany, Turkey, and Britain, among other countries, have wrestled with their own headscarf controversies. The debate reached international proportions when the European Court of Human Rights upheld Turkey's ban on the headscarf in universities, in the 2005 case of *Sahin v. Turkey*.³

The French ban has focused attention on questions of immigration, feminism, the relationship between Islam and the West, and the extent to which a democratic, liberal society should tolerate intolerant ideologies. Many American commentators reacted in horror at the contemptuous disregard for religious freedom they saw in France's headscarf ban. French commentators, in turn, shook their heads at Americans' apparent failure to understand the history that led France to pass the ban. These commentators pointed to France's centuries-long fight against the political influence of the Catholic Church and to the fact that its sense of national community is far more robust than that of the United States. Although the headscarf affair began to command significant media coverage in 2003, it—and the trans-Atlantic differences it has highlighted—has deep historical roots. At the same time, the prominence of this issue reflects the particular preoccupations of a post-September 11 America and a post-colonial, post-Maastricht Europe.

Central to the debate in France has been the value of *laïcité*, which roughly translates as "secularism." As several of the following articles dem-

onstrate, however, this translation fails to capture the complexity of the term. The French state, having been intertwined with the Catholic Church for centuries and having battled the Church for power at least since the Revolution of 1789, banished religion from the public sphere with the 1905 law that formally separated Church and State.⁴ The concept of *laïcité* was a central tenet of the Revolution, and its desirability remained contested for as long as the Revolution did. The contentiousness of the contemporary debate should not, therefore, obscure an important historical development. Both opponents and proponents of the headscarf ban now generally agree that *laïcité* is the right goal; what they hotly dispute is its proper meaning and application.

Since the early Third Republic (1870–1940), even before the 1905 law, one of the touchstones of the commitment to individual Republican citizenship has been the public school system, where French children are taught not only academic skills but also how to be French.⁵ Many see the headscarf as a threat to the state's educational message because it separates out its wearer and signifies—its opponents argue—allegiance to a different set of values. By banning the headscarf, the ban's proponents contend, the state frees students by helping them to resist the demands of an illiberal Islamic culture, often manifested in pressure from parents or other family members.

The Law of 15 March 2004 banned “ostentatious” religious garb in the nation's public schools.⁶ Previously, students had been permitted to wear headscarves, provided the scarves did not actively disrupt school activities.⁷ The headscarf has emerged as a political symbol of protest, a teenage symbol of rebellion, and a religious symbol of spiritual allegiance. Many non-Muslim French commentators have seized upon the headscarf as an opportunity to express anxiety about the cultural and religious distinctiveness of the country's population of immigrants of North African descent. Proponents of the headscarf ban often warn of fundamentalist Islam's putative aim to deny Muslims, particularly women, the political and social rights that are at the core of a liberal, democratic, secular society. The veil⁸ has widely come to represent an allegiance to a group identity, directly challenging the French political ideal of a polity composed of autonomous, secular individuals.

The present issue brings together six distinct perspectives on the implications of the headscarf. Geographically, the issue focuses primarily on France, with additional contributions on the American and Bulgarian experiences. There exist many more countries whose headscarf controversies this forum regrettably cannot address, but this issue serves as an essential beginning to a comparative consideration of the headscarf phenomenon. I sincerely hope that it will stimulate additional contributions by scholars of countries not investigated here—Western European countries such as Germany and majority-Muslim countries such as Turkey. Within its geographical scope, the assembly of articles in this issue demonstrates expansive breadth and profound depth. Each author has chosen a different facet of the controversy to illuminate;

collectively, the articles provide a roadmap to the historical underpinnings of the headscarf affair as well as to its contemporary significance.

The historian of *laïcité* Jean Baubérot opens the proceedings. Baubérot brings a singular perspective as the lone member of France's Stasi Commission who declined to recommend a headscarf ban. Baubérot opens with an overview of the historical and sociological contours of the French headscarf affair. He then weaves together observations about the French political, social, and cultural factors that created the public demand for the headscarf ban, with a forthright evaluation of the methods and dynamics of the commission itself that might have helped impel the commission toward backing such a ban. Broad cultural forces thus combine with institutional structure to create the momentum that ultimately led to the passage of the headscarf law in March 2004. Baubérot's article illustrates the contingency of historical events, as he combines his own scholarly work on the history and sociology of *laïcité* with his reflections on his participation in the political work of the Stasi Commission.

As noted above, the very desirability of *laïcité* remained fiercely debated for many decades following the French Revolution. Mayyada Kheir analyzes a key moment in the early Third Republic, that of the 1882 secularization of public school education, when that debate began to shift and the contours of the contemporary debate—which revolved around the meaning of *laïcité* rather than its desirability—began to emerge. Kheir demonstrates that *laïcité* has not been a static concept, but rather has long had a contested meaning. By examining the debates in the National Assembly and Senate surrounding the legislation secularizing the schools, Kheir draws out the views of four separate factions, each with a different perspective on whether the law was anti-religious or merely “neutral,” and on whether that anti-religiousness or neutrality was commendable. The Third Republic debate also helps to illuminate the conversation that is still on-going over whether *laïcité* is religiously neutral or anti-religious.

If the French response to the headscarf was contingent on several contemporary factors but responded at the same time to a contested and lengthy historical tradition, can we learn anything from a comparative analysis of France and the United States? Dan Gordon's piece takes up this question, asking why the vast majority of Americans, notwithstanding the country's War on (Islamic) Terrorism, have failed to find the headscarf controversial. He concludes that, while there is no one answer to this question, hints can be found in several places. Among the crucial distinctions he identifies between France and the United States are the lack of “public space” in the United States and the American emphasis on individual autonomy as integral to the popular and legal understandings of freedom of religion. Intriguingly, Gordon also suggests that religious Americans of a given faith tend to feel a common bond, rather than antagonism or rivalry, with religious Americans of other faiths.

My own piece takes up another aspect of the difference between American and French models of religious freedom. Although France has banished religion from public schools, it allows public funding of religious schools and sponsors religious councils that act as official liaisons between the state and particular religious communities. In the American context, this intertwining of state and religion would constitute an intolerable entanglement between the state and religious institutions. One of the cornerstones of the traditional liberal polity is the presence of civil society, a network of non-governmental groups and institutions that mediate between the state and the individual. By turning the civil society model on its head, I see the French state as interposing itself between the individual and one particularly encompassing group—the religious institution. The headscarf ban illustrates this tension by demonstrating that the French state attempts to protect its individual citizens from disunifying religious influences, while simultaneously molding neutral citizens who enter the political arena as individuals, not as members of one group or another.

James Whitman takes a longer historical perspective, addressing himself to the question of why the French and American conceptions of the separation of Church and State have evolved so differently from one another. In particular, Whitman points out that although Americans often pride themselves on having a more expansive freedom of religion than other Western countries such as France, religion is much more prominent in American political discourse than it is in France's. He ultimately traces the two competing Western visions of the separation of Church and State to the fact that in France and certain other Continental countries, the state long ago took over many Church functions, while the state never took over those functions in the Anglo-American tradition. This history helps to explain both why the state is so much more involved in religious institutions in France, and perhaps why private religiosity is weaker in Europe than in the United States: religion in the former has become bureaucratized and routinized, and has thus lost its spiritual and charismatic character.

The issue concludes with Kristen Ghodsee's illuminating article about the headscarf in Bulgaria, a country with a recent political history and a relationship with Muslims fundamentally different than those of the United States and France. Having emerged within the past generation from Communist rule, Bulgaria has grappled with how to respond to forms of cultural expression that had previously been suppressed, including those of the Muslim population that has existed since the country's conquest by the Ottoman Empire. Ghodsee focuses on the physicality of the headscarf, describing the juxtaposition between modest and revealing clothing—headscarf and miniskirt—in contemporary Bulgaria. In doing so, she reminds us that our understanding of the headscarf must encompass more than simply Western anxiety over immigration or Islamic fundamentalism. Ghodsee brings into focus the way in which young women's choice to wear the scarf might express a search for a meaningful, non-superficial personal identity.

In addition, some Bulgarian proponents of the headscarf have adopted the language of individual autonomy, hinting thereby at a possible convergence between Islamist and American reasoning about the headscarf, against the Western European view.

Running through these articles are alternative explanations of the headscarf affair in terms of long-term historical trends, on the one hand, and recent political events, on the other. The articles, taken together, juxtapose the instrumental role of institutions with the motivations of the individual—whether the headscarf-wearer or, in Baubérot’s case, the Stasi Commission member—in confronting and adapting to a larger socio-cultural reality. Even as the headscarf-wearer attempts to endow the headscarf with her own meaning, the larger society and the state see a symbol that is ultimately difficult for the individual to control completely. The countries that have confronted the headscarf issue have likewise struggled with the meaning with which the international community will invest their treatment of the headscarf and headscarf wearers.⁹

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Notes

1. Commission de Réflexion sur l’Application du Principe de Laïcité dans la République, Rapport au Président de la République (11 December 2003), <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>. The law also banned other conspicuous religious attire, such as a Sikh turban, but permitted discreet symbols, such as small crucifixes or Jewish stars. All agreed that the Muslim headscarf was the primary target of the law.

The Commission also made numerous other recommendations, including some intended to acknowledge France’s religious and cultural diversity, like making Yom Kippur and Eid-El-Kebir school holidays. The government did not enact any of these proposals. *Ibid.*, 65–69.

2. *Projet de Loi Encadrant, en Application du Principe de Laïcité, le Port de Signes ou de Tenues Manifestant une Appartenance Religieuse dans les Écoles, Collèges et Lycées Publics*, No. 253, Assemblée Nationale, Douzième Législature (2004), <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000417977&dateTexte=> [hereinafter *Headscarf Law*].
3. *Leyla Sahin v. Turkey*, 2005-XI Eur. Ct. H.R. (Grand Chamber). As this volume went to press, the Turkish Constitutional Court had just overturned an

- attempt by the Parliament to lift the country's ban on the headscarf among university students. See, e.g., "Turkish court upholds ban on Islamic head scarves in universities," *The Associated Press*, 5 June 2008, <http://www.iht.com/articles/ap/2008/06/05/news/Turkey-Head-Scarves.php>.
4. Law on the Separation of Church and State of 9 December 1905, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], 11 December 1905, art. 2, <http://www.legifrance.gouv.fr/texteconsolide/MCEBW.htm> (current version).
 5. See Françoise Gaspard and Farhad Khosrokhavar, *Le Foulard et la République* (Paris, 1995), 178–79; John Richard Bowen, *Why the French Don't Like Headscarves* (Princeton, 2007), 11–12, 14 (quoting an interview with Blandine Kriegel, Chair of the High Council on Integration, October 2003).
 6. Headscarf Law ("Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestant ostensiblement une appartenance religieuse est interdit.").
 7. For more details on the 1989 ruling by the French Council of State that enacted this standard, see Elisa T. Beller, "The Headscarf Affair: The Conseil d'Etat on the Role of Religion and Culture in French Society," *Texas International Law Journal* 39 (Summer 2004): 582–85, 609–15.
 8. Contributors to this issue have used the terms "veil" and "headscarf" ("voile" and "foulard" in French) fairly interchangeably. There exists, however, a wide range of veiling practices, ranging from the *burqa* and *niqab*, which cover the woman's face and entire body, to the *hijab* and *türban*, which cover only the hair. See Nusrat Choudhury, "From the Stasi Commission to the European Court of Human Rights: L'Affaire du Foulard and the Challenge of Protecting the Rights of Muslim Girls," *Columbia Journal of Gender and Law* 16 (2007): 199, 218–20; Martin Asser, "Why Muslim Women Wear the Veil," *BBC News*, 5 October 2006, http://news.bbc.co.uk/2/hi/middle_east/5411320.stm (describing different veiling practices and providing an accompanying graphic to depict those practices).
 9. The European Court of Human Rights case of *Sahin v. Turkey*, mentioned above, provides a prime example of a transnational body's attempt to evaluate the pressures and traditions that lead a particular country to ban the headscarf.