published in Avigail Eisenberg and Will Kymlicka (eds.) *Identity Politics in the Public Realm. Bringing Institutions Back In*. Vancouver: UBC Press 2011

From Immigrants to Muslims

Shifting Categories of the French Model of Integration

Eléonore Lépinard

Chapter 8

For several decades European countries have developed public policies that focus on incorporating immigrants into host societies. Governments and bureaucrats have designed specific policies to recognize, integrate, and assimilate foreign cultures and ethnic otherness. Since their inception, in most European countries, policies designed to include immigrant minorities have centred on ethnic identities and national origins rather than on religious identities. The British Race Relations Act of 1976 provided a legal framework that organized the integration of immigrants from former colonies along racial lines (Favell 2001; Bleich 2003). In France, although the civic conception of citizenship meant that all immigrants could become citizens, policy makers based estimations of the likelihood to integrate on immigrants' national origin and, implicitly, ethnic and cultural origins (Hargreaves 1995; Favell 2001). For a long time, in Germany, the rule of the *jus sanguinis* implied that Turkish *Gastarbeiter* (temporary workers) were not citizens; therefore, citizenship categories also coincided with ethnic boundaries (Brubaker 1992; Joppke 1999). Hence, for over three decades, the various politics of inclusion implemented in many European countries primarily used citizenship status (immigrant, alien, or citizens) and ethnic identities as their main policy categories.

To any observer of the political life of European countries, however, it is clear that issues of national identity and immigration are no longer played

out solely along racial and ethnic lines. There is still much debate in Europe about public policy on the regulation of immigration and race relations. However, these issues have been reconfigured with the emergence of a new issue: the regulation of Islam. Islam, rather than race or ethnicity, is at the centre of the new politics of inclusion and has become a main focal point of policy making and constitutional politics. Debates on the wearing of Muslim religious dress abound in European public spheres. In many countries legislative activism and litigation have led to restrictive policies on certain religious attire worn by Muslim women. Legislative efforts to ban the burka and the niqab – veils that partially or entirely cover one's face and body – have multiplied at the local and national level in Italy, Spain, France, Belgium, and the Netherlands.

Islam is a minority religion in European countries such as France and is practised mostly by immigrants and citizens of immigrant descent. The new regulations targeting Islamic religious practices are clearly connected to the presence of Muslim minorities and are therefore a side effect of immigration. Because of this overlap between religious affiliation and ethnic membership, one might think that religion is simply being used as a proxy for ethnicity. Whereas immigrant status and ethnic difference used to coincide, members of ethnic minorities are now, for the most part, nationals and citizens of European countries. In this context religious identities may be used to replace the national-foreigner divide and the markers of ethnic difference that previously structured integration politics and policy.

Yet religion cannot simply be substituted for race. The public policies designed to target ethnic groups and those designed to target religious minorities do not use the same legal tools or the same policy framework. This shift in categorization implies a shift in political means and objectives. For instance, when minorities that are designated for inclusion are defined by their immigrant status or their ethnic origins, they are governed by and incorporated into society through nationality laws, immigration policy, antidiscrimination and affirmative action policies based on ethnicity in employment or education, and social cohesion policy. Their cultural identity is thus assessed in relation to integration policy. Yet, when these same populations are perceived and evaluated through their religious identity as Muslims, the policy framework comprises another set of legal norms such as religious freedom, secularism, religious accommodation, and state neutrality. Hence, depending on the policy frame, governments, judges, and political representatives must mobilize different sets of institutions and different legal frameworks.

The proliferation of new regulations targeting Islam in many liberal democracies suggests that studies on the inclusion of minorities must also take into account policies that focus on the religious, rather than the ethnic, identity of immigrants and their children. More precisely, there is a need to analyze the relationship between policies that aim for the inclusion of ethnic minorities and policies that regulate religious minorities. What are the similarities and differences in policy making between regulating inclusion and exclusion along religious and racial lines? Is one concern (religion) replacing the other (race) on the political agenda, or do both policy frames influence each other, and how? Is the task of assessing the identities of individuals and groups similar in both cases?

In this chapter I examine the relationship between immigrant integration politics and the regulation of religion in France. Scholars of immigrant incorporation have identified France as a paradigmatic example of the civic-assimilationist tradition. The French republican model of integration promotes colour-blindness and the erasure of cultural differences. In the 1980s and 1990s, public discourse on the French model of integration referred mostly to the assimilation of immigrants and their children into French society and polity through the fostering of a common civic culture. However, during the public debate on the law banning conspicuous signs in public schools – passed by an overwhelming majority of the French National Assembly on 15 March 2004 – the ban was presented as a precondition for the integration and assimilation of Muslims. Public officials, first and foremost of whom was the then president of the republic Jacques Chirac, presented this ban as the natural product of the French conception of secularism, *laïcité*, and a requirement of the French republican model, thereby suggesting an affinity between laïcité and the French model of immigrant integration. This correlation between the policy frame of immigrant integration and the regulation of religion is also apparent in the law banning the Islamic full veil in public spaces, which was finally adopted by the French Parliament on 11 October 2010.[1]

For these reasons I examine the relationship between the French politics of immigrant incorporation and the regulation of religion that targets Islam. A short genealogy of the French politics of inclusion shows that it was initially based on ethnic and cultural categories instead of religious identities. Although integration policy was based on "culture-blind" premises, French institutions regularly engaged in evaluating immigrants' cultural identity in order to assess the cultural distance from French national identity that integration policy had to bridge. I then analyze how this model has influenced a

redefinition of laïcité in order to perpetuate the politics of integration vis-à-vis Muslims instead of immigrants. I also show that this shift in policy category implies a negative assessment of Muslims' religious practices and identity. Indeed, although Muslim religious practices are now at the centre of public policy, policy and law makers never attempt to understand what these practices actually mean to Muslim believers. Rather, they rely on a legal and political grammar of public order and proselytism to decide on issues of religious accommodation. Finally, I examine the transformation of the legal framework of secularism resulting from the shift in policy-making categories from immigrants to Muslims.

The Operating Categories of the French Model of Integration

Since the 1990s the French public policy approach to immigrants has been based on what bureaucrats and scholars alike label the French republican model of integration. This policy framework emphasizes a common national public culture instead of pluralism, an abstract concept of citizenship, and the constitutional guarantees of individual rights as opposed to collective rights (Jennings 2000; Favell 2001).[2] A strict divide between the public and private spheres supposedly enables citizens to detach themselves from their particular affiliations to participate in a national body politic bound by a common civic culture. These normative assumptions lead to a reluctance to use race, colour, or culture as legitimate categories for public policy. The French model of integration is colour-blind and culture-blind when it comes to national belonging or political and social inclusion. Prohibiting discrimination on the grounds of racial identity must therefore be achieved through the suppression of the social relevance of colour as a social marker and even as a category of public policy (Simon 2008).[3]

With respect to immigration, the role of the state vis-à-vis immigrants is to ensure that colour-blindness applies to all fields of policy and to guarantee equal treatment and civic integration to all immigrants (Hargreaves 1995; Bleich 2003; Sabbagh and Peer 2008). On the one hand, the state must remain neutral to treat all individuals, including immigrants, equally;on the other hand, immigrants are responsible for their own integration into the national community. They are encouraged to detach themselves from their "origins" to become French. This conception of immigrant integration was forged in the 1980s while debates on nationality laws (Brubaker 1992; Thomas 2006; Weil 2008), immigration (Guiraudon 1998), racism (Bleich 2003), and urban unrest took centre stage on the political scene. A 1988 report titled *Etre français aujourd'hui et demain* (To be French today and

tomorrow) released by the president of the commission on the reform of nationality law, the high civil servant Marceau Long, is a cornerstone in the shift from a focus on immigrants' economic and social integration to a reflection on how access to national identity through French citizenship is a prerequisite for the integration of migrants into the nation (Favell 2001). This political momentum was institutionalized legally through the legislative reforms of the nationality code and the creation of an institution, the Haut Conseil à l'Intégration (HCI), responsible for compiling an annual report on the state of the social integration of immigrants and their descendants. Thus, from 1988 on, integration was no longer defined in functional terms (the rate of employment, urban segregation, schooling, political participation, and so on) but in normative ones. Integration is a project to nationalize immigrants and their children; it presupposes the disappearance of, or at least the invisibility of, "their" difference (Lorcerie 1994; Hargreaves 1995, 33). In the HCI's terms, the process of integration means "identifying oneself with a group which is not the 'community of origin'" (HCI 2004, 105).[4]

Throughout the 1990s and 2000s, the philosophy of integration promoted by the HCI remained consistent in its two dimensions, affirming the right to equality regardless of one's origins and colour and stressing the need for voluntary adhesion and loyalty to the nation – that is, to French values. Although this normative framework supposedly implies a form of culture-blindness, the reports of the HCI reveal an underlying evaluation of migrants' cultural identity. Cultural foreignness is assessed and evaluated for different migrant groups in order to measure the cultural transformation that migrants must undergo to become French. Hence, becoming French is not only about adhering to French civic values, it also requires adopting these values as one's new cultural identity.[5]

In the HCI's reports, adhesion to French culture in fact often means dissociation from a migrant's culture of origin rather than a cohabitation of the old and the new. More precisely, the culture of origin can be maintained in the private sphere, but "specific" identities should not be promoted in the public sphere (HCI 1995, 19-20). The evaluation of the culture of origin and its compatibility with integration varies with the culture under scrutiny. Whereas the preservation of the cultural identities of Portuguese or Polish migrants through private associations, newspapers, and community activities is perceived positively, as a way of ensuring that migrants and their children have a community to welcome them and can learn about their identity, the cultural revival of children of immigrants from Maghreb is

characterized by the HCI as an obstacle to their integration, mostly because it is not an authentic identity. Indeed, in its 1995 report on cultural links and integration, the HCI insists that the renewed interest in Islam among children of immigrants constitutes a surrogate identity rather than a genuine desire to learn from one's true cultural background. Interest in more fundamentalist interpretations of Islam is presented as the result of the economic crisis and the lack of integration that young Muslims experience because they are unemployed and cannot have a positive source of identification through work (ibid., 18, 34). The interest that children of immigrants have in Islam is qualified by the HCI as a "reinterpretation of cultures by young people without education who fantasize about cultures they don't really know" (ibid., 18).

In the view of the HCI, the desire that children of immigrants from the Maghreb express to learn more about an essential part of their cultural background may not be genuine and may in fact reflect a failure of integration rather than the harmonious cohabitation of their culture of origin and the French dominant culture. For the HCI, "the individual must decide how he uses the facts of his religion, his culture of origin, his community. His choice determines his ability to integrate" (HCI 1995, 54). In other words, an excessive interest in Islam, in a context in which children of immigrants have been raised in the dominant French culture, can only be the sign of a refusal to integrate.

In the face of increased cultural diversity, the HCI insists that the role of the state is to remain neutral and to treat all cultures and all religions equally. However, equal treatment means strict enforcement of the general rule rather than specific accommodations. For example, the HCI is concerned with the way public officials and elected representatives create obstacles for Muslims who want to build new mosques. This breach of equal treatment has been severely condemned on multiple occasions by the HCI (1995, 2000). However, this concern does not imply that Muslims should enjoy official forms of recognition and accommodation. The greater public visibility of the Christian faith and the greater accommodation of Christian religious practices in French society are presented as a product of history that cannot be replicated for Islam, although the HCI admits that the lesser social visibility of Islam may fuel resentment among French Muslims and inhibit their integration (ibid., 45).

Interestingly, during the 1990s, although the religious identity of immigrants was clearly identified as an element of their cultural background, public institutions did not primarily categorize immigrants and their children as

Muslims (see, for example, HCI 1995). Religious identity was the focus of public attention only insofar as it was considered the symptom, rather than the cause, of a potential lack of integration, as well as a potential source of discrimination by public authorities. However, the concern with Muslim identity and religiosity grew over time and, by the end of the 1990s, laïcité had progressively become a central concept in political debates on the integration of immigrants and, even more so, their children. In this new context, Muslims rather than immigrants became a group to be integrated into the French nation because their identity posed a threat to the social order.

Laïcité, or Integration by Other Means

Laïcité does not have a single, legal definition: its meaning is multiple and embedded in various legal texts. The main legal text on secularism in France is the 1905 law on the separation of church and state, in which the term *laïcité* does not appear. The 1905 legislation puts forth a moderate and liberal version of laïcité that consists of two interrelated principles: (1) freedom of conscience and religious practice[6] and (2) a nonestablishment clause that mandates the separation of state and church, with several exceptions (Baubérot 2004).[7] Under the law, state regulation and limitation of religious practices is under strict scrutiny to guarantee freedom of religion, the neutrality of the state vis-à-vis all religions (understood as the principle of nondiscrimination among individuals based on religion), and religious pluralism (nondiscrimination and nonhierarchy among religions as organizations and beliefs).

To adjudicate cases on religious freedom, judges must interpret laïcité on the basis of the complex content of the law of 1905, the jurisprudence of the Conseil d'État (the highest administrative court, which also fulfills the function of *ex ante* judicial review) and, if necessary, the various laws on education that affirm the secular nature of the public school. Until the mid-2000s, the Conseil d'État, in keeping with the liberal spirit that had initiated the legislation in the first place, consistently favoured a liberal interpretation of the 1905 law (Conseil d'Etat 2004). The 1989 opinion of the Conseil d'État on the first cases regarding the headscarf in public schools is a case in point. The court was asked by the minister of education, Lionel Jospin, to give its opinion on the legality of wearing headscarves in public schools. Muslim girls had been wearing headscarves well before 1989, but the issue gained media attention thanks to a political entrepreneur and the headmaster of the *collège* (secondary school) of the city of Creil near Paris. On 27 November

1989, the court delivered its opinion and struck a balance between protecting students' freedom of conscience and right to an education without discrimination based on religion and their obligations related to schooling (such as attendance in class). Headscarves would not be banned, and pupils who wore them could be excluded only if they engaged in proselytism or disturbed school activities and the public order (see Conseil d'Etat 2004). Referring to various domestic laws on education and international conventions on the freedom of religion (such as Article 9 of the European Convention on Human Rights), the Conseil d'État proposed a liberal interpretation of laïcité, one that deemed the wearing of religious signs compatible with the secular nature of the French public school system. To reach its conclusion, the Conseil did not assess the centrality of the wearing of a headscarf to the religious belief of the schoolgirls. On the contrary the court explicitly refrained from interpreting the religious significance that the headscarf might have. As long as the headscarf was considered a religious sign but did not imply proselytism, no further inquiry was needed to allow the schoolgirls to wear it.

Despite this liberal ruling, and despite the Conseil d'État's jurisprudence throughout the 1990s, which clearly favoured the right of schoolgirls to wear their veil at school,[8] the headscarf issue continued to fuel challenges to this liberal interpretation of laïcité and calls for political action in the name of a more French republican concept of secularism.[9] Although such calls in favour of a return to the true spirit of laïcité had historical credence, since a similar understanding of secularism had been promoted under the Third Republic just before 1905,[10] this republican concept of laïcité is in fact quite alien to its liberal legal sources. The subsumption of laïcité under the French republican model of integration reveals the much more recent influence of the policy frame of immigration and ethnic politics on the regulation of religion. Although the policies on the integration of immigrants and laïcité had separate histories, the 2004 ban on religious signs in public schools was the result of a political process by which laïcité was reinterpreted as a pillar of the French republican model.

The influence of the republican model of integration on laïcité is apparent in developments throughout the 1990s. Various political entrepreneurs and legal experts who opposed the liberal ruling of the Conseil d'État on headscarves attempted to contest its jurisprudence (Galembert 2009). To promote a more restrictive law, these critics framed laïcité as a dimension of integration policy. This transformation of laïcité into a tool for integration

was made possible by institutions such as the HCI; major political actors such as deputies, senators, and the president of the Republic; and experts commissioned by the president to investigate the issue. For instance, in its report on Islam within the republic released in 2000, the HCI suggested that integration and laïcité go hand in hand. The HCI's interest in laïcité derived from the adoption of a broadened definition of integration. Whereas integration policy had previously been directed towards immigrants, in 2000 the HCI emphasized that integration potentially targeted French citizens and immigrants alike. Integration was, in fact, about social cohesion. With this new definition in mind, the HCI began to assess whether Muslim identity and religious practices could hinder French Muslims' integration into French society.

The 2000 report suggests that Islam, as an identity and as a set of religious practices, poses specific problems to the Republic. The report focuses on the Islamic veil, the accommodation of religious prescriptions regarding meals, and the practice of Ramadan in schools. Addressing the authorities of public schools, the report states that they "must insist on the fact that the veil represents an obstacle on the way to integration ... It is crucial to underline that its wearing denotes sexual inequality, and therefore contradicts a social norm followed in our country" (HCI 2000, 75). The report continues by noting that school authorities should explain to schoolgirls wearing the veil that they will expose themselves to discrimination in the job market, as well as to legal discrimination in the civil service. Rather than insisting on the need to combat religious discrimination in the private sector and promote the accommodation of religious diversity within French society, the report explicitly advises that Muslim schoolgirls – most of whom were born in France and are French citizens – should bring themselves in line with majority norms and stop being "at odds with their environment" (ibid., 76). This logic clearly echoes the paradigm of immigrant integration in which the responsibility of integration is that of the outsider and not society.

Although the HCI suggested that meals without pork should be served to pupils, it clearly objected, on normative grounds rather than practical ones, to public schools offering halal meals or accommodating school activities during the period of the Ramadan (HCI 2000, 75). The decision to accommodate a religious requirement (meals without pork) while refusing another did not rest on an assessment of the centrality of the religious practices for Muslim believers. Rather, it derived from the idea that not serving pork for lunch at school does not construct Muslims pupils as a separate group of

pupils, whereas serving halal meals or changing the school schedule for Muslim students during Ramadan amounts to granting a privilege to a group of pupils based on their religious identity. The HCI's official rationale suggests that these accommodations would endanger the uniformity of the public school curriculum and would create various categories of pupils (ibid.). However, what was really at stake, as the report itself suggests between the lines, was a competition between French identity and Muslim identity. Indeed, pupils' religious practices were interpreted by the HCI not so much as actions deriving from their religious identity and beliefs but rather as signs of their rejection of French culture and identity. Islam was conceived of as a surrogate identity for young people on the verge of dropping out of school and in precarious social and familial situations. Hence, for the HCI, there was a risk that Islam would become "an identity which absorbs or replaces all the other identities" such as the French identity (ibid., 53).

In this context the regulation of religious practices under the auspices of laïcité appears to be a convenient means to ensure that religious identities do not stand in the way of integration. Laïcité is well suited to justifying strict regulation rather than accommodation on the part of school authorities because it is conceived of as a "pillar of social cohesion" rather than merely as a set of protections for religious freedom (HCI 2000, 75). This republican interpretation of laïcité, which focuses on state neutrality to protect the social order, does not require, or perhaps even permit, investigations of a believer's relationship with his or her faith and religious practices. As far as the HCI is concerned, the compatibility of a religious practice with laïcité does not depend on the evaluation of the centrality of this practice to someone's religious belief but rather on the potential threat that the practice may represent for the society as a whole.

The HCI was not the only institution to invest laïcité with the task of ensuring the assimilation of the culturally and ethnically foreign. Three official reports were commissioned on laïcité. They are the Baroin report, commissioned by president Jacques Chirac and released in May 2003; the Debré report on religious signs in public schools, released by a parliamentary commission in December 2003; and the Stasi report on the implementation of laïcité in the Republic, commissioned by Chirac and released that same month. All three commissions favoured the prohibition of religious signs and the Islamic veil in public schools. In their efforts to legitimize a ban, the commissioners defined laïcité as a central dimension of the French

republican model. Major political actors also promoted this blurring of integration and laïcité. For example, the minister delegate of secondary education opened a debate on public schools and laïcité at a conference at the National Assembly by stating:

> I suggest we found anew the secular contract in public schools. We should not reduce laïcité to its sole dimension of neutrality vis-à-vis spiritual values, we should have a more active vision, more positive and inspired by a political project: to train citizens, to emancipate individuals from their social background, to give them freedom of choice. Laïcité also implies a social project. It must enable everyone to find his own path within society, to have his talents recognized, his work, his individual merit. Therefore laïcité is part of the Republican project to promote and integrate through the school system.[11]

This speech summarizes various elements of the French model of immigrant integration: the active role of the state in encouraging citizens to adhere to national values and the necessity of correcting social inequality and injustice to establish equal treatment. The idea that integration happens when differences are minimized and that it requires common values is typical of the integration model promoted by the HCI since the 1990s. However, in this speech, the model is applied to Muslims rather than immigrants. Hence, laïcité is invested with a political project of national cohesion rather than one of regulating state-church relations or protecting religious freedom.

This politicization of laïcité is also noticeable in the speech made by the president of the republic in 2003 in favour of the ban on Islamic headscarves in public schools:

> Laïcité is embedded in our traditions. It is the core of our republican identity. Today we shall not establish it again or modify its frontiers. Rather we aim at making it live in a way that is faithful to the equilibriums that we have invented, as well as the values of the Republic ... It is a place where everyone meets to bring the best of himself to the national community.[12]

Here, again, laïcité is invested with the function of protecting and ensuring the permanence of a national republican identity. It is designed as a tool to ensure the allegiance of individuals to the national community.

The Stasi report on secularism, commissioned by the president of the republic, summarizes the new meaning of laïcité that emerged during the 2003-4 debate on the headscarf. It affirms that secularism is characterized by three dimensions: the separation of church and State and the subsequent equal treatment of all religions by the state; the protection of freedom of conscience; and, finally, what the report calls a common requirement that, in exchange for the protection of freedom of conscience, each citizen must respect the common public space and religions must adapt to laïcité (Commission de Réflexion sur l'application du principe de laïcité dans la République 2003, 12-17). Whereas the first two principles are embedded in law, protected by the Constitution, and defined by coherent jurisprudence, the third does not rest on legal grounds and clearly echoes the policy frame forged on the issue of immigrant integration. To justify the claim that wearing a Islamic headscarf violates this common requirement, the Stasi commission insisted on a specific meaning for this religious sign: that it denotes sexual inequality and that, most of the time, girls are coerced into wearing it. Although the commission had no reliable data on the practice, it emphasized the negative value that could be attached to the veil. This negative portrayal then allowed the commission to conclude that the wearing of the veil threatened the respect of the common public space that laïcité requires.

This conception of laïcité, which is influenced by the French model of integration, clearly subordinates the protection of religious freedom to the protection of the social order.[13] Political actors and institutions are therefore not expected or inclined to assess the authenticity or centrality of one's beliefs in order to decide how to regulate a religious sign such as the Islamic veil in public schools. Rather, what is systematically assessed is the danger, the disruptive nature of the visibility of this sign, to social cohesion and public order. In fact, during the public debate leading to the 2004 ban, a notion of danger and threat to social peace was progressively attached to the Islamic headscarf. The scarf was therefore socially constructed as incompatible, by definition, with the harmonious maintenance of the social order. Whereas the judicial rulings of the Conseil d'Etat in the 1990s had insisted that wearing the Islamic veil could lead to expulsion from school only if a girl had engaged in proselytism or disrupted school activities, the 2004 ban was based on the assumption that the wearing of a headscarf is, in and of itself, a source of social tensions.

After 2004, as two controversies over the wearing of the full veil (niqab) unfolded, this new interpretation of laïcité became further enmeshed with

the issue of the (lack of) integration of Muslims in French society and the question of the protection of public order. During the first controversy, in 2008, the Conseil d'État rejected the complaint of a Moroccan immigrant whose demand for naturalization had been refused on the grounds that her wearing of the niqab had showed she had not integrated into French society (Koussens 2009). In its decision the court legitimized the idea that the practice of what it called a radical form of Islam was not compatible with participation as a citizen in French society. With this decision the incompatibility between some religious identities and the French national identity was discussed openly and, finally, embedded in law. Moreover, the legality and the legitimacy of the decision rested upon the claim that wearing the niqab is evidence of the radicalism of someone's religious practice and belief. In other words, whereas the Conseil had refrained for a long time from evaluating the meaning of the Islamic veil to those who wear it, in this surprising turn, it based its decision on such an evaluation. But this evaluation of the radical nature of the claimant's belief was not based on any real inquiry into the subjective understanding of the claimant. On the contrary, for the Conseil, the wearing of the full veil, in and of itself, denotes radicalism and constitutes an insuperable threat to the wearer's successful integration into French society.

A second, wider debate on the possibility of legally banning the niqab from French public spaces emerged in 2009. Despite claims that such a ban would unduly restrict religious freedom, the government and the representatives of Parliament decided to overlook these objections and enshrine the ban in law.[14] In its report on the legal permissibility of banning the full veil in public spaces, the Conseil d'Etat strongly suggested that such a ban would transgress fundamental rights and be susceptible to being overruled by the Constitutional Council and the European Court of Human Rights. Yet, in exploring all the legal routes that may be available to justify a ban, the Conseil d'Etat developed the idea that laïcité could be defined as a requirement for the *vivre ensemble,* that is, for the harmonious participation of all citizens in the public sphere and in the life of the nation and society. If the concept of laïcité, understood as the principle that enables national cohesion, was to be enshrined in law, everyone's face may need to visible in public (Conseil d'Etat 2010).

The subsumption of laïcité under the paradigm of integration is, therefore, the result of a political process by which political actors and institutions have invested secularism with a new political meaning by applying a discourse forged for the integration of immigrants to a religious minority.

Elements of continuity are clearly recognizable between, on the one hand, official discourses articulated by institutions such as the HCI on the issue of the integration of immigrants and, on the other hand, discourses legitimizing the ban on headscarves or full veils. In both contexts a similar republican model is said to be in crisis and in need of rescue, national identity and social cohesiveness are supposedly at stake, and an identifiable minority group is asked to voluntarily or coercively conform to a prescribed model of behaviour and a set of common values. In other words, in both cases, discourses on integration or laïcité are vehicles for nation-building practices. However, the shift in categories of public policy from immigrants to Muslims has other implications. Although the shift is aimed at continuing integration through other means, it produces new political effects.

Transforming Secularism

The ban on conspicuous religious signs in public schools and the ban on full veils in public spaces are now part of French secularism. Official discourses emphasize the continuity between the law on the separation of church and state and the new regulations of Islamic practices. However, from a legal perspective, this continuity actually has gaps and displacements. In other words these new regulations are transforming rather than perpetuating the politics of secularism in France in a number of ways. First, the shift from immigrants to Muslims is having a boomerang effect on the legal regulation of religious practices. In particular, these new regulations on the Islamic veil are transforming the concept of the neutrality of the public sphere and erasing the pluralism of identities. Second, the development of antidiscrimination law is imposing limits on what the state can forbid in the name of laïcité and is empowering new collective actors.

Neutrality, Invisibility, and Pluralism

The relationship between the two concepts that are central to secularism – neutrality and pluralism – has been reconfigured with debates on the ban of religious signs in public schools. In the jurisprudence of the Conseil d'Etat, *neutrality* refers to the neutrality of the state and its institutions vis-à-vis its public, especially pupils in its charge. Defined this way, *neutrality* implies the absence of proselytism and religious propaganda on the part of the representatives of the institutions. A famous decision of the Conseil d'Etat, from 1912, clearly formulates this requirement, which derives, in the opinion of the judges, from the secular nature of the public school. In this case a priest was forbidden from taking a national exam required to become a

public school teacher of philosophy. The common interpretation of this decision is that the priest's beliefs were incompatible with the role of teacher since he was likely to instill his beliefs in pupils and that such a form of proselytism was contrary to the mission of public schools.[15] This understanding of state neutrality can be labelled substantive neutrality since it focuses on the content of a civil servant's mission and work. In subsequent decisions the Conseil added nuance by introducing a new concept of neutrality. Indeed, in 1950 the Conseil argued that to *manifest* religious beliefs while working for a public institution might contradict secularism but that the fact of *holding* a religious belief was compatible with the function of a teacher in a primary school.[16] The Conseil thus established a distinction between holding and manifesting a belief or between substantive neutrality and manifest neutrality. This distinction persists in a recent opinion of the Conseil d'Etat, which states that the visible manifestation of religious belief is incompatible with the status of civil servant.[17] This opinion, expressed in 2000, also expands the scope of the prohibition on manifesting religious beliefs, applying it to civil servants from all public administrations and not only to civil servants working in public schools. There has, therefore, been a noticeable shift from the concern that a priest may influence children to the injunction given to civil servants to hide their religious affiliation. The meaning of the neutrality of the state has, therefore, been altered and, since 2004, there has been a notable increase in administrative jurisprudence on the visibility of Islamic religious signs worn by civil servants.

This trend regarding civil servants parallels legislation banning conspicuous religious signs in public schools. In the latter case, a more radical shift has taken place. Historically, the neutrality of the public school meant the substantive neutrality of the teachers. The 2004 ban, by contrast, puts the onus of neutrality on the children themselves: the visibility of religious signs that "make religious belonging immediately recognizable" is defined as incompatible with the principle of neutrality included in secularism.[18] Neutrality is subsumed under the idea of a transparent public space in which no affiliations are visible, as opposed to a pluralist conception of public space in which a multiplicity of beliefs is tolerated. This concept of neutrality as invisibility was further embedded in law with the Conseil d'Etat's 2007 decision on the wearing of the *keshi* (a hairnet worn under the Sikh turban) in public schools. The case began as demand for reasonable accommodation or at least a compromise between Sikh pupils and school authorities. Three Sikh pupils had agreed to remove their turbans while at school if they could keep their keshi. However, school authorities and judges decided the keshi

was a conspicuous religious sign on the grounds that it made the affiliation to a religious group immediately recognizable. In other words it is religious identity in and of itself that must be made invisible in public school.[19] Paradoxically, the more public institutions categorize and recognize Muslims or Sikhs according to their religious identities, instead of their socioeconomic status or their racial identities, the more this religious identity is supposed to be hidden and erased from the public space.

A second shift in the notion of public order is also transforming the meaning and the regulation of laïcité with respect to Islam in France. In an attempt to justify a proactive concept of laïcité (which runs against the grain of the liberal tradition embedded in jurisprudence), French legislators who promoted a ban on headscarves in public schools are promoting a legal notion of public order as a legitimate limit on the right to manifest one's belief. Dating from the Napoleonic Code, the notion of public order, or rather the perception of a threat to the public order, is a legal principle that can be used to limit fundamental freedoms.[20] Until 2004, however, the Islamic veil was not considered a threat to public order. The Conseil d'Etat's opinion in 1989 carefully stated that the meaning of the veil could not be presupposed. It is only through the association of veiling with gender inequality and Islamic fundamentalism, and its depiction as a practice harmful and disturbing for pupils, that the veil has progressively been invested with connotations of danger (Scott 2007). Official reports calling for a prohibition on religious signs in public schools insisted that headscarves were a source of confusion, social pressure, and a threat to public order inside public schools. The association of veiling with danger –- for the majority society and for the girls wearing veils – helped legitimized imposing limits on Muslim schoolgirls' religious freedom in public schools.

The association of veiling with danger has been enhanced, in a slightly different way, by the ban on full veils in public spaces. Indeed, legislators have argued that public safety, gender subordination, and "the minimal requirements for social life" require a ban on full veils.[21] The latter argument in fact expands the notion of public order by associating it with the idea of common duties and common social norms that dictate that one's face must be visible to others in a common public space.[22] Promoters of the ban argued that this requirement of visibility and transparency will ensure that no one can "deny his/her belonging to society" (Conseil d'Etat 2010, 27). To be able to recognize someone as soon as he or she enters a common public space is thought to guarantee the social contract and to make a common social life possible. This argument is, of course, reinforced by the idea that, regardless

of whether women choose to wear the full veil, the niqab is, in and of itself, a sign of subordination and gender inequality. The desire to ban religious signs that interfere with the transparency of the public sphere is therefore typical of a shift in the conception of neutrality required by secularism.

Taken together, the concept of neutrality as the invisibility of religious signs and the concept of public order as requiring the constant visibility of citizens' faces tend to limit the expression of religious pluralism in the public sphere and constitute a notable transformation of the French concept of secularism.

Antidiscrimination Law and Religious Pluralism

The new concept of laïcité that is emerging out of laws that ban Muslim religious dress from public schools and public spaces implies the exclusion or the limitation of the presence of Muslim religious identity. At the same time, however, the framework of antidiscrimination law, which is increasingly embedded in French institutional and legal design, offers an alternative route to the recognition of religious identity, one that may be more inclusive for Muslims. Indeed, the transposition of the European Commission's directives on race and discrimination into French law has improved protection from discrimination in the workplace on several grounds, including that of religious belief.[23] The European directive also led to the creation in 2004 of a new institution, the Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (HALDE, High Authority against Discrimination and for Equality), which monitors discrimination and helps plaintiffs in criminal or civil prosecutions. Muslim plaintiffs who wear the veil and who were denied the status of witness in civil wedding ceremonies, or who were not allowed to assist in school activities, or who were excluded from postsecondary education training programs have lodged complaints with the HALDE.[24] In all of these cases, the HALDE argued that the decisions of the public authorities were unlawful and affirmed the right of Muslim women to equal treatment and protection from religious discrimination. The legal vocabulary of discrimination and the creation of the HALDE therefore offer Muslims a new institutional route for their claims for inclusion.[25] Within antidiscrimination law, religious identity is recognized as a legitimate category on the basis of which victims can make claims for compensation. Religious identity is also recognized as an identity that must be accommodated in the workplace and in society in general. The many opinions publicized by the HALDE define as religious discrimination what was perceived by many as

the natural implementation of laïcité, for example, the requirement to remove one's veil in a city hall or the workplace. By stating that the injunction to remove one's religious sign is an unlawful discrimination on the basis of religious identity, the HALDE is reframing the understanding of these concrete situations, and its decisions may counter attempts to erase religious identities from the public space, a characteristic of the most recent interpretation of laïcité.

This new legal route has also encouraged the development of new collective actors who mobilize on the basis of religious affiliation. Issues of racism vis-à-vis immigrants in France led, in the 1980s, to the creation of organizations that fought racism and promoted human rights, but these NGOs were not based on a shared cultural or racial identity. The development of a new legal vocabulary of discrimination and the new institutional route opened by the HALDE has fostered the development of organizations that specifically combat religious discrimination against Muslims. The Collectif Contre l'Islamophobie en France, (CCIF, Collective against Islamophobia in France) exemplifies this new type of NGO, which focuses on legal routes to seeking redress, unlike traditional antiracist organizations, which relied on awareness raising and media campaigns instead of judicial action (Barras 2009). Using the legal expertise made available by the HALDE, the CCIF works primarily to protect the right of Muslim women to wear headscarves or the full veil. Although it would be legally difficult to attack the ban on religious signs in public schools, the CCIF believes that the ban on the full veil in public spaces can be challenged in court.

The interplay between restrictive policy making on Muslim headscarves and the recognition of religious identities promoted by the HALDE illustrates the tension between antidiscrimination and the regulation of religion that is currently shaping the politics of secularism in France. However, how this tension will be resolved in the future is not yet clear.[26] French deputies have contested the HALDE's too liberal views on Muslim religious dress, and the government has decided to dismantle the HALDE and transfer its mandate to the Ombudsman of the Republic. Although the legal tools to combat religious discrimination will still be available, the efficacy of the new institutional setting is uncertain. Moreover, contrary to countries such as Canada, this new jurisprudence on religious discrimination has not led to the development of a genuine legal concept of reasonable accommodation. Indeed, whereas the jurisprudence on religious freedom and the right to equality led, in the case of Canada, to the emergence and the strengthening

of the concept of reasonable accommodation (Bosset 2007), the recent development of antidiscrimination law in France has not been sufficient to enshrine a similar concept in French jurisprudence.

What is missing in particular in the French context is an assessment of the centrality of a religious belief or practice in the process of deciding between accommodation or restriction. Indeed, although the HALDE attempts to protect the right to manifest one's belief, particularly in the workplace, this protection does not rest on a rationale similar to the one that underpins doctrines of reasonable accommodation. When deciding upon a claim for accommodation, Canadian judges, for example, typically balance the sincerity and the centrality of the plaintiff's belief with the burden that the accommodation may impose on a business or organization. Although assessing sincerity or authenticity may raise thorny issues, evaluating whether a belief is authentic and central to one's religious identity will set the stage for accommodation to prevail (Eisenberg 2009). In France, however, only the burden of accommodation and the potentially disruptive character of the practice under scrutiny are evaluated in order to decide if a practice should be accommodated. Despite its focus on antidiscrimination law, the HALDE is no exception to this general trend in the French judiciary. For example, in a document developed to help businesses navigate through demands for accommodation in the workplace, the HALDE never suggests inquiring into the importance of the religious practice at stake. According to the HALDE, to decide between accommodation or restriction, one must scrutinize the potential proselytism of a practice or behaviour, the requirement of a job position, and the good functioning of the business. With these criteria in mind, judges effectively rejected demands for accommodation by members of religious minorities for Shabbat on several occasions and in various work contexts (school, business, and the railway public service).[27] Although the HALDE squarely rejects conflating wearing a religious sign with proselytism, the scope for accommodation of work schedules remains drastically limited in the face of the greater interest of business organizations.

There is, therefore, no legal encouragement of or requirement for the acceptance of visible religious signs or the accommodation of religious practices. The boundaries between which signs should be accepted and in which circumstances and which signs should be forbidden have been drawn through piecemeal jurisprudence with no overarching normative principle except for that of the nascent antidiscrimination law. Moreover, there is no official discourse on inclusion and pluralism to sustain this jurisprudence

and to legitimize the visibility of Islamic religious dress in French society. In this adverse context, antidiscrimination law may not be a sufficient tool to counteract the redefinition of secularism and neutrality as invisibility or to transform the reality of religious pluralism into a positive, normative principle.

Conclusion

The case of France suggests that the reconfiguration of laïcité now taking place has been influenced by policies designed to include immigrants. The French republican model of integration, developed in the 1980s and 1990s, relied on a civic conception of citizenship and on cultural assimilationism to address the issues of urban crisis, immigration, and social cohesion. However, as time passed, immigrants and their children have become French nationals, and the categories of cultural otherness have evolved from immigrant status to religious identity. A similar issue – that of the inclusion of a minority defined as different and in need of integration – has taken centre stage, but the minority to be included or assimilated is now defined along religious lines. The influence of the earlier policy frame of immigrant integration on the regulation of Islam is visible in the transformation of the concept of laïcité, which occurred during debates on Muslim headscarves in schools and later during debates on the full veil in public spaces. Whereas laïcité was first and foremost a legal concept to regulate the collective organization of religious practices, it has progressively become a political tool at the service of the politics of integration.[28] Laïcité has been invested with a new political conflict: that of the visibility and place of Islam in French national identity. Rather than regulating the organization of minority religions according to the principles of freedom of conscience, pluralism, and nondiscrimination between religions, as stated in the 1905 law, the redefinition of laïcité aims to regulate the relationship between the majority and a cultural and ethnic minority, Muslims.

The shift in the categories of the politics of integration from immigrants to Muslims directly affects the definition and legal framework of secularism in France. A new concept of secularism is emerging, one in which the neutrality vis-à-vis religions required on the part of the state is being transformed into a neutrality of the public space, stripped of religious signs. Following this concept of laïcité, the need to ensure social cohesion and a common national identity also implies the erasure of visible markers of religious differences, which are perceived as potential threats. From a political perspective, these shifts in the meaning of secularism and state neutrality

may be detrimental to respect for pluralism because the removal of religious signs, which is asked of Muslims, delegitimizes the very presence of religious identities in the public space. Therefore a paradox lies at the centre of the French politics of religious identity. Public debates on Muslim veiling have made categorization based on Muslim religious identity, previously almost absent from the political arena, legitimate and a privileged instrument in policy making. However, while Muslims are recognized *as Muslims* by public authorities and not as immigrants or ethnic others, their religious difference is being erased and their religious identity disapproved of. Nevertheless, the recognition of religious identity as a legitimate political category and the development of antidiscrimination law are also encouraging the formation of new collective actors. Organized on the basis of their religious affiliation, Muslims are contesting the current politics of secularism in the name of the right to be protected from religious discrimination.

Notes

1 Loi no. 2010-1192, forbidding the covering of one's face in public spaces.
2 The idea that there is a coherent national model with respect to so-called immigrant integration has been criticized since it over emphasizes consistency throughout policy fields and throughout time periods (for a summary of these critics, see Bertossi 2009). Despite these critics, the common sense idea that there is indeed a French republican model that defines national identity and determines how immigrants should integrate themselves can have a performative power (ibid.). In other words, the notion of a republican model of integration is a readily available policy frame (Bleich 2002) that influences the way problems related to immigration and minorities are understood and resolved.
3 There are, of course, many counter examples to the principle of colour-blindness that defeat the alleged consistency of the French model of integration. These examples range from the specific restrictive rules of access to French nationality for immigrants and French subjects born in Algeria (Weil 2008) to policy on urban and public housing and access to elite programs of higher education (Sabbagh 2002).
4 All translations are the author's own.
5 For an exploration of this tension between civic values and cultural values in the French context, see Laborde (2001).
6 Art. 1, s. 1: "The Republic ensures freedom of conscience, and guarantees the free exercise of cults, within the limits required by public order."
7 Art. 2: "The Republic does not recognize, employ or subsidize cults." Title II of the law organizes the devolution of the resources of churches (buildings and their maintenance) with several exceptions in favour of the Catholic Church. As far as the legal status of ministers, religious congregations, tax exemptions, building permits, ritual animal slaughters, permits for schools, and cemetery spaces are concerned,

the provisions in the 1905 law were modelled to accommodate the Catholic Church. This historical legacy implies a less favourable treatment of Protestant and Muslim cults.

8 Between 1992 and 1999, forty-nine cases of schoolgirls expelled from school on the grounds that they were wearing the veil reached the Conseil d'Etat. In forty-one of the cases, the court ruled in favour of the plaintiff and required the girl's reintegration into her school. In all cases, there was no evaluation of the particular meaning that the headscarf might have had for the plaintiff nor of the sincerity of her belief.

9 For extensive analyses of the headscarves affairs in France, see Scott (2007), Bowen (2006), Galembert (2009), and Amiraux (2009).

10 For an analysis of the various normative meanings that laïcité has taken over time, see Laborde (2005).

11 Xavier Darcos, National Assembly, "Roundtable on Schools and Laïcité Today," 22 May 2003, http://www.assemblee-nationale.fr/.

12 Jacques Chirac, televised speech, 17 December 2003, http://www.jacqueschirac-asso.fr/.

13 This conception of laïcité also leaves local authorities and institutions in a position to decide whether to accommodate based on subjective notions of the potential trouble to the institution that an accommodation may bring rather than the protection of religious freedom and freedom of expression. For an in-depth analysis of the situation in French prisons, see Beckford, Joly, and Khosrokhavar (2005).

14 Loi no. 2010-1192, 11 October 2010.

15 L'*arrêt Bouteyre,* no. 46027, 12 May 1910.

16 See Conseil d'Etat, 3 May 1950, *Dlle Jamet,* and the opinion delivered by the court on 21 September 1972.

17 Conseil d'Etat, 3 May 2000, *Dlle Marteaux.*

18 *Exposé des motifs* (description of motives), Loi no. 2004-228, 15 March 2004.

19 Conseil d'Etat, Arrêts nos. 285394, 285395, and 285396, 5 December 2007.

20 The notion of public order is not specific to the French Constitution. This Napoleonic heritage has spread to other European countries. It has also been invoked in Germany and in the European Court of Human Rights with the *Sahin* case, see Skach (2006).

21 See the Constitutional Council's favourable opinion on the ban, Decision no. 2010-613 DC, 7 October 72010.

22 See *Rapport* (no. 2262) *de la mission d'information parlementaire sur la pratique du port du voile integral,* 26 January 2010, 177.

23 European Commission Directives no. 43/2000 and no. 78/200 were partially transposed in Loi no. 2001-1066 on 16 November 2001.

24 See the various HALDE annual reports that document these cases at the organization's website.

25 At the European level, this suggests that the European Court of Justice or anti-discrimination provisions are better suited to ensuring inclusion for Muslims than the jurisprudence of the European Court of Human Rights related to Article 9 of the European Convention on Human Rights on religious freedom. For a discussion, see Rorive (2009).

26 For an assessment of the contradictory developments of the French situation regarding race and identity politics in general, see Lépinard (2008).
27 See Deliberation no. 2009-117 issued by the HALDE on 6 April 2009.
28 To be sure, laïcité has often been a site of political contention. For example, in the 1980s, the issue of private religious schools reactivated debates about the role and the place of the Catholic Church in French national identity, which had been at the core of the war between the two Frances – the Catholic and the secular – at the turn of the nineteenth century (Baubérot 2004).

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