

More Than Just a Piece of Cloth: The German “Headscarf” Debate

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ABSTRACT

This article highlights the blurred and often confused nature of the distinction between religious, cultural and political issues, within debates around the legal regulation of Muslim women’s dress codes. It focuses on party-political debates in Germany about female Muslim state school teachers’ right to wear, or duty to remove, a hijab, and highlights implicit assumptions about the role of religion in German culture, politics, legislation, education and notions of citizenship that have informed this debate.

Keywords

party politics, Christian “neutrality,” *hijab*, headscarf debate,
Germany, schoolteachers, citizenship

Should female state school teachers be allowed to wear the *hijab* at work? Over the last sixteen years, this has been a matter of a heated public debate in Germany which has led to a range of court decisions at regional and national level, with much of the debate played out in popular media and national and regional parliaments. This article draws on the findings of research I have conducted throughout the duration of this debate, with a particular focus on its party-political dimension and on (implicit) “common sense” assumptions within party-political discourses about the role of Islam in Germany and Germany’s “Christian heritage.” This research has been based on close textual analyses of relevant parliamentary debates, government press releases, and legislative texts, and integrates a wide spec-

trum of historical, socio-political and legal background information (see also Sinclair 2002 and 2012). The article outlines the specific features of the German “headscarf” debate, summarizes the findings of my analysis of the debate, and considers the wider relevance of the issues it highlights.

It all began with “case Ludin”: in 1997, Fereshta Ludin refused to remove her *hijab* while training as a primary school teacher in the German federal state of Baden-Württemberg. While her case was already starting to make headlines, the Baden-Württemberg government allowed Ludin to complete her teacher training with the *hijab*. However, it did not employ her as a state school teacher or accept her into the civil service (as most qualified state school teachers would have been in Germany at the time). Baden-Württemberg’s ministry of Culture, Youth and Sports, led by the centre-right Christian Democratic Union (CDU), justified this decision on the following grounds: Ludin’s refusal to remove her “headscarf” [*Kopftuch*] was seen as irreconcilable with a civil servant’s duty to be “objective” and “neutral” in their professional conduct. It was also perceived as a violation of the principle of “negative religious freedom” (as defined in Germany’s federal constitution), as teachers should put the duty of care for their pupils before their own personal right to express their religious beliefs. There were concerns that Ludin might try to use her position to promote Islamic fundamentalist ideas, encourage her female pupils to adopt the *hijab* themselves, or to support parents who forced their daughters to wear the *hijab*. Ludin’s insistence on wearing the *hijab* was perceived as an act of intolerance, as a symbol for the refusal of immigrants to integrate into German society, as the political instrumentalization of a religious symbol, and a threat to social peace (Pressestelle 1998; Sinclair 2002; Sinclair 2012).

In a parliamentary debate following this decision, members of all parties represented in the Baden-Württemberg parliament unanimously welcomed the ministry’s decision in “case Ludin,” though for different reasons. Members of all parties—apart from the centre-right Free Democrats (FDP)—described “the headscarf” as a symbol of political or religious extremism that could not be reconciled with a civil servant’s duty to be “neutral.” Members of the centre-right CDU, the FDP and the far-right Republicans supported the decision as they regarded “the headscarf” as a symbol of foreign influences and of immigrants’ refusal to assimilate to “German” culture. Members of the Social Democratic Party and the Green Party, on the other hand, welcomed the decision as they regarded “case Ludin” as a matter of women’s rights and perceived “the headscarf” as a symbol of the oppression of women (Baden-Württembergischer Landtag

1998). However, the arguments employed in the debate were based on many implicit assumptions (Sinclair 2002; Sinclair 2012), for example regarding the definition of the notion of “neutrality,” and whether this principle was equally applied to members of all religious traditions. For instance, how can this principle of “neutrality” be reconciled with the fact that Baden-Württemberg school law requires that children are “brought up and taught on the basis of Christian and occidental educational and cultural values” (Baden-Württembergisches Schulgesetz, cited in *Sonderpressespiegel* “Kopftuch” 1998, 54ff.)? Also, what are the characteristics of “German” or “occidental” cultural values—and what role does or should “religion” play in this? When does a “religious” symbol become “political” (and *vice versa*), and what is the difference? And what exactly do Muslim women need to be liberated from, and can or should someone be “liberated” against their wishes? Does the exclusion of *hijab*-wearing women from certain types of employment really empower or liberate them?

Particularly in its early stages, the debate was marked by a distinct lack of consultation with Muslim communities, with Ludin herself, with other Muslim women, or with parents, teachers or pupils at the school she had worked in as a teacher trainee. Politicians showed little insight into the diversity and complexity of veiling practices among Muslim women, or genuine interest in their motives for adopting particular dress codes. Many Muslim women in Germany have subsequently doubted the sincerity of politicians’ concerns for their rights, when remarkably little attention has been paid to their voices (Berghahn 2009, 61). Critics have also been puzzled by the amount of public attention that has been given to “headscarves,” when there are many other issues of far greater concern to Muslim women, such as housing, employment, education, childcare or caring responsibilities for elderly relatives (Gilliat-Ray 2011; Sinclair 2013, 66). This has led some critics to believe that the “headscarf” debate might even have been staged or fabricated to problematize Islam—with little knowledge of Islam or concern for German Muslims—in order to distract from other social and political problems and promote party-political agendas (Güvercin 2012, 73).

Ludin argued that her motivations for donning the *hijab* were personal and religious, and not of a political nature. She regarded the *hijab* as an essential element of her identity as a Muslim woman, but stressed that she was also a German citizen committed to the democratic values of the Germany’s constitution (Ludin, cited in *Der Spiegel* 1998, 59). Ludin appealed against the Baden-Württemberg ministry’s decision, and when she lost this appeal, she took her case to Germany’s national Federal

Constitutional Court. In 2003 the Constitutional Court arrived at the conclusion that the decision taken by Baden-Württemberg's government in Ludin's case had indeed not been based on a solid legal foundation, but that social change and the increasing pluralization of society now required a review of relevant legislation in all of Germany's sixteen federal states (Bundesverfassungsgericht 2003; McGoldrick 2006, 107ff.). This decision effectively "passed the buck" back to the governments of the federal states, which took a range of different approaches to this legislative review. This process took place between April 2004 and June 2006.

While there are detailed variations between the different approaches that each of the sixteen federal states took, they can be divided into three basic models: the "exclusive Christian," the "strict neutrality" and the "open neutrality" model (Henkes and Kneip 2009, 271–272). The "exclusive Christian" model bans *hijabs* among state school teachers, but continues to allow Christian expressions of faith. This model was adopted by six federal states: Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North-Rhine-Westphalia and Saarland. These were all governed by the CDU or its Bavarian "sister party," the CSU (Christian Social Union), and were all former West German states with a relatively high proportion of the population with Turkish roots (and Muslim background). Berlin and Bremen adopted the "strict neutrality" model, which does not allow teachers to wear any religious symbols (including Christian). Berlin and Bremen are both "city states," governed by centre-left/ left parties and have the highest proportion of residents with Turkish roots (and Muslim background). All other states adopted the "open neutrality" model, which meant that no new legislation was introduced.

This legislative review was dominated by party-political power dynamics and agendas, particularly by party-political approaches to immigration and by their understanding of the relationship between religion and politics (Blumenthal 2009; Henkes and Kneip 2009). While, in 1998, all parties represented in the Baden-Württemberg parliament unanimously welcomed the ministry's decision in "case Ludin," by 2004–2006 a more diverse range of opinions on the "headscarf" issue was expressed across the political landscape in Germany's sixteen federal states. The most consistent opinions were expressed among the members of the CDU/CSU, who consistently voted in favour of a headscarf ban among teachers, and the Green Party, who repeatedly voted against it (with the exception of Berlin, where the Green Party supported the "strict neutrality" model). Members of the CDU/CSU perceived the *hijab* as a political symbol representing a

political ideology that was irreconcilable with the democratic values of the German constitution, while Christian expressions of faith were understood as part of Germany's cultural heritage that needed to be protected. This understanding of "neutrality" was based on a "deep-seated understanding of Germany as a "Christian state" that has the license to selectively exclude... Islam" (Joppke 2007, 315). Members of the Green Party, by contrast, favoured a pluralistic model which could be equally applied to all religious traditions—or none (Henkes and Kneip 2009, 269ff.). The strong focus on party-political agendas meant that little attention was paid to Muslim voices, by either the opponents or the advocates of headscarf bans.

While the earliest records of Muslim communities in Germany date back to 1731 (Sinclair 2002, 109), the vast majority of the 4.3 million Muslims who currently live in Germany are descendants of migrant workers from Turkey, who were encouraged to come to work in Germany to fill gaps in the labour market in the 1960s (Becker-Cantarino 2012, 31). However, the portrayal of Islam as a "religion of migrants," and the strong association of the "headscarf" debate with party-political approaches to immigration, has angered the growing number of Muslims who have lived in Germany all their lives, actively engage in and contribute to German society, and hold a German passport (Güvercin 2012, 96).

As John Esposito points out, "the challenge today is to appreciate the diversity of Islamic actors and movements, [...] with informed, reasoned responses rather than predetermined presumptions and reactions" (Esposito 1992, 169). This is exactly what has not happened in the case of the German headscarf debate, particularly in its early stages. The party-political dimension of this debate has been founded on many implicit—but largely uninformed—assumptions about Islam. This lack of consultation seems to contradict the politicians' professed commitment to democratic values. One reason for this lack of consultation has been the fact that, unlike many other religious groups, particularly Roman Catholic and Protestant churches (which are the dominant religious groups in Germany), Muslim groups were not represented by a clearly identifiable representative body or institution. This is mainly due to the heterogeneous and multifaceted nature of the different forms of both Islam and of Muslim communities in Germany.

In more recent years, there have been attempts at more detailed consultation with Muslim communities. The foundation of the German Islam Conference [*Deutsche Islamkonferenz*, DIK] in September 2006—i.e. shortly *after* the introduction of the new "headscarf" legislation—could

be seen as an attempt to create more opportunities to involve Muslim organizations and individuals in party-political debates. The DIK was set up by the Home Office under the leadership of the CDU/CSU, and describes itself as “the most important forum between the German state and Muslims living in Germany” (DIK, 2013). Its plenary is hosted by the Federal Interior Minister and includes both members of Muslim organizations and Muslim individuals, as well as members of the national government. According to its mission statement, the DIK aims to strengthen social cohesion, improve the integration of Muslims into German society, and prevent extremism through the promotion of religious constitutional law and German values (DIK 2013). The “headscarf” is one of the “focal points” of the DIK’s website, and offers a wide range of different views on veiling practices within Islam. While this is clearly a step forward in the consultation process, it comes too late for the headscarf debate, as the DIK was formed after the introduction of the headscarf legislation for school teachers. Some critics have also expressed concerns with regard to the DIK’s membership selection process and the topics it has focused on. Some Muslim organizations, such as the Central Council of Muslims in Germany [*Zentralrat der Muslime in Deutschland*], have refused to participate in the DIK. This lack of trust has led to the establishment of an independent “Alternative Islam Conference” [*Alternative Islamkonferenz*] in protest with the aim of developing “new concepts that go beyond the German Islam Conference” (*Alternative Islamkonferenz* 2011). There is also a growing number of new Islamic organizations, such as Network Cogwheel [*Netzwerk Zahnräder e.V.*] or the Action Federation of Muslim Women in Germany [*Aktionsbündnis Muslimischer Frauen in Deutschland*], with an expressed commitment to positively engage with and actively contribute to debates around social and political issues in Germany.¹

The introduction of the new “headscarf” legislation for state school teachers between 2004 and 2006 did not conclude the debate, but led to many more continuing legal disputes challenging the implementation of this legislation (Berghahn 2009, 37f.). There have also been calls to take this legislation further and for example, introduce public *burqa* bans (Thumann 2011, 175). Though this is unlikely to happen on any larger

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1. Many thanks to Karin Hitz for providing information about these groups. Hitz is currently conducting her research for her PhD thesis, on Muslim engagement in social, civic and political affairs in Germany at the Centre for Religious Studies [*Centrum für Religionswissenschaftliche Studien* (CERES)] at Ruhr-Universität Bochum (see also Hitz 2013a; Hitz 2013b).

scale, in 2011, a *burqa* ban was introduced for public service workers in the federal state of Hesse (BBC 2011). Only a few weeks ago at the time of writing, the national administrative court in Germany ruled against the request of a thirteen year old Muslim girl to be exempted from mixed-gender swimming lessons in school—but advised her (and all other Muslim school girls in Germany) that she had the option of wearing a *burqini* (*Zeit Online* 2013).

Germany is, of course, not the only country where legal disputes have arisen around Islamic “veils,” be it in the form of the *hijab*, *niqab* or *burqa*. In Europe alone, legislation has been issued in many different countries regulating Islamic “veils” in different forms. One of the most recent developments includes *burqa* bans in France and Belgium which came into effect in 2011. At the time of writing, a British judge has recently ordered a Muslim woman to remove her face-veil [*niqab*] when giving evidence in court, while a college in Birmingham went back on a *niqab* ban for its students. These developments prompted Liberal Democrat Home Office minister Jeremy Browne to call for a national debate on whether the government should be “banning Muslim girls from wearing veils in public places, such as schools” (BBC 2013).

While there are some parallels with other countries, the “veiling” debate in Germany has been shaped by the legal and political intricacies of Germany’s federal state system and constitutional law. This debate has clearly been about much more than “just” a piece of cloth. It has been particularly concerned with the role of state school teachers as civil servants and “exemplary citizens,” but at its heart have been different, and sometimes contrasting, deep-seated understandings of concepts of “neutrality” and “democracy,” and of the implicit roles of religion in German culture, politics, legislation, education and of notions of national identity and citizenship in a “secular” state. The German example of the “veiling” debate highlights the need to expose and critically question such underlying assumptions and deep-seated understandings, and engage in an open, equal and democratic dialogue with Muslim communities, schools, pupils and parents, to come to informed, reasoned conclusions that are not pre-determined by long-standing party-political agendas. This need extends beyond the German example of party-political debates around “veiling.” However, how such dialogue can be most effectively facilitated is a matter that requires further consideration and research.

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