

## SCHOOLS, THE EU, AND THE BODY: FRENCH SECULARISM AND THE HEADSCARF

Denis Pelletier

Presses de Sciences Po | « *Vingtième Siècle. Revue d'histoire* »

2005/3 No 87 | pages 159 - 176

ISSN 0294-1759

ISBN 2724630041

This document is a translation of:

---

Denis Pelletier, « L'école, l'Europe, les corps : la laïcité et le voile », *Vingtième Siècle. Revue d'histoire* 2005/3 (No 87), p. 159-176.

DOI 10.3917/ving.087.0159

---

Translated from the French by JPD Systems

Available online at :

---

[http://www.cairn-int.info/article-E\\_VING\\_087\\_0159--schools-the-eu-and-the-body-french.htm](http://www.cairn-int.info/article-E_VING_087_0159--schools-the-eu-and-the-body-french.htm)

---

!How to cite this article :

---

Denis Pelletier, « L'école, l'Europe, les corps : la laïcité et le voile », *Vingtième Siècle. Revue d'histoire* 2005/3 (No 87), p. 159-176.

DOI 10.3917/ving.087.0159

---

Electronic distribution by Cairn on behalf of Presses de Sciences Po.

© Presses de Sciences Po. All rights reserved for all countries.

Reproducing this article (including by photocopying) is only authorized in accordance with the general terms and conditions of use for the website, or with the general terms and conditions of the license held by your institution, where applicable. Any other reproduction, in full or in part, or storage in a database, in any form and by any means whatsoever is strictly prohibited without the prior written consent of the publisher, except where permitted under French law.

---

# Schools, the EU, and the Body: French Secularism<sup>1</sup> and the Headscarf

Denis Pelletier

**The “headscarf debate,” which caused an uproar in France in 2003-2004, no doubt testifies to the difficult relationship between secularism and Islam, but it cannot be reduced to this aspect alone. The polemic around this issue points to a new concern with the collective duty of a Europe uncertain of its own identity. It also shows how traditional categories used to understand society, as well as the boundary between public and private life, and the way in which the body is shared between the private and the social, have been shaken up.**

In the spring of 2003, French public opinion went into a frenzy over a subject that is difficult to understand from outside French borders. It concerned the wearing of a scarf – the Muslim veil, called a “hijab” or headscarf – by young college and high school students. Other students perceived the wearing of the scarf as being a way of aggressively asserting one’s identity as a Muslim. Although the controversy was not new, it grew to such an extent that it led to the appointment of two commissions of inquiry, as well as several bills, one of which was adopted by Parliament by an overwhelming majority in February-March 2004.

Just a year shy of its centennial, the controversy surrounding the 1905 French law on the Separation of the Churches and the State

was once again fanned into flame, with the law sometimes promoted to the rank of founding text of French secularism, and sometimes called a vestige of a bygone era. The controversy led schools to become the locus for questioning the secular equilibrium, despite the fact that the failure of the last two attempts to amend it – by Alain Savary in 1984, and by François Bayrou in 1994 – demonstrated the French people’s attachment, if not to their schools, then at least to the way in which this equilibrium is managed there.

The schools are not the only arena in which secularism is being questioned, however, because the issue at stake is the validity of the French model for the relationship between church and state. The polemic on the headscarf includes a European dimension that also tends to spill over into two other debates. The first, starting in the winter of 1999-2000, concerned the role of the name of God in the future European Constitution; in the second, the Turkish request to join the EU placed the relationship between Islam and the State at the center of a common concern with the identity and the borders of Europe and, to the French, at the center of a debate as to the future of secularism. To this second European dimension of the headscarf debate, we must add a third: the fact that young women cover their hair should give them a certain place in society points to the question as to the place of the body in the construction of sexual identity. This is a question that has been asked publicly since 1968, and we are only now beginning to understand its impact in terms of the way in which it has

---

(1) Translator’s note: In French, the term “*laïcité*” has a specific meaning and connotation that is best explained as a uniquely French form of cultural and legal secularism. For the purposes of this article, we shall use the term “secularism,” with the understanding that it refers to the French *laïcité*.

brought about a shift in the boundary between private and public space – the other vital aspect of the history of secularism in France.

Schools, Europe, and the body: the polemic around the headscarf is in fact a convergence of crises, and it is this convergence that will be discussed here in order to understand the status of French “public secularism”<sup>1</sup> and how it has been put to test in many ways – precisely at a time when religious ties appear to be weakening and secularization triumphing.

### Headscarves at School: A Uniquely French Quarrel

Let us briefly retrace the events that led to the adoption of the law that banned the wearing of religious symbols at school. On April 19, 2003, Nicholas Sarkozy was invited to speak at the annual meeting of the *Union des organisations islamiques de France* (the French Union of Islamic organizations – UOIF) in Bourget, when he elicited boos from the audience and embarrassed the organizers by recalling the fact that it was not permissible to wear a headscarf in identity photos.<sup>2</sup> The involvement of Sarkozy, then Minister of the Interior, in the debates on secularism gave this incident a particular significance. A few weeks before, he had been invited to the Second European Encounters Between Catholics and Jews in Paris, a meeting organized by Unesco, where in front of his “Jewish friends” he pleaded for a “positive secularism,” even speaking in unusual terms for a context of interfaith dialogue: “If this God exists, it will be the God of everyone on earth who has ever hoped; it is a common good.”<sup>3</sup> Above all, Sarkozy played a visible role in the establishment of a representative body for Islam in France involving the heads of the three main Muslim organizations (the Great Mosque of

Paris, the UOIF, and the FNMF – the National Federation of Muslims in France). They met in December 2002 at the Nainville-les-Roches Chateau in Essonne to agree on the electoral procedures and functioning of what was to become the *Conseil français du culte musulman* (French Council of the Muslim Faith – CFCM). The elections for the CFCM, which took place on April 6 and 13 of that year, led to victory by the UOIF, which has historical ties to the Muslim Brotherhood and is reputed for being open to the fundamentalist strains of Islam in France, as opposed to the “Republican Islam” defended by the Rector of the Great Mosque of Paris, Dalil Boubakeur.<sup>4</sup> Sarkozy did not mention the wearing of headscarves at school before the UOIF, but it was around this issue that the debate was to rage in the weeks that followed.

The debate pitted religious authorities against political leaders, albeit according to the rules of a time-tested secularist compromise. Very early on, religions opposed to any kind of law formed a kind of “common front.” “I am not in favor of the ban of the headscarf in public schools,” stated Chief Rabbi Joseph Sitruk, while emphasizing the difference between the hijab and the yarmulke, which was “a much more discreet sign than the headscarf, and therefore not comparable.”<sup>5</sup> On the Muslim side, the CFCM established a committee of theologians who concluded that the headscarf, which resulted from a simple religious prescription, could not be considered a sign of proselytism in itself.<sup>6</sup> The involvement of Christian leaders is evidenced, amongst other things, in a joint letter addressed to Jacques Chirac by the French Council of Christian Churches (CECF), a body founded in 1987 for

(4) At the General Assembly of the CFCM, of the 157 seats on the Council, and apart from 44 who were co-opted, the UOIF obtained 53, the FNMA 44, and the Great Mosque of Paris 32. Apart from 22 representatives of the organization committee, of the 41 seats on the board the UOIF obtained 14, the FNMA 16, and the Great Mosque of Paris six (*Le Monde*, April 15, 2003).

(5) *Le Monde*, May 16, 2003.

(6) *Le Monde*, June 18 and October 14, 2003.

(1) Émile Poulat. *Notre laïcité publique. “La France est une République laïque.”* (Paris: Berg International, 2003).

(2) *Le Monde* and *La Croix*, April 22, 2003.

(3) Quoted in *La Croix*, March 12, 2003, speech on March 10.

joint consultation and action, and that includes the Catholic Church, the churches of the Protestant Federation of France, the churches of the Assembly of Orthodox Bishops of France, and the Apostolic Armenian Church. “Any law that would be experienced as discriminating towards a certain group of French people could do more harm than good in the short term,”<sup>1</sup> the members of the CECF wrote a few days before the issuing of the Stasi Report, echoing the concern already expressed by the Synod of the Reformed Church of France and by the Catholic Bishops’ Conference. The only dissenting voice was that of Roger Cukierman, the president of the *Conseil représentatif des institutions juives de France* (the Representative Council for Jewish Institutions in France – CRIF), who in May 2003 stated that his organization was “in favor of the banning of any provocative religious symbols” and on November 6 that year on Radio J denounced the wearing of the headscarf as a “desire to proselytize and the displaying of a symbol of oppression of women.”<sup>2</sup>

On the other hand, although the way in which the political class took sides on the debate at first reflected a clear left wing/right wing division, the discussion evolved towards a large majority rallying in favor of a headscarf ban.<sup>3</sup> Thus the law was eventually passed by an overwhelming majority: 494 votes to 36 in the National Assembly on February 10, 2004, and 276 votes to 20 in the Senate on March 3. Should one see in this, as did Rabbi Josy Eisenberg, “a veritable *Kulturkampf* and a war of religions that, like in the good old days of the separation of Church and State, does not pit members of the various religions against one another, but rather opposes people with religious beliefs to the defenders of secularism”?<sup>4</sup>

(1) *Le Monde* and *La Croix* (full text), December 9, 2003.

(2) *Le Monde* and *La Croix* (full text), December 9, 2003.

(3) Jean-Michel Dumay gives a good overview in “L’embarras des politiques,” *Le Monde*, October 16, 2003.

(4) Josy Eisenberg, “Dis-moi ce que tu portes...” *Le Monde*, May 30, 2003.

What is of particular note is the way in which consensus was built, and the role played in this by the two commissions of inquiry that were appointed in the very early days of the debate and were active during that fall. The first was the parliamentary commission of inquiry established on June 4 by the president of the National Assembly, Jean-Louis Debré, who was known to be close to Jacques Chirac. Consisting of 30 members, it was in the very best Jacobin tradition: it was up to central government to examine the issue of secularism in the country. Moreover, the commission had the twofold outcome of generating consensus between parliamentarians – and in particular within the UMP, Jacques Chirac’s party, which was divided on the issue – and proposing a simple solution, namely to ban all religious symbols from schools.<sup>5</sup>

The second commission was appointed by Jacques Chirac on July 3, and was led by Bernard Stasi, the National Ombudsman and leading figure from Christian Democrat circles. At his side, the commission included just two politicians: the deputy (member of French lower house) and mayor of Dunkirk, Michel Delebarre, and the senator and mayor of Garges-les-Gonesse, Nelly Ollin. The Council of State was represented by its honorary vice-president, Marceau Long, as well as by Rémy Schwartz, the commission’s rapporteur. Apart from Hanifa Cherifi, who had served at the Ministry of Education as a mediator in issues related to the wearing of headscarves since 1994, and who was the rector of the *Académie de Paris*, the other members all came from “civil society”: one headmaster, one lawyer, one director of an association, one businessman, and nine academics (sociologists, jurist, philosophers, historians). This was therefore a committee of experts, brought together for their abilities more than for how representative they were. The commission consisted of 14 men and six women, and although religious

(5) The commission’s report was published under the title *La Laïcité à l’école. Un principe républicain à réaffirmer* (Paris: Odile Jacob, 2003).

leaders were absent, several members who were known for their “religious sensitivity” or for their opposition to the idea of a law,<sup>1</sup> offered a counterbalance to the proponents of a combative form of secularism. One must wonder, therefore, what it was that led the commission, despite its initial differences, to mirror what was happening in French politics and propose with near unanimity<sup>2</sup> a law on secularism that restricted the rights of students, even though it was accompanied by a series of proposals that took into account the social dimension of the issue (that were not adopted by politicians).

The key provision was clearly there: by stating that “in public elementary schools, middle schools, and high schools, the wearing of symbols or forms of dress by means of which students conspicuously identify themselves as belonging to a particular religion is forbidden,” deputies and senators attempted to enshrine in law a balance that, for better or for worse, had been brought about through a series of local crises since 1989, often arbitrated by the Council of State. However, they were also breaking with a long tradition of respecting students’ right to express their personal convictions, which gave rise to the suspicion in France that a law of exception had been issued against Islam.

It started with the expulsion of three students from the *collège*<sup>3</sup> Gabriel-Havez de Creil, just a few weeks after the start of the school year in 1989, for refusing to remove their headscarves. The incident was evidence of a higher prevalence of Islam among young people, for the most part due to immigration, and was an apparent departure from the previous model in

France, which just a few years previously still encouraged community involvement by their elders in the “*génération des potes*” (generation of pals), whose spokesman was the association SOS Racisme (motto: *Touche pas à mon pote* – “Don’t touch my pal”).<sup>4</sup>

That year, the bicentennial of the French Revolution, the incident stirred up emotions in the public and among the political class, and opened an intellectual debate in which people grappled with authority, secularism, and the condition of women.<sup>5</sup> Under pressure to intervene, and not without first consulting the Council of State, Minister of Education Lionel Jospin preferred to publish a circular rather than turn to the law to resolve the matter. It was a well-written text that echoed the letter by Jules Ferry to teachers in 1883:

Nothing is as vulnerable as the conscience of a child. There should be greater scruples with regard to the conscience of the child, as it concerns the teachers, the regular requirements for neutrality in public service, and the duty of its agents to show reserve.<sup>6</sup>

However, while calling for dialogue and respect, the minister clearly stated what the objectives of this dialogue was to be: “in the interest of the student and out of concern for the functioning of the school,” the negotiation with students and their families was to result in these signs of religious affiliation no longer being worn.

(4) Jocelyne Cesari, *Musulmans et républicains. Les jeunes, l’Islam et la France* (Brussels: Complexe, 1998); and Farhad Khosrokhavar, *L’Islam des jeunes* (Paris: Flammarion, 1997).

(5) Françoise Gaspard and Farhad Khosrokhavar, *Le Foulard et la République* (Paris: La Découverte, 1995); and from a European perspective: Nadine Weibel, *Par-delà le voile. Femmes d’Islam en Europe* (Brussels: Complexe, 2000).

(6) Text of the Jospin circular of December 12, 1989, quoted in Francis Messner, Pierre-Henri Prélôt, and Jean-Marie Woehrling (dir.), *Traité de droit français des religions* (Paris: Éditions du Juris-Classeur, 2003). Cf. also the circular by Jean Zay of May 15, 1937, which established “the necessity of sheltering public education from political and confessional propaganda” and stated that “no form of proselytism should be allowed to enter into it.”

(1) René Rémond in *La Croix*, June 23, 2003; Alain Touraine in offering his support to the petition “Oui à la laïcité, non aux lois d’exception,” *Libération*, May 20, 2003

(2) Only Jean Baubérot abstained on this point. For his explanation of the vote, see “La laïcité, le chêne et le roseau,” *Libération*, December 15, 2003.

(3) Translator’s note: The first phase of secondary school, lasting four years. Approximately equivalent to middle school (US).

From that point on, the National Assembly, successive cabinet ministers, and the Council of State were protagonists in a series of conflicts that at first took place at secondary school level. On the side of Parliament, pressure was ramped up again as soon as the right came back into power in 1993, on the initiative of a handful of RPR deputies united around the former principal of the Creil *collège*, Ernest Chénière, whose activism on the issue earned him election as parliamentary representative for Oise. In practice, difficulties often originated from the powerlessness of pedagogical teams and school boards to act when faced with this new form of activism over the issue of secularism. In the light of repeated local conflicts and the submission of a bill by the same group of deputies in July 1994, the Minister of Education, François Bayrou, on September 20 published the circular that tipped the balance in a more repressive direction on at least two points. Firstly, it was in this text that the necessity of banning “ostentatious signs” of religious affiliation first appeared from the pen of a government minister, along with the distinction between these “ostentatious signs” and “discreet signs” by which students were allowed to express “their personal attachment to convictions of a religious nature.” Secondly, the report included in an annex a draft of a suggested article for inclusion in school rules.<sup>1</sup> It was in the wake of this circular that a mediator was appointed in November 1994 to resolve conflicts that occurred at a local level.

In what appears to be a tacit procedure for gradually tipping the scales towards secularism through a succession of confrontations and compromises, it is important to point out the role played by the Council of State, to which multiple local disputes were referred. From its first ruling in 1989 in response to the referral by Lionel Jospin, the Council of State

recalled that the wearing of a sign of religious affiliation by students does not *in itself* constitute a violation of the principle of secularism. However, it did establish the limits of the freedom conferred on students and their families, which “should not allow students to display signs of religious affiliation which, by their very nature, due to the circumstances under which they would be worn individually or collectively, or due to their ostentatious character or protest function, would constitute an act of pressure, provocation, proselytism, or propaganda, would violate the dignity or the liberty of the student or other members of the educational community, would compromise their health, or their safety, would disturb teaching activities and the educational role of teachers – in short would cause disruption in the school.”<sup>2</sup>

On multiple occasions, in November 1992, in March 1994, and in November 1996, the Council of State reversed the expulsions of students when the only reason given was the wearing of a religious symbol. On the other hand, the expulsions were upheld when there was a lack of diligence in schoolwork, when wearing the headscarf endangered the safety of the students, particularly during workshop classes, or when wearing the headscarf was accompanied by protest movements “that are seriously disruptive to the normal functioning of the school,” as was the case with 17 young girls wearing headscarves at a school in Lille in November 1996.<sup>3</sup>

By addressing the matter on a case-by-case basis, the Council of State adhered to what government commissioner Rémy Swartz in July 1995 called a “jurisprudence of conciliation.” It confirmed the principle according to which

(2) Council of State opinion no. 346.893, November 27, 1989. Complete text in *Conseil d'État, Rapport public 2004. Jurisprudence et avis de 2003. Un siècle de laïcité*. (Paris: La Documentation française, 2004), 424-429 and 428.

(3) For an overview of the consecutive jurisprudence in the headscarf affair, see *Conseil d'État, Rapport public 2004*, 333-342; and Francis Messner et al. (dir.), *Traité de droit français*, 1133-1140. Unless stated otherwise, we shall refer to these two works.

(1) The complete text of the circular can be found in *Le Monde*, September 21, 1994.

the neutrality required of civil servants as representatives of French secularism could not be imposed on students, for whom the same secularism conflicted with their rights to freedom of conscience and freedom of expression. It noted the indecision surrounding the exact meaning of the headscarf, and the lack of legal consistency as regards its being called an “ostentatious sign” of religious and community affiliation.

The sages of the Council of State were consciously aligning themselves with a long tradition, their vice president, Renaud Denoux de Saint-Marc, stating in November 1996 that, “in the 1910s, a number of secularist activists already stated that we were in bed with the clergy in the matter of processions on public roads ... . Today we are applying the same principles.”<sup>1</sup> In February 2004, on the day after the law was adopted, the Council of State dedicated its annual report to “a century of secularism,” a way of further underscoring a tradition of jurisprudence that allows for individual liberties.<sup>2</sup>

Needless to say, after the attacks of 9/11 and the success of the far right-wing politician Jean-Marie Le Pen in the first round of presidential elections in 2002, this systematic reference to the law placed political leaders in a difficult position as they simultaneously faced the concerns of their electorate. In this sense, the recourse to consultation with experts in the form of the Stasi Commission that was appointed in 2003 could very well have been the means by which the government attempted to find a way out of the impasse by tacitly appealing to civil society instead of to the exclusive legal authority embodied in the Council of State.

## Borders of Europe, Borders of Secularism

The European Union occupied a paradoxical position in the work of the Stasi commission.

(1) *La Croix*, November 7, 1996.

(2) Conseil d'État, *Rapport public 2004*.

For a long time, the French would have liked to have believed that the French law restricting the wearing of religious symbols would not be in conflict with European law. This obstacle was eliminated on October 17, after a pronouncement by Jean-Paul Costa, the vice president of the European Court of Human Rights. Based on Article 9 of the European Convention and on jurisprudence, he convinced the experts that “if this kind of law was submitted to our court, it would be judged to be in conformance with the French model of secularism, and thus not in contravention of the European Convention on Human Rights.”<sup>3</sup> While defending “freedom of thought, conscience and religion” the convention therefore allows Member States to define the relationship between religion and state in the light of their own juridical-political tradition. This “right to interference” in freedom of religion by the Member States nevertheless assumes that three conditions have been met: that it is codified in law, that this law has “a legitimate end,” and that the intervention is “proportional to the problem it is intended to resolve.”

Costa's pronouncement doubtlessly represented a turning point in the work of the commission by powerfully strengthening the case of proponents of the law. By underlining the *necessity* of having a law if the French were to obtain the court's backing, Costa opened up a way to politicians that had until then been blocked off by the Council of State's “jurisprudence of conciliation” approach that was based on case-by-case assessment.

(3) Quoted in *Le Monde*, October 28, 2003. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms allows for freedom of thought, conscience, and religion, including, in its first paragraph, the freedom to manifest one's religion or belief “either alone or in community with others and in public or private,” while in its second paragraph it states, “Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

It thus allowed the commission to escape from under the legal yolk in order to enlist the European Union as an ally in reflection on the convergence of national models. At the end of the second part of its report, the Stasi commission opened a paragraph on the confrontation with Europe with, “Is secularism particular to France?” – and continued for another ten pages.<sup>1</sup> After having distinguished three ways in which the relationship between religion and state is managed in Europe, two sentences set the tone for the discussion: “A tendency is emerging for European Member States to move closer on the issue of the separation of church and State. On the other hand, there is a growing difference between Europe, which is marked by an increasing secularization – not necessarily indicating a decline in religions – and the United States, where religion permeates every level of society.”<sup>2</sup>

Every word should be weighed here, from the choice of capitalization (church and State) to the comparison of Europe with the United States of “born again” George W. Bush, a few months after the start of the war in Iraq, and passing via the idea that increased secularization does not necessarily imply the decline of religions. Finally, the analysis is based on the idea that the confrontation with an Islam that arose due to immigration questions a long-standing equilibrium everywhere, leading each country to reconsider its own heritage, but in line with a common trend: “Each State is addressing this new challenge with its own traditions. There are various religion claims, depending on the cultures of each immigrant population. Most of the European countries have opted for a Community approach, but, faced with the rising tensions, the trend is reversing today, and is returning to a policy

of more proactive integration.<sup>3</sup> Two countries are named in support of the argument: the first is Germany, the only other European Member State that had been confronted with a “headscarf debate” since 1997, albeit initially under very different circumstances to France: decentralization of education policy to the *Länder* (federal states), confrontation with Islam interfering with the effects of reunification, and a debate on the wearing of headscarves by teachers. The other example given was that of The Netherlands, where the traditional system of *verzuiling* (pillarization) was in crisis, and in reference to which the commission referred to a “tribalization” of society in favor of a form of community that “feeds tensions between races and religions, a resurgence in anti-Semitism, and an exacerbation of the lure of extremists, as revealed in the phenomenon that was [right-wing politician] Pim Fortuyn.”<sup>4</sup>

This line of argumentation is rather perplexing. In The Netherlands, it was at the beginning of the 1990s – a decade *before* the success of the populist leader Pim Fortuyn and his *Leefbaar Nederland* (Livable Netherlands) movement in municipal elections in March 2002 – that the policy of offering support to cultural minorities started to make way for a more restrictive integration policy on the initiative of the right-wing VVD (People’s Party for Freedom and Democracy) and its leader, Fritz Bolkenstein.<sup>5</sup>

The case of Germany is the most interesting, however, because of the way in which it evolved in parallel with the work of the commission. On September 24, 2003, the conflict between the federal state of Baden-Württemberg and

(3) Stasi Commission, *Laïcité et République*, 74.

(4) Stasi Commission, *Laïcité et République*, 77.

(5) On the Dutch system and its difficulties, see Rik Torfs, “Les Pays-Bas,” in Brigitte Basdevant-Gaudemet and Francis Messner (dir.), *Les Origines historiques du statut des confessions religieuses dans les pays de l’Union européenne* (Paris: PUF, 1999), 195-205; Han Hentzinger, “L’Islam aux Pays-Bas: culture ou religion ?” *Confluences Méditerranée* 32 (winter 1999-2000): 103-117.

(1) Commission chaired by Bernard Stasi, *Laïcité et République, rapport au président de la République* (Paris: La Documentation française, 2004), 71-80.

(2) Stasi Commission, *Laïcité et République*, 73.

the teacher of Afghan origin who in 1998 was refused a permanent position because she wore a headscarf while teaching was rekindled after the German Constitutional Court in Karlsruhe, the highest judicial authority in Germany, ruled in the teacher's favor. The court stated that the sanction was invalid because there was no law prohibiting the wearing of the headscarf. Although education policy is in the hands of the federal states, the issues raised by Islam in Germany were at a national level. At a meeting of religious leaders from the various federal states on October 9, no agreement could be reached: eight of them wished to legislate against the wearing of the headscarf, while seven opposed a ban. In November, Baden-Württemberg's decision to go it alone and draft a law elicited a national debate which continued until the law was adopted in April 2004. "If the Islamic headscarf is considered to be an expression of faith, as a garment with the missionary character, the same should also apply to the monk's habit or the crucifix," said the president of Germany, Johannes Rau. "As a political as much as a religious symbol the headscarf has no place in schools," replied Annette Schavan, CDU minister of education for Baden-Württemberg.

Tellingly, the ban was therefore formulated in terms of the headscarf's political symbolism rather than its religious symbolism, allowing the government of Baden-Württemberg to single it out from among the other symbols of religious affiliation. It should also be remembered that the law concerned teachers: at no time was a ban affecting students under consideration, which in itself invalidates the comparison suggested by the Stasi Commission.<sup>1</sup>

One could at least have recalled the debate among academics as to whether French

secularism constituted a particularity, or whether it was a model of separation between church and state towards which some – but never all – European member states were trending.<sup>2</sup> This is not to question the value of the commission's final recommendations, but to wonder as to the French bias in this quick overview of how religions are handled in Europe. To this author it appears indissociable from the fact that the "headscarf debate" came to reinforce the concern as to the future of the French model of secularism in the face of European integration, and perhaps above all for the French to reassure themselves on this point. It is impossible not to hear in this discussion on what has been happening at a European level the echo of two other issues that have been the subject of debate over the past few years, namely Europe's "Christian heritage," and the admission of Turkey to the EU.

It was in the fall of 2000 that the government of Lionel Jospin, with the backing of President Jacques Chirac, vetoed the mention of a "Christian heritage," or even a "religious heritage" of Europe in the text of the EU Charter of Fundamental Rights. The debate flared up again and again throughout the drawing up of the European Constitution, which was finalized in October 2004. Representatives from Poland, the CSU in Bavaria, Germany, and from Italian conservative circles acted as a voice for the demand, which was a source of division for the Christian-Democrat-inspired European People's party, but was strongly voiced by figures from the Church, particularly from the European Bishops' Conferences and Pope John Paul II. In France, the debate took a particular turn: in France, it was the place of religions not

(2) See in particular Jean-Paul Willaime, *Europe et religions. Les enjeux du XXI<sup>e</sup> siècle* (Paris: Fayard, 2004); Françoise Champion, "Entre laïcisation et sécularisation. Des rapports Église-État dans l'Europe communautaire," *Le Débat* 77 (November-December 1993): 46-72; Philippe Portier, "États et religions dans l'Union européenne. Essai d'interprétation," in Gérard Cholvy (dir.), *L'Europe. Ses dimensions religieuses* (Montpellier: Centre régional d'histoire des mentalités, 1998), 301-326.

(1) For a complete overview, see *La Croix*, October 10, 2003 and December 11, 2003; *Le Monde*, September 26, October 15, November 13, 2003 and January 8, 2004; *Libération*, April 8, 2004.

just in Europe, but in public space that was at issue, as evidenced in the success of the petition launched by the weekly newspaper *Témoignage chrétien* under the title “*En cette fin d’année 2000, la France a mal à sa laïcité*” (“At the end of this year 2000, French secularism is hurting”).<sup>1</sup>

The text denounced a “climate of tension and mistrust” and defended a version of secularism that is open to religious diversity. No doubt the protest resonated with a sense of accelerating marginalization experienced by some within French society,<sup>2</sup> and their concern was born from what sociologist Danièle Hervieu-Léger called “the exculturation of Catholicism”<sup>3</sup> – the decoupling of the historically close relationship between Catholicism and the culture at large. It went further than just the Catholic context, however, and the signatories to the petition could not be easily grouped together simply as obstinate defenders: Olivier Abel, Paul Ricœur, and Jean-Paul Willaime from the Protestant side stood side by side with Jean Delumeau, René Girard, and René Rémond from the Catholic side; Jean-François Mattéi, Hubert Haenel, and Gilles de Robien from the political right joined Claude Cheysson, Marie-Noëlle Lienemann, and Catherine Trautman from the left.

Their opponents could dismiss the petition based on its reactionary content by denouncing the way in which the idea of a *Christian* Europe was behind the idea of a *religious* heritage, a notion which flew in the face of the Enlightenment tradition and of the contributions of Jews and Muslims. As to the resolution

by the French government, this could easily be explained: It was not out of ignorance of a history on which Christianity had undoubtedly left its mark, but it was born out of concern for the separation of church and state, in line with a position inherited from 1905, in a constitutional text that proposed a new form of sovereignty on a European scale.

Needless to say, the churches’ throwing their hat into the ring only caused the secularists’ concern to grow, as they saw the European project as a threat to France’s unique character – and, through the issue of secularism, it was France’s power within the Union that they wanted to defend. Although the draft Constitution did finally retain the wording “cultural, religious, and humanist heritage of Europe,” the debate took a different turn in the fall of 2004 when the Italian Commissioner-designate for Justice and Home Affairs, Rocco Buttiglione, was forced to withdraw his candidacy for having stated that homosexuality is a sin in the context of his involvement in the conservative Catholic movement *Comunione e Liberazione*.<sup>4</sup>

The headscarf debate therefore took place against a background of redefining the issue of secularism in such a way as to withstand scrutiny from Europe. Islam was never far from the debate however; for some it was the religion whose irruption at a national and a European level led to a fear of marginalization by Christians, while for others it justified EU demands strengthened them in their conviction that no concessions should be made with respect to the separation between church and state.

The issue of Turkey emerged in this context. It started with the victory of the Justice and Development Party (AKP) led by Tayyip Erdogan in the general elections of November 3, 2002,<sup>5</sup> and the country’s new

(1) *Témoignage chrétien* 2944, December 7, 2000. On November 16 prior to that, the weekly newspaper headlined “Faut-il avoir honte de notre héritage religieux?” (“Should we be ashamed of our religious heritage?”) (Jean-Louis Bianco, Jean-Pierre Mignard, Gaston Piétri, and Jean-Paul Willaime, *Témoignage Chrétien* 2941, November 16, 2000.)

(2) René Rémond, *Le Christianisme en accusation* (Paris: Desclée de Brouwer, 2000); Jean-Claude Guillebaud, “Le refus des origines,” *Le Monde*, December 5, 2000.

(3) Danièle Hervieu-Léger, *Catholicisme, la fin d’un monde* (Paris: Bayard, 2003), 91 et seq.

(4) “Europe: controverse autour des valeurs chrétiennes,” *Le Monde*, October 21, 2004.

(5) The AKP obtained 363 seats in Parliament, while the Republican People’s Party (based on Kemalist values) won 178 (*Le Monde*, November 5, 2002).

leaders made admission to the European Union a key priority in their governance program. Tayyip Erdogan came from a background of Turkish political Islam. Founded in 2001, his party was founded due to a split with the historical leader of political Islam, Necmettin Erbakan, who had been in power for several months in 1996-1997 before being forced to resign under pressure from the army. In 2002, however, Erdogan rejected the label of "Islamist," stating on the contrary that he was willing to relegate political Islam to the past in favor of a plan he defined as "democratic and conservative" and in which religion, far from being connected with the State or used as a tool by it, would only serve as a moral foundation for society.<sup>1</sup> Was this an authentic about-turn in the history of Turkish political Islam, or just a pretense for advancing the cause of EU admission? The question was asked from then on both in Turkey and in the rest of Europe.<sup>2</sup>

In France, the debate had two high points that frame the polemic on headscarves: in fall 2002, between Erdogan's victory at the polls and the decision by the European Union on December 12, 2002 at the Copenhagen Summit to postpone the start of official negotiations for EU admission to 2004; and fall 2004, when those negotiations actually started. The debate did not die down in the mean time, however. It repeatedly surfaced throughout the discussions on the future constitution in response to Turkish lobbying and Erdogan's efforts to communicate his position to European leaders. Although the issues were largely geostrategic and economic,<sup>3</sup> the lot of the Kurdish population, the refusal to acknowledge the

Armenian genocide, the human rights violations in a country where the army remained a key political force, and the difficulties experienced by religious minorities<sup>4</sup> emerged as significant obstacles to EU admission. It was on the potential explosion of Turkish Islam in the EU that the controversy was centered, however, which was contrary to French political culture in three ways.

Firstly, in the relationship to secularism. It should not be forgotten that modern Turkey, whose founders claimed to be adherents of Émile Durkheim, initially defined itself as a secular republic that was able to introduce democracy and give women the right to vote in 1934, ten years before its role model, France.<sup>5</sup> The Kemalist secularism was an authoritarian secularism, however, subjugating Islam to a political desire to modernize, while Erdogan's AKP proposed a democratic project that it liked to think was respectful of the autonomy of religions. This internal debate in Turkey echoed the long-standing opposition in France between "combative" secularism and "open" secularism. That the AKP, a party that had its roots in political Islam, should declare its support for democracy once it found itself in power had an echo in the French Christian-Democrats' long history of rallying behind the Republic once in power, with the accompanying doubts as to their sincerity. It should not be forgotten what the mention of secularism in the French Constitution of 1946 owes to the willingness of radicals and socialists to take on the Christian-Democrat MRP (*Mouvement Républicain Populaire*).

(1) *Le Monde*, November 5, 2002.

(2) Thierry Zarcone, *La Turquie moderne et l'islam* (Paris: Flammarion, 2004), 236-271. On the relationship with morality within political Islam, see Gudrun Krämer, "La politique morale ou bien gouverner à l'islamique," *Vingtième siècle. Revue d'histoire* 82 (April-June 2004): 131-143.

(3) See in particular Michel Rocard's position in "Turquie: dire oui est vital," *Le Monde*, November 27, 2002.

(4) Difficulties highlighted in the fall of 2004 by the survey conducted by the German Catholic development organization Missio. See *La Croix*, October 5 and 28, December 9 and 15, 2004; and *Le Monde*, December 14, 2004.

(5) Zarcone, *La Turquie moderne et l'islam*, 130 et seq.; Michel Bozdémir, "Islam et laïcité en Turquie," in Michel Bozdémir (dir.), *Islam et laïcité. Approches globales et régionales*. (Paris: L'Harmattan, 1996), 191-214.

The issue was all the more sensitive in France in 2003–2004, because Turkey was the first European state to be confronted with the question of the headscarf. It was in 1983, in fact, that the wearing of headscarves by students became a symbol of political protest against Kemalism and in favor of the values of Islam, a movement that was repressed without much success, as the 1980s and 1990s were marked by the unstoppable ascendancy of Turkish political Islam. Although it did represent the brandishing of religious tradition against Kemalist modernization, in Turkey the wearing of the headscarf also had associations with democracy and emancipation: The young women who wore the headscarf used the symbol of their confinement to the *mehreb* – private space, hidden space, forbidden space – to conduct a protest action that caused them to go against tradition by stepping into public political space. “By wearing the headscarf, the Islamist women are demonstrating their faithfulness to religious precepts,” wrote sociologist Nilüfer Göle in 1993. “But through their political and professional activities, they are leaving the enclosed space, the private sphere, and overthrowing the very foundation of the Islamic organization of society, namely the segregation of the sexes.”<sup>1</sup> Through the AKP’s electoral success in 2002, the “Muslim-democrat” outcome of this demand thus offered a mirror to the French uncertainty as to the significance of the headscarf and the motivations of those who wore it.

Finally, the Turkish application for EU membership raised the question as to the EU’s borders. Historically, the matter seemed to be settled: the Ottoman Empire was a European power before becoming “the Sick Man of Europe” in the 19<sup>th</sup> century. However, the Countess of Gasparin wrote of Constantinople and its bazaars in 1867: “Nothing here resembles Europe – do not speak to me of this

geographical heresy. No, Constantinople is not Europe. Hungary can barely be considered to qualify. Istanbul is Asia, the Levant; it has nothing in common with our character, our morals, or our physiognomy.”<sup>2</sup>

Fully European, Turkey *also* appears to be a boundary, and none less than the French writer Pierre Loti suggested the presence, in the middle of the Istanbul night, of this indecisive zone that separates “the reassuring fold, the *table d’hôte* in English style, the street in which one feels as if one is in Europe” from the Oriental city with the habit of “falling asleep in a dreadful silence, only to be interrupted from time to time by some chant from a mosque.” In 1892, he wrote, “It appears that this Golden Horn is not only an inlet from the sea that separates the two parts of Constantinople, but that it also represents a period of two or three centuries that separates what stirs on the one side and what falls asleep on the other.”<sup>3</sup>

What was the status at the beginning of the 21<sup>st</sup> century, and what does our discomfort owe to this inherited imagination? It cannot be denied that Kemalist Turkey modernized itself according to the European model. It was a founding member of the Council of Europe, and in 1963 signed the first association agreement with the EEC, an agreement that was already in line with the idea that Turkey would eventually gain full membership. Once admitted, it would also occupy a prominent position in the EU – and this is precisely the argument used by those opposed to Turkey gaining membership.<sup>4</sup> At once a geographical (Asia Minor) and cultural border (Islam), Turkey prompted Europe to reflect on its common identity, but

(2) Countess of Gasparin, *À Constantinople* (Paris: Michel Lévy, 1867), quoted in Jean-Claude Berchet, *Le Voyage en Orient. Anthologie des voyageurs français dans le Levant au 19<sup>e</sup> siècle* (Paris: Robert Laffont, 1985), 554.

(3) Pierre Loti, *Les Capitales du monde* (Paris: Hachette, 1892), quoted in Jean-Claude Berchet, *Le Voyage en Orient*, 578–579.

(4) See in particular the interview with Valéry Giscard d’Estaing in *Le Monde*, November 9, 2002.

(1) Nilüfer Göle, *Musulmanes et modernes. Voile et civilisation en Turquie* (Paris: La Découverte, 2003), 11.

also on the blurring of borders that characterizes a world in which economic and political issues are globalized.

*Mutatis mutandis*, has Turkish Islam not confronted France with the undecidable status of its own Islam? In France, Islam is a religion of boundaries – social boundaries (the religion of *banlieus* and prisons) or cultural boundaries (the religion of colonization, then immigration). It is also the second largest religion in the country, making its presence known by means of headscarves in schools, the symbolic center of a Republic that first saw itself as an educator, as well as in politics, under the three-fold effects of the attacks of 9/11, namely Jean-Marie Le Pen's success in the first round of the 2002 presidential election, the denunciation of inter-community violence, where the unrest in the *banlieus* met the local fall-out of the Israeli-Palestinian conflict, and the war in Iraq. Given the above, it may well be that the headscarves of young Muslim women made this blurring of boundaries tangible, the symptom or manifestation of a new concern as to security. What is suggested by involving the European dimension in the French debate on headscarves – and the brief reference by the Stasi Commission to the United States as cited above takes on its full significance here – is that the debate could be nothing more than the French (and hence the secularist) version of the debate provoked by the “clash of civilizations” hypothesis on the other side of the Atlantic.<sup>1</sup>

### The Headscarf, Gender, and the Body

Banning the headscarf from schools protected women's rights: the evidence emerged in 2003–2004 much more than with the crisis of in fall 1989. As demonstrated by Florence Rochefort, it took several weeks before the gender issue was raised, on the instigation firstly of the Women's

Grand Lodge of France (*Grande loge féminine de France*), and then by people like the advocate Gisèle Halimi, or the former Minister of Health Michèle Barzach.<sup>2</sup> Although this aspect then entered into the intellectual debate, it was only timidly taken up by politicians and legal experts. The issue was absent from the text in which Minister of Education Lionel Jospin appealed to the Council of State, and it was marginal in the advice issued by the Council on November 27, the Council contenting itself to pointing to the first article of the Framework Law on Education of July 10, 1989, according to which school should contribute “to favoring equality between men and women.” It later assumes responsibility for the expression itself, but in connection with one of the missions of school, and not in connection with secularism.<sup>3</sup>

As to the circular of September 20, 1994, its contribution was limited. Doubtless the legal scholars were justified in seeing in it a text by which François Bayrou, under pressure from some elected representatives from the majority party, broadened the scope of secularism. In school, a place that had become the location of integration *par excellence*, a sanctuary where particular practices should be left behind in favor of a common culture, “secularism is no longer simply described as a necessary condition for respecting religious freedom; it is an essential factor in integration, providing a guarantee of social cohesion.”<sup>4</sup>

Overall, the circular gave little attention to equality of the sexes, however. “All forms of discrimination should be left at the school door, whether due to sex, culture, or religion,”<sup>5</sup> wrote the minister, and although the Council of State refused to approve the text based on the fact that a circular does not have any legal

(2) Florence Rochefort, “Foulard, genre et laïcité en 1989,” *Vingtième siècle. Revue d'histoire* 75 (July–September 2002): 145–156.

(3) Council of State, *Rapport public 2004*, 427 and 428.

(4) Francis Messner et al (dir.), *Traité de droit français*, 1136.

(5) Full text in *Le Monde*, September 21, 1994.

(1) Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

force, it was later seen how its jurisprudence imposed a minimalist interpretation.<sup>1</sup>

It was quite a different matter in 2003, when the issue was raised at every step in the report by the Stasi Commission. It was identified as one of the common values behind French secularism: "Of these values, equality between men and women, although a recent development, has nonetheless assumed an important place in our laws. It is a component of the national pact today."<sup>2</sup> It allows us to measure the deterioration of the condition of this pact over the past decade: in 1989, "the community demands and the fears of the public service being questioned were still limited. In this respect, it is revealing to note that the petition to the Council of State did not mention the issue of sexual discrimination. The way in which the terms of the debate have changed over the past 15 years is an indication of the increasing extent of the problem."<sup>3</sup> Sexual equality was at the core of the challenges that ethnic isolation brings to the societal pact, and the experts from the Commission acknowledged the difficulties encountered by women in "neighborhoods home to multiple nationalities."<sup>4</sup> "It is becoming noticeably less common for women and girls to play sports in these neighborhoods. Some women are excluded *de facto* from stadiums and swimming pools. Clubs for women and mixed clubs are disappearing," there was considerable social pressure on girls and young women "on whom the headscarf is imposed, sometimes using violence." According to the Commission, wearing the headscarf falls under the large specter

of gender oppression of the type that varies from polygamy to female genital mutilation, from forced marriages to repudiation. The titles of the paragraphs that followed in the report were: "Threats to Individual Liberties," "Manifestations of Racism and Xenophobia" and "The Emergence of a New Anti-Semitism."<sup>5</sup>

The Stasi Commission stated that the headscarf was a sign and symbol of a form of sexual discrimination that is in itself a model for all forms of discrimination originating from a lack of integration. The statement by the commission according to which "today, secularism cannot be thought of without a direct link to the principle of equality of the sexes"<sup>6</sup> was supported by the profession of faith by the president of France in his speech of December 17, 2003 "on respect for the principle of secularism in the Republic": "In the end, our fight for the values of the Republic should lead us to make a clear commitment in favor of women's rights and their true equality with men. This fight is about those who will form the future face of France. The level of civilization of a society can be measured above all by the place it gives to women."<sup>7</sup> Because it was a law that benefited women, the law that banned the wearing of headscarves at school was a law in favor of the Republic and, by the same token, a law in favor of civilization. In 1989, a few intellectuals were concerned about a repeat of the rise of National Socialism, fearing "a Munich of public schools"<sup>8</sup>; in 2003, however, the Republic was replaying the battle of Valmy of 1792, which led to the glorious proclamation of the Republic the following day.

(1) In a motion brought against the Bayrou circular, and "in conformance with classic jurisprudence as regards circulars, the Council of State has rejected as inadmissible the conclusions directed against an act that deprives itself of legal force in relation to those governed" (Council of State, *Rapport public 2004*, 339). Nevertheless, cf. the skepticism expressed by the Council's vice-president to *Le Monde*, December 20, 1994.

(2) Stasi Commission, *Laïcité et République*, 35.

(3) Stasi Commission, *Laïcité et République*, 56.

(4) For what follows, to the end of the paragraph, see Stasi Commission, *Laïcité et République*, 99-108, under the sub-heading "Le pacte social: des fondements sapés".

(5) They appear in the report as: *Des menaces sur les libertés individuelles, Manifestations racistes et xenophobes*, and *Montée d'un nouvel antisémitisme*. Stasi Commission, *Laïcité et République*, 27-28.

(6) Stasi Commission, *Laïcité et République*, 114.

(7) Large extracts from the speech in *Le Monde*, December 19, 2003.

(8) Élisabeth Badinter, Régis Debray, Alain Finkielkraut, Élisabeth de Fontenay, and Catherine Kintzler, "Profes, ne capitulons pas!" *Le Nouvel Observateur*, November 2-8, 1989.

What happened in the interim? One can analyze the headscarf debate as a kind of gender-proof accomplishment of secularism, the French Republic having found itself driven to recognize and implement the “uncontestable elective affinities between secularism and equality between the sexes”<sup>1</sup> after decades of ambiguity. The Stasi Commission, wrote Florence Rochefort, “to some extent made this connection official by placing equality of the sexes among the founding principles of secularism.”<sup>2</sup>

Was it necessary to pass a ban on the headscarf in order to achieve this, however? Yes, without a doubt, in the view of some, including supporters of the ban who came from outside the circles of militant “secularists [*laïcardes*] because feminists.” This is how Anne Vigerie, a member of the Study Circle for Feminist Reforms (*Cercle d'études de réformes féministes*), presented herself ironically, along with Anne Selensky, the president of the League of Women's Rights (*Ligue du droit des femmes*). “France is a nation that observes two principles: secularism, which implies the separation of church and state, and equality of the sexes,” they wrote. As to displaying one's beliefs, “one might still allow this kind of display in the name of freedom of expression. But on condition that it is not an insidious instrument for a fundamentalist proselytism that divides women into two groups: the submissive and the sluts. Where social, moral, or physical violence against women who do not wear a headscarf starts, that is where the freedom to wear it should end.”<sup>3</sup>

Appearing in the December 15, 2003 issue of *Elle*, and picked up on the same day by *Le Monde*, the petition entitled “Women's Rights

and the Headscarf – *Elle Takes a Stand*” summarizes the gender dimension of the debate. Signed by 145 public personalities (108 women and 37 men) from the entertainment world and from politics, from intellectual and associative spheres – a veritable Who's Who of French society – it appeared in the columns of a magazine well known for its role in the women's rights movement for more than half a century. The president of France was notified of the petition based on a direct link between secularism and equality between the sexes: “As the guarantor of the Constitution, we solemnly request that in addition to the principle of secularism, to which we are profoundly attached, you also defend with the greatest intransigence the principle of equality between the sexes. This principle is included in the preamble to the Constitution, and it is a principle that the women of this country have fought for and still fight for today. The Islamic headscarf sends us all – Muslims and non-Muslims – back to an intolerable situation of discrimination towards women.”<sup>4</sup>

Banning the headscarf was a wake-up call, a line in the sand for France: “Allowing the Islamic headscarf in schools and in public administration would imply lending legitimacy to a visible symbol of female submission in a location where the State should guarantee strict equality between the sexes.” The ban was to be a prelude to a true integration policy and to a “fight against the forms of discrimination to which French citizens through immigration are subjected.” This common cause was that of democracy: “Today, the struggle of women in the ‘*quartiers*’ [neighborhoods] who denounce the deterioration in their living conditions and the regression in their status is also our struggle. The struggle to defend the rights of women is also the struggle on behalf of all female democrats. . . . Otherwise, ‘equality’ and ‘secularism’ are no more than words,” the petition concluded.

(1) Florence Rochefort, “Laïcité et droits des femmes: quelques jalons pour une réflexion historique,” *Archives de philosophie du droit* 48 (2004): 95-107.

(2) Florence Rochefort, “Laïcité et droits des femmes,” 95-107.

(3) Anne Vigerie and Anne Selensky, “‘Laïcardes,’ puisque féministes,” *Le Monde*, May 30, 2003.

(4) Text of the petition in *Le Monde*, December 16, 2003.

Opponents to the law rarely questioned the link between sexual equality and French secularism, but rather its implementation in the context of the polemic around the headscarf. One group of critics denounced the use of gender in service to a cause that was not appropriated by the young girls that were supposedly being protected. In their view, the law was using secularism as a front when in fact it was a law of exception and exclusion targeting only Islam and in fact representing the betrayal of the secularist project.

The cause won support abroad, and one can quote multiple European, Arab, and American sources in this vein, but let us mention what American political scientist Aristide Zolberg wrote about it. The law, which could only have the yarmulke and the headscarf in mind, “can only be discriminatory, because no Christian church imposes these kinds of obligations on its members. It would force students to choose between their religious obligations and integration into French society, at the risk of producing negative consequences by feeding into the specter of ethnic isolation that is being raised in France.”<sup>1</sup> In the United States, in the context of the disagreement between France and the US on Iraq, Congress was disturbed by the debate, the State Department called the draft law “a significant concern,” and the Ambassador at Large for International Religious Freedom, John Hanford, likened it to the wearing of yellow stars by Jews during the Second World War.<sup>2</sup>

In France itself, the law was denounced as a transfer to the *banlieus* of a colonial attitude to Islam. A parallel was also drawn with the emancipatory Napoleonic policy on Judaism, following the rushed appointment a few months

previously of the National Muslim Council of France by Nicolas Sarkozy: it was said to demonstrate the fact that France was pretending to “regenerate” the Muslims in the same way that Napoleon wanted to “regenerate” the Jews. Historian of Judaism, Esther Benbassa, wrote, “France is there to ‘civilize’ everyone it considers not in conformance with to its own model, whether the poorest people, or the richest, like the Americans; populations the furthest away in the past, or the closest to our times – like those in the *banlieus*. France emancipates and liberates . . . Including by force, or by force of the law, when it cannot do so through persuasion or education.”<sup>3</sup>

In the same vein of rejecting a law that used gender as a pretense, the ban on teenage girls from covering their bodies can be described as an imposture when the law is silent on the exposure of the same bodies in a commercial context. Thus the philosopher Alain Badiou stated that it was fear that underlies the headscarf law: “We maintain, and this is quite odd, that the headscarf law is a law of pure capitalism. It orders that femininity be *exposed*; in other words, that the circulation of a woman’s body under the commercial paradigm be obligatory. In this connection, it forbids any *reserve* – and this for adolescents, that most highly impressionable of groups.”<sup>4</sup>

Or there was this open letter by philosopher Élisabeth Sledziewski addressed to young girls who wear headscarves: “The rising tide of pornography, of a culture drenched in sex, the blasted media of the slut and the Lolita – no, none of this has taken away one hundredth of one of the final formulations through which they poured contempt on you.”<sup>5</sup> Whether the

(1) Interview with *Le Monde*, November 18, 2003. Aristide Zolberg was a professor of Political Science at The New School in New York.

(2) “I hope that our ambassador to France will be asked to wear a veil, just as the king of Denmark wore a yellow star,” declared Hanford in front of Congress in February 2004 (quoted in *La Croix*, March 4, 2004).

(3) Esther Benbassa, *La République face à ses minorités. Les juifs hier, les musulmans aujourd’hui* (Paris: Mille et une nuits, 2004), 120–121.

(4) Alain Badiou, “Sous la loi fouldrière, la peur,” *Le Monde*, February 9–22, 2004.

(5) Élisabeth G. Sledziewski, “Adieu foulards...,” *Le Monde*, December 17, 2003.

headscarf legislation originated from France's colonial heritage, or whether it concealed the subjection of the body to the market, in the view of these commentators, feminism was just an excuse, just a springboard for manipulation that stigmatized the headscarf to the detriment of a real fight against discrimination. Calling it ineffective and unjust, they predicted that the law would simply double the violence against those it purported to protect. It would send them back to the environment in which they are oppressed; and it would isolate them from the educational institution that was supposed to emancipate them. Expelling young veiled girls is a form of double punishment: "How can feminists support a law that leads young girls to be excluded from school, often the only place in which they are free, in order to send them back to the family environment accused of oppressing them?"<sup>1</sup>

A second strain of arguments makes recourse to what could be called a hermeneutics of the headscarf, in which the complexity of its multiple meanings is explored: as a clothing accessory, the headscarf may have value as a means of affirming the individual's identity in an era marked by the autonomy of individuals in relation to collective systems of meaning. In other words, it might just be a simple provocation, or affirmation of the fact that the wearer is different, making wearing the veil a fashion statement, and the veil a fashion accessory. Although it is a possible sign of alienation, the veil should therefore not be automatically identified with alienation.<sup>2</sup> It may also be the expression of a collective identity in suf-

fering in response to a situation of social exclusion or lack of recognition. It therefore concerns a social and political struggle that cannot be carried out only in the schools. This struggle needs to be carried out in the forsaken *banlieues*, in the context of urban policy, in positive action strategies that are able to reduce the real discrimination that feeds into reactionary assertion of identity and violence, whether symbolic or real, by the dominated groups.<sup>3</sup>

These attempts at hermeneutics of the veil broadened the issue, making the confrontation between Islam and secularism the backdrop to another story marked by the recent changes to the categories we use to understand the social structure of society, and by the resulting uncertainties. We will illustrate this here in reference to the viewpoints of two Anglo-Saxon intellectuals, who have both written on the changes in the structure of the family in the context of modernity. The first is Francis Fukuyama, the theoretician who coined the term "the end of history." He writes, "Individualism in the family – that is, the right to marry who one chooses – is the key to all individualism, and it is the negation of this right that allows family and social structures to be perpetuated from one generation to the next. Traditionalist Muslims are more astute than they appear when they insist on distinguishing their daughters from others by means of the veil, as this indicates that they are not sexually available to non-Muslims. The young girls themselves, who want to wear the veil as a symbol of their identity, do not understand that, in the long term, this threatens their individual freedom."<sup>4</sup>

In a similar vein (although the two men's opinions do diverge), Anthony Giddens should

(1) Alima Boumediene-Thiéry, Dounia Bouzar, Christine Delphy, Éric Fassin, Françoise Gaspard, Madeleine Davy, and Nicole Savy, "Un voile sur les discriminations," *Le Monde*, December 17, 2003; similar arguments were made by the sociologist Janine Mossuz-Lavau in "Une loi? Non," *Le Monde*, December 17, 2003, and Daniel and Gabriel Cohn-Bendit, "Une honte pour l'école laïque," *Le Monde*, October 17, 2003.

(2) Monique Canto-Sperber and Paul Ricœur, "Une laïcité d'exclusion est le meilleur ennemi de l'égalité," *Le Monde*, December 11, 2003; "De l'inutilité d'une loi déplacée," by the group "Paroles," which consisted of twelve Catholic intellectuals, *Le Monde*, February 3, 2004.

(3) "Oui à la laïcité, non à une loi d'exclusion," petition published in *Libération*, May 20, 2003, and signed by Étienne Balibar, sociologists Catherine Lévy, Françoise Gaspard, and Saïd Bouamama, and Anne Copel and Malika Amrouche, activists from the association Femmes Publiques.

(4) Francis Fukuyama, "Voile et contrôle sexuel," *Le Monde*, February 4, 2004.

be cited here – less because he is one of the theoreticians behind Tony Blair’s version of the “Third Way” than for his sociology of the transformation of social and personal life due to modernity. He writes, “Women’s identity is primarily found in the new global environment in which we live. Femininity – the way in which a person identifies herself as female – is no longer taken for granted. It has become the subject of controversy. With an insistence on the purity of women and a strict division of tasks between men and women, the traditional family is characteristic of fundamentalist movements within Islam, but also in other religions. This is why the hijab does not have just one meaning.”<sup>1</sup>

### Intimacy and Politics

This tension between modern thinking on individual autonomy and the traditional status of the family appears to shed light on the convergence of French passions around the bodies of these young girls that the veil in fact exposes more than it reveals. In France in the 1970s, leftist politics and the women’s emancipation movements made the body the locus of women’s emancipation and a political issue, leading in turn to a new examination of the boundary between the public and the private, between the individual and society, between the private and the political. It is this other blurred boundary that the headscarf provokes us to examine, in a way that requires us to understand the anthropological and political dimensions beyond the purely religious symbol that it represents.

Whether it is interpreted as an individual choice in favor of a form of emancipation under constraint, or as the visible – *ostensible* – sign of a social order based on the segregation of the sexes and the oppression of women, the gesture of wearing the headscarf calls into

question the way in which democracy has become an essential component of intimacy. “The possibility of intimacy has as its ultimate meaning the promise of democracy,” Anthony Giddens had written earlier.<sup>2</sup>

True to the romantic and/or sexual relationship between partners as it is to the parental relationship and the handing down from parent to child, this feature of “delayed modernity” makes the family the last area to be conquered by democracy – and this is the meaning of the recent ascendancy of “gender politics” at the heart of the French Republic. This is how one should reread Nilüfer Göle in her afterword to her 1993 work on Turkish Islam, written in the light of the French controversy: “Women’s bodies and sexuality are once again emerging as a political locus of difference that resists the forces of homogenization and egalitarianism of Western modernity; and the veiled bodies of women point to the centrality of the issue of gender and sexuality in the criticism that Islamists level against that modernity.”<sup>3</sup>

The movement also works in reverse, however, which led intimacy to enter into the political sphere via the practices of the “governance of bodies”<sup>4</sup> implemented in the wake of the debates on contraception and abortion that followed the student protests of 1968.

The issue should certainly be broadened, insofar as the emotions stirred up by the headscarf debate should be held up to two other “societal debates” through which the boundary between the public and the private, the politicization of the body, and the relationship between church and state are similarly formed. From the law that introduced the civil

(2) Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies*. (Cambridge: Polity, 1992), 184-204 (Chapter 10: “Intimacy as Democracy”). See also “Actualité sexuelle du voile,” in Clarisse Fabre and Éric Fassin, *Libertés, égalité, sexualités. Actualité politique des questions sexuelles* 2<sup>nd</sup> ed. (Paris: 10-18, 2004), 235-271.

(3) Nilüfer Göle, *Musulmanes et modernes*, 165-166.

(4) Didier Dassin and Dominique Memmi (dir.), *Le Gouvernement des corps* (Paris: Éditions de l’EHESS, 2004).

(1) Anthony Giddens, “Voile islamique: la France sur la mauvaise voie,” *Le Monde*, January 14, 2004.

solidarity pact (“PACS” – a form of civil union) in 1999 to the 2004 controversies on gay parenthood and gay marriage, the first of these debates invites the government to arbitrate between two possible forms of family: the one, considered traditional and of a natural order, and the other a free contract between individuals at the cost of a “disenchantment” and a “removal of sacred character” which unsurprisingly elicited the ire of religious authorities, most notably the Catholic church.<sup>1</sup>

From the bioethics questions of the 1980s to the recent debates on the status of embryos and the use of stem cells in gene therapy, the second of these debates makes the body the locus of another point of indecision linked to the “material” status that the new biomedical technologies are likely to confer on it at the risk of overturning the sacred aspect of our traditional notion of what it is to be human, which we know owes something to a religious heritage.<sup>2</sup>

Are we so far removed from the problems raised by the Islamic headscarf? This cannot be said for sure. Appointed to issue a decision on the wearing of headscarves at school, the Stasi Commission soon found itself debating secularism in hospitals, as if health was another secularist issue, but also segregation in swimming pools and gyms – as if secularism was under threat in every place where the body was concerned. Needless to say, it is not necessary to refer to biopolitics to understand this simple fact: when the boundary between the public and the private is shaken, our concept of secularism is affected, even though this may be the last effect of a process of secularization that had long been its closest ally.

A few hundred girls wearing headscarves goes beyond the question of Islam. It pushes us towards the indecision into which secularism plunges us as to the nature and the content of religious affiliation. What does the gesture of wearing the headscarf mean from a religious standpoint, since we have ended up convincing ourselves that belief is formed in the privacy of the conscience, apart from the institutions that used to shape it? And what does it mean, from a political standpoint? It may just prolong the proximity to a relationship with God in the public space, but as soon as the law considers it “ostentatious” or “ostensible,” this gesture of affiliation becomes one of activism, a political act that once again points to the blurring of the boundary between the public and the private, and perhaps to the difficulty that we have in discerning the new forms of civic engagement.

What makes the issue current beyond the gender issue (or, more specifically, through it)? Is it not the way in which we echo our own discomfort concerning bodies that we are not sure belong to the public or the private sphere, to nature or culture, market liberalization or regulation of a collective ethic? Or the way in which we are unsure what belongs to the sacred and what to the profane? The categories in terms of which we think of the relationship between the public and the private, the individual and the collective, the individual body and the collective body have become blurred. Having withstood the double test of European regulation and the globalization of conflicts, and having been exposed to the “mirror of Islam” just as Medieval Christianity was, secularism may be that which today informs our understanding of borders.

(1) The main issue here was same-sex parenthood, on which I refer the reader to Martine Gross, *L'Homoparentalité* 2<sup>nd</sup> ed. (Paris: PUF, “Que sais-je?” 2005); Martine Gross (dir.), *Homoparentalités. État des lieux* (Ramonville: Érès, 2005).

(2) Dominique Memmi, *Faire vivre et laisser mourir. Le gouvernement contemporain de la naissance et de la mort* (Paris: La Découverte, 2003); Danièle Hervieu-Léger, *Catholicisme*, in particular Chapters 5 and 6; Luc Boltanski, *La Condition fœtale. Une sociologie de l'engendrement et de l'avortement* (Paris: Gallimard, 2004).

**Denis Pelletier** is a professor of history and sociology of contemporary Catholicism at the Ecole pratique des hautes études (EPHE) and member of the Groupe Sociétés Religions Laïcités (GSRL, UMR 8582, CNRS-EPHE). His

research is on the place of religions in the history of 20th century French society. A member of the editorial committee of *Vingtième Siècle*, he is the author of *La crise catholique. Religion, société, politique en France (1965-1978)* (Payot, 2002). (tonnacc@club-internet.fr)

### **Abstract**

— The adoption of a law banning students from wearing “ostensible” religious signs in public school in 2004 clearly changed the history of secularism in France. But the characteristically French debate on the

veil intersected with two European controversies on the mention of a Christian heritage among the foundations of the European Union and on Turkey’s candidacy for EU membership. In addition, by raising the question as to the place of the body in the construction of gendered identities, the veil issue pointed to French society’s doubts as to the boundary between the public and the private, an important factor in the history of secularism. Beyond the connection with Islam, the polemics thus revealed the insecurities of French secularism in the light of secularization.

---