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## Lifting the veil<sup>1</sup>

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On July 3, 2003, President Jacques Chirac set up an Independent Commission to study the implementation of the principle of *laïcité* [secularism] in the French Republic. In the previous weeks, the issue of violence in public schools had risen to a level of visibility so high in the media and the public eye<sup>2</sup> that the French National Assembly had already created a special commission run by its President to study the issue of 'religious symbols in schools'. The Presidential commission had a wider scope - the *laïcité* in the whole society - and its composition was more open: its 19 members consisted of school principals and teachers, academics, civil servants, businesspersons and MPs, with very diverse origins, religious beliefs and political opinions.

I was a member of that commission, most likely chosen for my expertise in the field of Immigration Policy and Nationality Laws and as a former member of the High Advisory Council on Integration. I arrived with the idea that a law was probably unnecessary for resolving the problems. Yet, after four months of public hearings involving representatives of all religious confessions, political parties, Unions and NGOs, and above all actors on the ground - principals, teachers, parents, students, directors of hospitals and jails, company managers etc. - I endorsed a report recommending 25 different measures, including the ban on conspicuous religious symbols in public schools. I would like here to explain why.

The French tradition of *laïcité* was built - it is an historical fact - against the influence, indeed domination, of the Catholic Church in public affairs. The 1905 law of separation between Church and the State was a victory for the majority of French citizens educated in the Catholic faith, but who wanted the Catholic Church to be put in its place, out of public education and public influence. Public subsidizing of religious institutions was forbidden. Yet it was not an anti-religious legislation. The law was also the recognition of the right of everyone to practice their own beliefs, to the point where the State, in an exception to the general rule, paid the salaries of chaplains of any religion in order to permit all those forced to live in enclosed areas such as asylums, prisons, the army, some schools, hospitals etc to pray and practice their faith<sup>3</sup>. No law forbade the wearing of religious signs, but the custom in France was, and still is, to keep religious faith a

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<sup>1</sup> First versions of this article has been published in 'Progressive Politics', Vol. 3.1 March 2004, Policy Network and on March 25, 2004 under the title A nation in diversity: France, Muslims and the headscarf, by [www.opendemocray.com](http://www.opendemocray.com).

<sup>2</sup> For a the detailed calendar of the rise of the issue on the agendas of the main French political parties in April-May 2003, cf. T. Jeremy Gunn, "Religious Freedom and *Laïcité*: A Comparison of the United States and France", *Brigham Young University Law Review*, Summer 2004, pp.456-459.

<sup>3</sup> Article 2 of the Law of December 9, 1905.

private matter. This tradition is most likely linked in France to the long battle against the power and public exposure of Catholic faith: in the relation between the individual, the religious group and the State, the latter appears and is asked to protect the individual against any pressure of the group. Our commission could have based its proposals with regard to this custom - but it did not.

Our commission could have also based its proposals on the respect of a human right that was not recognized in the western world in 1905 but has emerged in the last 50 years: equality of women and men. It did not do this either. This would have meant an intrusive interpretation of a religious symbol which can have different meanings. While for a majority of women the headscarf is the expression of the domination of women by men (this meaning was, for example, strongly expressed by many women refugees from Iran), it can be, and is, understood differently. It can also be the expression of a free belief, a means of protection against the pressure of males, an expression of identity and freedom against secular parents and against Western and secular society. The State has no right to interpret religious symbols. Had the headscarf been banned on the basis of discrimination against women, it would have been necessary to do so not only in schools, but across the whole of society.

In fact, since 1905, France has been integrated into the European Union, signed the European Convention on Human Rights and many other international conventions that recognize the right to publicly express one's religious belief. It was on this basis that in 1989 the French administrative Supreme Court - the *Conseil d'Etat* - stated that the Muslim headscarf is not in itself an ostentatious symbol that could be banned from schools. It could be only forbidden if it were used as a tool of pressure on girls who would not wear it<sup>4</sup>.

What has happened since 1989, and especially over the last two to three years - perhaps under the influence of the September 11 attacks or of the second intifada which has too often justified anti-Semitic aggressions, yet the cause is not so important here - is that in the schools where some girls are wearing the headscarf, the Muslim girls who do not wear it are subject to strong pressure to do so. The daily pressure takes different forms, ranging from insults to violence<sup>5</sup>. In the view of these groups, composed mainly of males, these girls are 'bad Muslims', 'whores' and they should follow the example of their sisters who respect the prescription of the Koran. We received testimonies from Muslim fathers who had to take their daughters out of public schools, placing them in Catholic private schools where they were not under such pressure to wear the scarf. Contrary to the official data and assessment of the ministries of Education and of Home Affairs, we found that the number of schools where girls wear the *hijab* has increased<sup>6</sup>. In these schools, a strong majority of Muslim girls who do not wear the headscarf called for the protection of the law and asked the commission to ban all exterior religious signs.

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<sup>4</sup> Avis du Conseil d'Etat, November 27, 1989.

<sup>5</sup> For the context of these pressures, cf. Stéphane Beaud, Michel Pialoux, *Violences urbaines, violences sociales, Genèse des nouvelles classes dangereuses*, Fayard, 2003, pp357-364.

<sup>6</sup> The data collected by the commission was sufficient to prove the important underestimation of the phenomenon by official data and statements. Yet, the lack of resources and a short deadline did not permit us to evaluate the exact number of headscarves wear in French public schools.

Muslims girls who do not want to wear the scarf also have a right of freedom of conscience, and they constitute the large majority. Principals and teachers have tried their best to bring back some order to the situation. They have failed to do so. It is impossible to have pupils denounce their peers when they are subjected to pressure, insults or violence. The denouncer is seen as a traitor to his or her community, and there have been cases where pupils had their arms broken in violent acts and yet lied to their parents so as not to denounce their colleagues.

We studied many alternative solutions: I myself was thinking of distinguishing the courtyards and the classroom and apply rules concerning a dress code only in classrooms; we considered giving the principal the authority to forbid exterior signs at a local level. After four months of inquiries and numerous public, private, collective and individual hearings, our commission did not in the end endorse these solutions. Our near-unanimous sentiment (with the exception of one member) was that we had to face a reality which was perceived at the local level, but not at the national nor obviously at the international one: wearing the scarf or imposing it upon others has become an issue not of individual freedom but of a national strategy of fundamentalist groups using public schools as their battleground. Banning the scarf at the local level would have created a permanent tension between principals and these national groups who would have targeted schools one after the other in order to attract, every week, the attention of the public and of the national press.

This is why we proposed to ban exterior - that is, conspicuous - signs of religious belonging (including Jewish skullcaps and large crosses). We did it in full respect of the European Convention on Human Rights. This convention authorizes the limitation of the expression of religious faith in the case of problems of public order or attacks on the rights or on the freedom of conscience of others<sup>7</sup>. For such limitation the Convention requires a law and this is why a law passed by the Parliament was legally necessary<sup>8</sup>. The Convention requires also that restriction should be proportionate to the permissible aim<sup>9</sup>. This is why the ban concerns conspicuous and not discrete religious signs, and applies only in public schools since the majority of those involved are minors<sup>10</sup>. There is no question of forbidding religious signs in the future in universities or elsewhere in the world of adults:

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<sup>7</sup> The article 9 of the European Convention on Human Rights, signed in Rome on November 4, 1950 states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. 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 the protection of the rights and freedoms of others.

<sup>8</sup> Cf. for example European Court Judgements: Sunday Times vs. United Kingdom, April 26, 1979 or Larissis and others vs. Greece, February 24, 1998.

<sup>9</sup> In a recent judgment (Leyla Sahin vs. Turkey, June 29, 2004), the European Court of Human Rights rejected unanimously the allegation that a ban on wearing the Islamic headscarf in higher-education institutions violated the rights and freedoms of a student, under Articles 8, 9, 10 and 14 of the Convention, and Article 2 of Protocol No. 1. The Court found that the University of Istanbul's regulations imposing restrictions on the wearing of Islamic headscarves and the measures taken to implement them were justified in principle and proportionate to the aims pursued and, therefore, could be regarded as "necessary in a democratic society".

<sup>10</sup> Marceau Long and Patrick Weil, "Une laïcité en voie d'adaptation", *Libération*, Jan. 26, 2004.

adults have means of defense that children do not. They can go to court and claim their right of freedom of conscience more easily.

We made our choice after long individual and collective hesitations. Were we under pressure, influenced by the impossibility of hearing all the persons interested in giving a testimony or by the lack of time to make a decision based on sufficient evidence? Were we aware of the possibility that some adolescents or their families could perceive our proposal through the prism of discrimination, within the legacy of colonization and racial prejudice?<sup>11</sup> I must admit that I have never worked under this amount of public pressure coming from all sides. Obviously, the issue of *laïcité* aroused old divisions and political passions across civil society and in many institutions. But I believe that these pressures did not prevent us from taking all considerations and circumstances into account. The most active opponents to the headscarf did not convince us<sup>12</sup>. We heard more partisans of the status quo than defenders of a ban. And hearing more girls wearing the headscarf would not have change our reasoning which was not based on an assessment of a religious sign or its meaning. Of course, we would have benefited from more time and resources in order to obtain more scientific evidence. But becoming temporarily an "expert" means accepting temporarily to be involved in the world of politics where decisions sometimes have to be made under constraints, for example that of time. In this world, scientific knowledge can help, but as Isaiah Berlin has shown - only partially - political judgment is an art of another nature, that requires us to "grasp the unique combination of characteristics that constitutes a particular situation"<sup>13</sup>. In these particular circumstances, we tried to find our way among very complex obstacles, to understand the gaps between the testimonies of the different actors, and finally to propose the least bad choices. Our proposals can be criticized. Yet they cannot fairly be placed into a continuity of the ruling of Islam in French Algeria. On the contrary.

Under the French Colonial Law, not only Algerian Muslims could practice the rituals and commandments of their religion, but they were assigned to it, one could say imprisoned in it. Algerian Muslims could only become subject to the French Civil Code by becoming fully French through 'naturalization'.<sup>14</sup> They were deterred from doing so and from applying: therefore, between 1865 and 1962 only 7000 Algerian Muslims became fully French. Islamic authorities governed not only religious but also the social and civil rights of Algerian Muslims, under the guidance of the Koran. The 1905 law of separation between Church and the State was applicable in Algeria... except for the Muslims who represented 90% of the population!<sup>15</sup> Today in 2004 France, a majority of Muslims are fully French and the

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<sup>11</sup> Cf. Gérard Noiriel and Stéphane Beaud, "Les Parias de la République", *Le Monde*, Feb. 20, 2004.

<sup>12</sup> Cf. the Press reactions to the hearing of Chahdortt Djavann, in *Le Figaro* and *Libération*, Sept.22, 2003.

<sup>13</sup> Isaiah Berlin, "Political Judgement", in *The Sense of Reality, Studies in Ideas and their History*, Farrar, Straus and Giroux, New York, 1996, pp. 40-53.

<sup>14</sup> Cf. Patrick Weil, *Qu'est ce qu'un français ? Histoire de la nationalité française depuis la Révolution*, Grasset, 2002, pp. 225-244.

<sup>15</sup> Cf. Raberh Achi, "La séparation des Eglises et de l'Etat à l'épreuve de la situation coloniale. Les usages de la dérogation dans l'administration du culte musulman en Algérie (1905-1959)", *Politix*, dossier "L'Etat colonial", volume 17, n° 66, septembre 2004.

others can become so. They are subjected to the Civil Code and still can refer to the Koran as a moral and religious code. Therefore our report and the subsequent laws and regulations that should follow can be interpreted in the legacy of Napoleon's action towards the Jews in 1806, and of the 1905 law towards the Catholics: as a moment of compromise, of interactive adaptation which means that for the first time the French State and French society has decided to adopt a strong Muslim minority and to recognize it.

It is not absurd to think that the majority of Muslim families might be relieved. A minority of Muslims are anti-religious. A small minority is fundamentalist and considers that there is a superiority of the religious law over the law of the land. A large majority does not want to impose the headscarf on their daughters but also feel uncomfortable with being unfaithful in certain ways to their religious tradition. They are submitted to the pressure of friends, neighbors and family members who want to impose the wearing of the scarf. Henceforth, they will be able to reply to them, "I was ready to follow your advice, but now it is impossible: I cannot go against the law!" In some ways, it is the same kind of feeling shared by numerous Algerian immigrants when the French Nationality was imposed through birth in France on their children, so well described by Abdelmalek Sayad. Individually, Algerians could never have applied for it. But when French nationality was ascribed automatically, they were discreetly satisfied:

"The beneficiaries of the [French] nationality, acquired without having applied for it, adapt to their situation well, and protestations of circumstance (which can be perfectly sincere in other respects) cannot convince us to the contrary. Those around them, who would not have accepted an act of naturalization that would have followed the ordinary process, appear relieved, afterwards, that French nationality ('French papers', as one says) occurred by itself, as a constraint collectively imposed: it is the lot common to all and not the result of an individual and voluntary act by which some called attention to themselves and separated themselves from the others. [...] Despite protestations of all sorts that are the right thing to proclaim, despite the guilt or simple unease that continues to be felt by the naturalized, the naturalization that one calls 'forced' finally produces something like a satisfaction which, for a whole series of reasons, asks to remain secret and, sometimes, resigned to".<sup>16</sup>

With a legal ban, the decision coming from the outside thus allows the protection of children from fundamentalist pressure without a break in religious ties.

I admit that the unfortunate consequence of the law passed by the French Parliament is that the right of Muslim girls who freely want to wear the scarf in public schools without pressuring anyone is denied. What will happen to them if they do not want to take off their scarf after the period of dialogue imposed by the law? They will most likely be offered the opportunity to attend classes in private religious schools, not Muslim - there are only three in the whole country - but

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<sup>16</sup> Abdelmalek Sayad, *La double absence. Des illusions de l'émigré aux souffrances de l'immigré*, preface by Pierre Bourdieu, Paris, 1999, p. 352.

Catholic, Protestant or Jewish. These schools have the obligation, if they are under State contract (95 per cent are), to accept applications of pupils of other faiths.

Yet, in the future, Muslim schools, under contract with the State - which entails control on the curriculum - will develop. Whether we like it or not, it is the French tradition to have this parallel sector of the education system strongly subsidized by the State, enabling tuition fees to remain very inexpensive. And it is the right of the Muslim community to have schools for observers who want to respect all the customs, all the holidays of their faith and to have religious instruction in addition to the normal curriculum.

In fact, my single and strong regret is that the ban on religious signs in public schools is the only one of our 25 proposals yet to be implemented by the President, his government, and the Parliament. Certainly, religious fundamentalism needs to be fought and contained when it puts at stake basic values of our democracies. It has its autonomy and is not the simple outcome of social injustice. Nevertheless, our commission also recommended acting strongly against the social factors that favor the rise of fundamentalist influence. France has not done enough against the ethnic, racial, and religious discrimination, of which most children of North African immigrants are the victims. History programs in school do not recognize slavery or colonization as a full part of our national history.

Last but not least, there is an urgent need to adapt to the new diversity of the French religious landscape in order to respect one of the main principles of *laïcité*: equality of all faiths before the law. France is today the country with the largest Buddhist, Jewish and Muslim communities in Europe. Because the Muslim community is the most numerous and the most recent in mainland France there is a need to focus our adaptation to it more than on the others. Our commission demanded that the French State respect fully the freedom of building mosques, funerary rituals, and culinary customs. We even proposed the recognition of the most important religious feast of minority faiths as public holidays in order to move beyond the simple right to practice one's own faith, to mark the respect of the whole French community towards their compatriots<sup>17</sup>. This last proposal - approved by Catholic, Protestant, Muslim religious authorities during their hearings - was rejected by the government and was coolly received by the majority of Socialist leaders. But it was also backed by 40 per cent of citizens and provoked a very intense, fruitful and creative debate in almost all families in the country. I wager that it will return to the public agenda sooner or later.

The historical success of the French model of secularization - *laïcité* - rests in the fact that it gives priority to the protection by the State of individuals against any religious group pressure. In contrast, its future lies in its capacity to adapt and to respect cultural and religious diversity, and to consider it not as a burden, but as a challenge and an opportunity.

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<sup>17</sup> It was also a way - in my view - to fully respect a French custom that keeps religious faith and practice in privacy: today a Jew or a Muslim can stop working at Kippur or Aït, but in doing so they declare themselves as Jews or Muslims. If tomorrow, Kippur and Aït are recognized as optional national holidays in alternative choice with Pentecost or Oriental Christmas, one would bet that somebody not working on Kippur would be a Jew, but one wouldn't be sure: it could be an agnostic who has taken summer vacation in July and who had chosen Kippur as a way of having a weekend of vacations before the fall.

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