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Republicanism Recast: How the "Veil Affairs" Transformed French Republican Ideology and Public Discourse (2004–2014)

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Thèse de doctorat

université PARIS-SACLAY
ÉCOLE DOCTORALE
Sciences de l'homme et de la société (SHS)

Titre : Le républicanisme remanié : Comment les « affaires du voile » ont restructuré l'idéologie républicaine et le discours public français (2004–2014)

Mots clés : foulard islamique, idéologie, discours, républicanisme, femmes, laïcité

Résumé : Depuis la loi interdisant le port de signes religieux "ostensibles" dans les écoles publiques (2004), un changement progressif s'est opéré en France. De l'interdiction du port du foulard intégral dans l'espace public (2010) aux mesures touchant les parents d'élèves (2012) et les employées des crèches privées (2014), les femmes portant le foulard islamique ont graduellement été exclues de différents espaces publics. Ces mesures sont souvent justifiées au nom de la nécessité de défendre la République ou de revitaliser les valeurs qui la sous-tendent. À travers quels processus politiques y compris discursifs l'exclusion des femmes voilées est-elle devenue une composante de la promotion des valeurs républicaines ?

Ma recherche se penche sur cette question à l'aide d'une approche conceptuelle et discursive de l'étude des idéologies politiques. Plus précisément, en ancrant mon analyse dans les discours publics entourant quatre "affaires du voile", ma recherche met en lumière la transformation graduelle du républicanisme français – une construction complexe à travers laquelle les concepts politiques acquièrent un sens. Cette analyse de l'idéologie républicaine française dans le contexte des "affaires du voile" révèle et continuité et changement. Continuité, car les anciens principes de liberté, égalité et fraternité y demeurent centraux ; et changement, car de nouveaux idéaux ont modifié la signification de son noyau conceptuel. Dans le chapitre 4, "Le foulard de l'étudiante : Le succès du séxularisme", j'analyse le début de ce processus. En examinant la controverse publique au sujet du port du foulard islamique dans les écoles publiques, je démontre comment les acteurs politiques français ont graduellement construit la question de l'égalité des sexes – qui, historiquement, a été plutôt marginale dans la pensée républicaine française – comme une valeur contiguë au principe de la laïcité, ouvrant ainsi la porte à d'autres redéfinitions. Dans le chapitre 5, "La burqa dans l'espace public : L'ordre social républicain", mon analyse démontre comment les hommes politiques et les juristes, en visant à interdire le port du voile intégral, ont revivifié et transformé la notion de l'ordre public à travers la construction d'une nouvelle définition de l'ordre social. Dès lors, le républicanisme français s'oriente vers la protection de "valeurs communes". D'un point de vue théorique, je soutiens que ce glissement implique une transformation naissante au sein même du noyau républicain : la priorisation de fraternité aux dépens de liberté et d'égalité. Le chapitre 6, "Baby-Loup et l'emploi privé : de discrimination à la cohésion sociale", et le chapitre 7, "Mères 'voilées' et sorties scolaires : une extension de la norme sociale républicaine", analysent la consolidation et les conséquences du noyau républicain transformé : la priorisation de l'intérêt public au détriment des droits et libertés individuels. Ces chapitres démontrent comment les acteurs politiques et juridiques ont appliqué ce républicanisme remanié aux nouveaux espaces et aux nouveaux groupes. Ce faisant, ils ont contribué à l'émergence et à l'enracinement d'un nouveau discours de cohésion sociale, imprégné par l'exigence de neutralité religieuse individuelle et conditionné par l'exclusion des femmes "voilées" d'une variété d'espaces publics.

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Title : Republicanism Recast: How the "Veil Affairs" Transformed French Republican Ideology and Public Discours (2004–2014)

Keywords: Islamic headscarf, ideology, discourse, republicanism, women, laïcité

Abstract: Since the law prohibiting the wearing of conspicuous religious symbols in public schools (2004), a gradual development has taken place in France. From the law banning full-face covering in public space (2010) to measures concerning the parents of students (2012) and the employees of private nurseries (2014), women wearing the Islamic headscarf have step-by-step been excluded from different spheres of public life. These measures have been publicly justified by the necessity of defending the French Republic or of reinvigorating its underlying principles. Through which political including discursive processes did the public promotion of republican values come to signify the exclusion of headscarf-wearing Muslim women from public spaces?

My research tackles this question by employing a conceptual and discursive approach to the study of political ideology. More specifically, by focusing on the public discourses surrounding four so-called "veil affairs," my research sheds light on the gradual transformation of French republicanism – a complex construct through which political concepts gain meaning. Examining contemporary French republicanism through the context of the "veil affairs" reveals both continuity and change. Continuity, because the age-old principles of liberty, equality, and fraternity still form its cornerstone; and change, because newer ideals have modified the meaning of its conceptual core. In Chapter 4, "The Student's Headscarf: The Success of Sexularism," I analyze the beginning of this process. By examining the public controversy surrounding the wearing of the Islamic headscarf in public schools, I show how French political elites gradually constructed the question of gender equality – which, historically, has been rather marginal in French republican thought – as a value adjacent to the principle of *laïcité*, thereby opening the door for further redefinitions. In Chapter 5, "The Burqa in Public Space: The Republican Social Order," my empirical analysis demonstrates that, in aiming to ban face-covering veils, French political and legal actors ended up reviving and transforming the notion of public order through the construction of a new definition of republican social order. Thus, French republicanism took an important turn towards the protection of "shared values." From a theoretical point of view, I argue that this shift implies a nascent transformation within the very core of the republican-ideological construct: the prioritization of fraternity over liberty and equality. Chapter 6, "Baby-Loup and Private Employment: From Discrimination to Social Cohesion," and Chapter 7, "'Veiled' Mothers and School Outings: Extending the Republican Social Norm," examine the consolidation and consequences of the transformed republican-ideological core: the prioritizing of the "common good" over individual rights and freedoms. These chapters shed light on how political and legal actors applied the transformed republican ethos to new spheres and new groups of people. In doing so, they contributed to the emergence and entrenchment of a new discourse on social cohesion – one permeated by the requirement of individual religious neutrality and dependent on the exclusion of headscarf-wearing Muslim women from a variety of public spaces.

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Abbreviations

ADLPF	*Association des libres penseurs de France*
AFP	*Agence France-Presse*
AMF	*Association des maires de France*
ANAEM	*Agence nationale de l'accueil des étrangers et des migrants*
AP	Associated Press
CADAC	*Collectif d'associations pour le droit à l'avortement et à la contraception*
CCIF	*Collectif contre l'islamophobie en France*
CDA	Critical Discourse Analysis
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFCM	*Conseil français de culte musulman*
CFDT	*Confédération française démocratique du travail*
CFL	*Coordination féministe et laïque*
CFPE	*Collectif féministes pour l'égalité*
CGT	*Confédération générale du travail*
CLEF	*Coordination française pour le lobby européen des femmes*
CLR	*Comité Laïcité République*
CNCDH	*Commission nationale consultative des droits de l'homme*
CNDF	*Collectif national pour le droit des femmes*
CNIP	*Centre national des indépendants et paysans*
CORIF	*Conseil de réflexion sur l'islam en France*
CRC	*Groupe communiste, républicain et citoyen*
ECHR	European Court of Human Rights
EELV	*Europe Écologie Les Verts*
EHESS	*École des hautes études en sciences sociales*
FCPE	*Fédération des conseils de parents d'élèves*
FDG	*Front de gauche*

FEP-CFDT	*Fédération formation et enseignement privés*
FN	*Front national*
FNDMP	*Fédération nationale des maisons des potes*
FNMF	*Fédération nationale des musulmans de France*
FNSF	*Fédération nationale solidarité femmes*
GDR	*Gauche démocrate et républicaine*
GODF	*Grand Orient de France*
HALDE	*Haute autorité de lutte contre les discriminations*
HCI	*Haut conseil à l'intégration*
ICCPR	International Covenant on Civil and Political Rights
IDA	Ideology and Discourse Analysis
IDLR	*Indigènes de la République*
IFOP	*Institut français d'opinion publique*
JO	*Journal officiel*
LCR	*Ligue communiste révolutionnaire*
LDH	*Ligue des droits de l'homme*
LDIF	*Ligue du droit international des femmes*
LICRA	*Ligue internationale contre le racisme et l'antisémitisme*
LR	*Les Républicains*
MFPF	*Mouvement français pour le planning familial*
MIP	*Mission d'information parlementaire*
MIVILUDES	*Mission interministérielle de vigilance et de lutte contre les dérives sectaires*
MLF	*Mouvement pour la libération des femmes*
MRAP	*Mouvement contre le racisme et pour l'amitié des peuples*
MRC	*Mouvement républicain et citoyen*
MTE	*Mamans toutes égales*
NC	*Nouveau centre*
NI	*Non-inscrits*
NPA	*Nouveau parti anticapitaliste*

NPNS	*Ni putes ni soumises*
NQF	*Nouvelles Questions Féministes*
OFII	*Office français de l'immigration et de l'intégration*
PACS	*Pacte civil de solidarité*
PCF	*Parti communiste de France*
PEEP	*Fédération des parents d'élèves de l'enseignement public*
PRG	*Parti radical de gauche*
PS	*Parti socialiste*
RDSE	*Rassemblement démocratique et social européen*
RPR	*Rassemblement pour la République*
RRDP	*Groupe radical, républicain, démocrate et progressiste*
SNALC	*Syndicat national des lycées et collèges*
SNES	*Syndicat national des enseignements de second degré*
UC	*Union centriste*
UDF	*Union pour la démocratie française*
UFAL	*Union des familles laïques*
UJFP	*Union juive française pour la paix*
UMP	*Union pour un mouvement populaire*
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSA	*Union nationale des syndicats autonomes*
UOIF	*Union des organisations islamiques de France*
UPF	*Union pour la France*
ZEP	*Zone d'éducation prioritaire*

À une France plus inclusive

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Chapter 1

Introduction

On August 26, 2016, the French Council of State (*Conseil d'État*) rendered a verdict regarding a municipal decree that concerned beach attire (Conseil d'État 2016). The regulation in question had been established on August 5, 2016, by *Les Républicains*' (LR)[1] Lionnel Luca, the mayor of Villeneuve-Loubet, a commune in the French Riviera. With this decree, Luca had banned people from wearing clothing that demonstrated an "obvious religious affiliation" while they were swimming or spending time on public beaches.[2] Although the new regulation did not specify the forbidden pieces of clothing, its publicized aim was to prohibit the wearing of the burkini – a full-body swimsuit used by some Muslim women.[3] As the so-called "burkini ban" had attracted widespread media attention in France as well as across the world, it was up to the Council of State to rule on the decree's legality. In its decision, the Council of State – France's highest administrative court – stated that French mayors had the right to establish municipal decrees in order to maintain public order, safety, hygiene, and decency on their beaches. However, the Council of State also stressed that such measures needed to be adequate, necessary, and proportionate. Moreover, according to the highest court, all regulations that restricted public liberties needed to be "justified by clearly identified risks of breaches against public order" (Conseil d'État 2016). Since the Council of State had received no evidence indicating that the wearing of full-

[1] A full list of abbreviations and acronyms that are used is provided in the beginning of this work.

[2] "*Tenues regardées comme manifestant de manière ostensible une appartenance religieuse lors de la baignade et sur les plages*," the Council of State's communiqué: < http://www.conseil-etat.fr/Actualites/Communiques/-Mesure-d-interdiction-des-tenues-regardees-comme-manifestant-de-maniere-ostensible-une-appartenance-religieuse-lors-de-la-baignade-et-sur-les-plages >.

[3] See, for example, Lionnel Luca's opinion piece in *Le Parisien*, "J'ai voulu stopper tout prosélytisme," August 16, 2016.

body swimsuits would have constituted a breach of public order, it suspended Villeneuve-Loubet's municipal decree, thereby lifting the "burkini ban."

Yet Lionnel Luca had not been the only one to establish such a ban. In fact, during the summer of 2016, in the aftermath of the terrorist attacks that had taken place in Nice on July 14, 2016, more than thirty French seashore municipalities, located mostly in the Côte-d'Azur, had adopted decrees banning full-body swimsuits from their beaches.[4] The chain reaction had been triggered by David Lisnard (LR), the mayor of Cannes, who had, on July 28, denied beach access to people who did not have "a suitable outfit [that is] respectful of good moral standards and of *laïcité* […]."[5] According to Lisnard, the decree was meant to prohibit the wearing of the burkini – "a uniform which is the symbol of Islamic fundamentalism."[6] In the wake of Cannes' burkini ban, Villeneuve-Loubet's Lionnel Luca had claimed that the burkini was an "ideological provocation."[7] In both cases, the measures taken by the mayors had been contested, but the decrees had been validated by the administrative court of Nice, which had agreed with the mayors in considering that full-body swimsuits were a "problem for public order."[8] Next, the *Collectif contre l'islamophobie en France* (CCIF) and the *Ligue des droits de l'homme* (LDH) appealed to the Council of State. In its August 26 decision, the highest court annulled the ruling of Nice's administrative tribunal by stating that the ban on full-body swimsuits was "a serious and obviously illegal breach of the freedom to express one's religious beliefs, the liberty to dress oneself in public space and the freedom to come and go."[9]

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[4] The 31 municipalities were Leucate, Sainte-Maries-de-la-Mer, Cassis, La Ciotat, La Londe-des-Maures, Le Lavandou, Le Rayol-Canadel-sur-Mer, Cavalaire-sur-Mer, Cogolin, Sainte-Maxime, Fréjus, Théoule-sur-Mer, Mandelieu-la-Napoule, Cannes, Vallauris-Golfe-Juan, Villeneuve-Loubet, Cagnes-sur-Mer, Saint-Laurent-du-Var, Nice, Saint-Jean-Cap-Ferrat, Villefrance-sur-Mer, Beaulieu-sur-Mer, Èze, Cap-d'Ail, Roquebrune-Cap-Martin, Menton, Le Touquet-Paris-Plage, Oye-Plage, Cagnano, Sisco, and Ghisonaccia.

[5] "*L'accès aux plages et à la baignade est interdit jusqu'au 31 août 2016 à toute personne n'ayant pas une tenue correcte, respectueuse des bonnes mœurs et de la laïcité, respectant les règles d'hygiène et de sécurité des baignades adaptées au domaine public maritime*," quoted in *Le Monde*, "Interdiction des burkinis : la justice conforte l'arrêté de la mairie de Cannes," August 13, 2016.

[6] "*J'interdis simplement un uniforme qui est le symbole de l'extrémisme islamique*," quoted in *La Dépêche du Midi*, "Burkini, le maillot de la discorde," August 17, 2016.

[7] "*Le burkini n'a aucun sens, c'est une provocation idéologique*," quoted in *La Dépêche du Midi*, "Burkini, le maillot de la discorde," August 17, 2016.

[8] "*Trouble à l'ordre public*," tribunal administratif de Nice, ordonnance du 13 août 2016 (no 1603470):
< https://pdfligne.files.wordpress.com/2016/08/ta-nice-ord-13-aout-2016.pdf >.

[9] "*L'arrêté contesté porte une atteinte grave et manifestement illégale à la liberté de manifester ses convictions religieuses, à la liberté de se vêtir dans l'espace public et à la liberté d'aller et de venir*" (Conseil d'État 2016).

The Council of State's decision is not surprising considering that there is no law in France that would limit an individual's right to cover the body on public beaches. Although the French law[10] of October 2010 prohibited face-covering in public space, it did not concern full-body swimsuits such as burkinis which leave the face uncovered. Yet, judging by the vast support that the mayors received from the French political elite, one might have expected a different outcome. The mayors who had banned the burkini had, for instance, been supported by Prime Minister Manuel Valls (PS), who had publicly stated that he understood the mayors' wish to "avoid problems of public order."[11] According to Valls, women's full-body swimsuits were incompatible with French republican values which needed to be protected: "Faced with provocations, the Republic must defend itself."[12] The Socialist Prime Minister was joined by a number of prominent right-wing politicians. According to former President Nicolas Sarkozy (LR), doing nothing against the burkini would mean "acknowledging a new retreat of the Republic."[13] Sarkozy wanted the French parliament to pass a law banning the wearing of such garments.[14] Marine Le Pen, president of *Front National* (FN), declared that the question of full-body swimsuits concerned nothing less than "the soul of France."[15] Le Pen thought it obvious that the burkini should be prohibited on French beaches: "It is, of course, a question of republican *laïcité* and of public order."[16] François Baroin (LR), president of France's influential mayors' association (*Association des Maires de France*, AMF), had also announced his "support for mayors who, for reasons of public order, have prohibited the wearing of the burkini on our beaches."[17]

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[10] *Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*.

[11] "*Je comprends les maires qui, dans ce moment de tension, ont le réflexe de chercher des solutions, d'éviter des troubles à l'ordre public*," quoted in *AFP*, "Valls s'invite dans la polémique sur le burkini, invoquant 'les valeurs de la République'," August 17, 2016.

[12] "*Ce n'est pas compatible avec les valeurs de la France et de la République. Face aux provocations, la République doit se défendre*," quoted in *AFP*, "Valls s'invite dans la polémique sur le burkini, invoquant 'les valeurs de la République'," August 17, 2016.

[13] "*Ne rien faire, […] ce serait acter un nouveau recul de la République*," quoted in *Le Parisien*, "Burkini : 'Ne rien faire serait un nouveau recul de la République', selon Sarkozy," August 24, 2016.

[14] *BFMTV*, "Nicolas Sarkozy veut une loi pour interdire le burkini," August 25, 2016.

[15] "*C'est de l'âme de la France dont il est question*," quoted in *AFP*, "Valls s'invite dans la polémique sur le burkini, invoquant 'les valeurs de la République'," August 17, 2016.

[16] "*Bien sûr le burkini doit être proscrit des plages françaises, où il n'a strictement rien à faire. C'est une question de laïcité républicaine, d'ordre public, assurément*," quoted in *AFP*, "Valls s'invite dans la polémique sur le burkini, invoquant 'les valeurs de la République'," August 17, 2016.

[17] "*Soutien aux maires, qui pour des raisons d'ordre public ont interdit le port du burkini sur nos plages*," François Baroin's Twitter account: < https://twitter.com/francoisbaroin/status/765906248831213568 >.

As these statements illustrate, in voicing their support for the "burkini ban," French politicians appealed to the French Republic and to its values, such as public order and *laïcité*[18] – the French principle of public secularism. Indeed, those who supported the mayors' actions were just about unanimous in arguing that the modest swimwear worn by a handful[19] of Muslim women threatened the very core of the republican value system. Although the "burkini ban" was, in the end, overturned by the Council of State, the controversy surrounding it raises a number of questions. To begin with, when did full-body swimsuits become an alleged threat to the French Republic? More specifically, how was it possible for French mayors to refer to republican values in order to ban burkinis from public beaches, for high-ranking politicians to join them in arguing that such a ban was necessary, and for the Nice administrative court to legitimate such a position? In short, when did "republican values" begin to trump the freedom to choose how to dress oneself in a situation where neither public safety nor hygiene were effectively threatened?

This thesis presents answers to these questions. It is *not* an analysis of the 2016 burkini controversy, but rather a detailed examination of how France got here. In fact, the discussion of the burkini is only the latest in a series of public controversies related to Muslim women's attire. In many ways, it is the extension of the long-running public debate on the wearing of the Islamic headscarf.[20] The latter discussion emerged in France in 1989 when three girls were expelled from their school in the city of Creil for refusing to remove their headscarves. Since the first controversy erupted, the so-called "question of the veil" (*question du voile*) continued to receive attention from school administrators, civil society organizations, courts, politicians, and philosophers alike. As we will see in this work, from the late

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[18] Because of the uniqueness and polysemy of *laïcité*, the French version of secularism, I have chosen not to translate it in this work. However, for reasons of convenience, I will sometimes refer to it as "the principle of public secularism."

[19] Contrary to what the size of the controversy might have led to believe, the wearing of the burkini – a swimsuit which resembles the wetsuit commonly worn by divers – appears to be a marginal phenomenon in France. According to the representative of the *Fondation des Musulmans du Sud*, the wearing of burkinis was "anecdotal" on the Côte-d'Azur (*Le journal du dimanche*, "En France, une polémique mais combien de burkinis ?", August 17, 2016). The mayor of Le Touquet, Daniel Fasquelle (LR), admitted that there were no burkinis in his municipality, but nonetheless maintained that a preventive ban was necessary (*Le journal du dimanche*, "En France, une polémique mais combien de burkinis ?", August 17, 2016).

[20] In this work, I will use the term "Islamic headscarf" or simply "headscarf" to refer to an item of clothing which is worn by some Muslim women and which typically covers the hair and head, including ears and throat. The French usually refer to this garment as *foulard* (scarf) or *voile* (veil). Although both terms appear in French public debate, in my own text, I will, for the most part, use the more neutral term "headscarf" when referring to a garment which leaves the face uncovered. I will, however, use the word "veil" when paraphrasing public discourses which give preference to the term *voile*, in which case the word appears in quotation marks.

1980s onwards, a coalition of actors wished to establish a ban that would prohibit students from wearing headscarves in the republican school system. Their efforts were rewarded in March 2004 when the French National Assembly passed a law[21] prohibiting the wearing of "conspicuous" (*ostensible*)[22] religious symbols in public schools. With this law, the French parliament effectively excluded headscarved schoolgirls from republican classrooms in the name of *laïcité* (Scott 2007b, 90). After fifteen years of public debate, one might have expected the passing of such a law to put the controversies surrounding the veiling issue to rest. Yet, as my study shows, what happened was quite the opposite.

Far from solving the tensions related to the wearing of the Islamic headscarf in France, the 2004 law has been followed by a range of other controversies. Pro-ban and anti-ban actors have regularly engaged in a public discussion about whether Muslim women should be allowed to wear the headscarf in various contexts, evoking arguments – old and new – to justify their respective positions. In these debates, the pro-ban group has usually come out on top and succeeded in transforming its vision into restrictive measures. Indeed, since the law of 2004 prohibiting the wearing of conspicuous religious symbols in public schools, a gradual development has taken place in France. From the law banning face covering in public space (2010) to measures concerning the parents of students (2012) and the employees of private nurseries (2014), women wearing the Islamic headscarf have step-by-step been excluded from different spheres of public life. Each of these measures has been publicly justified by the necessity of defending the French Republic or of reinvigorating its underlying principles. The aim of this study is to describe how this development became possible. How did the exclusion of headscarved Muslim women expand to its present scope while maintaining its republican respectability?

Thinking, in 2017, about the issue of religious symbols in France, it is easy to forget that the first law on the topic is only thirteen years old. Indeed, before 2004, women and girls wearing the Islamic headscarf were able to fully participate in public life as students, parents, citizens, and employees. In fact, as far as the school was concerned, debates related to the headscarf of Muslim girls had always

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[21] *La loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*.

[22] Article 1 of the law states the following: "*Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit*." Throughout this work, I consistently translate "*ostensible*" as "conspicuous" to differentiate it from "*ostentatoire*" which translates as "ostentatious."

ended with the conclusion that banning it would be a violation of religious freedom. In this wider context, the years 2003–2004 can be identified as the moment when those in favor of prohibiting conspicuous religious symbols finally gained the upper hand (Scott 2007b, 32-35). As mentioned above, the 2004 law has been followed by a range of measures limiting the right to express religious convictions in public. While some of them are based on new laws, others are not. Today, collateral phenomena exist in various social spaces: not only in schools, where "veiled" mothers are excluded from school trips and where girls who wear long skirts are expelled; but also in the public service sector, where women are obliged to unveil themselves in order to get married, to appear in court, or to pass an exam; in the sphere of immigration and citizenship, where visible religiosity may prevent someone from obtaining French nationality or a residence permit; and in the private sector, where women wearing the Islamic headscarf are discriminated against as customers and employees (Hajjat and Mohammed 2013, 17).

In this work, I examine the processes through which this expansion became possible. While I will do so by analyzing various headscarf controversies, my main focus is on the republican ideals that are at their center. In debating whether Muslim women should have the right to cover their hair or not, French political actors have employed the language of republicanism – a repertoire of concepts, ideas, and symbols on which individuals draw to justify their opinions. The aim of my study is to analyze this set of political ideas which underpins French public discussion. I treat it as a *political ideology* – an organic entity that is in constant fluctuation. As a political ideology, French republicanism is a living tradition of related ideas – one that actors constantly rely on to make sense of the world and to legitimate certain agendas over others. In other words, republicanism is not merely a theory or a philosophy, but also a real force in day-to-day politics. As such, it is a structure of ideas which changes as political actors engage in a battle over its "true" meaning. What do the French headscarf controversies tell us about the development of republican ideology? More specifically, *through which political including discursive processes did the public promotion of republican values come to signify the exclusion of headscarf-wearing women from public spaces*?

My research tackles this question by employing a conceptual and discursive approach to the study of French republicanism as political ideology. Building on morphological analysis (Freeden 1996) and poststructuralist discourse theory (Laclau and Mouffe 1985), my study examines how recurring patterns of republican ideas appear in French public discourse and compete with each other. More

importantly, my analysis sheds light on the development of the internal structure of the republican thought-system – its morphology. Analyzing French republicanism in this way allows me to map shifts within the republican-ideological structure: to examine how concepts move, for example, from the periphery towards the core, how their positioning affects the meaning of other concepts, and how they gain or lose importance. In this work, I offer a systematic analysis of these types of processes that have taken place within dominant republican ideology.

My empirical analysis is rooted in the public discourses surrounding the French "veil affairs" (*affaires du voile*)[23] – a series of controversies[24] related to the wearing of the Islamic headscarf (a combined chronology is available in Appendix 1). My focus is on four "affairs" which preceded and led to the burkini debate: the student's headscarf (1989–2004), the issue of full veils (2009–2011), the legal saga concerning the employees of private nurseries (2008–2014), and the controversy surrounding "veiled" mothers and school outings (2011–2014). My research shows how these "affairs," which might have been resolved, for example, by applying existing legislation, by appealing to the principle of freedom of religion, or indeed by evoking the liberal ideals underpinning *laïcité*, were on the contrary constructed through the recasting of republican values. In this study, I will empirically demonstrate that the gradual exclusion of headscarf-wearing women from public spaces came about through discursive efforts that, at each step, either introduced new concepts into the debate on the meaning of French republicanism or modified the relationship between its age-old ideals. As this was the case, the "veil affairs" have contributed significantly to the ways in which French republican values are today publicly defined.

My work will further stress that this development was far from inevitable. By anchoring my analysis in four headscarf controversies, I will show that the recasting of republican values was achieved and consolidated through the discourses that specific actors employed in public debate. In this process, the redefinition of old republican ideals such as *laïcité* and equality also met with resistance and suffered drawbacks. Hence, the recent headscarf controversies cannot be understood simply by referring to the "French model" or the "French republican tradition." In fact, as I will demonstrate, these do not exist as monolithic entities. Looking at French republicanism as a political ideology will allow me to

[23] Throughout this work, I will use the expression "veil affairs" in reference to the French expression "*les affaires du voile*."

[24] On the French headscarf controversies as public "affairs," see Amiraux (2009), on public "affairs" more generally, see Boltanski et al. (2007).

point to its internal contradictions and constant fluctuations. In this work, I will show how, for the exclusion of headscarved women to become a widely supported republican project, republicanism itself needed to be "remade." This is hence a story about the recasting of republican values – a winding process full of successes and stumbling blocks, saviors and scapegoats.

As a study of the recent transformation of French republican ideology, this thesis is a contribution to scholarship on contemporary France and French politics in particular. Whatever one might think of the so-called "French exceptionalism," there is definitely something to be said about the high drama of French political life and, especially, of its rhetoric. By focusing on French public discourse, my analysis of the "veil affairs" (2004–2014) will shed light on some of the most contentious issues of the last decade of French politics while also exposing networks of political actors, intellectuals, and institutions that developed in the same period. By juxtaposing ideas and actors, this work takes into account the importance of specific historical moments and particular protagonists in attempting to reconstruct the deep contexts of French politics. Hence, through the context of the headscarf controversies, my study will also offer a glimpse of how French political actors have engaged with major political challenges – the issues of assimilation, European integration, the rise of the extreme-right, the threat of terrorism – in a new age of political uncertainty.

First and foremost, however, this is a study in political ideology and an addition to the scholarly field of ideology and discourse analysis. France lends itself brilliantly to a case study aiming to grasp the dynamics of ideological construction. While France's traditional partisan disagreements have waned, they have been replaced by a newly reclaimed attachment to republicanism and, indeed, by a recasting of republican values. As my thesis demonstrates, this redefinition and restructuring of republican values is the outcome of turbulent debates. My work shows that these public discourses offer a particularly rich empirical starting point for conducting ideology analysis. On the one hand, they allow us to appreciate the continued relevance of age-old ideological building blocks, such as the ideals of the French Revolution: liberty, equality, and fraternity. On the other hand, they also bring to light the significant changes that the republican-ideological value system has undergone in recent years. This research demonstrates that the version of republicanism which dominated French public discussion in 2014 is not the same which galvanized French political actors in 2004 – let alone in 1989, 1905, or 1789. In shedding light on the most recent processes of change within dominant republican discourse, my work will, on the whole, highlight the importance of ideology in contemporary politics.

This thesis is divided as follows. In Chapter 2, I offer an overview of republicanism and present some of the analytical starting points of my research. Having outlined my theoretical approach, I briefly discuss existing literature on French republicanism and the "veil affairs" before specifying my research question. In Chapter 3, I address some of the ontological, epistemological, and methodological questions raised by this work. The aim of Chapter 3 is to explain the basic tenets of my discourse analytical approach and to describe how I have gone about constituting my empirical corpus and conducting my empirical analysis. My empirical demonstration takes place in four steps corresponding to four empirical chapters. In each of these chapters, I focus on the emergence and gradual development of a specific controversy while highlighting how it has contributed to the recasting of republican values. In Chapter 4, I start my analysis by examining the controversy surrounding the student's headscarf in public schools. Proceeding in a loosely chronological order, I analyze the development of the French debate leading up to the passage of the 2004 law. My specific focus is on the mobilization of republican values in this debate. I ask: What does French public discourse and the passage of the 2004 law reveal about the malleable structure of republican ideology? In Chapter 5, I examine the discursive processes that preceded the 2010 criminalization of face covering in public space. In so doing, I shed light on further changes within republican morphology. Similarly, in Chapter 6, I analyze how the firing of an employee of a private nursery was publicly justified, and in Chapter 7, I show how the exclusion of headscarf-wearing mothers from school outings became possible. In the brief introductions to each of the empirical chapters, I outline their main aims and arguments in order to direct the reader's attention to specific ideological dynamics. Finally, in Chapter 8, I present the conclusions of my work.

Chapter 2

Republicanism: Between Theory and Practice

The gradual exclusion of headscarf-wearing Muslim women from public spaces has been accompanied, in France, by frequent references to republican values. In fact, the various prohibitions on the wearing of conspicuous religious symbols have almost always been publicly justified by the necessity of defending the French Republic or of reinvigorating its underlying principles. In order to understand the processes that have led to the entrenchment and gradual extension of the French headscarf ban, it is therefore necessary to shed light on some of the political ideas and practices from which these appeals for republicanism stem. In this chapter, I will do so by drawing on existing literature on republicanism, the study of political ideas, and the French case in particular. This will allow me to define my research object and to develop my theoretical approach in order to arrive, at the end of the chapter, at the formulation of my research question.

Section 2.1 offers a brief overview of the general phenomenon of republicanism – its history, values, and debates. My aim is to counter the view that republicanism is a unified body of thought – or indeed *simply* a body of thought. I will present republicanism not only as political thought or political theory, but also as a political practice that runs through several centuries. In identifying the most central values of republicanism, I will also touch on some of the debates that have taken place within the republican tradition. Indeed, republicans do not and have not always agreed on the relative weight and meanings attached to republican principles. The aim of this section is to shed light on some of the most prevalent republican positions and divisions: the ideas that republican thinkers agree on and those that they disagree on.

In Section 2.2, I suggest that in order to make sense of the plurality of republican ideas and practices, it should be examined as an *ideology* – a complex construct through which political concepts gain meaning. In order to develop this approach, I will briefly examine the relationship between political theory and political ideology, and present some of the roots of ideology studies. I will then introduce in more detail two contemporary theoretical strands within the field of ideological analysis that will be particularly useful for my work: morphological analysis and poststructuralist discourse theory.

In Section 2.3, I address my specific research topic: French republicanism as political ideology. As I will examine recent manifestations of this ideology in subsequent empirical chapters, here I will focus on the ways in which contemporary French historians and some historians of France have presented the development of republicanism, and how they have viewed its relevance to contemporary political life. This will allow us to see that republican history has been interpreted in different ways, as historians have engaged, each in their own manner, in rewriting the national narrative. More importantly, this section will permit us to see that contemporary readings of French republican history are intimately tied to current political challenges. Similarly, in Section 2.4, I offer an overview of how some French feminists and historians of France have examined women's exclusion from the republican civic body, and in Section 2.5, I briefly present the growing body of literature on the French headscarf controversies. These sections will offer a useful backdrop for the empirical analysis that follows.

Finally, in Section 2.6, I specify my research question. At the end of the chapter, it will be clear that my goal is to empirically analyze the gradual evolution of the internal anatomy of French republican ideology: its central conceptual clusters and the changes within them. I will argue that these are the factors that can shed light on how the exclusion of headscarf-wearing Muslim women became possible and publicly legitimized in France.

2.1 Republicanism: History, Values, and Debates

What is republicanism? Although the literal meaning of the word "Republic" (*res publica*, public thing) is well known and directs our attention to that which concerns the *public* sphere of human existence, the numerous centuries of republican thought and political practice have surrounded the term with a range of connotations. In order to make sense of the many faces of republicanism, I will rely on an analytical distinction between classical, modern, and contemporary republicanism. Moving from

historical stages to more contemporary concerns, I will briefly identify not only the central themes that run through the republican tradition, but also certain intramural disagreements that they have created. This will allow me to clarify some of the core values and internal tensions of republican thought and practice.[1]

The roots of republicanism can be traced back to ancient Greece, and *classical republicanism* reaches from ancient times through to the Renaissance. The works of Plato[2] and Aristotle prefigure ideas that later crystallized in the republican tradition. Writing in the context of the city-state republic of classical Athens, Aristotle saw that man[3] could only reach his full human potential in political association with others. In other words, in Aristotle's perfectionist political philosophy, the civic virtues of political participation were *intrinsically* important. It was the practice of ruling and being ruled that formed the cornerstone of the Aristotelian republic and allowed for citizens to reach a higher level of existence. Republican virtues – such as courage, willingness to sacrifice, and honesty – were developed within a civic space where men sought honor and esteem (Mouritsen 2005, 24).[4] And developed they were: we know that Aristotle's writings stem from – and influenced – the actual city-state of Athens and its radically democratic forms of government. From its very roots, then, the republic has been both a political ideal and a political practice.

As the republican virtues could only be exercised in a good *polis*, its institutions were important factors in contributing to human flourishing. Indeed, from Aristotle to later classical thinkers such as Polybius, Cicero, and even to Machiavelli,[5] republicans have been interested in forms of rule – rarely agreeing with each other, but often favoring some form of mixed government. The ideal republic would

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[1] Within the scope of this section, it will be impossible to offer anything other than a rudimental overview of republicanism. For a more detailed presentation, see, for example, Honohan and Jennings (2006), Laborde and Maynor (2009), and Weinstock and Nadeau (2004).

[2] Although Plato is, for obvious reasons, a central figure within what can be considered *anti-republican* political thought, he must be acknowledged for having fixed the paradigmatic status of the idea of "the republic" in his *The Republic*.

[3] For Aristotle, the political subject was indeed a man: women (and well as slaves, foreigners, and some other groups) were excluded from citizenship. See Aristotle's *Politics*, especially Books I and III written around 335–323 BCE.

[4] Aristotle's republicanism relies on a sharp opposition between the private and the public sphere. The public sphere of politics is superior to the private domestic sphere, thus also reflecting Aristotle's view of "natural" gender relations. For more details and a feminist interpretation of the public/private distinction in political thought, see Elshtain (1981).

[5] The question of whether Machiavelli represents "classical" or "modern" republicanism is a complex one. For a discussion of some of the paradoxes of Machiavellian republicanism, see Jurdjevic (2007).

be formed of self-governing citizens who would "act and speak for themselves" (Dagger 2004, 168). For classical republicans, "a polity was conceived in terms of a unity of natural orders," each with its own mentality or interests, the republic offering a balance between them and protecting itself against the domination of only one class or one set of interests (Mouritsen 2005, 22-23). Indeed, from Aristotle's city-state to Cicero's Rome and Machiavelli's Florentine Republic, a well-ordered republic took into account – in one way or another – the natures and demands of different groups. This balance – and hence political freedom and autonomy – was reached and maintained through impartial laws supporting the different orders.

The shift between classical and *modern republicanism* can be located where the idea of the people as an undivided body of rights' holders emerged (in opposition to the natural orders) (Mouritsen 2005, 22, 26). Freedom was hence no longer an issue of natural harmony, but rather a question of the people exercising their political will to defend their natural rights. This idea has been expressed in various ways in different times and contexts. While Rousseau's "general will" was brought about by deliberately fostering patriotic identification and a national culture, Montesquieu stressed existing conditions and finding a good fit between climate, institutions, and laws that were conductive to liberty (Mouritsen 2005, 29). The two famous thinkers also disagreed on the scope of republicanism: for Montesquieu, the republic relied on closeness and transparency, while Rousseau believed that republicanism could be attained even in a bigger state (Mouritsen 2005, 29).[6]

The question of scope was also an important one in the American constitutional debates. Moving from the idea of an undivided people towards a consideration of individuals and groups, the American federalists and anti-federalists debated whether republicanism could be reached through representative government. The liberal-pluralist republicans[7] of the late 18th century considered that liberty was best accomplished not through a general will, but through a negotiated "general interest" reached through constitutional settlement (Mouritsen 2005, 23). Once again, we see how the history of republican thought mirrors concrete developments in institutional arrangements – and vice versa. Many of

[6] Though smallness was preferable even for Rousseau.

[7] I here refer to writers such as Jefferson, Paine, Madison, and Tocqueville (Mouritsen 2005, 30-33).

the republican principles evoked in *The Federalist Papers* – and as part of a larger public debate – came to form the Constitution of the United States.[8]

In France, the Revolution of 1789 marked the founding moment of modern republicanism insofar as it focused on the call for equal rights, the collective appropriation of sovereignty, and the idea of representative government (Gueniffey 2011). Gradually, these egalitarian principles led to the emergence of republicanism as a regime: the establishment of institutions based on law and on the will of the people (Aulard 1913). Although each of France's first four Republics was overthrown, the republican ideals of liberty, equality, and fraternity remain the cornerstone of French political thought and system of governance.

The continuities, tensions, and ruptures within republicanism can also be grasped by looking at the relative weight attached to specific republican values. For example, although the concept of liberty has always held a central position in republican thought, it has become particularly salient in recent decades. However, the republican "liberty universe" should not be considered as a homogenous field, but rather as "a repository of arguments," for it consists of partly conflicting conceptualizations (Mouritsen 2005, 34; see also Pocock 1985).[9] In other words, although republican thinkers have had a distinct interest in liberty,[10] they have frequently disagreed on the conditions in which it can be reached – as well as on the importance of other, related issues (see, e.g. Weinstock and Nadeau 2004). In many ways, then, *contemporary republicanism* consists of attempts to clarify, to revive, or to reconfigure the historical roots of republican thought. For Pocock (1985), this involves tracing the development of republicanism through the so-called "Atlantic tradition" back to Machiavelli, Polybius and Aristotle. Skinner (1998), for his part, concentrates mostly on Roman theory and practice. The field of contemporary republicanism can roughly be mapped around these two positions. Those who go back to Aristotle usually put emphasis on the intrinsic value of political participation and civic virtue,[11] while those

[8] In a similar vein, Rousseau's influence on the French Revolution is undeniable, and Montesquieu's separation of powers can still be found in constitutions throughout the world.

[9] I counter the view of Skinner (2002) who argues that republicanism offers a distinctive "third concept of liberty."

[10] As have, quite obviously, liberals. There is much controversy regarding the relationship between liberalism and republicanism, with many authors claiming that the distinction is an artificial one. Although liberalism and republicanism share many of their central values, I will argue that this does not undermine the distinctive identity of republicanism.

[11] This is the case, for example, for Arendt (2013).

who focus on Rome are more interested in "the republican commitment to independence as freedom under the law" (Dagger 2004, 170).[12]

In fact, since the publication of Pocock's seminal *The Machiavellian Moment* (1975) , there has been such a surge of interest in republican political thought that it has become commonplace to talk of a "republican revival." Although this revival has often taken the form of historiographical analysis, it has also been prompted by contemporary concerns: the perceived erosion of political participation, the challenges of multiculturalism, and the predominance of neoliberal ideas and practices. Today's republican thinkers tend to see the ideals of political equality, deliberative politics, and freedom as self-government as possible antidotes to persisting problems, such as political apathy and the abuse of power. For example, the age-old republican aversion to tyranny, fractions, or the domination of one class has found a contemporary formulation in Pettit's (1997) emphasis on freedom as non-domination – the absence of arbitrary interference.[13] Others, such as Sandel (1996), rally for a renewal of the lost spirit of republicanism: a public philosophy based on the focused deliberation by citizens about their common life.

To summarize, although republicanism is a diverse field of partly conflicting positions and practices, we can nonetheless discern a thread running through the republican tradition. It consists of certain values that help us identify something as "republican" when we see it, and to make sense of the variation that exists within the republican family. Many of these central republican values are expressed in "the belief that government is a public matter to be directed by the members of the public themselves" (Dagger 2004, 168). It is *self-government* – whether direct, or today, representative – that best prevents tyrannical forms of rule. For republicans, self-government is the most important form of *freedom* precisely because (in combination with the *rule of law* and a system of the *separation of powers*) it prevents citizens from being subject to absolute or arbitrary rule. Moreover, the principle of publicity refers not only to the idea that political affairs should be conducted in public, but also to a distinction between the private and the public sphere. Politics is played out in *the public sphere* that has its own considerations and takes citizens from their private lives towards common concerns (Dagger 2004, 168). *Active citizenship* – whether it is considered intrinsically or instrumentally valuable – is hence an

[12] The former are often referred to as "civic humanists," while the latter can be described as "civic republicans."

[13] There is a lack of agreement among republicans as to what constitutes interference and arbitrary power, and some of the most vivacious debates within contemporary republicanism have revolved around this issue.

important part of the republican universe, and contemporary republicanism relies on the assumption that membership in a political community is determined by citizenship (and not by race, ethnicity, or religious affiliation) (Honohan and Jennings 2006, 11). All of these ideas taken together are what gives republicanism its distinctive identity.

Yet, as mentioned above, republicanism is political practice as much as it is political thought.[14] With historical experiences ranging from ancient Greece to the contemporary United States and France have come not only diverse theories and traditions, but also a lot of compromise. Republican ideals such as liberty, equality, and solidarity are not always easily translatable into public policies, and the difficulties related to political practice have fed the constant redefinition of republican principles (Honohan and Jennings 2006, 9). The question, "What is republicanism?" should therefore always provoke the counter question: "Which republicanism?" Before replying to the latter, I will first offer a general answer to the former.

2.2 Republicanism as Ideology

Republicanism cannot be defined in a straightforward way. It is rather a spectrum: a range of ideas that – in a cyclical relationship with political practice – offers continuously varying shades and highlights. As this is the case, I will argue that republicanism should be approached as "clusters of arguments, values, and employment of concepts" (Mouritsen 2005, 17). These elements or "building blocks" of republicanism can be combined in multiple ways, leading to different practical outcomes. Even within a single *polis* and a specific timeframe – such as France in the 2000s – republican ideals can fluctuate, be linked in novel ways, or become objects of political controversy. In order to take into account this plurality and flexibility, and to connect political theory with political practice, I suggest that republicanism be studied as an *ideology*[15] – a complex construct through which political concepts gain meaning.

[14] As is the case with any ideology.

[15] In this work, the term ideology always refers to *political* ideology.

Although the word "ideology" is somewhat in ill-repute,[16] research on ideology has grown in the past decades and ideological analysis is today an established, albeit fragmented, field of study (Maynard 2013). The analysis of political ideologies is "a commitment to studying political ideas as they are found *in the wild*" (Finlayson 2012, 751). Whereas political theorists examine political ideas as they have been articulated in the great canons of political theory and philosophy, scholars analyzing ideologies also look at the ways in which political ideas are mobilized and debated, for example in speeches, in the media, and in political events such as demonstrations (Finlayson 2012, 751). As opposed to traditional approaches to the study of political thought, which focus on "truth and epistemology, ethical richness, [and] logical clarity," ideological analysis is "sensitive to concrete political language and debate" (Norval 2013, 158; see also Freeden 1996, 7).[17] In other words, scholars interested in political ideologies are "concerned to establish how political *doxa* works – how it forms, is manifested, reproduced, develops and decays" (Finlayson 2012, 751). A study of political ideology is hence a study of *how recurring patterns of political ideas appear in the public arena and compete with each other*. More specifically, then, examining republicanism as ideology means analyzing how republican ideas manifest themselves in concrete political life and actual political debate.

This approach counters the view that ideologies are simply false consciousness, disruptive forces, or obfuscating sets of ideas, and views them rather as ubiquitous, normal, and necessary components of political life. Contemporary ideological analysis thus implies a departure from some of its historical treatments.[18] As is well known, for Marx and Engels, ideology was dissimulative in nature, a

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[16] It is often seen as an instrument of the totalitarian systems of ideas that are taken to represent the political turmoil of the 20th century. On this topic, see Bracher (1984): *The Age of Ideologies: A History of Political Thought in the Twentieth Century* and Bell (1960): *The End of Ideology*.

[17] In so doing, these approaches bridge the gap that has long existed between political philosophy and political practice. An ideology approach implies that the ideas employed in both enterprises can basically be analyzed in the same manner: "As products, both political philosophy and political ideology are genres of political thought that display strong similarities in their morphology and that may overlap considerably" (Freeden 1996, 1). Hence Freeden argues that the academic examination of ideologies should be given the same standing as the study of political philosophy. Ideological analysis can also be viewed as a way of combatting the relative isolation of political philosophy within the field of political science.

[18] Marx and Engels are without a doubt the most prominent developers of the concept of ideology (see *The German Ideology* and Marx's *The Capital*), though the term was first coined in the aftermath of the French revolution by Destutt de Tracy – one of the "ideologues" who attempted to create an empirically based branch of study to analyze ideas (Freeden 2003, 4). It is interesting to note that the concept of ideology emerged as a philosophical term specifically in debates over how to establish a free, republican constitution – first in France, then in the USA (Stråth 2013).

tool for domination, a distortion of truth that would disappear once social relations were transformed.[19] Although Marx and Engels set the groundwork for contemporary forms of ideological analysis, it is important to distinguish the Marxist approach from more recent theorizations.[20] I will here focus on two distinctions that are of most importance for my work. First, the Marxist conception relies on the contrasting of ideology and true consciousness. This belief in political ideas as distorted relies on the assumption that there exists undistorted forms (Freeden 2003, 9).[21] Many contemporary approaches to the study of ideology either reject the existence of objective social truths altogether or simply set the question aside – for even if a distinction between distorted and undistorted facts can be made, scholars still see the engagement with the study of ideology as a highly relevant enterprise. Second, while Marxist logic considers ideology as an all-encompassing phenomenon upheld by the bourgeois class, current approaches offer a more nuanced view. Ideologies do not offer "seamless view[s] of the world" (Freeden 2003, 9), nor are they necessarily upheld by a specific and entire *class*; they may be internally contradictory and externally challenged, and although they are the products of *groups*, their particular provenance is always a question for empirical investigation (Freeden 2003, 10).

These distinctions notwithstanding, ideological analysis builds on its Marxist heritage in many ways. To begin with, as seen above, ideologies – such as republicanism – are the product of the social and historical circumstances in which they develop. Political ideas should thus be studied, as Marx did, in the cultural milieu in which they are shaped; not as pure forms or "eternal truths" that can be understood and applied irrespectively of their origins.[22] Moreover, Marx pointed us to the fact that ideas matter: they are not simply rhetorical, but have important material consequences and political functions, for "[t]hey direct [the social world] towards certain activities, and legitimate or delegitimate its practices" (Freeden 2003, 11). Indeed, republicanism has often implied concrete projects whether for political organization or for civic participation. Finally, it should be noted that the critical project of

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[19] As such, for Marx, it is closely linked to material reality (which is itself distorted through the capitalist division of labor).

[20] It is specifically through the works of Mannheim, Gramsci, and Althusser that the concept of ideology gained its contemporary meanings and came to be considered a regular feature of political life (Freeden 2003, 12-30).

[21] The relationship between ideology and false consciousness has been examined in depth by Rosen (1996).

[22] This is the view carried by the Cambridge School of Intellectual History and Quentin Skinner in particular. In "Meaning and Understanding in the History of Ideas," Skinner attacked intellectual historians and political theorists who considered that texts "form the self-sufficient object of inquiry and understanding" (Skinner 1969, 4), taking Leo Strauss (1959) as his main target. For a discussion and comparison of Skinner's and Strauss' interpretative strategies, see Major (2005).

unmasking is still present within contemporary approaches which see ideologies as "contain[ing] levels of meaning that are hidden from their consumers and, frequently, from their producers as well" (Freeden 2003, 11). Analyzing republicanism as ideology hence implies identifying and deciphering structures and elements that are not readily visible (Freeden 2003, 11).

Having presented some of the distinguishing features of ideology studies, I will now look at two specific approaches: morphological analysis and poststructuralist discourse theory. These perspectives are associated with the works of Michael Freeden and Ernesto Laclau respectively, and they are, today, the leading approaches in the field of ideology studies (Finlayson 2012, 751).[23] The aim of the following subsections is to draw on these theoretical strands in order to develop an analytical approach to the study of republicanism as ideology.[24] In the following, I will therefore offer a more detailed understanding of what ideology *is*, what it *does*, and how it can be observed and analyzed. Methodological considerations are excluded from this discussion, for they will be taken up later in Chapter 3.

Conceptual and Morphological Analysis

Growing out of the field of intellectual history and the German hermeneutic tradition, conceptual approaches to the study of ideology are interested in "structures of ideas" and take *concepts* as their key units of analysis. Since a strong affinity exists between these approaches and conceptual history (Freeden 2003, 73), I will start this section by briefly presenting Koselleck's historical method – a project that, though not explicitly focused on ideology, has informed the current field of ideological analysis in important ways. Having presented some of the roots of conceptual approaches to the study of ideology, I will then move on to examining Freeden's morphological analysis. My aim is to offer an overview of the key elements of Freeden's theoretical perspective. What exactly do we investigate when analyzing ideology? How can ideological change be grasped? These are some of the questions to which I seek answers.

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[23] Another distinctive strand is quantitative research on ideology – an approach dominant in the United States (Maynard 2013, 309). Given the scope and aims of this chapter, quantitative – as well as social psychological – perspectives on ideology will not be discussed here.

[24] Given this objective, these subsections will not do justice to the full nuances and complexities of Freeden's and Laclau's theoretical positions; I will draw on these authors with the specific aim of finding theoretical insights that will help tackle the empirical research problem at hand.

Conceptual history is an approach to examining concepts over time – their embedded meanings, continuities and discontinuities. This strand of knowledge has been developed in particular by Reinhart Koselleck, whose work[25] represents something of a linguistic breakthrough within the discipline of social history. The aim of Koselleck's conceptual history (*Begriffsgeschichte*) is to examine fundamental concepts in history "with regard to their functioning as both a factor in, and an indicator of historical processes" (van Vree, Hampsher-Monk, and Tilmans 1998, 1). It relies on the idea that "concepts are central to the constitution of society, including the constitution of action as well as agents of action" (Andersen 2003, 34). Since without concepts there is no society or politics, concepts should be placed in the very center of historical social science. Koselleck interprets society as a semantic battle, "a battle about the definition, defence, and occupation of conceptually composed positions" (Andersen 2003, 34). This view draws attention to the power struggles involved in defining key political concepts and in occupying semantic fields. In other words, for Koselleck, politics is in large part a discursive competition over the right to identify and to interpret problems and their solutions.

However, Koselleck's program is not simply a history of ideas. On the contrary, Koselleck stresses that "the history of concepts must include linguistic as well as socio-historical data – any semantics entail non-linguistic content" (Andersen 2003, 34). As this is the case, "conceptual history is always more than conceptual history" (Palonen 1997, 41). In fact, Koselleck's specific contribution lies in his emphasis that conceptual and social history are intertwined: neither can be practiced successfully without the other (van Vree, Hampsher-Monk, and Tilmans 1998, 4-5). Hence the historical analysis of a conceptual apparatus such as republicanism must always investigate the actual contexts in which it developed and that it aimed to influence.

There are different ways of viewing and explaining conceptual change. Koselleck stresses the fact that semantic units – concepts – outlast the events that have created them (Andersen 2003, 35); they have a "slower rate of change than events themselves" (Koselleck 1989a, 657). His analytical strategy also distinguishes between – and combines – diachronic and synchronic analyses.[26] On the one

[25] See Koselleck (1982); Koselleck (1989b); Koselleck (1989a); Koselleck (2002); Koselleck (2004). Koselleck has also participated in the writing of an extensive conceptual encyclopedia entitled *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland* (Brunner, Conze, and Koselleck 1972).

[26] This distinction was already present in the work of Ferdinand de Saussure who drew attention to the diachronic and synchronic aspects of language (van Vree, Hampsher-Monk, and Tilmans 1998, 2): "*Le synchronique doit être traité pour lui-même ; mais sans l'opposition perpétuelle avec le diachronique, on n'aboutit à rien* […]" (Saussure 1957, 186).

hand, it focuses on single concepts – their origins and gradual transformation. On the other hand, it also looks at the way that concepts appear in relation to counter-concepts in the semantic field at specific moments in time. Koselleck's history of concepts involves a back-and-forth between these two dimensions (Andersen 2003, 47). For example, our current, synchronic understanding of a republican concept such as "equality" is the result of a long diachronic evolution. Conceptual history helps us analyze the relationship between current and past uses of "equality," and to see how contemporary uses can be dependent on the institutions and practices of the past. At the same time, though, the contemporary meanings attached to the concept of "equality" can redefine our interpretation of past conceptions. All of these processes shed light on the fact that our political vocabularies are contingent: the uses of concepts and the connections between them are not given but socially constructed.

Another influential tradition in the field of conceptual approaches – and a more explicit form of ideology analysis – can be found in the so-called Cambridge School of intellectual history. Its prominent authors, J. G. A. Pocock and Quentin Skinner, are well known for their attempts to place political theories in their nuanced historical contexts, and to examine the interactions between political and social language (Pocock 1971; Skinner 1989). In their historical analyses, both Pocock and Skinner, however, despite some of their efforts to the contrary, have mostly focused on canonical works – as is apparent from their crucial contribution to the excavation of republican political philosophy. Koselleck's conceptual history, in contrast, shares with contemporary approaches to the study of ideology a more pronounced interest in a variety of sources: not just the elitist articulations of political theorists and philosophers, but also the everyday utterances that appear in the media, in speeches, and in a myriad of other publications.

Building on Koselleck's history of concepts as well as on the Cambridge School, Freeden's *morphological analysis* is today one of the leading approaches to the study of ideology. It has been developed in particular in Freeden's landmark book *Ideologies and Political Theory: A Conceptual Approach* (1996). Freeden views ideologies as "complex constructs through which specific meanings, out of a potentially unlimited and essentially contestable universe of meanings, are imparted to the wide range of political concepts that they inevitably employ" (Freeden 1994, 140-141). As such, ideologies fulfill the vital role of providing frameworks for people to make sense of their political environment. Indeed, it would be impossible for us to act in the world did we not have a framework for decoding what is happening around us. Ideologies offer these organizing frames of reference. They may be harmful, but

they do not by definition need to be so; they are ubiquitous and inevitable forms of social products that "permeate societies and […] emanate from them" (Freeden 2006, 14). Intentionally or unintentionally, consciously or not, all of us "produce, disseminate, and consume ideologies all our lives" (Freeden 2003, 1). Every text, utterance, or event therefore has an ideological dimension, for they are constructed and accessed through patterned and situated conceptual structures (Freeden 2006, 14).

Ideologies are also a form of "action-oriented political thinking" (Freeden 1994, 140). In other words, they are not simply "ideational," but rather a type of political *thought-practice*.[27] Freeden's theory of ideology is based on the idea that thinking is a "social fact," a process in which human beings engage (Freeden 1996, 43). Ideology is hence a form of human conduct to be explored and analyzed (Freeden 1996, 51). This means categorizing, elucidating, and decoding "the ways in which collectivities in fact think about politics, the ways in which they intentionally practice the art of political thinking, and unintentionally express the social patterns which that kind of thinking has developed" (Freeden 2000, 304). Several alternative conceptual configurations are constantly in competition over political support and over the control of political institutions (Freeden 2006, 14). These configurations are not monolithic entities, nor are they necessarily imposed by ruling groups, though they are often articulated and refined by intellectual and political elites (Freeden 2006, 14). Moreover, Freeden's view of ideology as thought-practice refers to political acts *as they take place over time*. This means that ideology is always something of a tradition: it is located not only in a specific social and cultural context, but also in a historical setting (Freeden 2006, 306). History is hence "a necessary dimension of ideology" (Freeden 2006, 306).

As has become clear, according to Freeden's perspective, ideologies are particular configurations of political *concepts*. Yet these ideological building blocks are themselves complex entities. In fact, Freeden builds on and regrounds Gallie's notion of essentially contested concepts (Freeden 1996, 55-60). Gallie's (1955) seminal work has drawn attention to the fact that a wide range of concepts, especially political ones, are the object of dispute insofar as their worth and meaning are not agreed upon. In refining Gallie's reasoning, Freeden defines ideologies through their *decontestation* of concepts. This means that one of their central characteristics is that they impose specific meanings on their components, and, in so doing, remove those meanings from dispute (Freeden 2003, 54). Decontestation is necessary, to begin with, because concepts do not have a pre-given content. Yet it is also necessary

[27] Freeden regularly also refers to this as *thought-behavior*.

because various ideologies regularly share concepts.[28] To give an example, above we have seen the importance of the concept of liberty for the republican tradition. However, the same concept also holds a central position within the liberal ideological family. As this is the case, it is the differently decontested meanings – and the varying degrees of significance attached to them – that constitute the most important ideological differences.[29]

Analyzing an ideology – such as republicanism – hence implies, to begin with, "staking out" its distinctive building blocks or favored concepts (Freeden 1996). According to Freeden, political concepts – such as "liberty" or "equality" – acquire meaning not only through specific traditions and contexts, but also – and most importantly – through their structural relationship to other concepts.[30] Here we arrive at Freeden's specific thesis: the decontestation of particular concepts is best understood by looking at *ideological morphology*[31] – i.e., the particular structural arrangements between concepts. Freeden's morphological analysis looks at ideologies as particular patterned clusters and configurations of political concepts. The importance of morphology for decontestation also shows why morphological analysis is "the paramount […] preliminary field of inquiry" that should foreground any examination of essential contestability (Freeden 1996, 55). Essential contestability cannot be fully understood without an investigation into the ideological morphology of which it is a consequence (Freeden 1996, 55).

Within the morphology of an ideology, concepts can influence each other's possible meanings when they are "adjacent." This adjacency can be either logical or cultural. *Logical adjacency* refers to "necessary options and permutations which are invariably brought into play by any concretization of [a concept]" (Freeden 1996, 68). For example, the concept of "rights" is, in practice, always connected to some idea of a "rights holder." Defining the rights holder is obviously a question that is open to processes of decontestation, but the logical link between "rights holder" and "rights" is (almost) always

[28] This is what Freeden refers to as the *permeability* of ideological compositions: they are not mutually exclusive, but can "intersect with one another at multiple points of contact" (Freeden 2003, 63).

[29] This is, of course, also true of ideological divergences *within* ideological traditions.

[30] Koselleck showed this with his focus of concepts and counter-concepts, but did not elaborate further on the conceptual connections of the semantic field. Freeden – as we will see – addresses this shortcoming.

[31] It is generally thought that the term "morphology" was coined by Johan Wolfgang von Goethe (Aronoff and Fudeman 2011, 1). The Greek stem *morph-* signifies "shape, form." In biology, the word "morphology" is used to refer to the study of the form of organisms, and in linguistics, to the formation of words (Aronoff and Fudeman 2011, 1-2). Freeden uses it to refer to the internal conceptual structure of ideologies.

present: *any* concept of "rights" carries with it this adjacent category. This explains why "[l]ogical adjacency is both a constraint on the indefinite variety of a concept and an opening for its indeterminate and pluralistic structure" (Freeden 1996, 68-69). For although logical adjacency explains the likelihood of *certain types of* conceptual links, it does not explain why specific links are chosen or privileged over others: "decisions about which paths to follow within a large network of logical adjacency, as well as decisions to establish illogical adjacent connections, will be socially mediated through the notion of cultural adjacency" (Freeden 2006, 69).[32]

Cultural adjacency refers to how "[the] *specific internal formation* [of concepts] […] is shaped by what is referred to here as culture: temporally and spatially bounded social practices, institutional patterns, ethical systems, technologies, influential theories, discourses, and beliefs" (Freeden 1996, 69-70, emphasis in original). Cultural adjacency can take two principal forms. First, it can "act as a break operating *within* the framework of logical adjacency" (Freeden 1996, 70). This means that culture intervenes against the making of *all possible* types of logical connections between concepts. This is necessary, for although concepts are capable of a variety of meanings, they cannot simultaneously carry them all. For instance, to continue with the previous example, the choice of focusing on individual rather than collective rights can be the result of cultural and historical preferences that bear other intervening factors (Freeden 1996, 70). Second, cultural adjacency can refer to "elements that do not follow logically from the ineliminable components of a concept, but are regarded in ordinary usage as legitimate, if not indispensable" (Freeden 1996, 71). For example, it is not *logical* to embrace gender equality, to politically mobilize for women's equal opportunities in education and employment, and yet to deny certain women the right to participate in these spheres. Nonetheless, as I will show in this work, this is the combination of conceptual linkages that is currently thriving in France. This outcome – I will argue and empirically demonstrate in the chapters that follow – is the result of cultural adjacency, i.e. "specific historical and socio-geographical phenomena that encourage the association of different political concepts, or smaller idea-units within a political concept, and which either operate within broader logically interlinked categories or *override such logical linkage*" (Freeden 1996, 72, emphasis added).

[32] Hence, Freeden stresses, all concepts have both *inalienable* as well as *quasi-contingent* features. For a full discussion of what this means, see Freeden (1996, especially 61-66).

A morphological analysis of republicanism as ideology involves mapping changes within its conceptual structure. This is done through an analysis of the logical and cultural adjacencies between different ideological components. Within the conceptual network, some elements are obviously more important than others. Indeed, Freeden emphasizes that it is possible to distinguish concepts which are central to an ideology from concepts with are adjacent or peripheral to the core (Freeden 2013, 124). *Core concepts* are relatively stable markers of an ideology. They are indispensable to holding the ideology together. Yet even ideological cores contain a number of key concepts that can acquire different proportionate weight in different manifestations of that ideology (Freeden 2013, 125). This is the case because the positioning of *adjacent* and *peripheral* concepts affects the core itself. Moreover, concepts can move from the periphery to the core and back. Hence, for Freeden, an ideology such as republicanism is flexible rather than rigid, and ideological analysis always implies an examination of its morphology – its internal anatomy as expressed in conceptual clusters. The goal of morphological analysis is to explore the trajectory, development, and change of these clusters in specific socio-historical contexts.

To reiterate, Freeden argues that an ideological analysis must always account for three principal factors. First, the researcher needs to take into consideration the tradition from which the ideology stems. Second, she needs to examine the present cultural context that it inhabits. To these two rather obvious aspects Freeden adds a third dimension: the analysis of ideological morphology. Before I follow Freeden's lead and offer some insights into historical and contextual factors, or move on to detailed morphological analysis, I will first look at how discursive approaches to the study of ideology can inform my examination of republicanism as thought-practice and changing morphology.

Ideology and Discourse

If the broad field of conceptual approaches to the study of ideology is most often associated with Freeden's morphological analysis, the discursive perspective builds in important ways on Ernesto Laclau's discourse theory. The conceptual and discursive clusters are heterogeneous fields that cannot be clearly delineated. Nor should we, in my opinion, attempt to do so. In this section, I will emphasize the potential for cross-fertilization between the two perspectives by presenting Laclau's discourse theory as a useful analytical toolkit for *complementing* morphological analysis. I will begin with a brief overview of discursive approaches to the study of ideology before examining some of the commonalities and differences between Freeden's and Laclau's theories. I will conclude this section by pointing to

the specific ways in which Laclau's discourse-theoretical approach can complement morphological analysis.

Discursive approaches to the study of ideology focus on the "communicative practices through which ideology is constituted, transmitted, and made visible" (Maynard 2013, 304). This field can roughly be divided in two principal poles:[33] "Critical Discourse Analysis" (CDA) and "Ideology and Discourse Analysis" (IDA, following the name of the research program of the University of Essex). CDA is associated with the work of Norman Fairclough, Ruth Wodak, Theo van Leeuwen, and Teun van Dijk – to name but a few practitioners. IDA, on the other hand, refers to a grouping of scholars who build on the poststructuralist tradition and rely heavily on the work of Ernesto Laclau (and Chantal Mouffe, in recognition of their co-authored book).[34] These authors include – amongst others – David Howarth, Aletta Norval, Yannis Stavrakakis, Jacob Torfing, Jason Glynos, and Slavoj Žižek.[35] Since the significant overlaps as well as the several divergences[36] between these two poles have been amply covered elsewhere (see, e.g. Maynard 2013; Norval 2000), I will not develop them here. Suffice it to note that both vibrant theoretical approaches offer examples of how to make empirical sense of the *discursive* construction of ideologies.

Conceptual and discursive approaches to the study of ideology have many commonalities (and some differences). This is particularly evident when comparing Freeden's morphological analysis to Laclau's poststructuralist discourse theory (Finlayson 2012; see also Laclau 1990; and Laclau and Mouffe 2001). To begin with, these approaches both emphasize that social meanings are never stable. It follows that realities are not stable either, but rather constantly the object of discursive struggle. Both Freeden's and Laclau's approaches imply and anti-essentialist ontology and an anti-foundational epistemology, which means that the ontological world (probably) exists independently of us, but that

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[33] A third, though still emergent, approach is the "rhetorical analysis" of ideologies, which is associated, amongst others, with the work of Alan Finlayson (Maynard 2013, 309; see also Finlayson 2013; and Finlayson 2012).

[34] Laclau and Mouffe (2001): *Hegemony and Socialist Strategy: Towards A Radical Democratic Politics*.

[35] Žižek, a political philosopher known among other things for his use of Lacanian psychoanalysis, is often associated with IDA – and not without reason, for his influence in the development of a theory of hegemony has been significant (cf. Torfing 1999). However, his theorizations have also diverged from the interests that are generally shared by IDA scholars and he can also be considered a critic of this form of poststructuralist discourse theory.

[36] One of the major differences between CDA and IDA concerns the scope of "discourse." CDA is not completely clear on how the link between discourses and their non-discursive contexts should be understood (Torfing 2004, 6-7). IDA, on the other hand, has responded to this critique by broadening the definition of discourse to social phenomena in general. As this is the case, IDA scholars take the "discursive" to correspond to the social (see also Torfing 2004, 8; Derrida 1978).

"truths" about "what is out there" only gain meaning through the language games and different relations of signification that that we apply.[37] Hence, power and discourse are internally linked, but there is no division between the discursive and the non-discursive; even seemingly non-discursive phenomena are constructed through discursive systems (Torfing 2005, 8-9). In other words, no social phenomenon is "closed," but their meanings are always open to fluctuation (Jørgensen and Phillips 2002, 24).

While Freeden looks at political concepts, Laclau's unit of analysis is the signifier. However, neither morphological analysis nor discourse theory takes signification as ontologically fixed – the stabilities of meaning that can be observed are the consequence of social power. In Freeden's conceptual morphology, they are the result of processes of decontestation; within Laclau's discursive structure, they come about through hegemonic articulations. Freeden speaks of decontested concepts; Laclau's signifiers are "empty" or "floating." Moreover, both approaches are primarily interested in the *relational* aspects of the construction of meaning, and they agree that political ideologies are reproduced by discourse – its sources are "semiotic rather than behavioral" (Finlayson 2012, 756). In short, both Freeden and Laclau question the ways in which ubiquitous ideologies shape public life and compete over the control of political language.

Although Freeden's morphological analysis and Laclau's discourse theory have different units of analysis, a distinctive vocabulary, and specific intellectual roots, they are complementary rather than contradictory. The differences between these approaches depend, to an important degree, on their respective research objectives. Freeden, as seen above, is specifically interested in examining political concepts and their configurations. As this is the case, his approach "self-consciously limits itself from other possible ways of approaching the analysis of ideology" (Norval 2000, 326). For instance, in being so thoroughly focused on conceptual issues, Freeden does not look in detail at "objects, institutions, symbols and identities" (Norval 2000, 327). His disregard for identities can be seen as especially problematic, for identities are often constructed as a part of ideological processes (Norval 2000, 327). In comparison to Freeden, Laclau opens up the space of decontestation: what is being decontested is not just political concepts, but the very character of "society" and "identity." Moreover, whereas Freeden

[37] To avoid confusion, I wish to stress that this does *not* imply that everything can be reduced to thought or language; these approaches simply contend that ideas have effects on the material world and that nothing follows from the bare existence of matter. Furthermore, the anti-foundational denial of objective truth does *not* lead to nihilism: just because concepts and identities are dependent on discourses does not mean that they do not hold any meaning within particular discourses. Judgments about empirical and moral claims can made, but they cannot exist outside the discursive (Howarth 1995, 128).

tends to see ideologies as neutral constructs, Laclau is explicitly interested in the functioning of power. In developing a poststructuralist, post-Marxist theory of ideology, Laclau therefore puts forward certain analytical tools that can be useful in complementing morphological analysis.

Three such tools deserve our attention here. First, Laclau's approach locates political agency within a discourse through the concept of *subject position*, thereby "bringing subjectivity back in" (Norval 2013). Second, Laclau focuses on examining the formation of collective *identities* through the drawing of political frontiers that distinguish between discursive "insides" and "outsides" (Laclau and Mouffe 2001). Third, Laclau's theory of *hegemony* shows that even seemingly unambiguous discourses are always the result of processes of power. All of these aspects are important, for ideologies "compete over providing and controlling plans for public policy, and do so with the aim of justifying, contesting or changing the social and political arrangements and processes of a political community" (Freeden 2003, 32). Thus the fact that ideologies assign privileged identities to some while excluding others can have direct consequences on political institutions and practices. As this is the case, and as political ideologies are often articulated by privileged groups, the question of "who speaks" – i.e., their subject position – is also far from insignificant. A morphological analysis of republicanism as ideology can benefit from looking not only at the development of conceptual configurations, but also at the collective identities that they bring about, assign, and contest. Nor should its emphasis on conceptual structures keep us from analyzing agency within that structure, and to this end, an examination of subject positions will be particularly useful. Finally, morphological analysis should be conducted with the aim of revealing the contingency of dominant discourses. Laclau's theory of hegemony helps us deconstruct discourses that have become publicly legitimized, and shows how seemingly "universal" discourses are, in fact, the result of particular processes of power. I will return to Laclau's discourse theory and discuss more of its specificities in Section 3.1 below.

To conclude, an ideological analysis of republicanism can employ elements from both conceptual and discursive approaches. My theoretical perspective draws on the central insights of Freeden's morphological analysis and borrows from Laclau's poststructuralist toolkit. The utility of these theoretical strands – as well as how they fit together – will become clearer in the following Chapters where I will outline my analytical approach (Chapter 3) and conduct my empirical analysis (Chapters 4–7). Before proceeding, I will briefly discuss existing literature on French republican thought, on the Republic and the exclusion of women, as well as on the "veil affairs."

2.3 French Republicanism Reinterpreted

Republicanism can refer to a lot of things, and its specific meanings and outward expressions are always context-dependent. It should therefore be emphasized from the start that my interest is in French republicanism. My examination of French thought-practice is context-sensitive and does not purport to offer direct evidence of republicanism as a general phenomenon; we need to distinguish republican ideology in *general* from the *particular* expressions that exist in France. In fact, the relationship between the French and the Anglo-American strands of republican thought is ambiguous at best, with some authors claiming that French republicanism has developed in a direction that sets it apart from other republican traditions (Laborde 2008, 3; see also Spitz 2005). Whatever the case may be, scholars seem to agree that France is "a fascinating laboratory of republicanism, a living political tradition where theory and practice are indissociably linked" (Laborde 2013, 5). Whereas the "republican revival" of the last decades was mainly prompted, in the field of Anglo-American political philosophy, as noted above, by historically informed analysis, in France, the republican tradition has been revitalized and reformulated through real-life political controversies (Laborde 2008, 3; see also Laborde 2010). Indeed, French republicanism is not simply a theoretical construct or a philosophical object, but also an issue of lively public discussion and an appeal to specific public policies.

French republicanism is not, nor has it ever been, internally coherent; it means different things to different people, and there are many tensions inside France's "republican tradition." In this section, I will briefly discuss some of the ways in which contemporary French scholars have attempted to make sense of republicanism. The so-called "republican revival," which started in the late 1970s, led French historians to revitalize the Republic and to rewrite its history (Chabal 2015, 18-19). The 1989 bicentenary of the French Revolution also marked a moment of effervescence, for it prompted a number of scholars to engage with "republican values" and the idea of the "nation" (Lorcerie 1994). It was during this period of "revival" that historians who had previously seen the Third Republic in a more negative light started to reevaluate the regime's achievements (Chabal 2015, 19). Hence, the Third Republic (1870–1940) came to be seen, by many, as a model for contemporary France. Three series of events that took place during the Third Republic are of particular importance for my work, for they have become part of the national mythology that republican advocates – scholars and politicians alike – frequently evoke in their discussions. I will therefore briefly outline these events before outlining contemporary reinterpretations of French republicanism.

To begin with, the Dreyfus affair (1894–1906) revealed the anti-Semitism of the French army, which gave a coalition of leftist intellectuals and progressive politicians reason to rally to defend a "secular," "rational" conception of justice (Chabal 2015, 13). The Dreyfusards' anti-clericalism and quest for a modern democratic system was in stark contrast with the army's and the Catholic church's obscurantism and anti-Semitism – a tension which would remain dominant at least until the 1905 law separating church and state (Chabal 2015, 13-14). Above all, though, the Dreyfusards' campaign was a movement of *moral* protest. Henceforth, as the republican historian Michel Winock has noted, this ethical dimension became inseparable from the republican ideal (*l'idée républicaine*) (Winock 1992, 132-133). In other words, according to Winock, the intellectuals who defended Dreyfus transformed the French Republic from a system of government to a *vivre ensemble* which had a shared moral foundation (Winock 1992, 132). The relevance of the Dreyfus affair has been such that Winock describes it as one of the "founding myths" of the Republic and as a "key reference of republican ideology" (Winock 1992, 131; see also Duclert 2004).

Moreover, the Dreyfus affair is important insofar as it gave birth to a new figure: the public intellectual, committed to defending republican principles against petty partisanship and major injustices (Ory and Sirinelli 2002, 13-40). Among those who defended the falsely accused Captain Dreyfus were not only the famous author Émile Zola, but also the novelist Marcel Proust and the sociologist Émile Durkheim (Seigel 2011, 334). According to political historian Sudhir Hazareesingh, the political battle that took place in the Dreyfus affair "forged an enduring alliance between the republican regime and the emerging intellectual strata," laying the foundations for a "distinctive tradition of intellectual activity" (Hazareesingh 1994, 38). Indeed, the Dreyfusards set a model for the modern intellectual: an individual eager to rise above everyday party politics, to protect important republican principles, and to express his moral outrage directly to the French public (Seigel 2011, 336-337). My analysis of the headscarf controversies will offer numerous contemporary examples of this dynamic. In Chapters 4–7, we will see how a wide range of intellectuals – well-known philosophers, historians, and researchers – have participated in the recasting of republican values through various statements, manifestos, and petitions. In doing so, they have usually positioned themselves as the "true" defenders of republican principles in much the same way as the Dreyfusards of the Third Republic.

Finally, the debates and events surrounding Captain Dreyfus' imprisonment are a paradigmatic example of the form of an "affair": a controversy which rallies individuals for a single cause, consists of

a denunciation of a grave injustice, prompts numerous public figures to take a stance, and touches on fundamental questions of collective social conscience (Boltanski 1990; Claverie 1994; Boltanski et al. 2007). As such, the controversy surrounding Dreyfus is an affair which has left a mark in French republican memory (Duclert 2004), thereby foreshadowing the contemporary "veil affairs" which have followed a similar discursive logic.

If the seminal Dreyfus affair remains firmly lodged in France's collective memory, it is the construction of the republican school system which is today viewed as one of the great achievements of the Third Republic. During this time, the ideas of Enlightenment rationalism, participationism, and universalism contributed to the creation of a system of free, compulsory, and secular primary education – *l'école républicaine* (Ozouf 1963). Today, this public school system has acquired a mythical nature, as republicans of every hue tend to consider it the carrier of the highest and most sacred republican principles (Dubet 1997, 3). Jules Ferry, who oversaw the construction of the national school system, is, nowadays, generally hailed as a republican idol. His aim was to establish a patriotic school system that would allow for students of all backgrounds to rise into public life and to become exemplary citizens (Nord 2011, 48; Le Bras-Chopard 1995). The republican school system was also established as a firmly secular institution. Ferry saw the Catholic Church as a bastion of obscurantism and did everything he could to exclude it from the sphere of public instruction (Nord 2011, 48). The school system was thus also an essential instrument of republican social and cultural objectives, as only the values promoted by the public school system were regarded as legitimate (Hazareesingh 1994, 84). The social values transmitted by the republican school were seen as "an essential condition of the fulfilment of the principle of fraternity," since they gave future French citizens an identity which was detached from the influence of the Catholic Church (Hazareesingh 1994, 84).

Besides the construction of the republican school system, a third and interconnected sequence of events deserves special mention in light its contemporary relevance. Indeed, the creation of *l'école républicaine* was intimately tied up with the conflict between the two Frances and especially with the idea of *laïcité*, the principle of French secularism (Poulat 1988). Although the separation of church and state was a slow and complex process, today, *laïcité* is usually associated with the law of 1905 (Mayeur 2005; Portier 2016).[38] This law, which is still valid today, guarantees "freedom of conscience" and "the free exercise of religion under the provisos enacted hereafter in the interest of public order" (Article

[38] *Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État.*

1).[39] Moreover, it states that "The Republic does not recognize, pay, or subsidize any religious sect" (Article 2).[40] Historically, the development of *laïcité* has been a process full of internal tensions (Baubérot 2012, 48; see also Baubérot 2010; Weil 2007). Its contemporary meanings are no more uniform: republican advocates continue to disagree on its "true" signification. As we will see later in this work, the French "veil affairs" have not only brought the issue of *laïcité* to the fore, but also crystallized the disagreements surrounding its meaning and application. Similarly, the headscarf controversies have opened the door for a profound public discussion concerning the role of the republican school system and the heritage of Jules Ferry, as I will show in Chapters 4 and 7.

These three historical events – the Dreyfus affair, the establishment of a public school system, and the separation of church and state – took place during the Third Republic, a period which, since the 1980s, has come to be viewed as the apogee of French republicanism (Chabal 2015, 13). Yet the renewed interest in French republicanism has not implied that contemporary scholars agree on its meanings. Within this body of works, which Chabal qualifies as "neo-republican," we can find at least two overlapping narratives. Building on Chabal's distinction between "institutional" and "transformative" narratives (Chabal 2015, 9-10), I will now turn to the ways in which historians and philosophers have reconstructed republican past and thereby participated in the contemporary construction of the republican national narrative.

The "neo-republican" reading of the Third Republic is visible, for instance, in Pierre Nora's monumental 1984–1992 project, *Les Lieux de mémoire*, which brought together essays from a number of respected French historians. The aim of the project was to "examine and classify key sites of French memory in order to counteract what Nora saw as the 'rapid disappearance of national memory'" (Chabal 2015, 19; quoting Nora 1984, vii). The hugely successful *Les Lieux de mémoire* offered not only an overview of French history, but also an analysis of numerous symbols of the republican regime. However, as Chabal has shown, the seven-volume work was "disproportionately biased in favour of the Third Republic," casting the Third Republic as the only "real" manifestation of republicanism and privileging its symbols over others (Chabal 2015, 21). According to Chabal, Nora's description of modern

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[39] "*La République assure la liberté de conscience. Elle garantit le libre exercice des cultes sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public*," < https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508749&dateTexte=20170106 >.

[40] "*La République ne reconnaît, ne salarie ni ne subventionne aucun culte*," < https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508749&dateTexte=20170106 >.

French history has contributed to reinforcing the "institutional narrative" of republicanism, insofar as it has emphasized "true" republican values and made republicanism a "legitimate language of government, rather than simply a language of opposition" (Chabal 2015, 19).

At roughly the same time, historian Maurice Agulhon engaged in a similar enterprise. His rich volumes on Marianne as a symbol of the Republic contributed to the rehabilitation of the Republic and its institutions (Agulhon 1979; Agulhon 1989; Agulhon 2001). Indeed, the Third Republic gave birth to important republican symbols: the regime recognized *La Marseillaise* as the national hymn and enshrined the fourteenth of July (*quatorze juillet*) as a national holiday (Nord 2011, 47). It was also during the Third Republic that the figure of Marianne was established as a commonplace symbol of the Republic, as newly established town halls throughout the country were decorated with her busts (Agulhon 1986; Agulhon 1989). Agulhon's series on the history of Marianne contributed to reviving it as a republican symbol. As we will see in Chapter 4, as an allegory of the French Republic, this female figure remains a powerful tool for contemporary republicans battling over the "true" meaning of republican values.

In a similar vein, Claude Nicolet's *L'idée républicaine en France (1789–1924)*, published in 1982, had the aim of "presenting, in as complete a manner as possible, republican doctrines and ideology" (Nicolet 1994, 23). Nicolet looked for the roots of republican thought in the French Revolution, and also focused his attention on the Third Republic, thereby offering a reading of some of republicanism's forgotten "leading lights" (see also Nicolet 2000). Yet, Nicolet's engagement with republicanism was not purely academic. For instance, in 1992, he wrote a report for the Ministry of Education, warning against the disappearance of "republican" and "civic" values in public schools (Nicolet 1992, 73-99), and in 1996, he participated in the founding of the *Comité Laïcité République* (Chabal 2015, 25), a pressure group which has, as we will see in subsequent chapters, participated in the public debate concerning the wearing of the Islamic headscarf. In fact, Nicolet's scholarly work and his political engagement are a prime example of how political and academic discourses overlap; it is impossible to distinguish different readings of modern French history from the contemporary construction of republican ideology.

According to Chabal, the above-mentioned historians – Pierre Nora, Maurice Agulhon, and Claude Nicolet – have each, by describing the history of the French Republic and its manifold facets, contributed to the rehabilitation of republican symbols which took place in the 1980s. These historians wished to restore to prominence "the Third Republic as the institutional realization of these republican

principles," offering an idealized and relatively stable view of the Republic (Chabal 2015, 25). Chabal refers to this vision of the Republic as the "institutional narrative," since these historians emphasized not only republican principles, but also their institutional incarnations.

Other influential historians attempting to make sense of republican past at around the same time include François Furet and Pierre Rosanvallon. Furet is particularly well known for his set of historiographical essays, *Penser la Révolution Française* (1978), a rereading of the French Revolution and of its consequences. With Mona Ozouf, he has also edited two major volumes: *Dictionnaire critique de la Révolution française* (1988) and *Un siècle de l'avènement républicain* (1993). Rosanvallon, with his works *Le moment Guizot* (1985) and *Le modèle politique français* (2004), has also sought to nuance the dominant reading of the Revolution and of its legacy. Furet and Rosanvallon can be distinguished from the "institutional narrative" of republicanism, for they have both, in their own ways, critiqued a teleological reading of the development of French republicanism from the Revolution to the Third Republic and beyond (Chabal 2015, 185). In the *École des hautes études en sciences sociales* (EHESS), Furet and Rosanvallon also collaborated with two philosophers, Marcel Gauchet and Pierre Manent, both known for their contributions to French political thought (Rosanvallon 2001, 7).[41]

In contrast to the "institutional narrative," Chabal has named the second – and overlapping – story of French republicanism the "transformative narrative." Indeed, instead of emphasizing republican values and their institutional manifestations, many French historians have stressed that republicanism was, originally, a language of protest. This transformative narrative focuses on the normative rhetoric of French republicanism as well as on its revolutionary roots. Historically, this narrative has been carried by the political left which has demanded change and insisted that the French state be more faithful to republican values. In the last decades, though, the transformative narrative has been adopted by a variety of actors across the political spectrum. (Chabal 2015, 25-26.)

The transformative narrative of republicanism has been concerned with the restatement of republicanism's core principles. In recent decades, it has primarily focused on a reinterpretation of *laïcité*, the French principle of public secularism (Chabal 2015, 26). This reading of French history sees the Revolution as the founding moment of *laïcité*, the establishment of the secular school system as its

[41] Some of Gauchet's works include *La condition historique* (2003), *La condition politique* (2005), and *La démocratie contre elle-même* (2002); Manent has published *Histoire intellectuelle du libéralisme* (1987) and, more recently, *Situation de la France* (2015).

logical extension, and the 1905 law as its culmination (Baubérot 2004b, 20-49). Many contemporary historians who have employed such a transformative reading of French republican history have done so in the context of the "veil affairs," and, sometimes, precisely in order to take an explicit stance on the controversies surrounding the Islamic headscarf. For example, philosopher Régis Debray has positioned himself as the defender of the Republic as an incarnation of enlightened rationalism. He did so, first, in the aftermath of the 1989 bicentenary of the French Revolution – a moment not only of proud celebration, but also of intense reflection on the past, present, and future of French republican thought. In this context, Debray published a book, *Que Vive la République !* (1989), in which he proclaimed that "[t]he Republic is not a political regime as others. It is an ideal and a combat. It requires not only laws, but faith" (Debray 1989, 13).[42] The year 1989 also saw the emergence of the first headscarf controversy – a public debate in which Debray participated. Debray is far from the only intellectual who has seen *laïcité* as the very foundation of the "republican pact," or the Republic and its secular institutions as a precondition for emancipation. Similarly, Alain Finkielkraut, in his scholarly reading of republicanism as well as in his numerous public appearances, has focused on a criticism of multiculturalism and a defense of *laïcité* and the public school system (Finkielkraut 1987; Finkielkraut and Lévy 2006). Both philosophers, as we will see in the chapters that follow, have been vocal proponents of the French headscarf bans.

Since Gérard Noiriel's seminal *Le creuset français* (1988), there has also been a growing concern that the narratives of French republicans should reevaluate their color-blind conception of the nation and to take into account the role of immigrants and foreigners in its forging. For the sociologist Dominique Schnapper, this implies reviving republican citizenship and reinforcing *the lien social* (Schnapper 2005; see also Schnapper 1994; Schnapper 1996). For others, such as philosopher Pierre-André Taguieff, diversity is a challenge that would best be countered by defending a unified Republic. In *La République enlisée* (2005), Taguieff warns against the fragmentation of the French nation in general, and against militant Islam in particular. It is hence perhaps not surprising that – as we will see – he has viewed the Islamic headscarf as a sign of communalism and as a threat to the French Republic and its values.

[42] Debray's other works include *La République expliquée à ma fille* (1998) and *Ce que nous voile le voile : La République et le sacré* (2003). In the latter work, Debray took a stance in favor of a law banning conspicuous religious insignia from public schools.

This brief presentation of some contemporary reinterpretations of French republicanism shows that they are intimately tied to current political challenges. The rewriting of the French Republic and its past cannot be separated from the political context that has prompted it. Before examining the "veil affairs" as a context for the negotiation about republican values, I will first review how scholars have examined women's role in the Republic.

2.4 Women and the Republic

The question of women's inclusion in the French Republic has been an object of political and philosophical debate since 1789. In this section, I will briefly review how some French feminists and historians of France have viewed women's role in the context of republican political life. In so doing, I will also map some of the stages through which French women have claimed and gradually obtained civic and political rights. This will offer a useful backdrop for understanding contemporary dynamics of women's exclusion from the republican civic body.

Mainstream republican historiography has largely ignored women. Although French feminist activism has long roots, French scholars have had to struggle to include women in historical analysis (Duby and Perrot 1991; Bard, El Amrani, and Pavard 2013), and it was not until the 1980s that women and feminism started to gain legitimacy as objects of scholarly analysis in France (Bard 2003). Especially since the 1989 bicentenary of the Revolution, however, there is a growing body of literature which examines the historical roots of women's exclusion from the Republic (Le Doeuff 1989; Fraisse 1989; Riot-Sarcey 1995; Viennot 1996).

According to the philosopher Geneviève Fraisse, France is an "exclusionary democracy" (*démocratie exclusive*), founded on the exclusion of women from the public sphere (Fraisse 2000, 61; Fraisse 1989). Indeed, historians have shown, on the one hand, the many ways in which women participated in the Revolution (Martin 2008), and on the other hand, how they were nonetheless excluded from citizenship rights from the outset (Scott 1996). The Revolution, which supposedly established equality between citizens, excluded women and assigned them to the private sphere (Landes 1988), prompting French feminists to protest against the biases of republican thought. They have done so by underscoring the paradoxes of a universalist language. As Joan Scott has forcefully argued, feminist discourse and agency were "not a reaction to republicanism, but one of its effects" (Scott 1996, 168). It was the paradoxes of republican thought – its claim for universalism and its simultaneous insistence

on "sexual difference" – which forced French feminists to straddle their discursive position as women while at the same time attempting to eliminate "sexual difference" in politics (Scott 1996, 3).

Although the Revolution did not open the door for women's inclusion, it allowed French feminists to use the language of modernity and the conceptual categories of republican thought to reclaim their rights. Olympe de Gouge's *Déclaration des droits de la femme et de la citoyenne* (2003 [1791]) is a perfect example of this, as it was modelled on the Declaration of the Rights of Man and of the Citizen. At around same time, the Marquis de Condorcet argued that women should vote and enjoy equal citizenship (Condorcet 2010 [1790]), and republican writer Charles Théremin asked: "Are we in a Republic of men only, and should there be in France only *républicains* and not *républicaines*?" (Théremin 1996 [1799]). These examples notwithstanding, contemporary feminists have pointed to the profound misogyny of republican thinkers of that time. For example, Élisabeth Badinter's *Paroles d'hommes* (1989) brings together the writings of a number of republican thinkers, most of whom insisted that women should remain in the role of wives and mothers. Fraisse has also shown that the exclusion of women was not seriously questioned by mainstream republican discourse in the aftermath of the Revolution. Indeed, the exclusion of women was not explicit, it was "produced rather than announced," which led to a hazy boundary between the civic and the domestic spheres (Fraisse 2000, 63). Although the Revolution temporarily opened the door for women's participation in the public sphere for example in "women's clubs" (Godineau 1988), these forms of participation were stigmatized in republican discourse as "effeminate" and contrary to the masculine republican values of "virtue" and "reason" (Landes 1988, 46).

Maïté Albistur and Daniel Armogathe's two-volume *Histoire du féminisme français* (1978) was the first major French-language investigation into French women's historical activism, and Michèle Riot-Sarcey's *Histoire du féminisme* (2008) was a welcome addition to what is today a growing literature on French feminisms. These works trace the history of French women's struggle for rights and emancipation. For example, they show that the Revolution of 1848 offered a new opportunity for French feminists to claim their rights; Jeanne Deroin is among the most famous to have vindicated equality of civil rights and political participation at that time (Riot-Sarcey 2008). Yet the Second Republic granted "universal" suffrage only to men who had reached the age of majority and continued to exclude women (Verjus 2002).

During the Third Republic, the question of suffrage remained unresolved. In 1881, Hubertine Auclert established *La Citoyenne*, a weekly magazine focused on women's full inclusion in the Republic, and in 1897, Marguerite Durand launched *La Fronde*, a paper which advocated for women workers and defended Captain Dreyfus (Albistur and Armogathe 1978a, 546, 550-551). By 1900, many feminist associations had emerged. Although their demands varied, the feminist congresses which took place between 1878–1913 showed that feminist political programs tended to converge on the issue of obtaining civil and political rights (Albistur and Armogathe 1978a, 520-523). Despite these advances, dominant republican ideology continued to consider that women held an auxiliary role as wives and mothers and that they should be excluded from political life (Rochefort 2000, 181).

Historical analyses, such as Klejman and Rochefort's *L'égalité en marche : le féminisme sous la Troisième République* (1989) and Bard's *Les filles de Marianne : histoire des féminismes 1914-1940* (1995) offer detailed descriptions of the difficulties related to feminist action during the Third Republic. One of the issues that underpinned women's exclusion was growing anti-clericalism. Women had been driven to the Church, for it was one of the few avenues of public expression that was open to them. Yet especially during the Third Republic republicans feared that women's attachment to the Church would lead them to vote against the Republic, which served as an argument for denying them suffrage (Offen 2011, 293-294). In other words, secularists claimed that women could not be reliable republicans, because they were too Catholic and inadequately educated (Offen 2011, 294). It was in part this link between anticlericalism and women's "unreliability" that postponed French women's access to suffrage.

Although women's movements multiplied in the early 20th century, it was not until 1944 that women finally gained voting rights. In 1949, Simone de Beauvoir's groundbreaking *Le deuxième sexe* turned public attention to the philosophical roots of the "woman question" and to the fact that formal equality did not guarantee social equality. In the 1960s and 1970s, important political reforms were passed, as the *Mouvement pour la libération des femmes* (MLF) reclaimed women's right to control their own bodies, leading the government to legalize contraception and abortion (Rochefort 2012, 21). Under President Mitterrand, the establishment of the short-lived Ministry for Women's Rights illustrated the development of "state feminism" in the 1980s (Thébaud 2004), and in the 1990s, Édith Cresson's appointment as Prime Minister was an important symbolic breakthrough for women's political participation in the Republic (Jenson and Sineau 1995, 331).

The *parité* debates of the 1990s prompted a new reflection about gender equality in the republican context. The debate was launched in 1992 by the publication of *Au pouvoir citoyennes ! Liberté, Égalité, Parité* (1992) in which feminists Françoise Gaspard, Claude Servan-Schreiber and Anne Le Gall called for a law that would implement gender equality in political representation. In so doing, they rejected gender quotas while reclaiming a "philosophically distinct" measure: *parité* (Gaspard, Servan-Schreiber, and Le Gall 1992, 165). Several scholars have noted the ingenuity of the pro-parity rhetoric which was, from the beginning, rooted in republican universalism (Scott 2007a; Lépinard 2007; Bereni 2015). Instead of falling prey to the usual "paradoxes" of feminist action (Scott 1996), the *paritaristes* argued that sexual difference, in contrast to other types of difference, was already included in the universal, and that the abstract individual on which the political order was founded was therefore necessarily sexed. In other words, "women were not a category;" they were part of the fundamental duality that constituted humanity (Bereni and Lépinard 2004, 84). Through these philosophical arguments, the *parité* movement sought to establish a true universalism and to overcome the tension between political equality and sexual difference.

The issue of *parité* created an intense philosophical discussion among French political elites, including academics and feminists. Those who were against *parité* argued that it essentialized sexual difference and overlooked the causes of women's political underrepresentation (Scott 2007a, 66-73). Indeed, many were those who refused the *partitaristes'* claims and positioned themselves as "defenders of the Republic" and as guardians of abstract universalism, emphasizing the dangers of American-style affirmative action (Scott 2007a, 70-71). One of the most vocal critics of *parité* was Élisabeth Badinter who was joined by philosopher Évelyne Pisier, sociologist Dominique Schnapper, historian Mona Ozouf, writer Danièle Sallenave, historian and psychoanalyst Élisabeth Roudinesco, and many others (Bereni 2015, 188). In a similar vein, the pro-*parité* group featured many well-known academics, such as philosopher Geneviève Fraisse, historian Michelle Perrot, philosopher Blandine Kriegel, political scientist Janine Mossuz-Lavau, and philosopher Sylviane Agacinski (Bereni 2015, 191-192). Bereni's recent analysis shows how individuals from both groups used their reputation as public intellectuals to argue for their cause (Bereni 2015, 177-205). More importantly, in seeking public support, both groups employed a vocabulary of republicanism, attempting to frame their agenda as the only solution that was in line with "true" republican values (Lépinard 2007, 156-158).

The debate concerning *parité* ended in the passage of the law of June 6, 2000, the aim of which was to "favor women and men's equal access to elected office."[43] The law required equal numbers of male and female candidates on most electoral lists. Although it was effective in expanding the number of women representatives in municipal and regional councils, on the whole, it did not succeed in transforming French politics in the way that its proponents had hoped (Sénac 2012, 126-127; Sineau 2011). From a philosophical point of view, the passage of the *parité* law validated the priority of sexual difference over other forms of inequality. In arguing that sexual difference, in contrast to other types of difference, was included in the universal, French feminists did not to take into consideration the numerous cleavages that exist between women or the forms of oppression experienced by other groups. These feminists from the Parisian elites were therefore ill-equipped to support minority women in their claims for equality when the headscarf controversy reemerged in 2003.

2.5 The "Veil Affairs" as the Context of Analysis

In the context of the French "republican revival," no single issue has triggered as many appeals to the renewal and defense of republican ideals as the so-called "veil affairs." Indeed, since the 1980s, the headscarf controversies have motivated a great number of commentators – politicians, political scientists, sociologists, activists, historians, journalists, etc. – to take part in the debate on the meanings attached to the French Republic and its underlying values. Some of these discourses are explicitly focused on the issue of the Islamic headscarf, while others barely mention it. Yet the "veil affairs" have clearly played a pivotal role in the shift that has taken place, in recent decades, within the discursive universe of French republicanism.

There is, today, a large body of literature on the French headscarf controversies. From books of fiction aimed at the general public to political pamphlets, autobiographies, reports, and academic publications, literature on the Islamic headscarf has grown exponentially since the turn of the millennium when the French "affairs" became an essential reference point when talking about the hijab in a variety of contexts.[44] Whereas in the 1990s literature on the Islamic headscarf was concentrated on the

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[43] *Loi n° 2000-493 du 6 juin 2000 tendant à favoriser l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives.*

[44] Whether authors today examine the practices or politics of veiling either in other European countries, in the United States, Canada, Quebec, or even in Australia, the French case is constantly evoked and used as a point of comparison. See Auslander (2000), Baker (2006), Barras (2009), Beaman (2008), Bribosia and Rorive (2004), Von

Turkish and Iranian contexts,[45] since then – and especially since 2004 – publications that are either wholly or primarily concentrated on France have multiplied in numbers.

This wide body of literature can roughly be divided into polemical, descriptive, and analytical strands. However, the French "veil affairs" are characterized by the fact that these different "registers" commonly blend with each other or alternate within single works. This is notably the case with academic texts which are often directed at an audience that goes well beyond the academic sphere: to politicians, teachers, and other people concerned (Galembert 2008, 15). All in all, academic literature on the "veil affairs" forms an important part of French public discourse. As such, it is part of my primary research material and will be included in my empirical corpus. Seeing as this is the case, it will only be briefly summarized here.

It was with the publication of Kepel's *À l'ouest d'Allah*[46] (1994) and especially with Gaspard and Khosrokhavar's seminal *Le foulard et la République* (1995) that the social sciences in France started to engage in public debate on the Islamic headscarf.[47] When the project of legislating on the hijab appeared in the beginning of the millennium, this literature expanded further.[48] De Galembert has noted that during this time, most academic authors positioned themselves explicitly either for or against the ban on the Islamic headscarf (Galembert 2008, 15). Interestingly, the works of academics and public intellectuals in favor of legislating against the headscarf in public schools were in minority (Galembert 2008, 15). The most important of these "pro-ban" publications is perhaps Kaltenbach and Tribalat's *La République et l'islam – entre crainte et aveuglement* (2002). Its goal was to challenge "blind enthusiasm" for Islam and to combat the "lenient approach" that public authorities and intellectuals had adopted toward the rise of "communalism" (*communautarisme*) and "political Islam." The authors – both of whom were members of the *Haut Conseil à l'Intégration* (HCI) – also attacked this institution's

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Campenhausen (2004), Dreher and Ho (2009), Gordon (2008), Gunn (2004), Koussens (2008), McGoldrick (2006), Walterick (2006), Westerfield (2006).

[45] On the Turkish case, see Göle (1993) and Ozdalga (1998); on the Iranian one, see Adelkhah (1991), Sabouri (1995), as well as Lutrand and Yazdekhasti (2003).

[46] Written during the aftermath of the controversy surrounding Salman Rushdie's *The Satanic Verses* (1989), Kepel's book offered a comparison of the integration and "Islamization" of Muslim communities in the United States, Great Britain, and France.

[47] Khosrokhavar (1997), Venel (1999), Kaltenbach and Tribalat (2002).

[48] Lévy et al. (2004), Bouzar and Kada (2003), Lorcerie (2005), Nordmann (2004), Tevanian (2005), Bouamama (2004), Baubérot (2004a).

report[49] which had defended the legal position of the Council of State by arguing that the practice of veiling belonged to the sphere of religious freedom and should hence be protected (Galembert 2008, 16). This is one example of how academic and legal discourses intersect and interact with more overtly political ones.

An important group of French writers also engaged in the debate to argue *against* the ban on the headscarf. Many of them attempted to defend hijab-wearing girls and women by offering empirical proof of the significations attached to the practice of veiling, or by advocating for women and their voice (Gaspard and Khosrokhavar 1995; Bouzar and Kada 2003; Lévy et al. 2004; Chouder, Latrèche, and Tevanian 2008). One of the most striking examples of the latter is Larabi Hendaz's *Le voile humilié: les auditions manquées de la commission Stasi* (2005), which aimed to reveal the biases of the politico-legal process that lead to the passage of the 2004 law. Researchers were also interested in deconstructing public discourses on Islam and the "Muslim problem." For example, Deltombe (2007), Tévanian (2005), and Thomas (2008b) focused specifically on the role that the French media played in the debates leading up to the 2004 law.

All in all, the way that academics have engaged in the "veil affairs" should be understood as a continuum with, at one end, openly militant thinkers such as Tévanian and Bouamama publishing research-based work while also organizing demonstrations, petitions, etc.; and at the other end, scholars making an explicit effort to appear as "neutral" as possible (Galembert 2008, 18). Generally, scholars who are based outside of France appear the most disengaged from the public debate (Scott 2007b; Bowen 2007; Winter 2008; Laborde 2008; Joppke 2009; McGoldrick 2006). However – perhaps precisely for wanting to distance themselves from the political aspirations that so easily blend with scientific endeavors – most of these works have remained at a descriptive level, either simply trying to illustrate the French affairs to an English-speaking audience, or to examine the historical roots of the debate. The most analytical book on the topic is perhaps Scott's *The Politics of the Veil* (2007b) which has become an essential reference for scholars of France. As the French "veil affairs" continue to multiply, so do their scientific examinations. Recent books concerning the burqa (Koussens and Roy 2013; Bouzar and Bouzar 2010; Languille 2015) and the so-called Baby-Loup affair (Hennette Vauchez and Valentin 2014) have contributed to this growing literature.

[49] Haut Conseil à l'Intégration (2000).

Literature on the "veil affairs" is also linked to other strands that focus, for example, on *laïcité* (Bedouelle and Costa 1998; Borne 2005; Costa-Lascoux and Auduc 2006; Farago 2005; Schwartz 2007; Baubérot 2012), on Muslim integration and the effects of French colonialism on current conceptualizations of republicanism (Amiraux 2010b; Amiraux 2010a; Bowen 2011; Souilamas 2006; Adida, Laitin, and Valfort 2016; Bancel, Blanchard, and Lemaire 2013), or on anti-Muslim discrimination (Adida, Laitin, and Valfort 2010; Body-Gendrot 2003; Geisser 2003; Tevanian 2007; Hajjat and Mohammed 2013). More recently, Fredette (2014) has focused on French elite discourse and its interaction with the discourses of French Muslims, Fernando (2014) has provided an ethnographic study into the contradictions of French Muslim citizenship, and Perreau and Scott (2017) have edited a volume which analyzes the most recent transformations of Republican public policies in a situation where minorities are reclaiming their rights. I hope to contribute to this literature by offering a detailed analysis of the "veil affairs" which covers more than a decade of contemporary French political history. In examining the development of republican ideology in the context of the headscarf controversies, my specific focus will be on the political ideals that have justified headscarved Muslim women's exclusion from public spaces.

2.6 Research Question

The aim of my research is to describe how the entrenchment and gradual extension of the headscarf ban became possible and publicly legitimized while maintaining its republican respectability. *Through which political including discursive processes did the public promotion of republican values come to signify the exclusion of headscarf-wearing Muslim women from public spaces*? This is the question that will guide my analysis.

I argue that the continual references to republican values that we observe in French public discussion – as well as the actual exclusion of observant Muslim women from public spaces – are expressions of a republican ideology that is today dominant in France. Examining these phenomena as dimensions of French republicanism implies two interconnected interrogations. First, how did *this* specific set of political views came about? In other words, how did French republicanism gain its current ideational content? Answering this question requires analyzing the *evolution* of this ideology in a historical perspective. Second, what are the specific conceptual configurations of this ideology? Indeed,

deciphering contemporary debates on French republicanism requires an understanding of its *morphology* as well as of the horizons of meaning that it constructs. In the following chapter, I will present the strategies that I have adopted in constructing my research design and in conducting my empirical analysis.

Chapter 3

Analyzing Contemporary French Republicanism

This is, first and foremost, a study in the recent history of political ideas. By examining a decade of French public discourse, I will shed light on the development of republican ideology and its central concepts: their meanings, weight, clusters, and relationships. In short, I am interested in republican morphology as it appears in French public debate. This kind of analysis raises a number of ontological, epistemological, and methodological questions. Having already presented the theoretical starting points of my ideology analysis above, the aim of this chapter is to discuss the series of procedures whereby I have transformed this theoretical approach into empirical analysis.

This research is driven by a specific "way of knowing" (Moses and Knutsen 2007). Rooted in a post-foundational, poststructuralist perspective, it implies a particular understanding of the role of discourse in shaping social and political life. Throughout the following empirical chapters, I will focus on processes of meaning-making by examining how discourse constructs – rather than simply reflects – republican thought-practice. In Section 3.1, I will locate my poststructuralist approach within the broader field of discourse analysis and present some of its core assumptions and central concepts.

In Section 3.2, I will discuss some of the ways in which my research breaks with positivism and the most common naturalist criteria of validity. This departure from positivism does not by any means render methodological concerns irrelevant. On the contrary, the aim of this chapter is to address some of the challenges that arise from putting a morphological, poststructuralist approach into practice. In Section 3.3, I will present my research design. In doing so, I will shed light on some of the most basic choices that have guided my research, such as which discourses to study, how to delimit them, and how to determine a time frame for this study. Having outlined my general research design, I will address

specific methodological questions. Who are the relevant actors? Which sources should be used? How should ideological data be interpreted? In Sections 3.4, 3.5, and 3.6, I will discuss each of these issues in turn.

3.1 Poststructuralist Discourse Analysis

Especially since the so-called "discursive turn" of the 1990s, researchers across the social sciences, humanities, and other fields have focused their attention on discourse. This can mean many different things: from conversation analysis to sociolinguistics, discursive psychology, and to Foucauldian research and critical discourse analysis, different fields and sub-fields have their own distinct understandings of the term "discourse." It can refer to ways in which things are spoken and thought of or represented. Despite these differences, discourse analytical approaches normally agree on the fact that language and reality are closely intertwined, and that meaning is not a mere reflection of reality but a product of discourse. Therefore, discourse theoretical approaches – and their corresponding discourse analytical methodologies – do not aim to discover universal truths or facts, but rather to examine how those "truths" and "facts" are socially constructed.

Broadly speaking, discourse theory has stemmed from an attempt to combine hermeneutics with the social sciences. The development of discourse theory can roughly be divided in three stages, which Torfing describes as "generations" (Torfing 2005, 5). *First generation* discourse theorists defined discourse narrowly as a text which is longer than a sentence, and focused on the semantic aspects of written and spoken language. For Torfing, this is the case with sociolinguistics, content analysis, conversational analysis, and discursive psychology. What these approaches have in common is that they do not attempt to "link the analysis of discourse with the analysis of politics and power struggles" (Torfing 2005, 6). For *second generation* theorists, discourse does not simply refer to written and spoken text or language, but more largely to social practices. Discourse is hence a collection of practices that include a semiotic element (such as speech, written text, pictures, or gestures) that social actors use when producing and interpreting meanings (Torfing 2005, 7). One of the most important schools of thought within the second generation is Critical Discourse Analysis (CDA) as developed, for example, by Fairclough (1989; 1995). Second generation discourse theory builds on a Foucauldian conception of power. However, Torfing argues that CDA is not clear on how the link between discourses and their non-discursive contexts should be understood. For Torfing, the explanatory power of CDA is limited by

its view of linguistic processes that are independent of social structures (Torfing 2005, 6-7). In a similar vein, Howarth is pessimistic with regard to CDA's capacity for creating critical research strategies for the deconstruction of dominant discourse (Howarth 2000, 8).

Building on these critiques, the *third generation* discourse theorists that I draw from have further broadened the definition of discourse. For third generation theorists, discourse refers to social phenomena in general, which leads them to consider that the discursive corresponds to the social (Torfing 2005, 8; see also Derrida 1978). Third generation theorists emphasize that social meanings are never stable. It follows that realities are not stable either, but rather constantly the object of discursive struggle. Third generation discourse theory implies an anti-essentialist ontology and an anti-foundational epistemology (Torfing 2005, 13), which means that the ontological world exists independently of us, but that "truths" about "what is out there" only gain meaning through the language games and different relations of signification that we apply. Hence, power and discourse are internally linked, but there is no division between the discursive and the non-discursive; even seemingly non-discursive phenomena are finally constructed through discursive systems (Torfing 2005, 8-9). In other words, no social phenomenon is "closed," but their meanings are always open to fluctuations (Phillips and Jørgensen 2002, 24).

As seen above, the two pillars of my theoretical approach, Freeden's morphological analysis and Laclau's discourse theory, share many of the ontological and epistemological assumptions that characterize third generation discourse theory. While my analytical focus is on conceptual morphology, Freeden has not offered clear guidelines for empirical research. Although Freeden applies his conceptual approach to the historical study of political ideologies in *Ideology and Political Theory* (1996), he does not put particular emphasis on methodological strategies. All in all, morphological analysis, though one of the leading approaches to the study of political ideologies, does not provide specific procedures for conducting empirical analysis. This lack is no doubt a reflection of the gap that exists between, on the one hand, the study of political ideas, and on the other hand, "methodologies" which are most often associated with naturalist approaches.

If we examine Laclau's discourse theory, we are faced with the same problem. In fact, apart from the deconstruction of concepts (see, e.g. Laclau 1993), Laclau did not engage in empirical analysis. In his book, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (2001; originally

published in 1985), written together with Chantal Mouffe, Laclau offers, above all, a rewriting of Foucault's discourse theory as well as a novel definition of the concept of hegemony. However, a number of other theorists, mostly based in the University of Essex, have built on Laclau's poststructuralist, post-Marxist theory and developed his concepts and methodological precepts further. Although the resulting discourse-analytical strand, known as Ideology and Discourse Analysis (IDA), still suffers from a methodological deficit, IDA scholars have attempted to develop tools for making empirical sense of the discursive construction of ideologies (see, e.g. Phillips and Jørgensen 2002; Torfing 2005). More recently, Marttila (2015) has brought a wide range of post-foundational analytical strategies together in a book that offers an attractive empirical research program for conducting this type of discourse analysis. All in all, then, compared with the morphological approach, discourse theory offers a wider range of analytical tools for making sense of the processes of meaning-making that are of interest in this work.

Consequently, while Freeden's morphological analysis helps me to make sense of the research object (republican ideology), it is Laclau's discourse theory and IDA that allow me to empirically examine the discourses that construct it. Although the two analytical approaches "intersect" (Freeden 2013), and although theory and analysis are always strongly intertwined, I have, broadly put, chosen to use the language of morphological analysis when talking about my research object, and the vocabulary of third-generation discourse analysis when making sense of its discursive construction. In the following, I will thus present poststructuralist discourse theory as the methodological strategy of this work, referring back to the conceptual approach whenever necessary for the construction of a cohesive analytical framework. My specific focus, here, will be on the central concepts of Laclau's discourse theory. I will discuss the relationship between deconstruction and discourse analysis later, in Section 3.6.

Discourse and the Construction of Meaning

In order to clarify what Laclau means by "discourse," we need to go back to the structuralist linguistics that he criticizes and builds upon. Ferdinand de Saussure's central contribution to linguistics can be summarized in the simple yet revolutionary statement according to which "language is a system of signs that express ideas" (Saussure 1983, 15; translated and quoted in Howarth 2000, 18).[1] Speakers

[1] For Saussure, language (*language*) can further be divided into an abstract system of signs (*langue*) and individual speech acts (*parole*). According to Saussure: *"une langue [est] un système de signes distinct correspondant à des*

need to adhere to the rules of the system of signs in order to be understood. A linguistic *sign* is made up of a *signifier* (*signifiant*), a word or sound image, and of a *signified* (*signifié*), its conceptual "content." According to Saussure, the relationship between signifier and signified is arbitrary in the sense that there exists no given or "natural" connection between the two (Howarth 2000, 19). For example, the signifier "headscarf" could, in theory, refer to any other material object than the piece of clothing that I have discussed above. In other words, the use of a signifier such as "headscarf" in reference to a specific conceptual content is the result of linguistic practice (and not vice versa). Language does not only create a relationship between a signifier and its signified, but it also constitutes signified objects independently from their non-linguistic context (Smith 1998, 84-85). In other words, signs do not simply refer to material objects; those objects do not conceptually exist outside of the linguistic system. This structuralist perspective of language as a system of signs can be understood in terms of the metaphor of a fishing-net: "all linguistic signs can be thought of as knots in a net, deriving their meaning from their difference from one another, that is, from being situated in particular positions in the net" (Phillips and Jørgensen 2002, 25).

Although Laclau and other poststructuralists agree with Saussure's assertion that signs only acquire their meaning in relation to other signs, they challenge the view that signs could gain a permanent "content." On the contrary, poststructuralist discourse theory claims that sings can be positioned in different ways, hence creating new meanings. Despite this fundamental difference, the fishing-net metaphor remains useful for understanding poststructuralist discourse theory. According to IDA theorists, meanings are created through social processes, the aim of which is to fix "contents" or meanings *as if* a Saussurean structure existed (Phillips and Jørgensen 2002, 25). In other words, actors constantly engage in efforts of trying to fix signs in a specific relationship with other signs even though each knot in the fishing-net is *contingent* – possible but not necessary, existing only through constant (re-)articulation. The political processes that are at the center of my research project should hence be understood as *attempts to fix a meaning*.

These are the starting points for understanding what Laclau means by discourse. In *Hegemony and Socialist Strategy*, Laclau and Mouffe define discourse as a structure that is created by the practice of articulation:

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idées distinctes" (Saussure 1967, 26); "*la parole est au contraire un acte individuel de volonté et d'intelligence*" (Saussure 1967, 30).

> [W]e will call *articulation* any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from the articulatory practice, we will call *discourse*. (Laclau and Mouffe 2001, 105, emphasis in original.)

Although Laclau and Mouffe obviously take the concept of discourse from Foucault, they give it a more unambiguous and general definition. As a "structured totality of differences"(Laclau and Mouffe 2001, 105), a discourse is understood as an ensemble of partially and temporarily fixed meanings.[2] The signs that constitute a discourse are as knots in a fishing-net; their meanings being fixed through their differential positions. Without this configuration of relations, meaning would be imprecise and ever so fleeting. It should be noted that, for Laclau and Mouffe, discourse is not in itself a practice; it is the result of practice. As this is the case, the discourse/articulation division resembles the structure/agency dichotomy spanning the field of social sciences. Although articulation takes place within existing discourses, it is never predetermined by them. As the process of fixing meaning is never complete, the relationship between articulation and discourse is a dynamic one. The structure of discourse prompts articulation, but all attempts to fix meaning by creating a stable discourse always ultimately fail. One of the goals of discourse theory is to examine this dialectical relationship between discourses and their constant production.

Laclau and Mouffe make another important distinction by distinguishing discourse from *field of discursivity* (Laclau and Mouffe 2001, 111), which is often referred to simply as *the discursive*. The field of discursivity functions as a "reservoir for the 'surplus of meaning' produced by the articulatory practice" (Phillips and Jørgensen 2002, 27). The surplus of meaning refers to all the different contents that a sign has (or has had) as an element of different discourses. A reservoir is necessary for those meanings to be excluded when a discourse is articulated. The field of discursivity can therefore be understood as the collection of *all* discourses – a horizon that is necessary in order for the construction of meaning to become possible in the first place (Smith 1998, 85).

The concept of field of discursivity also sheds light on one of the central assumptions of Laclau's discourse theory: each discourse needs to have limits. A discourse is always brought about by exclusion,

[2] "The impossibility of an ultimate fixity of meaning implies that there have to be partial fixations – otherwise, the very flow of differences would be impossible. Even in order to differ, to subvert meaning, there has to be *a* meaning." (Laclau and Mouffe 2001, 112.)

by rejecting an enormous amount of "surplus meanings" into the field of discursivity.[3] The field of discursivity is therefore what makes the existence of competing discourses possible (Torfing 1999, 91). Even though – or, paradoxically, because – a discourse is created by excluding something, that which is excluded also threatens the existence of the discourse. This is the case because – with the help of the field of discursivity – the elements[4] of a discourse can always be structured in a different way which would result in the discourse changing. On the one hand, therefore, the field of discursivity is the prerequisite for the existence of any discourse, and on the other hand, it renders the permanent fixing of a discourse impossible because no single discourse can attach to itself all that is discursive. The field of discursivity makes every discourse undecidable and contingent (Torfing 1999, 92).

As mentioned above, the specific assumption of third-generation discourse theory is that the field of discursivity – all that is discursive – corresponds to the social. Put differently, Laclau and Mouffe's discourse theory is, in fact, a theory of the social, since social practices are always fully discursive. In comparison to classical Marxist theory, which emphasizes the material dimension of ideology, Laclau and Mouffe's analysis "rejects the distinction between discursive and non-discursive practices" (Laclau and Mouffe 2001, 107). According to Laclau and Mouffe, "every object is constituted as an object of discourse" (Laclau and Mouffe 2001, 107), which means that although objects can exist externally of thought, we cannot grasp them as objects outside of the discursive (Laclau and Mouffe 2001, 108). As Laclau and Mouffe explain:

> […] if the so-called non-discursive complexes – institutions, techniques, productive organization, and so on – are analysed, we will only find more or less complex forms of differential positions among objects, which do not arise from a necessity external to the system structuring them and which can only therefore be conceived as discursive articulations. (Laclau and Mouffe 2001, 107.)

In this way, Laclau and Mouffe's theory breaks with the realism/idealism opposition. Everything is discursive not only because every object is constituted as an object of thought, but because discourse is material as much as it is mental. Following the example that Laclau and Mouffe borrow from Wittgenstein, if two builders discuss how to proceed in their task of constructing a building, they may refer to "blocks," "pillars," "slabs," and so forth (Laclau and Mouffe 2001, 108). Yet these objects do not only

[3] If this were not the case, there would be no politics left, for all discourses could belong to a single discursive structure.

[4] In contrast to moments, *elements* are signs whose meanings have not yet been fixed, and that therefore (potentially) hold multiple meanings (Phillips and Jørgensen 2002, 27).

exist in language; they have material properties: "The linguistic and non-linguistic elements are not merely juxtaposed, but constitute a differential and structured system of positions – that is, a discourse. The differential positions include, therefore, a dispersion of very diverse material elements" (Laclau and Mouffe 2001, 108). From this perspective, although discourses naturally have both material and ideational aspects and effects, all kinds of social dynamics can be examined as structured totalities and relations of difference.

To recapitulate, according to Laclau and Mouffe, a discourse is a signifying totality where each sign has a (partially) fixed meaning. It is also seemingly closed. This is the case because it is created through the exclusion of all other meanings that the signs of the discourse could have had, that is, "all other possible ways in which the signs could have been related to one another" (Phillips and Jørgensen 2002, 27). Thus, in a way, a discourse reduces the possibilities of fixing to a given reality a meaning other than the one constructed by the discourse in question. Here we can see the similarities between Laclauan discourse theory and Freeden's morphological analysis, as both approaches are interested in processes that impose specific meanings on signs. Freeden urges us to look at the ways that ideologies function to remove the meanings of concepts from contest, referring to this as *decontestation* (see above, Section 2.2). In my analysis, I will use Laclau and Mouffe's term "articulation" to refer to the practices of meaning production, and "discourse" to speak about the structures of meaning that these practices construct. In parallel, I will employ "decontestation" when talking about the processes of assigning meaning to *political concepts*. I will return to this distinction shortly.

Each discourse aims to "dominate the field of discursivity" by "arrest[ing] the flow of differences" (Laclau and Mouffe 2001, 112). This is done, for instance, by fixing meanings with the help of *nodal points*. Nodal points are privileged signifiers around which other signifiers are ordered. For example, in the discourses that I will examine, the signifier *laïcité* often forms a nodal point, for it gives a meaning to other signifiers and, in so doing, structures the whole discourse. Without the meaning(s) that are partially fixed in *laïcité*, French discourses on visible religiosity would be completely different, for arguments both against and in favor of the exclusion of hijab-wearing Muslim women tend to be structured by the meanings attached to *laïcité*. From a morphological perspective, nodal points might be referred to as *core concepts* or *adjacent concepts*, for it is the concepts that are the most central that give an ideology its character by affecting all the concepts that surround them. If we look at French republicanism specifically, we can, indeed, conclude that *laïcité* is one of its core concepts.

While Laclau distinguishes between signifieds and signifiers, Freeden is concerned with concepts. Freeden builds on Koselleck's analytical strategy, which distinguishes between words and concepts: "Each concept is associated with a word, but not every word is a social and political concept. Social and political concepts possess a substantial claim of generality and always have many meanings." (Koselleck 1982, 418.) In other words, while concepts are tied to signifiers, not all signifiers are concepts. According to Koselleck, the meaning of signifiers can be easily interpreted in ordinary discourse. Concepts, on the other hand, are always ambiguous (Andersen 2003, 36-37). For instance, the meaning of republican concepts such as "liberty," "equality," and "fraternity" can never be completely defined, for they comprise an abundance of meaning. It is precisely this ambiguity that makes all concepts open to processes of decontestation, thereby creating the semantic battlefield. As I will be analyzing French republican morphology, my particular focus will thus be on signifiers which are political concepts.

To conclude, we have now seen that the practice of articulation creates a discourse, which is a structure of relations. While this structure (discourse) prompts action (articulation), meanings can only be partially fixed. Consequently, discourse does not determine articulation, but articulation is always something more. In comparison to the field of discursivity, where meanings can be drifting and fleeting, a discourse is a "systemic totality," characterized by a relatively stable pattern of differences. French republicanism, in its many forms, is one such discourse.

Hegemony, Politics, and Objectivity

The general aim of poststructuralist discourse analysis is to examine the relationship between signifiers and signifieds. Often, new meanings are created through articulations which change the signification of the signified. Taking, once again, *laïcité* as an example, we can observe that its "content" has shifted in mainstream discourse. Whereas *laïcité*, historically, referred to the neutrality of the state, it is, today, often taken to signify individual religious neutrality and the absence of headscarves. Besides directing attention to these kinds of displacements, the Laclauan discourse theoretical approach also focuses on how the fixing of signifiers to signifieds is very much a political issue.

Discourse analysis examines the way that contingent relations of meaning become fixed in one way, when they could have been fixed in many other ways. Hence *politics* should not only be understood in the narrow sense of party politics; it rather refers to the manner in which we constitute the

social and exclude all other ways of constituting it. Sometimes, discourses can become so firmly established that we lose sight of the fact that they are political, and come to view them as objective (Laclau 1990, 34). In such cases, the contingency and the inherently political nature of discourse have developed into "objectivity" through hegemonic interventions.

Hegemonic interventions are specific types of articulations. Both hegemony and discourse refer to attempts of fixing a meaning. However, hegemony differs from discourse in the sense that it fixes a meaning by imposing a specific perspective while suppressing alternative understandings to the extent that it starts to appear "objective." For Laclau, objectivity is, in fact, ideology. Although Laclau's discourse theory stresses that all social phenomena resist closure, at certain historical moments specific discourses can, nonetheless, become partially fixed so that they start to seem normal and are no longer challenged. While hegemony produces objectivity, political conflicts can be retriggered through articulation, unveiling the ideological character of the single discourse that previously dominated.

More specifically, hegemonic interventions are able to fix meaning "across discourses that collide antagonistically" (Phillips and Jørgensen 2002, 48). The concept of *antagonism* refers to a situation where two discourses – for example, two identities – are mutually exclusive. While social identities are often fragmented, the relationship between different identities is not necessarily antagonistic, for a Muslim woman may well be able to define herself, for example, as an "employee" and as a "friend" at the same time. But if "the two identities make contrasting demands in relation to the same actions within a common terrain" (Phillips and Jørgensen 2002, 47), they become antagonistic. Since antagonism renders the contingency of both identities visible, it threatens both discourses in question. The role of the discourse analyst is to describe the ways in which the construction of discourses is, in this way, blocked. In the case of French republicanism, we can, for instance, chart the different ways in which actors construct dichotomies of Us/Them, or deserving/undeserving citizens, in antagonistic terms. How did a specific discourse of French republicanism become partially fixed and objectified? While all discourses aim to establish hegemony by constructing an unambiguous, sedimented structure of meaning, the construction of objectivity is always precarious, as discourse is always threatened by something external to it. Paradoxically, in the case of the French "veil affairs," the exclusion of headscarf-wearing Muslim women is, on the one hand, the precondition for the existing republican ideology, and, on the other hand, the point where that social formation can no longer be stabilized.

3.2 Co-Constitution and Non-Causal Epistemology

Having presented the theoretical insights and analytical concepts that offer a starting point for conducting poststructuralist discourse analysis, I will now discuss some of the questions that such analysis confronts. In many ways, these questions are the fundamental interrogations of any research project: What should the study focus on? How can this focus help us build a research design? However, a poststructuralist discourse-theoretical approach signifies a departure from certain naturalist assumptions. Before constructing my research design, I will therefore, in this section, confront the demand for causal theorizing, and shed light on the relationship between discourse, ideology, and exclusion.

Although poststructuralist approaches have gained relevance in recent years, the naturalist paradigm still dominates the field of political science today. King, Keohane and Verba's seminal *Designing Social Inquiry: Scientific Inference in Qualitative Research* (1994) remains an important reference to researchers in social sciences, presenting a methodological approach which borrows heavily from the natural sciences. More specifically, according to King, Keohane and Verba, the goal of social scientific research is inference (King, Keohane, and Verba 1994, 7-8). Although the authors admit that "fact-finding and description" can be necessary steps that precede explanation, they clearly favor causal research over other ways of knowing, stating that "*a research project should make a specific contribution to an identifiable scholarly literature by increasing our collective ability to construct verified scientific explanations* […]"(King, Keohane, and Verba 1994, 15, emphasis in original).

In order to avoid all confusion, I wish to stress that my analytical approach does not lend itself to the type of analysis that King, Keohane, and Verba promote as "good research" (1994, 7). In fact, my ontological and epistemological position rejects the ideas of causality and falsification. To begin with, my research question, "*Through which processes did the public promotion of republican values come to signify the exclusion of headscarf-wearing Muslim women from public spaces?*", does not aim to uncover "*the* truth" about the "real world." In seeking to understand the development of French republicanism and the expansion of the exclusion of headscarved women, I, myself, cannot step outside of the discursive context that I examine. Moreover, since the discursive corresponds to the social, there is no extra-discursive dimension against which discursive analysis could be tested.

In reading the empirical chapters that follow, one might be tempted to think that it is French republican ideology that produces exclusion – in other words, to fall back on the dominant discourse

of causality. Indeed, at first view, my analysis might seem to suggest that if a specific understanding of republican values had not become hegemonic, Muslim women's exclusion would not have taken place. But grasping this social phenomenon in terms of causality would mean failing to recognize its complexity. While exclusion relies upon a particular understanding of republican values, it is also through exclusion that a certain type of republican ideology is produced and reproduced. In addition, discourse is ontologically productive, and epistemologically fundamental: it is only through discourse that ideology and policy preferences can be grasped in the first place. Ideology, exclusion, and discourse are thus ontologically interlinked. The relationship between them cannot be conceptualized in terms of causality, because they are co-constitutive.

It is this break with causality and from the most common positivist criteria of validity that informs my research agenda. Far from being a weakness, this ontological and epistemological stance allows me to seek answers to a "how" question that is not easily translatable into the rationalist language of variables, causes, or effects. Nor does the impossibility of conducting causal analysis mean that systematic empirical analyses and rigorous methodologies should be abandoned. In this work, my aim is to offer a reliable empirical account of the development of French republicanism, and a plausible interpretation of its link with the exclusion of headscarf-wearing Muslim women from public spaces. However, as the two cannot be ontologically or empirically separated, I seek to offer a persuasive reconstruction rather than a causal explanation.

If ideology, discourse, and exclusion are co-constitutive, how should we understand their respective status? Setting exclusion aside for a moment, I will begin by addressing the relationship between ideology and discourse. Indeed, this relationship puzzles most researchers in the field, leading to the interchangeable use of these terms and to uneasy amalgams even within the finest works. In fact, scholars within the field of Ideology and Discourse (IDA) analysis often do not make the relationship between the two core concepts explicitly known. As this is the case, we have reason to ask whether the two concepts are necessary in the first place (Määttä 2014). Could we approach the study of French republican ideology directly, without focusing on discourse? Could we conduct morphological analysis without relying on poststructuralist discourse analysis, as I have described it above?

Without pretending to solve the underlying dilemma about the relationship and respective statuses of ideology and discourse, my answer is no. Although it might appear, at first view, that there is no reason why one could not approach French republicanism "purely" as a morphology (by choosing to

tackle it through the language of concepts and morphologies), this would in my opinion imply an inappropriate simplification of reality. As seen above, reality cannot be grasped without relying on the relations of meaning that exist in discourse. If one chooses to focus solely on the relations between concepts, one would loose from sight the fact that even though everything is discursive and, to varying degrees, ideological, not every discourse constructs a political ideology. I therefore argue that both ideology and discourse are useful in making sense of republican thought-practice.

Above we have seen that Freeden views ideologies as "complex constructs through which specific meanings, out of a potentially unlimited and essentially contestable universe of meanings, are imparted to the wide range of political concepts that they inevitably employ" (Freeden 1994, 140-141). In comparison, Laclau and Mouffe define discourse as a "structured totality resulting from […] articulatory practice" (2001, 105). While discourse is a partially closed system of signification, an ideology such as republicanism too is an unstable and permeable structure, yet it is built from political concepts. And, as we have also seen, not all signifiers are concepts in the sense that they would condense meaning, leading to their strikingly ambiguous articulation, and to the overlap of philosophical and political interrogations. Moreover, not all discourses succeed in gaining hegemony or in imposing their seemingly objective truths on others. Seen in this way, a political ideology such as French republicanism is *a specific type of discourse*.

In order to make sense of its development, I argue that we should not only focus on the republican structure of meaning, but also on the discourses that surround it, feed it, or offer alternatives to it. As we will see in the empirical chapters that follow, in many instances, republican discourse should be understood in relation to the wider political and discursive context. For instance, discourses that construct collective identities or representations are not ideologies *per se*, but they may be useful in understanding the social context in which republican ideology took shape or gained legitimacy. Moreover, although discursive elements are always relational, they are definitely not always part of a discourse. There is no reason why the researcher should, from the outset, close herself off to taking into account such "free floating" elements from the field of discursivity. I will therefore examine republican ideology (a specific discourse) by embedding it in the social reality that it stems from (the wider discursive context).

In short, the discursive field offers a springboard for constructing all kinds of discourses, including ideologies. They are inherently unstable and often overlapping structures of meaning. From this

viewpoint, the exclusion of headscarved Muslim women can be understood a part of republican discourse. The aim of this study is to examine the development of French republicanism and its discursive context in order to understand the processes that lead to exclusion becoming such a central part of the dominant republican creed.

Figure 3.1 illustrates the co-constitution of ideology, discourse, and exclusion. It shows, on the one hand, that republican ideology is necessarily nested within the discursive. It co-exists with other discourses in the discursive field. On the other hand, the exclusion of headscarved women, which is of interest to me here, is a part of the dominant republican discourse. Viewing these constructs as nested is another way of illustrating the co-constitution of discourse, ideology, and exclusion.

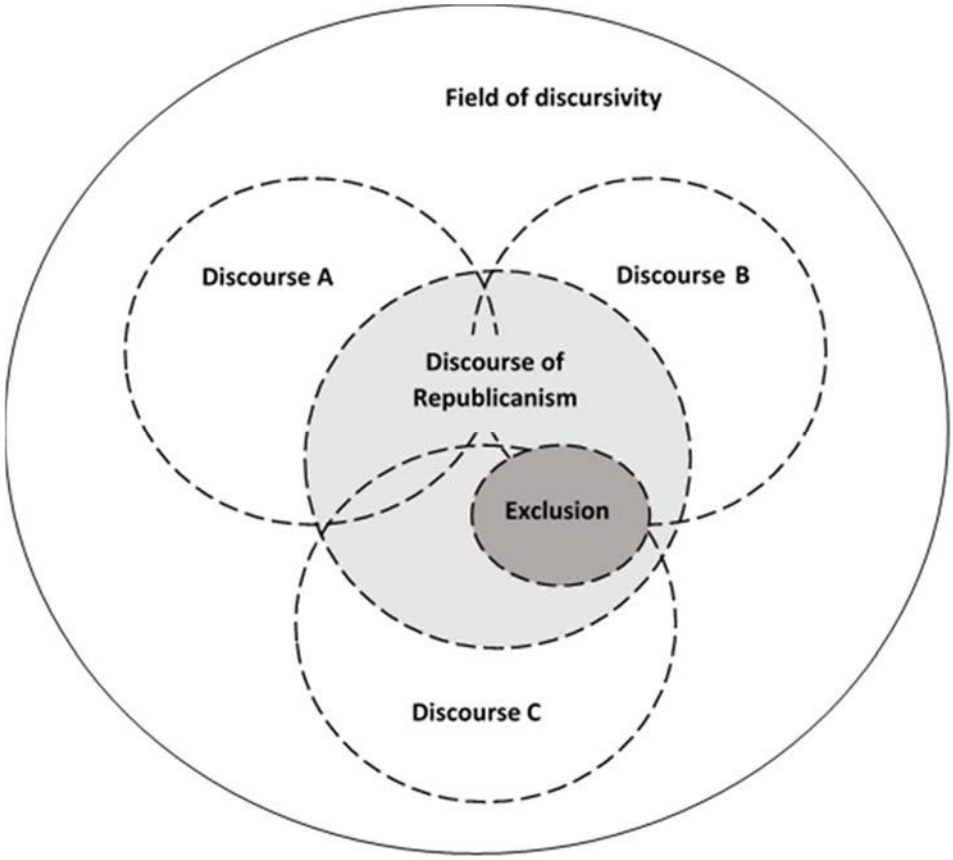

Figure 3.1 – The Field of Discursivity.

3.3 Doing Discourse Analysis: The Research Design

I will now discuss the scope and specific goals of my research in more detail. In her acclaimed book, *Security as Practice* (2006), Lene Hansen provides an in-depth discussion of poststructuralist discourse theory and methodology. Although Hansen's book is focused on identity and foreign policy, I have found her methodological insights particularly useful in developing my own research agenda. Hansen identifies four choices as especially relevant for poststructuralist discourse analysis (Hansen 2006, 73). First, one needs to choose the range of discourses to study. Second, the number of cases (or, as Hansen calls them, Selves) has to be specified. Third, one must choose a temporal perspective. Fourth, the research should be limited in terms of issue or event. Building on this framework for constructing a research design, I will discuss each of these issues in turn.

In order to analyze the establishment and development of French republican morphology, a first step is to delimit the field of empirical research. My ontological and epistemological assumptions do not *a priori* point me to a specific direction: examining French discourses from a poststructuralist perspective means that all different kinds of linguistic as well as non-linguistic data will be considered "text." All types of data – not just speeches, reports, and interviews, but also events, ideas, and organizations – are viewed as signifying practices that constitute a "discourse" that "enable[s] subjects to experience the world of objects, words, and practices" (Howarth and Stavrakakis 2000, 4).

In order to guide the researcher in delimiting the range of discourses to study, Hansen draws on Julia Kristeva's concept of *intertextuality* (Kristeva 1980). Intertextuality refers to the fact that discourses are "simultaneously unique and united" (Hansen 2006, 55). Indeed, from a discourse theoretical point of view, each articulation constructs a unique structure of signification. At the same time, though, articulation would not be possible without existing patterns of meaning and a shared field of discursivity. As this is the case, "all texts make references, explicitly or implicitly, to previous ones, and in doing so they both establish their own reading and become mediations on the meaning and status of others" (Hansen 2006, 55). The process of articulation, and the discourses that result from it, are, by definition, intertextual. Still, the concept of intertextuality can be useful in drawing specific attention to this dynamic. While intertextuality is often implicit, in the following chapters, we will also be able to observe explicit intertextuality: cases where discourses intentionally respond to others, and in so doing, reinterpret and reconstruct them. Moreover, since it is through the reading, repetition, and critique of

texts that discourses construct their authority (Hansen 2006, 55), an analysis of processes of intertextuality will help us examine how one discourse gained hegemony over others.

Given that all discourses are linked in this way, the field of relevant discourses to study should be examined as a *network* of texts. However, we can distinguish between different genres of texts depending on the "modalities of authority" that they employ (Hansen 2006, 56). Hansen develops three intertextual research models with specific analytical foci and objects of analysis (Hansen 2006, 59-68). With regard to foreign policy, she suggests that we could focus either on official discourse (model 1), the wider policy debate (model 2), cultural representations (model 3A), or marginal political discourses (model 3B). While model 1 is based on the discourse produced by official government bodies, model 2 broadens the scope to include the discourse of political opponents, the media, non-governmental organizations, etc., whereas models 3A and 3B are based on either wider and more marginal representations (Hansen 2006, 60-63).

In conducting ideology analysis, there is no one and only "logical" model, since ideology can, in theory as well as in practice, be found anywhere. However, we know that ideologies are often produced by political and intellectual elites (Freeden 2006, 14). That being said, it does not make sense for me to focus purely on parliamentary, government, or scholarly discourse. To give an example, although, in the 2003–2004 headscarf debates, it was the government and the members of the French National Assembly who had the official authority to pass a law excluding headscarved girls from republican classrooms, as we will see in Chapter 4, the discursive processes leading up to the adoption of the March 2004 law stemmed from an interactive process where journalists, civil society actors, and public intellectuals alike engaged in assigning a specific meaning to the exclusion. It is here that we can see the importance of an intertextual approach. All discourses contain traces of other discourses and they are often constructed in relation to other texts that either support them or contrast with them. Sometimes, the links that actors construct may surprise us. For instance, in Chapter 5, we will see how, during the work of a parliamentary commission, MP Jacques Myard referred to a play by the famous French author Jean Giraudoux, and philosopher Abdennour Bidar to the work of Emmanuel Levinas, thereby creating intertextual links across decades and textual genres.

Because of the importance of intertextuality, and because of the ways in which the construction of French republican ideology cuts across different discursive spheres (media, political, judicial, cultural, etc.), I have avoided delimiting the scope of my empirical analysis in strict terms of sphere,

genre, or actor. Instead, I have chosen to focus on *public discourse* – the process through which a variety of actors engage in the struggle to fix specific relations of signification. Hence, the only strict criteria for choosing which texts to study is their public character, i.e., the fact that they are made easily accessible to a wide audience. I will present the construction of my textual corpus in Section 3.5 below. For the time being, suffice it to note that my focus on public discourse corresponds, broadly, with Hansen's second model (i.e., the wider policy debate), insofar as I will take into account the discourses of the government, opposition parties, the media, public institutions, and civil-society organizations. The construction and contestation of dominant republican ideology stems from the interplay between the articulations of these various actors.

Moving on, the second step of constructing a poststructuralist research design concerns the "choice of Selves," i.e., the state, institution, or collectivity that we wish to focus on (Hansen 2006, 75).[5] As I am interested in French republican ideology, discourses of the "Self" are the ones that aim to – explicitly or implicitly – stabilize a meaning to "we, the (true) republicans," and, often, to exclude headscarved women from this group. As mentioned above, in French public discourse, individual and collective actors tend to refer back to republicanism and to portray themselves as the representatives of "true" republican values. In other words, through various strategies,[6] they engage in the discursive construction of legitimation, creating a political frontier between "true republicans" and those who are excluded from this group. As I am primarily interested in the version of republicanism that has gained hegemony, my focus will be on tracing that dynamic discourse through multiple actors who have succeeded in imposing their vision on others.

Third, I have chosen a temporal perspective that allows me to compare discourses not only across actors, but also, and more importantly, across time. Instead of focusing on one specific moment or on comparative moments, I have chosen to adopt a historical perspective and to analyze the evolution of discourse across a ten-year period. This allows me to shed light on the fact that the exclusion of headscarved women has been a gradual process. The historical perspective is also necessary in order

[5] According to Hansen, "[i]dentity is the ontological and epistemological center of postructuralist discourse analysis" (Hansen 2006, 37). She is therefore particularly interested in how "Selves" and "Others" are discursively constructed.

[6] Van Leeuwen (2008, 105-106) distinguishes between authorization, moral evaluation, rationalization, and mythopoesis.

for me to be able to analyze the gradual *sedimentation* of dominant republican ideology, as well as its ongoing contestation.

The fourth dimension of poststructuralist research design concerns the "number of events" that are the focus of analysis. In this work, my focus on four "veil affairs" helps generate knowledge about discursive changes, repetition, and contestation across moments that are relatively close in time. A further analytical advantage of multiple events or affairs is that it allows us to identify the production of discourse in different spheres. While all of the "veil affairs" are similar insofar as they prompted a public discussion about limiting Muslim women's right to display their religious beliefs, each affair is also different, for each concerns a specific space (the republican classroom, public space, private employment, and school trips). In addition, in each of the four affairs, the discourses circulated differently, stemming either from the media, from a cluster of politicians, from the courts, or from school administrators, yet propagating beyond and across these spheres. Taken together, these four controversies illustrate not only the *expansion* of a specific republican logic, but also the complex network of actors involved in its promotion.

I have summarized these four basic choices in Figure 3.2 below. My research design is shaped by the combined focus on a single country, on public discourse, historical development, and four "veil affairs." Having presented the framework for conducting my analysis, I will now turn to more specific questions, such as who creates ideology.

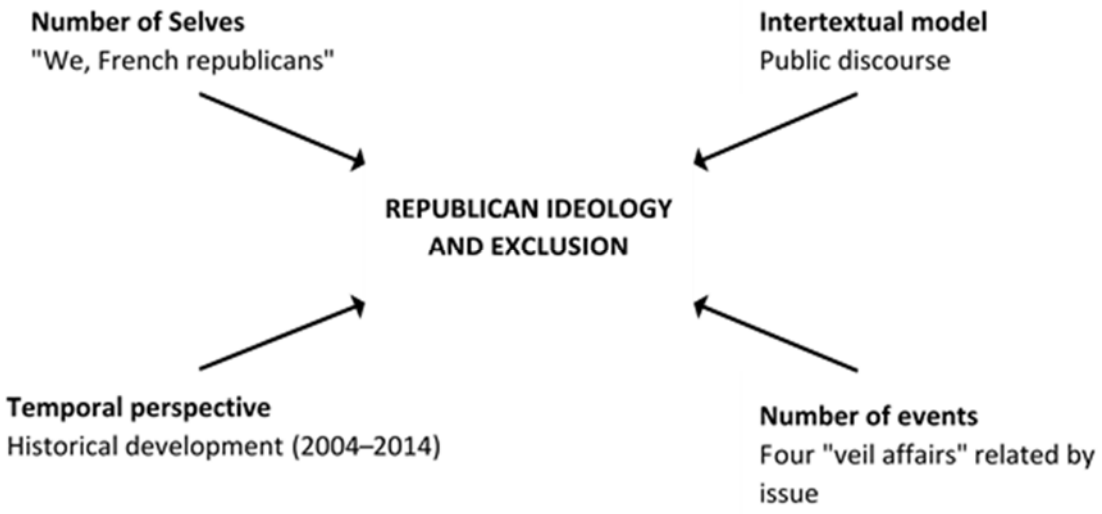

Figure 3.2 – The Research Design*. This figure illustrates the four dimensions that Hansen has suggested for developing a discourse analytical research design. Following her model (Hansen 2006, 81), I use this figure to summarize the basic choices that make up my research design.*

3.4 Who Creates Ideology? The Role of the French Intellectual Triad

Discourses and ideologies are, by definition, social. French republicanism is thus a set of beliefs that is socially shared and constantly reproduced through the process of articulation. Although I am primarily focused on the development of political ideas, the question of who will be heard, in the following chapters, is far from insignificant. Although countless individuals engage in ideological practices in their daily lives, not everyone is able to participate in public discourse to the same degree. Who are the actors who are capable and willing to voice their opinions in the public sphere? And who are the ones who succeed in imposing specific meanings on republican values over others?

As my focus is on public discourse, I will generally be more concerned with elite discourses than with grassroots projects of resistance. This does not mean that I reject Laclau and Mouffe's view according to which even hegemonic discourses are always unstable and open to re-articulation. On the contrary, I aim to show that the recent development of French republican ideology has been anything but given, as that the extension of exclusion has been repeatedly critiqued. However, the most marginal discourses – specifically, the discourses of headscarved women themselves – are rarely heard in the

public sphere. As this is the case, my analysis will be biased towards the discourses of the powerful elites who have the necessary resources to gain access to the public arena and to produce discourses that have authority and that others might come to view as "objective." In the following, I will briefly discuss the categories of people that are the major actors in the construction of republican values as they appear in public discourse.

French public discourse is shaped by the country's elite. The individuals who are most often heard in public discussion fall within three categories: politicians (career politicians, elected officials, and activists), intellectuals (including academics), and journalists. Together, these categories can be taken to form the French intellectual triad. The lines between the categories are blurred. As John Bowen writes: "French politicians, writers about public affairs, television 'talking heads,' and philosophers are much more likely to read one another's work, be related to one another, or indeed be the same person than is the case in most other countries" (Bowen 2007, 3). Indeed, in the following chapters, we will see how individuals move from being civil society activists to being political advisors, how academics turn to journalism, and how scholarly and political work overlap.

The insularity of French political elites has been a topic of interest for researchers (see, e.g. Bourdieu 1989; Birnbaum 1994; Dogan 1953; Dogan 1967; Cayrol, Parodi, and Ysmal 1973). It can, in part, be explained by the country's education system. Scholars who have examined the formation of French political and administrative elites have focused, in particular, on the role of the system of *grandes écoles* in providing a pathway to positions of power (Suleiman 1978; Suleiman 1974; Eymeri 2001; Garrigou 2016). Rouban's analysis of the entourage of executive powers from 1974 to 2012 shows that the majority of people working in the highest levels of political power were former students of at least one *grande école*. This was the case for 53.1% of the entourage of president Chirac, and 69.6% of that of president Sarkozy (Rouban 2012, 480). The relative homogeneity of French political elites does not stop with education. Despite some advances towards gender equality, men still dominate the political sphere (Jenson and Sineau 1995; Sineau and Tiberj 2007; Calvès 2016). Moreover, the number of elected officials from visible minorities remains small. In short, a number of factors – gender, race, class, age, education, etc. – contribute to an unequal access to the political sphere. Hence, not only are some political fora, such as parliamentary debates, reserved for elected representatives, but those representatives tend to share similar social attributes, thereby accentuating the patterns of inequality that exist in French society at large.

In a similar vein, elites and minorities have differential access to mass media. French media is highly centralized, and the major news agencies and papers are concentrated in Paris. Moreover, the relationship between political and media elites is so closely knit that they are sometimes referred to with the umbrella term of *classe politico-médiatique* (Dagnaud 1991). However, it is analytically useful to distinguish between the two categories of actors, as public discourse is usually generated as an interplay between them. On the one hand, journalists depend on political actors and institutions for information that is vital for their profession. On the other hand, they are eager to demonstrate their independence and critical approach. Similarly, while politicians rely on the visibility offered by the media to gain support and to transmit their message, they are also often eager to criticize journalists for misquoting them or misleading the public. From this complex interplay emerge discourses that cut across spheres and tend to dramatize political phenomena (Wacquant 1992; Mucchielli 2012a). Existing literature recognizes the important role that the media has played in the construction of the successive French "veil affairs" (Deltombe 2007; Thomas 2008b; Charaudeau 2015; Cabral Arêas 2016). From a discourse theoretical perspective, it is important to emphasize that there is no distinction between mediated and unmediated forms of social practice (Dahlberg and Phelan 2011, 5); the media constructs – rather than simply reflects – social reality in the same way as other actors.

Lastly, the role of French intellectuals is one of a kind. As we have already seen, the modern intellectual appeared in France with the seminal Dreyfus affair when Émile Zola and other representatives of the educated classes used their authority to condemn the imprisonment of Captain Dreyfus. In *J'accuse*, Zola defended the duty of the intellectual to defend republican values. In so doing, he "went from being a well-known author to being the celebrated defender of Republican virtues" (Kauppi 2000, 9). Especially since the Dreyfus affair, French intellectuals from Sartre to Bourdieu have continued to assume an active role in political life. In the following chapters, we will be able to observe the ways in which French intellectuals have mobilized either in favor or against headscarved women's exclusion. This mobilization has taken the form of petitions, manifestos, books, and interviews. Scholarly production on the "question of the veil" bears many similarities with other types of public discourse, as many researchers have tended to make their position for or against exclusion explicitly known (Galembert 2008). Scholars and philosophers have also been often heard by official bodies, such as parliamentary commissions. Since the debate surrounding the wearing on the headscarf has revolved around issues of gender equality, feminist intellectuals and activists, in particular, have had authority in the public discussion – some more than others, as my empirical analysis will show.

Although the French intellectual triad – politicians, journalists, and intellectuals – shares social attributes and participates in the same discursive processes, they obviously do not always agree. On the contrary, while French elites are all, in one way or another, influenced by republicanism, individuals hold different views on the specific meaning and demands of republican values. Indeed, the relevance of my research arises from the ongoing struggle to define the limits of visible religiosity in the republican context. Sometimes, we can observe a relatively clear division between categories of actors. For instance, in Chapter 5, we will see differences in the discourses of politicians and legal practitioners; and in Chapter 6, we will be able to analyze the discursive interaction between political elites and courts. Usually, however, dominant discourses tend to cut across different categories of actors and institutions.

In the following chapters, I will aim to offer to the reader the fullest possible picture of who is talking, for example by providing, usually in footnotes, biographical information about the relevant actors. The empirical chapters also include text boxes that "zoom in on" certain individual and institutional actors. Taking into account individual actors will also highlight the fact that many prominent members of the French political elites have changed their stance, shifting from a tolerant approach towards a more intransigent interpretation of *laïcité*.[7] Yet, ultimately, the individual trajectories of political actors are of secondary importance. Instead, what I wish to show is that French public discourse has developed in tandem with a multi-layered intellectual, political, and institutional network that shares a certain vision of republicanism. If ideology and exclusion are co-constituted, so are ideology and inclusion in the French elite. Therefore, in following the story of the development of republican morphology, we will also be able to observe the rise and fall of specific individuals and political groups. Of most importance for this study is the observation that a discourse that was, in the beginning, carried by a small group, has proliferated, becoming hegemonic across the usual political cleavages, many discursive arenas, and various institutions.

Finally, it is important to stress that, for the most part, the intentions of the actors are beyond the scope of this work. Although everything is ideological, the motivations of actors vary. While some may advocate difference-blind universalism out of a conviction of its truth, others may do so out of habit, in a voluntary attempt to exclude Muslims from the public sphere for electoral purposes, or for any range of possible motivations or combinations thereof. As an outside observer, however, I do not

[7] This was the case of former Minister of the Interior and President Nicolas Sarkozy and former Minister of Education Jack Lang, to give just a few examples.

have access to these intentions; I can only interpret specific discourses as they are articulated in the public sphere. More importantly, for the purposes of this work, intentions are beside the point. Firstly, my analytical focus is primarily on the development of political ideas, not on their advocates. Secondly, from a discourse theoretical point of view, what counts is not individual cognition, but how discourses are socially "read" and received.

3.5 Ideology as Discursive Data: Choosing Sources and Texts

Having defined the focus of my study in Section 3.3 above, a central methodological question remains: Which specific texts should be analyzed? In this section, I will discuss the process of selecting discursive data. I will particularly focus on the use of the Factiva database in locating moments of discursive effervescence, in constructing chronologies, and in identifying key texts as well as basic discourses. As the processes of constructing an empirical corpus and conducting empirical analysis have been closely intertwined, I will touch on both issues here. The more specific interpretative strategies will be discussed later, in Section 3.6.

As my focus is on public discourse, my corpus consists of empirical data that is freely accessible: press material, official documents, parliamentary debates, court rulings, books, reports, images, etc. I will refer to all of these documents as *texts* – concrete textual material where we can find discourses. Since I am interested in knowing how one type of discourse became hegemonic, I have been particularly interested in texts that has been distributed widely enough to be able to contribute to a seeming consensus. However, as noted above, each of the four "veil affairs" has its own specificities. While, in Chapter 4, many of the relevant processes can be located in the media, in Chapter 5, my focus is on the articulations of the 2010 parliamentary commission, and in Chapter 6, I will examine court rulings in detail. In other words, each empirical chapter has its own privileged sources where key texts can be found. Yet, as we know, language is social: what is said is also heard and interpreted. The discursive processes that interest me often imply going back and forth between different actors and spheres, moving from one articulation to its interpretation and instrumentalization, and mapping the texts and ideas that have an echo and those that do not. Hence, in each of my empirical chapters, I have drawn on a variety of sources and texts which, taken together, represent French public discourse.

In constructing my empirical corpus and in launching my analysis, I have made use of Factiva – a database which includes a wide range of media sources. I have, primarily, used Factiva in three ways: (1) to identify moments of discursive effervescence, (2) to construct chronologies, and (3) to identify key texts from a wide range of speeches, media coverage, and commentary. Factiva is an online database which includes 32.000 sources in 28 languages.[8] Owned by Dow Jones & Company, it is mainly marketed as a business tool. However, because of its scope and the because of the existence of academic license agreements, Factiva is also suited for academic research. For the purposes of this study, Factiva has the advantage of including most major French national and regional newspapers and news magazines. These include titles such as *Le Figaro*, *Les Échos*, *La Croix*, *Le Point*, *L'Express*, *Le Progrès*, *Le Journal du Dimanche, Le Nouvel Observateur, Le Bulletin Quotidien*, *Le Parisien*, *L'Humanité*, *Ouest France*, *L'Est Républicain*, *Sud Ouest*, *Midi Libre*, *La Dépêche du Midi*, *La Provence,* etc. Factiva also includes newswires from *Agence France-Presse*, France's major international news agency. Besides the traditional written press, Factiva also includes web news, blogs, pictures, and multimedia. All in all, for the time frame that is of specific interest to me (2004–2014), compared to other comparable databases (such as *LexisNexis*, *Europresse* or *PressDisplay*), Factiva offers the most comprehensive listing of French publications. However, due to Factiva's content restrictions on academic accounts, I have not been able to use it to gain access to certain major publications, such as *Le Monde* or *Libération*'s print version. For these missing sources, I have relied on *Europresse* to complement the data that I have obtained through Factiva.

In addition to Factiva's broad time frame – some of the French sources that are listed go back to the early 1990s –, the database also offers a sophisticated digital search engine. The search engine allows for a Boolean query (with the use of operators AND, OR, and NOT as well as parentheses) on four different axes,[9] making it possible, if necessary, to construct very precise search criteria. The search can also be constructed with the help of a number of filters, such as source, author, subject, region, language, etc.

As a first step in constructing the empirical corpus and starting data analysis, I have used Factiva to obtain rough statistical information about the development of French public discourse. Factiva is an interesting place to start, because media sources tend to reflect discourses that are more widely shared

[8] Factiva webpage, < http://www.dowjones.com/products/product-factiva/ >.

[9] "All of these words," "at least one of these words, "none of these words," and "this exact phrase."

within society. Seminal studies have shown that the way that the media constructs information can influence politics and agenda-setting (Champagne 1993) and contribute to the construction of "events" or "affairs" (Nora 1974). More specifically, we know that the media have played a significant role in the construction of the "veil affairs" (Deltombe 2007). I have therefore used Factiva as a tool in delimiting empirical data and in locating basic discourses.

In this preliminary stage of my empirical research, I conducted searches in the Factiva database, always limiting the search by language (French) and region (France). I usually did not apply other filters, allowing for results to include different authors, publications, subjects (for instance, education, politics, society, legal action, etc.), and content types (e.g., analyses, commentaries, editorials, images, interviews, press releases, etc.). In a very first step, I conducted searches for all dates with the goal of obtaining statistical information on how the "veil affairs" have been covered in the French press throughout the years. As a reminder, the "affairs" are taken as the primary *context* where the issue of republican values has been debated, the underlying assumption being that these public controversies crystallize the discursive processes that I wish to study. Figure 3.3 below shows the results for the Boolean search criteria "republic* OR républiq* AND voile OR foulard OR hijab OR niqab OR burqa." From this histogram, which covers close to 23,000 results, we can already start to identify the "veil affairs" as moments of discursive effervescence. To begin with, there is a small peak in 2003–2004 followed by an important rise in publications starting in 2009 and gaining scope in 2010. The first peak corresponds to the first affair: the controversy surrounding the wearing of the Islamic headscarf in republican classrooms. The major peak of 2010 reflects the discursive effervescence linked to the second affair: the public discussion about the possibilities of prohibiting face-covering in public space. The so-called Baby-Loup case and the question of "veiled" mothers and school outings are more diffuse in time, yet both have contributed to the high numbers of publications from 2010 to 2014. (A combined chronology of the "veil affairs" is available in the Appendix.)

From this general overview of newspaper articles, one can zoom into a given moment, topic, source, etc. For each of the four "veil affairs," I conducted independent searches in order to establish the relevant timelines for analysis. Also, in each of my empirical chapters, I have included a histogram which illustrates the development of public debate. Although these types of charts only provide a rough overview, when used in combination with detailed textual analysis, they are a relevant addition to my empirical demonstration.

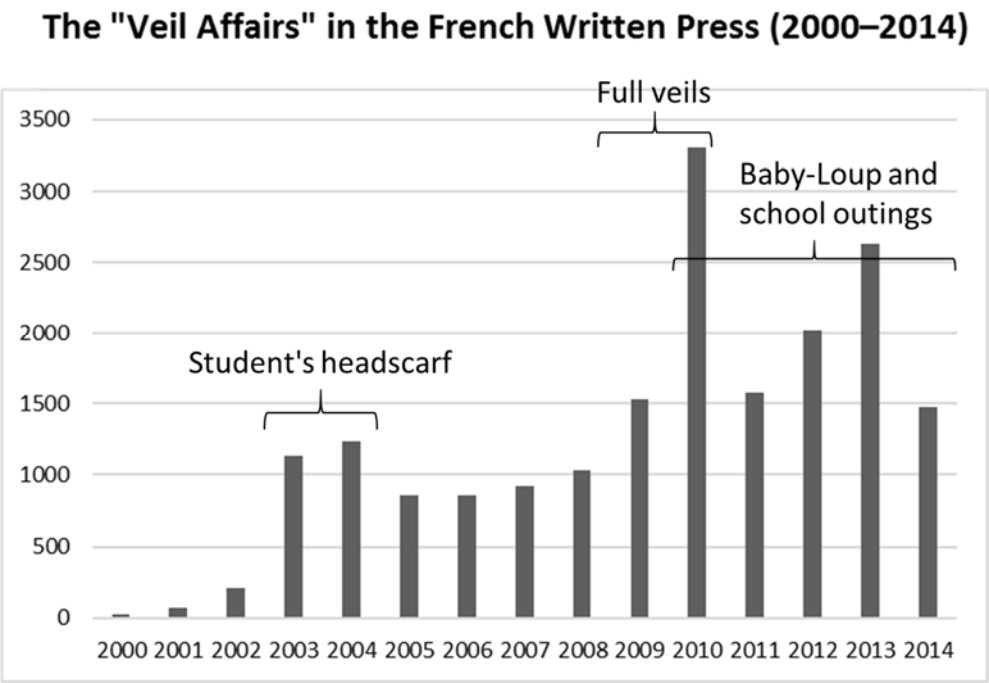

Figure 3.3 – The "Veil Affairs" in the French Written Press (2000–2014). *This histogram shows the number of texts published in the French written press listed in Factiva that correspond to the search criteria "republic* OR républiq* AND voile OR foulard OR hijab OR niqab OR burqa."*

In a second step, I have used Factiva to construct chronologies of the four "veil affairs." Indeed, a histogram which illustrates a given affair reveals the specific moments when a given topic was most discussed in the media. In most cases, such "peaks" in newspaper material corresponded to important events, such as the launch of a committee, the publication of a report, the passage of a law, a court ruling, etc. In this way, Factiva searches helped me establish relevant timelines and to reconstruct important sequences of events. In some cases, such searches yielded thousands of results. However, Factiva's display options facilitated the task of skimming through them. For instance, in examining first the title and lead paragraph, it was possible to cover long periods of time and to gain an overview of some of the most important concepts, events, and actors.

Third, Factiva has been useful in identifying key texts and basic discourses. By *key texts* I refer to texts that are frequently quoted and that hence have a privileged position within my empirical corpus (Hansen 2006, 85). These are texts which are widely read and discussed by politicians, commentators, and the wider public. Often, though not always, key texts have some type of formal authority (Hansen

2006, 85). For instance, presidential addresses fall within this category, as they have formal authority and are usually widely covered by the media and discussed by political supporters as well as opponents. I have also considered certain public reports, legal documents, petitions, and statements of prominent politicians as key texts, insofar as they have provoked widespread public interest. Broadly put, key texts are texts which usually make headlines and are quoted by all major newspapers. Because of the quasi-exhaustive listings included in Factiva, it has been a useful tool for identifying these texts. I have been able to access the key texts either directly through Factiva, or through the libraries and websites of various institutions.

Although key texts form the backbone of my empirical data, I have also included other, more general – or, sometimes, marginal – texts in the corpus. Typically, this *general material* includes an important number of newspaper articles, editorials, statements, communiqués, parliamentary debates, and various other publications, including academic ones. These texts, though not necessarily widely quoted, offer an important glimpse of the intertextual body from which key texts stem. Often, I have arrived at them by following intertextual links. For instance, in analyzing key texts, I have paid attention to explicit (and sometimes, implicit) references to other texts. I have then proceeded by adding these documents into the corpus, reading them, and repeating the procedure. By repeating this process many times over, it became possible to distinguish key texts from other texts which I included in the corpus as general material. The general material is pivotal inasmuch it allowed me to compare key texts with other texts, locating the articulations which had a definite echo from those that did not. Sometimes, I also intentionally searched for texts which were not referenced within the broader corpus in order to gain a better understanding of oppositional and marginal discourses. In these cases, I searched, for instance, the webpages of associations known for their critical views, looking for statements and communiqués that sought to challenge those of key texts.

Here we arrive at the essential question of identifying particular discourses. As key texts are widely read, they have a central role in defining dominant discourses. I have therefore used them to identify *basic discourses*. Following Hansen, I define basic discourses as ideal-typical structures which "point to the main points of contestation within a debate and facilitate a structured account of the relationship between discourses, their points of convergence and confrontations; how discourses develop over time in response to events, facts and criticism; and how discursive variations evolve" (Hansen 2006, 52). In other words, basic discourses are analytical constructs that allow me to map the

main positions in a debate, to understand which specific concepts or issues are contested, and to analyze morphological shifts. As this is the case, basic discourses emerge from a large body of texts. For instance, in Chapter 4, I have identified two basic discourses which offer different understandings of the meaning of *laïcité* within the republican-ideological value system. These discourses illustrate the main positions in the public debate concerning religious symbols in the republican school system. For each of the "veil affairs," I identified one to three basic discourses with different understandings of republican values. This approach allowed me to compare basic discourses across the various controversies and to examine the evolution of dominant discourse. Doing so implied combining synchronic as well as diachronic analyses. I will discuss these and other analytical strategies in the following section.

3.6 Interpretative Methods: Discourse Analysis and Deconstruction

Conducting ideology and discourse analysis does not mean depicting something from the "outside;" it is rather an attempt to understand discursive structures hermeneutically from the "inside" (Howarth 2000, 127). This perspective is built on the idea that all objects and practices are meaningful, and that social meanings are contextual, relational, and contingent. In this section, I will briefly discuss some of the interpretative strategies that I have employed in my research.

To begin with, building on Koselleck's concept-historical approach (Koselleck 1982; Koselleck 2002), my empirical analysis is two-dimensional: it relies upon a combination of synchronic and diachronic analyses. On the one hand, I have focused on *specific moments* in order to identify basic discourses and to compare their respective morphologies. In these moments, we can observe discursive struggles and dislocations: moments when the concepts of republican ideology come to be articulated in new ways. On the other hand, I have analyzed the *development* of specific concepts and discourses over longer periods of time. Each of the four "veil affairs" is, by itself, a sequence of events spanning over several years. Yet the four "veil affairs" can also be viewed as a single story about the development of dominant French republican thought. Analyzing the evolution of specific concepts, such as *laïcité*, allows us to see how its signifieds have broadened, and following the evolution of the dominant republican discourse sheds light on its sedimentation. In this work, I have constantly moved back and forth between synchronic and diachronic analyses. Figure 3.4 below illustrates this analytical approach.

Finally, my interpretative approach builds on two interconnected strategies: deconstruction and discourse analysis. Deconstruction implies showing how the relationships between signifiers are contingent. For instance, it means tracing how the concepts of *laïcité* and gender equality were constructed as adjacent Discourse analysis is a complementary strategy which consists in demonstrating how a particular view became hegemonic. In other words, if deconstruction is focused on demonstrating contingency, discourse analysis focuses rather on the sedimentation of a specific power relation.

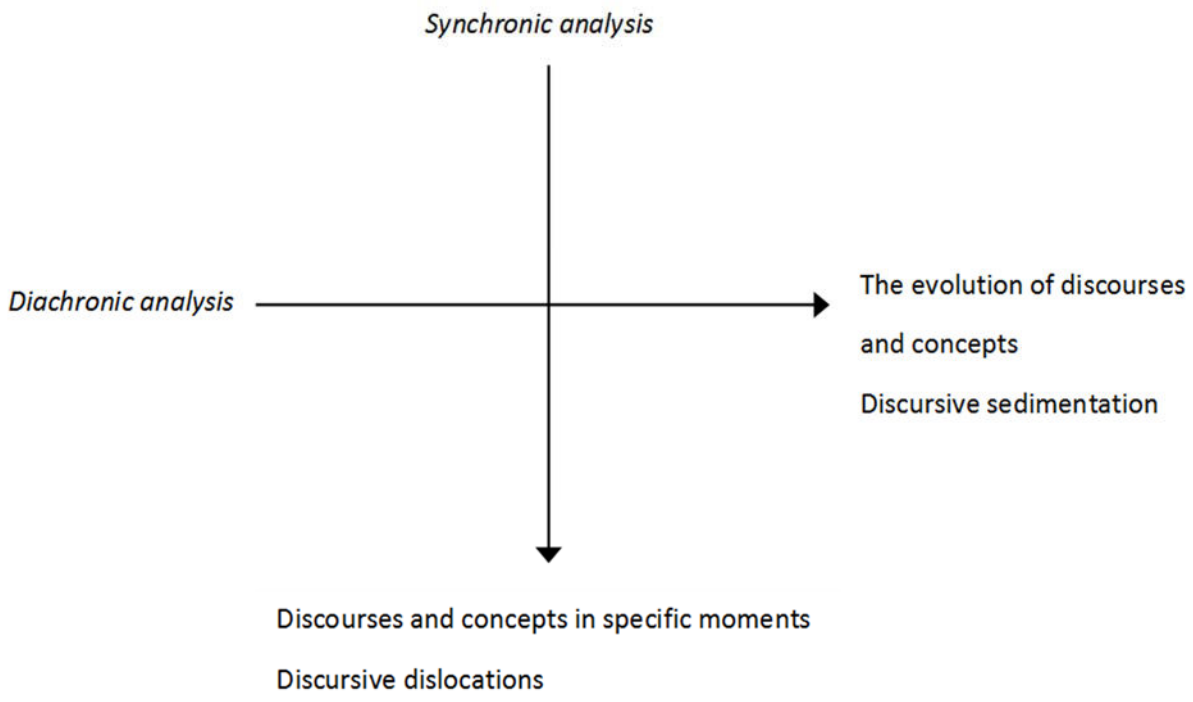

Figure 3.4 – Synchronic and Diachronic Analysis. *Adapted from Andersen (2003, 47).*

Textbox 1 -- A Note on Translation

As a study about republican ideology, this is also a study about the language of French politics. Moreover, the emphasis that discourse analysis puts on language makes questions related to the particular codes of the French language especially important. From a discourse theoretical perspective, language is a social epistemology, and linguistic codes do not necessarily carry the same meaning from one language to another. As this is the case, I have attached particular attention to contextualizing the construction of meaning in an attempt to make the political relevance of different types of articulation clearly visible to readers who might be less familiar with French political vocabulary.

The importance of language inevitably raises the problem of translation. Since linguistic signs and codes do not correspond across languages, translation implies a pure reconstruction of discourse. Yet, in conducting discourse analysis, we are always reconstructing, whatever the language of the original material may be. In fact, working in several languages has the advantage of forcing the researcher to stay very conscious of all discursive and ideological building blocks. Not a single citation has found its way in the pages of this work without the careful analysis that necessarily precedes the task of translation. Unless otherwise noted, all the translations in this work are my own. I also provide explanations in footnotes where a term seems to me of particular importance (such as *communautarisme* or *ostensible*). I urge the reader to consider all translations as provisional and imperfect, and to refer to the original French versions that are always provided in the footnotes.

Chapter 4

Headscarves in Schools: The Success of Sexularism

The processes through which the promotion of republican values came to signify the exclusion of headscarf-wearing Muslim women from public spaces are multiple and intertwined. Although the seeds were sown early on, the first major consequences – in terms of discursive as well as policy change – are visible in 2004 when the French National Assembly passed a law prohibiting the wearing of conspicuous religious symbols in public schools. As this is the case, I will begin my empirical analysis by looking at the controversy concerning the Islamic headscarf in the public school system, the most seminal of the French "veil affairs." My particular focus will be on the republican classroom – one of the first spaces where the headscarf became an issue of fervent attempts at decontestation. Indeed, beginning in 1989, the "question of the veil" (*la question du voile*) was debated in the French public arena with specific regard to the requirements of *laïcité* in the republican classroom. Yet it was not until 2004 that the National Assembly passed a law that excluded headscarved Muslim girls from the republican school system. How did this ban become possible, and more specifically, what does a morphological analysis of the public discourses that constructed these events reveal about the ideological dynamics in play?

The French debate on whether or not students should be allowed to wear the Islamic headscarf in public schools was long. However, this discussion was far from linear; it has known many highs and lows, and the question has been framed differently at different times (Winter 2008, 127). In Section 4.1, I will draw on secondary literature and a few primary sources to summarize some of the events that took place *before* the discourses directly preceding the 2004 headscarf ban. I will specifically focus

on two peaks in the public debate (1989 and 1993–1994) that can be seen as precursors to the 2003–2004 controversy and as the beginning of the French "republican revival." My discussion will show how the veiling issue – which had not caused significant unease when it had primarily concerned foreign-born Muslim women – became a heated topic of debate as the so-called second and third generation of immigrants entered adolescence. In many ways, then, the wearing of the Islamic headscarf, in the republican classroom in particular, came to crystallize the unfulfilled promises of republican integration, and headscarf-wearing Muslim girls became a visible reminder of the shortcomings of the French assimilationist stance. Most importantly, the headscarf issue prompted a public discussion about the meaning of the French principle of public secularism. A short summary of the debates surrounding *laïcité* will provide a counterpoint that will help tease out ideological dynamics later in my analysis. Indeed, Section 4.1 will show that even though the student's headscarf sparked political controversy since 1989, the discussion about *laïcité* in the republican classroom mostly focused on the question of integration and on the principle of religious freedom. Although the gender dimension was present in the debates, an outright ban on the Islamic headscarf was not feasible until 2004 – fifteen years after the first public controversy emerged.

Having presented these observations, I will conduct my empirical analysis in Sections 4.2-4.7. Drawing on a corpus of newspaper articles, parliamentary debates, official reports, books, and other data, I will examine the public discourses surrounding the veiling issue directly leading up to the passage of the 2004 law. The aim of this analysis is fourfold. First, it will show that the issue at stake in the headscarf debates was, indeed, republican values. In other words, I will empirically demonstrate that participants made arguments that revolved around defining the Republic and its normative underpinnings. In these discussions, everyone seemed to agree that republican principles needed to be safeguarded, but opposing camps had contrasting views of what this meant. The debates that followed not only exposed pre-existing ideological cleavages, but also produced new divisions and alignments within the republican field. As this was the case, the headscarf controversy emerged as a discursive site where different republican positions engaged in a battle over the definition of "true" republican values. My analysis will illustrate the processes through which different groups attempted to gain legitimacy for their understanding of genuine republican heritage, the correct attitude towards diversity, the fair treatment of minorities, and the proper limits of solidarity. In these discourses, they usually appealed

to some idea of "common good"[1] – as could be expected when political goals are articulated within the republican-ideological framework.

Second, and more specifically, this chapter will empirically demonstrate that, in these debates, both *laïcité* and women's rights were central targets of decontestation.[2] In other words, in the struggle between competing views on republicanism and the "question of the veil," participants strove to impose their ideas by limiting the range of possible meanings associated, in particular, with public secularism and gender equality. Since neither concept has a pre-given content – and since any concept can only gain a meaning in relation to other concepts – the discursive struggle over the meanings assigned to them can only be understood as a plethora of decontestation efforts. Although decontestation always concerns a morphology, by its very nature it also tends to focus on specific components. In this case, I will show that decontestation efforts concentrated on *laïcité* and women's rights.

Third, my discourse analysis will shed light on how these two – originally separate – values gradually became closer, and how this movement generated morphological changes. This chapter will illustrate that certain groups of actors encouraged the approach of the two topics, which had an effect on competing views on republicanism as well as on the overall debate on the headscarf and the Republic. When different actors laying claim to republican values engaged with the two concepts at the same time, they also came to define further ideological building blocks in new ways. In other words, when *laïcité* and women's rights were articulated close to each other, the meanings attached not only to the latter and to the former, but also to other terms – such as freedom of religion – tended to shift, thus paving the way for new ideas to be introduced into the debate.

Fourth, the aim of this chapter is to demonstrate how a particular republican morphology – one that was upheld by the adjacency[3] of *laïcité* and women's rights – gained prominence over others. Indeed, my text will illustrate how a specific discourse, first articulated by some, was quickly adopted by a range of actors. The fact that a major part of the French political elite voiced support for this particular version of republicanism accorded legitimacy to certain ideas while pushing others to the margins. This

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[1] As opposed to private or particular interests. On this topic, see Boltanski and Thévenot's (2006) theory of justification, which lays out different operations of generalization used in demands for justice.

[2] As explained in Chapter 2, ideologies are constantly in competition to impose certain meanings on their concepts. This is done through *decontestation*, i.e. the process of attempting to remove specific conceptual configurations from all possible contestation.

[3] For a definition of *adjacency*, see Chapter 2 above.

shift is apparent, among other things, in the ways that republican, *laïque*, and feminist subject positions were occupied. For example, we will see that those that the National Assembly recognized as "feminist" were those who held specific views on *laïcité* and republican integration. These processes led, in early 2004, to French MPs passing a law that institutionalized a specific view on *laïcité*, thereby also bolstering a version of republicanism that had a distinct understanding of women's rights. The ratification of the law offered a final seal of public validation to a discourse that had become dominant, and that would henceforth be enforced in an institution at the very heart of the Republic: the public school.

Finally, in the concluding section of this chapter (Section 4.8), I will argue that this first stage in the transformation of French republican ideology should be examined as a story of *sexularism* (Scott 2011, 91-116) – the confounding of *laïcité* and gender equality. In so doing, I will point to some of the ideational and material consequences of this conceptual proximity, thus opening avenues for the empirical analyses to follow. At the end of this chapter, we will have seen one of the first results of this adjacency: the exclusion of headscarf-wearing girls from the republican classroom – a space traditionally meant to foster inclusion and equality.

4.1 The Headscarf in the Republican Classroom (1989–1994)[4]

The series of controversies known as the "veil affairs" begun on September 14, 1989, when three girls refusing to remove their Islamic headscarves were expelled from a high school[5] in Creil, some

[4] There is a sizeable body of literature that examines the French headscarf controversies from their very beginning all the way to 2004 (and beyond). In this section, I will rely on this secondary literature in summarizing some of the events that took place between 1989 and 1994. I will do so while bearing in mind that much of the French-language academic literature is in fact part of the public discourse which forms my empirical corpus. As this is the case, I have, for the most part, given preference to English-language sources, such as John R. Bowen's *Why the French don't like headscarves* (2007), Joan W. Scott's *Politics of the Veil* (2007b), Bronwyn Winter's *Hijab & The Republic* (2008), and Christian Joppke's *Veil: Mirror of Identity* (2009). In particular, I draw heavily on Winter's work, for it offers a detailed account of the events. Whenever necessary, I will complete these sources with French publications – especially when they have been written by scholars who did not publicly engage in the controversy (for example by signing petitions or by appearing before the Stasi Commission), or when the information that they provide relates to the chronology of events or other such "bare facts."

[5] The school, *Collège Gabriel-Havez*, belonged to a ZEP (*zone d'éducation prioritaire*). These "priority education zones" had been established in 1981 to grant extra resources and additional autonomy to schools located in areas fraught with socio-economic problems. The ZEPs were usually characterized by their sizeable immigrant population, higher than average employment rate, and considerable teacher turnover. The ZEP program has since been replaced by other policy tools. For a general discussion of the ZEPs and schooling in the *banlieues*, see Bouveau and Rochex (1997), and for an analysis on the ideological underpinnings of the ZEP program, see Sénac (2000).

forty kilometers north of Paris. The decision was taken by Ernest Chénière, the principal of the school, who considered that the scarves worn by the two sisters of Moroccan background (Leïla and Fatima, aged thirteen and fourteen) and by their friend of Tunisian origin (Samira, aged fourteen) were in violation of French public secularism. Chénière referred to *laïcité* as an inviolable principle at the very heart of French republicanism, and to the school as its cradle (Scott 2007b, 22). The expulsion – which otherwise might have gone unnoticed – developed into a media frenzy, for it tapped into the question of the integration of immigrants and their descendants, the application of *laïcité*, and the rise of Islamism (Scott 2007b, 22-24). The expulsion of the three girls from their school was followed by a chain reaction where the media took up similar incidents from other schools, teachers went on strike, and Muslim groups organized a demonstration to support the girls (Winter 2008, 131). So began the series of events that *Le Monde* would later refer to as a "national psychodrama" and the "veil saga" (*Le Monde*, October 20, 1994, quoted in Winter 2008, 130).

The first to react publicly to the events that had taken place in Creil were organizations such as *SOS-Racisme*, *Mouvement contre le racisme et pour l'amitié des peuples* (MRAP), and *Ligue des droits de l'homme* (LDH), all three of which joined local groups in condemning the girls' expulsion (Rochefort 2002, 146). However, faced with what had quickly become a national controversy, the main political parties took some time to react, for they were fraught with internal divisions on the issue (Gaspard 2006, 76). At the time when the Creil affair erupted, Lionel Jospin was Minister of Education for the ruling Socialist government. Jospin – who voiced his opinion a little over a month after the conflict broke out – stressed the need for dialogue and argued in favor of a flexible approach to the application of *laïcité*. The Minister of Education emphasized that "no child should be deprived of his or her right to an education" (*Le Monde*, October 28, 1989, quoted in Winter 2008, 134), and made it publicly known that he wanted to prohibit the expulsion of headscarved girls. When Jospin announced in the National Assembly that "the school must not exclude because its purpose is inclusion,"[6] his statement received booing from both the political right and the left (Gaspard 2006, 76). Yet Jospin was not alone in wishing to "exclude exclusion." He was supported by Minister of Culture Jack Lang (PS), as well as by Prime Minister Michel Rocard who rejected "the reductionist choice that would lead, in concrete terms, to an opposition between secularism and refusal of exclusions" (*Le Figaro*, November 10, 1989, quoted in Winter 2008, 134). A few days before Jospin took a position on the issue, the lenient stance of Danielle

[6] "*L'école ne peut pas exclure car elle est faite pour accueillir*," quoted in Gaspard (2006, 76).

Mitterrand, wife of then President François Mitterrand, had also caused a stir. In *Le Figaro*'s October 23 issue, which included a series of reactions to the Creil affair, Madame Mitterrand (the only woman cited on the topic) had stated that all traditions should be respected, "whatever they may be" (Winter 2008, 134).

Although Jospin's tolerant attitude was supported by a part of the government, it also brought out fractures, thereby revealing the existence of another, stricter approach to *laïcité*. This second approach fell along the lines adopted by Ernest Chénière: it took the inviolability of *laïcité* as its starting point, and argued that the prohibition of religious symbols was applicable even for students. This "intransigent" approach was defended, among others, by Jean-Pierre Chevènement (Minister for Defense, PS), Henri Emmanuelli (Vice-president of PS), Laurent Fabius (former Socialist Prime Minister), and Pierre Mauroy[7] (also a former Socialist Prime Minister) (Winter 2008, 134-135). Through the opposition that emerged in reaction to Jospin's lenient approach, the Creil affair reinvigorated a form of *laïcité* that "had been considered dead": the *laïcité* of combat (*laïcité du combat*)[8] (Joppke 2009, 36). In fact, the two camps that adopted different stances on the expulsion of headscarved girls basically embodied the old tension between "liberal" and "statist" conceptions of public secularism (Koenig 2015, 47).

The reemergence of an intransigent *laïcité* of combat is particularly obvious in an open letter that five public intellectuals addressed to the Minister of Education in November 1989. Published in *Le Nouvel Observateur* (November 2, 1989) under the title "*Profs, ne capitulons pas !*" ("Teachers, let's not give in!"), the letter attacked Jospin's position.[9] The five signatories were Élisabeth Badinter, a historian

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[7] Pierre Mauroy had been Prime Minister when the Socialist government had initiated a project for unifying national education by cutting funding from private schools (known as the Savary project after the name of then education minister, Alain Savary). After strong opposition from the pro-Catholic right as well as from Catholic schools and the French Catholic Church, Mauroy resigned from his position in 1984 (Kuru 2009, 156).

[8] "*Laïcité du combat*" could also be freely translated as "assertive public secularism," but I will use the literal translation to preserve the original idea of a battle.

[9] The use of public letters addressed to government officials has long roots in France, the most famous historical example being Zola's "*J'accuse,*" published during the Dreyfus affair. "*Profs, ne capitulons pas !*" represents a similar genre insofar as it was signed by public intellectuals expressing their outrage at what they considered to be an injustice committed by those in power. As we will see throughout this work, such letters – published on the pages of major national newspapers – would form an important part of the public debate during the "veil affairs" either by setting the tone for the discussions or by crystallizing different discursive positions. In fact, during these debates, participants even drew explicit parallels between the ongoing headscarf controversy and the Dreyfus affair (Galembert 2008, 20; for an example of this, see Grupper et al. 2004).

and a professor of philosophy known for her writings on women and motherhood;[10] Régis Debray, a philosopher and author[11] who would later become a member of the Stasi Commission and a co-founder of *Comité Laïcité République*; Alain Finkielkraut, a vocal critic of multiculturalism known for his work on anti-Semitism as well as on schools;[12] Élisabeth de Fontenay, a philosophy professor and an ardent defender of animal rights,[13] and Catherine Kintzler, a philosopher interested in issues of public secularism and republican values.[14] As Winter has noted, the three women signatories were, at the time, "among the rare women to be granted media access on the issue" (Winter 2008, 135). In their manifesto,[15] addressed to Lionel Jospin, the intellectuals – who were considered left-wing – targeted the tolerant position held by the Minister of Education:

> The future will tell us whether the bicentenary [of the French Revolution] will have seen the Munich of the Republican school.[16] […]
>
> The partisans of the "new *laïcité*" among whom you [Jospin] place yourself advocate a blurry tolerance. They want a school open to communalist [*communautaire*], religious, and economic pressures, a school were each teacher is obliged to conform to the social environment […]. In our society, the school is the only institution reserved for universality. This is why free women and men are not ready to make concessions on the principle of its independence […].[17]

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[10] Badinter is the author of *L'amour en plus: histoire de l'amour maternel XVIIe-XXe siècle* (1982). Her further publications include *L'un est l'autre: Des relations entre hommes et femmes* (2002), *Fausse route* (2003, published in English in 2006 under the title *Dead End Feminism*), and *Le conflit: La femme et la mère* (2011, published in English in 2011 under the title *The Conflict: How Modern Motherhood Undermines the Status of Women*).

[11] Debray's later publications include, *La République expliquée à ma fille* (1998) and *Ce que nous voile le voile: La République et le sacré* (2003).

[12] Finkielkraut's publications include, among many others, *The Imaginary Jew* (1997), *Au nom de l'autre: réflexions sur l'antisémitisme qui vient* (2003), *Le livre et les livres: entretiens sur la laïcité* (2006), and *La querelle de l'école* (2007).

[13] De Fontenay's books on the issue include *Le silence des bêtes: La philosophie à l'épreuve de l'animalité* (1998), *Sans offenser le genre humain: Réflexions sur la cause animale* (2008), and (with Alain Finkielkraut) *Des hommes et des bêtes* (2000).

[14] Kintzler's work includes *La République en questions* (1995), *Tolérance et laïcité* (1998), *Qu'est-ce que la laïcité ?* (2007), *Penser la laïcité* (2013).

[15] The full letter can be found online at < http://www.laicite.fr/voile-profs-ne-capitulons-pas/ >.

[16] "*L'avenir dira si l'année du Bicentenaire aura vu le Munich de l'école républicaine*," *Le Nouvel Observateur*, "Profs, ne capitulons pas !," November 2, 1989.

[17] "*Les partisans de la 'nouvelle laïcité', au rang desquels vous vous placez, prônent une tolérance indistincte. Ils veulent une école ouverte aux pressions communautaires, religieuses, économiques, une école où chaque professeur est tenu de se plier à l'environnement social […]. Dans notre société, l'école est la seule institution qui soit dévolue à l'universel. C'est pourquoi les femmes et les hommes libres ne sont pas prêts à transiger sur son indépendance de principe […]*," *Le Nouvel Observateur*, "Profs, ne capitulons pas !," November 2, 1989.

> Neutrality is not passivity, nor liberty simple tolerance. *Laïcité* has always been a power struggle [*rapport de forces*]. Is the moment when religions are again acquiring a taste for battle the right time to give up what you call "*laïcité* of combat" in favor of good intentions? *Laïcité* is and will remain, as a matter of principle, a battle, much like the public school, the Republic, and liberty itself. Their survival demands of all of us discipline, sacrifices, and a little courage.[18] […]
>
> The face of French democracy is the Republic. Devoted to free choice, attached to the development of knowledge, and confident in the sole natural enlightenment of Man, the School is the foundation of the Republic. This is why the destruction of the School would precipitate that of the Republic.[19]

In this 1989 letter, the five intellectuals – who would go on to play central roles in the "veil saga" – attacked Jospin's tolerant position to *laïcité* by dramatically comparing it with the 1938 Munich Agreement. In so doing, they created a parallel between Jospin "capitulating" to the demands of religious minorities and President Daladier caving in to Nazi Germany during the Sudeten crisis. They further argued that the accommodation of religious difference would not only bring down the Republican school, but also hasten the fall of the very value system that the Republic was built upon. What was at stake, for the authors, was nothing less than the survival of the Republic itself. The letter painted a picture of urgency: the downfall of the republican school system and its underlying values could only be avoided by the state adopting a rigorous approach to *laïcité*. Indeed, in their efforts to remove *laïcité* from contest, the authors argued the *laïcité* of combat was the one "true" approach to public secularism – one that Jospin was, in their eyes, abandoning.

To emphasize this point, the intellectuals referred to the tolerant approach as the "*new laïcité,*" thereby dismissing the fact that French secularism has always consisted of both rights-based and unity-based elements. In fact, according to Joppke, it was the *laïcité* of combat – rather than the tolerant approach – which had been withering and was now reemerging (Joppke 2009, 36). Interestingly, though, this time the *laïcité* of combat was not so much directed towards religious behavior as it was

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[18] "*Neutralité n'est pas passivité, ni liberté simple tolérance. La laïcité a toujours été un rapport de forces. Est-ce au moment où les religions sont de nouveau en appétit de combat qu'il faut abandonner ce que vous appelez la 'laïcité de combat' au profit des bons sentiments ? La laïcité est et demeure par principe une bataille, comme le sont l'école publique, la République et la liberté elle-même. Leur survie nous impose à tous une discipline, des sacrifices et un peu de courage*," *Le Nouvel Observateur*, "Profs, ne capitulons pas !," November 2, 1989.

[19] "*La figure française de la démocratie a pour nom République. […] Vouée au libre examen, liée à l'essor des connaissances et confiante dans la seule lumière naturelle des hommes, la République a pour fondement l'École. C'est pourquoi la destruction de l'École précipiterait celle de la République*," *Le Nouvel Observateur*, "Profs, ne capitulons pas !," November 2, 1989.

against what the authors considered the new, lax approach to religious expression (Joppke 2009, 37). All in all, the two republican positions that took form during the Creil affair – on the one side, the "tolerants," on the other, the "intransigents" – revealed that, from the very beginning, the headscarf controversy was a discursive struggle between political actors who all agreed on the importance of *laïcité* but deeply disagreed on its meaning.

Indeed, a week after the publication of "*Profs ne capitulons pas !,*" the tolerant approach to *laïcité* was defended in a letter which also focused on defining the principle of public secularism. In a rebuttal of the intransigents' manifesto, another group of five public intellectuals took a stand against the exclusion of headscarved girls. The letter, published in *Politis*[20] on November 9, 1989, was titled "*Pour une laïcité ouverte*" ("For an Open-Minded *Laïcité*"). It was signed by Joëlle Brunerie-Kauffmann, a gynecologist known for her role in the fight for the right to contraception; Harlem Désir, the president of the anti-racist organization *SOS-Racisme*;[21] René Dumont, engineer, sociologist, and ecologist; Gilles Perrault, author and journalist; and Alain Touraine, a sociologist known for his work on social movements and a future member of the Stasi Commission.[22] The authors denounced the intransigents' message about the "Munich of the Republican school," and, instead, referred to the expulsion of Muslim students as the "Vichy of the integration of immigrants"[23] (quoted in Rochefort 2002, 21). In so doing, they, too, made use of the memory of the Second World War, though the picture that they painted referred to the questionable legitimacy of France's pro-Nazi puppet government. Indeed, the group of intellectuals implicitly compared the expulsion of headscarf-wearing girls to the actions taken by the Vichy regime in its attempts to establish a social order based on the *national* (versus Republican) community – one that would exclude groups that were considered "inassimilable" (Rousso 2007).[24] This "Vichy of integration" was, according to the authors, the fault of "unadulterated *laïcists*"[25] (quoted in Rochefort 2002, 153) – those focusing single-mindedly on the defense of public secularism, thereby failing to take into account issues of postcolonial prejudice and institutional racism. In opposition to the

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[20] *Politis* is a left-wing magazine published weekly.

[21] As we will see, *SOS-Racisme* would later, under a different president, change its position on the issue. Harlem Désir would go on to become a Socialist deputy.

[22] Although Touraine continued to support a tolerant view of *laïcité* and multiculturalism (Touraine 1997), as a member of the Stasi commission he, too, came to change his mind and to favor the headscarf ban.

[23] "*Vichy de l'intégration des immigrés*."

[24] The Vichy regime represented a major rupture in French history. In fact, during the Vichy years, the French Republic was even officially renamed the "French State" ("*État français*"). For a presentation, see Rousso (2007).

[25] "*Laïcistes purs et durs*."

intransigents, this second group of intellectuals appealed to the 1905 law and argued for a tolerant approach to *laïcité* which would leave room for cultural diversity (Rochefort 2002, 21). The authors also warned that a headscarf ban would increase the power not only of Muslim fundamentalists, but also of extreme nationalists such as the *Front National* (Kuru 2009, 126).

Because of the attention received by the Creil affair – and the critique he had received from within and outside his party – Jospin submitted the issue to the Council of State (*Conseil d'État*), France's Supreme Administrative Court[26] (Scott 2007b, 24). By transferring the issue from the political to the legal arena, Jospin was attempting to counter the critique he had received by circumscribing the debate within the limits set by existing legislation (Galembert 2007, 99-100). The Council of State's decision[27] – which would become the legal framework on the issue for fifteen years – was handed down on November 27, 1989. In this *avis*, the Court referred to a long list of laws, including, among many others, the Declaration of the Rights of Man and of the Citizen (1789), the European Convention on Human Rights (1950), and the French Law on the Separation of Churches and State (1905). The decision also made reference to the law of July 10, 1989 on education, and specifically to its first article, which concerned "the right to an education and freedom of expression of school students within the context of respect for 'neutrality and plurality,' and their requirement to attend classes and respect teaching activities" (Winter 2008, 137). Furthermore, the Council of State called attention to the law of August 2, 1989, concerning the conditions of entry and residence of foreigners in France, which dealt with "non-discrimination by public authorities against individuals or groups on the basis of nationality, ethnicity, or religion" (Winter 2008, 138). The main points of the Council of State's ruling were included in the following sentence:

> […] [I]n schools, the wearing by students of symbols expressing religious affiliation is not by itself incompatible with the principle of *laïcité*, insofar as this principle constitutes freedom of expression and freedom to demonstrate religious beliefs, but this freedom should not permit students to display religious symbols which, by their very nature, or by the conditions in which they are worn individually or collectively, or by their ostentatious [*ostentatoire*][28] nature or display of protest, would constitute an act of pressure, provocation, proselytism, or propaganda; or breach upon the dignity or liberty of the student or other members of the educational community; or compromise

[26] The Council of State is the highest court for matters of public administration. It also monitors the constitutionality of new legislation and functions as the government's legislative advisor.

[27] *Avis* no. 346.893, published online at < http://mafr.fr/media/attachments/2012/9/10/CE_27_11_1989.pdf >.

[28] As noted above, I translate "*ostentatoire*" as "ostentatious" to differentiate it from "*ostensible*" (the word used in the 2004 law, which I consistently translate as "conspicuous").

> their health or security; or disturb the running of teaching activities or the educational role of the teachers; or finally would disrupt the order in the school or the normal functioning of public service.[29] (Conseil d'État 1989.)

The Council of State's decision was, on the one hand, perfectly clear: it stated that the wearing of religious symbols by students in public schools was *not* prohibited by the principle of *laïcité*. More precisely, the *avis* noted that for students, public secularism signified "freedom of expression and freedom to demonstrate religious beliefs," thereby establishing that the expulsion of headscarved girls constituted discrimination. On the other hand, the ruling was ambiguous insofar as it left the definition of multiple issues – such as the meaning of "ostentatiousness," "provocation," "proselytizing," etc. – open to interpretation. In fact, the ministerial circular[30] that Jospin sent to schools following the Council of State's decision advised schools to evaluate case by case, depending on the specific context, whether or not the wearing of religious symbols would be allowed (Scott 2007b, 25). As this was the case, school administrators were in practice left with the power to determine their own regulations on the issue (Winter 2008, 138). On the whole though the Council of State's 1989 ruling came down on the side of the tolerant approach to *laïcité* which emphasized individual rights and freedom of conscience.

The Creil affair ended with the two girls of Moroccan origin returning to school and agreeing to remove their scarves when entering the classroom.[31] The third girl did not consent to this solution and was therefore never readmitted in spite of the Council of State's judgment. The compromise that had been reached did not remove hijabs from schools; they remained in schoolyards and hallways, and usually students only removed them during class (Scott 2007b, 25-26). Although the media discussion over the question waned for some time after the Council of State's decision, in several places Muslim

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[29] "[…] *[D]ans les établissements scolaires, le port par les élèves de signes par lesquels il entendent manifester leur appartenance à une religion n'est pas par lui-même incompatible avec le principe de laïcité, dans la mesure où il constitue l'exercice de la liberté d'expression et de manifestation de croyances religieuses, mais que cette liberté ne saurait permettre aux élèves d'arborer des signes d'appartenance religieuse qui, par leur nature, par les conditions dans lesquelles ils seraient portés individuellement ou collectivement, ou par leur caractère ostentatoire ou revendicatif, constitueraient un acte de pression, de provocation, de prosélytisme ou de propagande, porteraient atteinte à la dignité ou à la liberté de l'élève ou d'autres membres de la communauté éducative, compromettraient leur santé ou leur sécurité, perturberaient le déroulement des activités d'enseignement et le rôle éducatif des enseignants, enfin troubleraient l'ordre dans l'établissement ou le fonctionnement normal du service public*" (Conseil d'État 1989).

[30] *Circulaire du 12 décembre 1989*, available at < http://www.assemblee-nationale.fr/12/dossiers/documents-laicite/document-2.pdf >.

[31] The girls had, in fact, been urged to do so by the king of Morocco who had personally involved himself in resolving the conflict. While this is, in itself, quite astonishing, it is also important insofar as the pressure on the girls to take off their scarves came, in a way, from their own community (Scott 2007b, 25).

girls continued to be expelled from their schools (Bowen 2007, 87; see also Winter 2008, 166-176). Many of the students in question appealed to the courts and numerous cases went all the way to the Council of State. Out of the forty-nine cases treated by the Council of State between 1992 and 1994, forty-one ended in verdicts favoring the girls (Korteweg and Yurdakul 2014, 24).[32] An important legal precedent among these rulings was the Council of State's *arrêt* of November 2, 1992, concerning the so-called "Kherouaa affair" (Joppke 2009, 39). In this legally binding judgment,[33] the Council of State reaffirmed its 1989 decision by ruling that internal school regulations banning religious symbols were illegal, thereby nullifying the expulsion of three girls from their school in the Parisian *banlieue* of Montfermeil (Joppke 2009, 39). In other words, during the years that followed the Creil affair, the Council of State continued to enforce its "liberal" or "tolerant" interpretation of the principle of *laïcité*, which meant that students could legally only be expelled if the school was able to prove that they had, for example, threatened public order, engaged in proselytizing, or endangered the safety of themselves or others.

However, in spite of the Council of State's position, in 1993 another headscarf controversy emerged which received widespread media attention and spurred a new peak in public debate. The affair took place in Nantua, a town in Eastern France, and it concerned four girls who had been given the right to wear their scarves in the classroom, but had been asked to remove them during gym class (Bowen 2007, 87). When the girls refused and the administration was still evaluating the situation, the majority of teachers from the school in question went on strike, claiming that the Islamic headscarf was not only dangerous during gym classes, but also "discriminatory in its treatment of girls and segregationist [….] It is a provocative act contrary to the values of the Republic which are freedom, equality, fraternity and secularism, and that jeopardizes integration of students into French society" (*Le Monde*, October 12, 1993, quoted in Winter 2008, 170). Muslim authorities – in their apparent attempt to provide assistance to the girls, though the effect was opposite – hurried to proclaim that Islam *required* that women cover their heads (Bowen 2007, 87). As a result, many came to consider that the Nantua girls had been manipulated by a strict interpretation of Islam and that they should be seen as the victims (Winter 2008, 172). The Nantua affair did in fact involve an overt Islamist presence, for the girls had

[32] In the eight cases in which the expulsions of headscarf-wearing girls were upheld the students and their parents had organized demonstrations and were therefore seen as having disrupted "public order" (Kuru 2009, 127).
[33] Ruling no. 130394.

distributed religious tracts and organized demonstrations outside of their school with the visible support of members from Islamist groups (Winter 2008, 171-172).[34]

Prompted by the Nantua case and other similar affairs, François Bayrou (UDF),[35] Minister of Education for the right-wing coalition[36] government of Édouard Balladur (RPR), issued, on October 26, 1993, a ministerial circular concerning *laïcité* in public schools.[37] Bayrou's circular reiterated the Council of State's 1989 decision and stressed the links between *laïcité* and republican values: "From the outset, the Republic has passed on its values through schooling. Freedom and secularism naturally appear among these values. Principals must rank respect for this heritage first among their concerns" (quoted in Winter 2008, 171). The circular did nothing to prevent conflicts from continuing to break out between headscarf-wearing girls and school administrators. For example, in a highly mediatized controversy that emerged in Grenoble in early 1994, a high-school student who had been expelled went on a hunger strike, set up camp outside of her school, and repeatedly proclaimed to the international media that she had converted to the Muslim faith all on her own and that the wearing of the headscarf was her free choice (Bowen 2007, 88).[38]

Following the Nantua and Grenoble cases, the question of regulating on *laïcité* was again on the table. By then, Ernest Chénière – the principal of the school in Creil where the first conflict had erupted – had been elected as deputy for the center-right *Rassemblement pour la République* (RPR). First thing in office, Chénière prepared a bill in order to ban all "ostentatious" (*ostentatoire*) religious symbols from state schools (Scott 2007b, 26). When the debate had lasted for almost a year, François

[34] The Council of State would later, in 1995, reject the appeal of the students, stating that the girls had participated in activities that had disrupted the order of the school (Winter 2008, 190).

[35] The *Union pour la démocratie française* was a center-right party.

[36] This electoral coalition, *Union pour la France* (UPF), formed by *Rassemblement pour la République* (RPR) and *Union pour la démocratie française* (UDF), had won the 1993 general elections.

[37] Circular no. 93-316.

[38] As Bowen has noted, the two cases that received attention during the 1993–1994 school year illustrate one of the questions at the very heart of the affairs: free choice and agency. Whereas the Nantua case served as a useful reference point for those who considered that Muslim girls wore the headscarf under pressure from Muslim patriarchy and religious authorities, the Grenoble affair supported the view that the girls, on the contrary, were agents making their own, independent, choices (Bowen 2007, 88).

Bayrou – who had in 1993 favored a tolerant position similar to Jospin's (Manceron 2005, 66)[39] – announced his willingness to prohibit religious symbols from the public school system (*Le Point*, September 10, 1994, quoted in Winter 2008, 178). Indeed, on September 20, 1994, Bayrou issued a new ministerial decree – the one that would become known as the "Bayrou circular" (*circulaire Bayrou*).[40] In this official notification, the Minister of Education referred to a certain idea of republican citizenship – one that not only consisted of individual rights, but also provided a "common destiny" (*communauté de destin*) (Bayrou 1994). He further argued that the school held a privileged position in the development of this republican project:

> This [republican] ideal is constructed first in the school. The school is, *par excellence*, the place of education and integration where all children and youth meet, learn to live together and to respect each other. The presence, in this school, of symbols or behaviors which indicate that they cannot conform to the same obligations, nor follow the same lessons or the same curricula, would be a negation of this mission. At the school gates must stop all discrimination, whether based on sex, culture, or religion.[41] […]
>
> That is why it is not possible to accept, in schools, the presence of symbols that are so ostentatious [*ostentatoire*] that their meaning is precisely to separate certain students from the rules of living together in the school. These symbols are, in themselves, elements of proselytism […].[42]

With this 1994 formulation, Bayrou changed the ministerial guidelines and reinterpreted the Council of State's 1989 *avis*. He argued in favor of a unity-based approach to French republicanism which basically gave priority to cohesion and integration at the expense of individual rights. In so doing, the Minister of Education informed schools that the conduct of headscarved students no longer needed to be taken into consideration in assessing the cases, for certain symbols could *in and of themselves* be

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[39] Moreover, during the 1989 Creil affair he had argued that "any gesture of exclusion could bring about the development of Koranic schools, which would be much more detrimental to integration than the wearing of the veil over hair" (quoted in Winter 2008, 178).

[40] The full text can be found at < http://www.assemblee-nationale.fr/12/dossiers/documents-laicite/document-3.pdf >.

[41] "*Cet idéal se construit d'abord à l'école. L'école est, par excellence, le lieu d'éducation et d'intégration où tous les enfants et tous les jeunes se retrouvent, apprennent à vivre ensemble et à se respecter. La présence, dans cette école, de signe et de comportement qui montreraient qu'ils ne pourraient pas se conformer aux mêmes obligations, ni recevoir les mêmes cours et suivre les mêmes programmes, serait une négation de cette mission. À la porte de l'école doivent s'arrêter toutes les discriminations, qu'elles soient de sexe, de culture ou de religion*" (Bayrou 1994).

[42] "*C'est pourquoi il n'est pas possible d'accepter à l'école la présence de signes si ostentatoire que leur signification est précisément de séparer certains élèves des règles de vie commune de l'école. Ces signes sont, en eux-mêmes, des éléments de prosélytisme […]*" (Bayrou 1994).

considered as forms of proselytism. In other words, Bayrou drew a difference between "discreet" and "ostentatious" symbols, banning the "ostentatious" ones as contrary to commonly held republican values. The Bayrou circular even included a specific formulation that the Minister suggested should be included into each school's internal regulations (Bayrou 1994).

As a result of the Bayrou circular, more than a hundred girls were expelled from their schools for wearing the Islamic headscarf (Bowen 2007, 90). In order to deal with the increase in expulsions, the government appointed Hanifa Chérifi,[43] a woman of Maghrebin origin, as official mediator in affairs concerning the Islamic headscarf. As had been the case in 1989, the media took up the topic with gusto, and many of the old arguments were voiced in the public debate. However, whereas in 1989 the debate had focused on integration and *laïcité*, in 1994 the public discussion concentrated more on the extent to which headscarf-wearing girls were being manipulated by Islamist groups (Winter 2008, 185).

Many of the girls who were expelled appealed about the decisions. Finally, in an *arrêt* handed down on July 10, 1995, the Council of State confirmed its 1989 judgment: the wearing of the Islamic headscarf alone was not sufficient grounds for expulsion (Debré 2004, 94). The Council did not accept Bayrou's interpretation according to which certain symbols could be disconnected from their users' intentions, and therefore instructed teachers, once again, to take into consideration how the students conducted themselves. With time and through the work of state-appointed mediator Hanifa Chérifi, the number of conflictual cases decreased (Chérifi 1996). In some schools, the compromises consisted of allowing girls to wear small bandanas to cover their hair, and in others, the headscarf was allowed, but girls needed to bring it down to their shoulders during class (Scott 2007b, 29).

From this summary of the first "veil affairs" in French public debate (1989 and 1993–1994), several conclusions can be drawn. To begin with, we have seen that the discourses surrounding the wearing of the Islamic headscarf in state schools were, from the very beginning, linked to the fundamental question of republican values. Indeed, it is not insignificant that the Creil affair erupted in 1989 during the bicentenary of the French Revolution – a moment when republican heritage was widely celebrated, but also a moment when its future was generally perceived to be threatened (Galembert 2008, 21). From Jospin's initial position to the Council of State's 1989 ruling and further to the 1994

[43] Chérifi would later become a member of the Stasi Commission as well as a member of the High Council for Integration. She is author of the book *Nous sommes tous des immigrés* (2003, with Roger Fauroux) as well as of an official report on the application of the 2004 law (Chérifi 2005).

circulaire Bayrou, the above-quoted discourses have illustrated the centrality of republican values – such as integration and freedom of religion – to the public debate surrounding the Islamic headscarf. Yet they have also demonstrated that the protagonists in these debates were mainly concerned with how students' religious insignia fit into the French framework of public secularism. In fact, we have seen that actors formed alliances in support of different understandings of *laïcité*, thereby making the issue of public secularism a definite focal point for public discourse and political mobilization. In addition, we can observe that the pro-ban coalition cut across political cleavages. This was unprecedented, insofar as right-wing politicians have traditionally criticized "intransigent" approaches to *laïcité* and favored state subsidies for private (Catholic) schools (Kuru 2009, 155-157). When the headscarf controversy emerged, however, factions of the French political left and right set some of their disagreement aside, as figures from both sides came together to promote a strict interpretation of *laïcité*.

Finally, and most importantly, this section has shown that, during the early debates, neither the "intransigents" nor the "tolerants" made claims that would have substantially focused on the topic of gender equality. Although some feminists participated in the discussions,[44] and even though the gender dimension was present in the debates,[45] the question of the equality of the sexes remained relatively distant from the battle that was being waged between competing visions of *laïcité*. When the debate reappeared in 2003, this distance would start to decrease.

4.2 The Headscarf Controversy Reemerges: From Security to Schools (2002–2003)

Although a vocal pro-ban coalition had emerged during the 1989–1994 controversies, major political figures had continued to endorse – and to enforce – the tolerant approach to visible religiosity; the Council of State had maintained its 1989 decision; and those hoping to legislate on the headscarf had not gained important momentum. In this section, I will move on to examining the public discourses

[44] For example, Élisabeth Badinter and Gisèle Halimi, president of the feminist organization *Choisir la cause des femmes* (who had previously resigned from *SOS-Racisme* because its slogan, "*Touche pas à mon pote*," could not be declined in the feminine form). Other feminist NGOs such as *Planning familial*, *Ligue du droits des femmes* and *Rupture* had also voiced their opposition to the headscarf (Rochefort 2002, 149).

[45] For example, in the 1989 letter "*Profs ne capitulons pas !*," the authors made reference to the Islamic headscarf as a "symbol of women's submission," and argued that allowing it to be worn in public schools would be like "giving a blank check" to Muslim patriarchy (Badinter et al. 1989). Other examples include the Council of State mentioning that one of the roles of the school was to "guarantee and to favor equality between men and women" (Conseil d'État 1989), and the Bayrou circular stating that "discrimination must end at the school gates" (Bayrou 1994).

that finally led, in early 2004, to the French National Assembly passing a law prohibiting the wearing of conspicuous religious symbols in public schools. My empirical analysis sheds light on the crucial processes through which the public promotion of republican values came to signify the exclusion of headscarf-wearing Muslim women from public spaces. More specifically, the remainder of the chapter illustrates how the pro-ban coalition gradually gained supporters for a strict interpretation of *laïcité*, and how, through the passage of the 2004 law, the "intransigents" succeeded in according a privileged status to their republican morphology, thus already setting it apart from its competitors. As we will soon see, this gradual progression and eventual institutionalization of a specific republican morphology was also mirrored in whose voices were heard – and echoed – in public discourse. Indeed, the media did not grant all actors similar access to the public arena, and official bodies such as the Stasi Commission only invited certain people to intervene in its deliberations. I argue that these issues reflect deeper changes within the French republican field. More precisely, I suggest that they illustrate the adjacency of *laïcité* and gender equality within a pro-ban ideology that was gradually gaining steam.

Although the headscarf debates had calmed down from the 1993–1994 peak, by the beginning of the millennium the "question of the veil" had become a recurring theme in French public discussion. The reemergence, in 2003, of a more vehement debate must be understood against discursive developments that took place during the Chirac presidency.[46] To begin with, the French political discussion had taken a turn towards the securitization of issues surrounding immigration and integration (Mucchielli 2006b; 2006a; 2012b). This turn was, on the one hand, fueled by the rise of Jean-Marie Le Pen's *Front National* (FN), and on the other hand, taken up by the political left during Lionel Jospin's Socialist government (1997–2002) (Deltombe 2007, 285-287). Indeed, the *Parti socialiste* (PS) had made security one of its political priorities, which is apparent, among other things, in the passage of the 2001 law on civil protection.[47] This law – ratified in the immediate aftermath of the September 11 attacks – included not only a range of measures to combat terrorism (e.g. reinforcing security controls in airports), but also aspects that touched the "immigrant" population of the *banlieues*[48] (e.g., prohibiting

[46] I refer specifically to the end of Chirac's first term (1995–2002) as well as to the beginning of his second term (2002–2007).

[47] *Loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne*.

[48] The word "immigrant" is used in a specific way in French public discourse. On the one hand, it is used loosely: it often refers to immigrant origins rather than to the experience of migration. On the other hand, in the context of the *banlieues* – disadvantaged neighborhoods known for their poverty, social housing projects, and urban violence – the populations it refers to are rather specific: they mostly originate from the southern hemisphere, mainly from Africa.

gatherings in the hallways of apartment buildings).[49] Hence, in retrospect it can be argued that the historic "earthquake" of April 21, 2002 – Jean-Marie Le Pen defeating Lionel Jospin and moving to the second round of the presidential elections[50] – was not so much a sudden political shift as it was a reflection of the predominance of a securitizing discourse that cut across the French political spectrum.[51]

The security dimension of French political discussion was reiterated – as well as vocally criticized – in the debates that took place during the second round of the presidential election between Le Pen and Chirac. As almost all political parties – with the obvious exception of the FN – rallied *against* Le Pen, Chirac was reelected president with a landslide of votes in May 2002. His party *Rassemblement pour la République* (RPR) was soon afterwards reconfigured and later renamed *Union pour le mouvement populaire* (UMP). At the start of Chirac's second term, Jean-Pierre Raffarin became Prime Minister and Nicolas Sarkozy was appointed Minister of the Interior.[52] The explicit priority of the UMP-led government, at the specific request of the President of the Republic, was to tackle the issue of "security."[53] President Chirac had already stated during the campaign that security was to become a priority – among other things by alluding to the insecurity of the *banlieues*:

> Violence is changing the face of our Republic. […] With the increase of violence, it is the cohesion of our society which is in question, our republican model which grows weaker, and the social bond which stretches thin – for security is at the very root of our social contract.[54] […]
>
> Although insecurity is present everywhere, it affects the most vulnerable among us first. The many women, men, and youngsters who wonder in what state they will find

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[49] The law sparked wide-spread media debate about security needs. It was criticized, among others, by the *Commission Nationale Consultative des Droits de l'Homme* (CNCDH), the *Ligue des droits de l'Homme* (LDH), and the *Mouvement contre le racisme et pour l'amitié entre des peuples* (MRAP).

[50] This event was generally referred to in French public discourse as having had the shocking effect of an earthquake (*le séisme Le Pen*).

[51] Whatever part the PS played in bringing about its own electoral defeat, it cannot be denied that the events of April 21, 2002, were a profound shock not only for the political left, but more generally for a big part of the French population.

[52] Following the presidential election and Jospin's resignation, Raffarin's government was appointed in May 2002. A second Raffarin government was named in June 2002 after parliamentary elections, and a third one in March 2004 after regional elections.

[53] *Le Figaro*, "La sécurité, nouveau priorité du gouvernement," May 9, 2002; *Le Figaro*, "Sécurité: le gouvernement passe aux actes," May 16, 2002.

[54] "*La violence est en train de changer le visage de notre République. […] Avec la montée de la violence, c'est la cohésion même de notre société qui est en cause, c'est notre modèle républicain qui s'affaiblit, c'est le lien social qui se distend, car la sécurité est à la racine même du pacte social,*" Jacques Chirac's speech, February 19, 2002: < http://discours.vie-publique.fr/texte/027000050.html >.

> their cars the following day, who return to their apartments by worn-down elevators or through shabby stairways, and who do so by steering clear of the more or less threatening groups stationed at the entrance.[55]

When the Raffarin government assumed its functions in May 2002, its first official act was the creation of a new security council (*Conseil de Sécurité Intérieure*) – an electoral promise that Chirac had made in the above-quoted February speech. The spiral of securitization continued in public discourse throughout the year as the Minister of the Interior, Nicolas Sarkozy, decided to tackle the problem of "immigrant gang-leaders" in "rough neighborhoods."[56] The tough measures adopted by the government led to several cases of police foul-ups[57] as well as to the National Assembly passing a new law on juvenile delinquency.[58] In spite of criticism from a part of the political left as well as from civil rights activists, Sarkozy gained popularity with his strict approach to security,[59] and the Minister of the Interior went on to playing an important role in the ratification of a number of new laws on security and immigration.[60]

It was in this general context that Sarkozy participated in the annual congress of the Union of Islamic Organizations of France[61] (UOIF), held in Le Bourget on April 20, 2003. In a speech[62] given in front of thousands of Muslim participants, the Minister of the Interior started by congratulating the

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[55] "*Si l'insécurité est présente partout, elle frappe d'abord les plus vulnérables d'entre nous. Ces femmes, ces hommes, ces jeunes si nombreux, qui se demandent dans quel état ils vont retrouver leur voiture le lendemain, qui regagnent leur logement par un ascenseur ou une cage d'escalier détériorés, en évitant de regarder les groupes plus ou moins menaçants qui stationnent près de l'entrée*," Jacques Chirac's speech, February 19, 2002:
< http://discours.vie-publique.fr/texte/027000050.html >.

[56] *Le Figaro*, "Sarkozy en lutte contre les caïds de banlieue," May 18, 2002.

[57] For example, a death in Dammarie-les-Lys in May (*Les Échos*, "Mort du jeune blessé par un policier," May 23, 2002) and another one in Pantin in July 2002 (*Le Figaro*, "Poursuivi, il tombe du quatrième étage," July 17, 2002).

[58] *La loi n° 2002-1138 du 9 septembre 2002 d'orientation et de programmation pour la justice*, known as the "First Perben law" (loi Perben I).

[59] On December 27, 2002, *Le Figaro* referred to Sarkozy as "the most popular politician in France," and the media started to speak of "Sarkomania" with reference to the Minister of the Interior's effect on the general population as well as on his peers.

[60] These include two laws on internal security (*Loi n° 2002-1094 du 29 août 2002 d'orientation et de programmation pour la sécurité intérieure, Loi n° 2003-239 du 18 mars 2003 pour la sécurité intérieure*), a law on immigration and nationality (*Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité*), and a law on asylum seekers (*Loi n° 2003-1176 du 10 décembre 2003 relative au droit d'asile*), to name some of the first ones.

[61] *L'Union des Organisations Islamiques de France.*

[62] *Intervention de Nicolas Sarkozy, ministre de l'Intérieur, de la sécurité intérieure et des libertés locales*:
< http://www.interieur.gouv.fr/fr/Archives/Archives-ministre-de-l-interieur/Archives-de-Nicolas-Sarkozy-2002-2004/Interventions/19.04.2003-20eme-rassemblement-annuel-de-l-UOIF >.

French Muslim leaders for the creation and successful elections of the French Council for the Muslim Faith[63] (CFCM), which was to become the official representative of the Muslim population in discussions with the government: "It is a victory for the Muslims of France who have shown their willingness to live their religion in peace and respect with the values of the Republic."[64] At first, Sarkozy's message received applause: "It is not acceptable that, in France, a Muslim would be considered different from any other citizen."[65] In order to combat the unequal categorization of citizens, Sarkozy stressed the need for religious leaders to be "fully immersed" in French culture and values. As the speech progressed, it increasingly revolved around the idea of the "law of the Republic," a law explicitly rooted in the principle of *laïcité*:

> *Laïcité* is a founding principle of our Republic. Far from being the enemy of religions, *laïcité* lays down the principle that the Republic guarantees religious activities, whatever the religion may be, without privileging a single one. In other words, as long as religion is compatible with the law of the Republic, everyone is free to practice their religion.[66]
>
> […] Religion – as long as it clearly respects the values of the Republic – transmits positive values and integration. […] Today you give Islam the right to be seated at the table of the Republic just like other religions. This demands that Islam be perfectly respectful of the laws of the Republic.[67]

According to Sarkozy, the primacy of republican laws – *laïcité* in particular – needed to be protected because of the social unrest of the *banlieues* where "the rule of gangs has attempted to compete with the law of the Republic."[68] Towards the end of his speech, the minister also gave another example of the priority of the secular law of the Republic:

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[63] *Le Conseil Français du Culte Musulman.*

[64] "*C'est une victoire pour les musulmans de France qui ont témoigné ainsi de leur volonté de vivre leur religion dans la paix et le respect des valeurs de la République*," Nicolas Sarkozy, April 20, 2003.

[65] "*Il n'est pas acceptable qu'en France un Musulman soit considéré comme un citoyen différent*," Nicolas Sarkozy, April 20, 2003.

[66] "*La laïcité est un principe fondamental de notre République. Loin d'être l'ennemi des religions, elle pose le principe que la République garantit l'exercice du culte, de tous les cultes, sans en privilégier un seul. En d'autres termes, dès lors que la religion est compatible avec la loi de la République, chacun peut être libre de pratiquer son culte*," Nicolas Sarkozy, April 20, 2003.

[67] "*La religion, dès lors qu'elle respecte clairement les valeurs de la République, est porteuse de valeurs positives et d'intégration. […] Vous donnez aujourd'hui à l'Islam le droit de s'asseoir à la table de la République au même titre que les autres cultes. […] Ceci exige que cet Islam soit parfaitement respectueux des lois de la République*," Nicolas Sarkozy, April 20, 2003.

[68] "*Des cités ont vu la loi des bandes tenter de rivaliser avec celle de la République*," Nicolas Sarkozy, April 20, 2003.

Textbox 2 – *Conseil français de culte musulman* (CFCM)

The creation of the French Council for the Muslim Faith (CFCM) in 2003 was an important step in the process of institutionalizing the "Islam of France." It was the culmination of a political and bureaucratic process aiming to monitor and to domesticate Islam. This project stemmed from the creation, in 1991, of the *Conseil de réflexion sur l'islam de France* (CORIF), an initiative of then Minister of the Interior Pierre Joxe which was maintained by successive French governments. The role of Minister of the Interior Nicolas Sarkozy as well as that of his predecessor, Jean-Pierre Chevènement, were crucial in the establishment of the CFCM in the spring of 2003. This event had important value both institutionally and symbolically: it represented the Republic recognizing French Islam, thereby contributing to legitimizing and normalizing the presence of Islam in France alongside other major religions. The CFCM brings together important Islamic organizations, such as the Union of Islamic Organizations of France (UOIF), the National Federation of the Muslims of France (FNMF), and the Paris Mosque. It is a national elected body which serves as an official interlocutor with the state in the regulation of Islamic worship and public ritual practices.

(Source: Galembert 2003; Galembert and Belbah 2005.)

> There cannot be, in France, an Islam that would hold a discourse contrary to republican values. That kind of Islam is illegal in France and it will have consequences. […] This law [of 1905] is just and applies to everyone whatever their religion may be. The law demands that the photos on national identity cards, whether they be of a woman or a man, show the head uncovered. This obligation is respected by Catholic nuns as it is by all women living in France. Nothing could justify women of Muslim faith benefitting from a different law.[69]

This part of Sarkozy's speech received booing and whistling from the crowd where many women wearing the headscarf were seated.[70] Several newspapers decided to make a leading story out of the speech, and the media coverage that followed concentrated, in particular, on the question of the

[69] "*Il ne peut y avoir en France d'Islam porteur d'un discours contraire aux valeurs Républicaines. Cet Islam est en France illégal et j'en tirerai toutes les conclusions. […] Cette loi [de 1905] est juste et elle s'applique à tous quelle que soit leur religion. […] La loi impose que sur une carte nationale d'identité, la photographie du titulaire soit tête nue que ce soit celle d'une femme ou d'un homme. Cette obligation est respectée par les religieuses catholiques, comme par toutes les femmes vivant en France. Rien ne justifierait que les femmes de confession musulmanes bénéficient d'une loi différente*," Nicolas Sarkozy, April 20, 2003.

[70] A video is available on the website of the INA: < http://www.ina.fr/video/2283045001025 >.

Islamic headscarf. Although Sarkozy had only mentioned the veiling issue in passing, the media eagerly took up the topic – by then a most familiar theme in French public debate. The fact that the minister gave his speech the day before the anniversary of April 21 – when *Front National*'s Le Pen had beaten Socialist Jospin to the second round of the presidential elections – did not go unnoticed either. "To mark the anniversary of Le Pen's success, Nicolas Sarkozy shows himself as the defender of republican principles," *Ouest France* titled its story; [71] "Sarkozy rekindles the debate on the Islamic veil," announced *Le Figaro*.[72]

Following Sarkozy's Le Bourget speech and the re-launch of the debate on the veil, French public discourses revolved around the idea of protecting the Republic. As had been the case during the early headscarf controversies, this discussion mainly focused on the principle of *laïcité.* Moreover – and, again, in line with earlier debates – passport photos and other such topics were immediately forgotten, as talking about *laïcité* almost always shifted to the issue of its application in schools. For example, the parliamentary debate[73] of April 29, 2003 – a little over a week after Sarkozy's speech – proceeded in the following manner:

> **François Baroin** (UMP)[74]: […] every day brings further proof of the relevancy of the question of *laïcité*. Wars are again waged in the name of God. Conformist Europeans ponder a mention about religious heritage in the future constitution. Turkey joining the EU sparks lively debate. But beyond these issues, the development of communalism[75] is in contradiction with the republican project of integration […].
>
> What should one do when a future lawyer wishes to take her oath wearing a veil; when a student refuses to take an exam with a teacher because she is a woman; when a young girl refuses to be treated by a male doctor; when teachers can no longer teach

[71] *Ouest France*, "Pour marquer l'anniversaire du succès de Le Pen, Nicolas Sarkozy s'affiche en défenseur des principes républicains," April 22, 2003.

[72] *Le Figaro,* "Sarkozy relance le débat sur le voile islamique," April 21, 2003.

[73] Journal officiel de la République française du mercredi 30 avril 2003, compte rendu intégral, 2e séance du mardi 29 avril 2003: < http://www.assemblee-nationale.fr/12/cri/2002-2003/20030195.asp#PG2 >.

[74] A deputy of the leading UMP party, Baroin was a prominent figure in the political debate on *laïcité*. At the request of Prime Minister Raffarin, he would go on to write a public report on the issue. The report, published in May 2003, argued that *laïcité* should be defended against "multiculturalism" and by proposing a "code of *laïcité*" which would ban headscarves from schools (Baroin 2003).

[75] The French word "*communautarisme*" holds a more far-reaching – and usually more pejorative – meaning than the English "communautarianism." In this work, it will be consistently translated as "communalism," i.e. allegiance to one's ethnic or religious group (as opposed to the Republic as a whole).

> such and such part of the curriculum? Is it not time, Prime Minister, to forcefully reassert the rather basic idea that *laïcité* is the first guard and the last defense for the unity of the nation?[76]
>
> **Jean-Pierre Raffarin** (UMP): I do not think we need to be afraid of religions, provided that they accept the superior principle of republican organization which is *laïcité*. The Republic must clearly state that *laïcité* means freedom: freedom of conscience, freedom of religion, equality between all religions. The Republic must guarantee the equality of all citizens. A teacher does not have, in his class, Catholics, Jews, Protestants, or Muslims: there are only French youth who are all members of the republican community![77]
>
> This is why we need to reaffirm forcefully the principle of *laïcité* which is at the root of our republican principles. […] We will not touch the 1905 law, […] but it is true that a debate on the school and on its future has now begun in all of France! We all fully believe that the school is the primary republican space. We need to make sure that, in schools, the supreme value of the Republic is protected, and that ostentatious signs of communalism will not interfere with the stability of that space.[78]

This portion is illustrative of how *laïcité* can be linked to a variety of questions from foreign policy to EU affairs, and how it can be taken to concern issues ranging from courts to hospitals and to

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[76] "*[…] chaque jour apporte la preuve de l'actualité du thème de la laïcité. Des guerres sont à nouveau menées au nom de Dieu. Les conventionnels européens s'interrogent sur la mention de l'héritage religieux dans la future Constitution. L'adhésion de la Turquie à l'Union européenne suscite toujours un vif débat. Mais, au-delà de ces sujets, le développement des communautarismes s'oppose au projet républicain d'intégration […]. Que faire quand une élève avocate demande à garder son voile pour prêter serment, quand un élève refuse de passer un examen avec une enseignante au motif que c'est une femme, quand une jeune fille renonce à se faire soigner par un médecin parce que c'est un homme, quand des enseignants ne peuvent plus enseigner telle ou telle partie du programme ? N'est-il pas temps, monsieur le Premier ministre, de réaffirmer avec force l'idée, au fond assez simple, selon laquelle la laïcité est la première sentinelle et le dernier rempart de l'unité de la nation ?,*" compte rendu intégral, 2e séance du mardi 29 avril 2003:

< http://www.assemblee-nationale.fr/12/cri/2002-2003/20030195.asp#PG2 >.

[77] "*Je ne crois pas qu'il nous faille avoir peur des religions, à condition qu'elles acceptent le principe supérieur d'organisation républicaine qu'est le principe de laïcité. […] la République doit dire clairement que la laïcité c'est la liberté, la liberté de conscience, la liberté de religion, l'égalité entre toutes les religions. La République doit assurer l'égalité pour tous les citoyens. Le professeur n'a pas, dans sa classe, des catholiques, des juifs, des protestants ou des musulmans ; il a des jeunes Français qui sont tous des membres de la communauté républicaine !,*" compte rendu intégral, 2e séance du mardi 29 avril 2003: < http://www.assemblee-nationale.fr/12/cri/2002-2003/20030195.asp#PG2 >.

[78] "*C'est pourquoi il nous faut réaffirmer avec force ce principe de laïcité, fondateur de nos principes républicains. […] Nous ne toucherons donc pas à la loi de 1905 [...] mais il est vrai qu'un débat sur l'école et son avenir est engagé aujourd'hui dans toute la France ! Nous sommes tous convaincus que l'école est l'espace premier de la République. Nous devons veiller à ce que l'on protège bien, dans l'école, cette valeur suprême qu'est la République et à ce que des signes ostentatoires de communautarisme ne viennent pas rompre notre équilibre scolaire*," compte rendu intégral, 2e séance du mardi 29 avril 2003: < http://www.assemblee-nationale.fr/12/cri/2002-2003/20030195.asp#PG2 >.

varying levels of education. However – and as had been the case since the Creil affair – the sphere that the discussion focused on was the "primary republican space" – the public school. Moreover, the quote shows that the headscarf controversy emerged, once again, as a discursive site for formulating the republican values of integration, equality, and freedom of religion. In rekindling the controversy, Sarkozy's speech therefore also revived the old battle between different understandings of *laïcité*. Indeed, politicians who had previously expressed their support for banning the headscarf from schools jumped at the chance to repeat their aversion to the "veil" and to reintroduce the issue to the political agenda (Lorcerie 2005). One of the first to do so was Minister of Education Luc Ferry[79] who had, in February 2003, expressed his "personal" opposition to the Islamic headscarf and voiced his concern for the increase of "communalist confrontations" in schools.[80] Ferry had also stated that if the Council of State's judgment did not exist, he would prohibit the wearing of religious symbols in the public school system.[81] When the debate was relaunched in April, the Minister of Education immediately called for a law that would consolidate *laïcité* in public schools, claiming that now was the time for public authorities to "forcefully reaffirm" the principles of the Republic.[82]

For some, it seems, this call came "fourteen years too late,"[83] for, as I have shown, a coalition of actors had been campaigning since 1989 to ban the headscarf from schools.[84] Several prominent figures took a stand in favor of a new law. Alain Juppé, President of the UMP, said that "the legislator must act responsibly,"[85] and François Baroin, UMP spokesperson, claimed that a new law "could not be avoided."[86] MP Yves Jégo (UMP) joined them in arguing that "since the *laïque* and republican common

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[79] Luc Ferry is a philosophy professor whom François Bayrou had previously appointed to the Ministry of Education. He is distantly related to Jules Ferry, the father of public education and an important figure in the republican "hall of fame."

[80] *Les Échos*, "Luc Ferry hostile au port du foulard à l'école," February 6, 2003.

[81] *Le Figaro*, "Ferry contre le foulard à l'école," February 6, 2003.

[82] *Reuters*, "Ferry annonce une loi sur la laïcité à l'école," April 22, 2003. However, as the debates progressed, Ferry's position on the issue became vaguer.

[83] *L'Express*, "Le voile à l'école – Quatorze ans de retard," April 30, 2003.

[84] Indeed, secondary literature suggests that the reemergence of the issue was not linked, for example, to a significant rise in the number of headscarf-wearing girls, or to a specific incident (as had, to some degree, been the case with the early controversies). As Lorcerie (2005, 14) has noted, Sarkozy's Le Bourget speech became an incident because a specific group of actors took it up with the objective of reintroducing the issue on the political agenda.

[85] "*Le législateur doit prendre ses responsabilités*," quoted in *AFP*, "Foulard - Jean-Pierre Raffarin ferme sur les principes, prudent sur la méthode," May 4, 2003.

[86] "*On n'échappera pas à un texte*," quoted in *AFP*, "Foulard - Jean-Pierre Raffarin ferme sur les principes, prudent sur la méthode," May 4, 2003.

sense does not prevail on its own, it is urgent to legislate,"[87] and asked for a law that would prohibit the wearing of all religious symbols in public schools. Jégo's call for a new law was not insignificant, for he was a member of the High Council for Integration[88] (HCI) – an institution created by the government in 1989 to offer expert non-partisan information on integration and to tackle the headscarf issue (Beaugé and Hajjat 2014). The HCI brought together actors from different parts of the French elite (politicians, senior bureaucrats, academics, activists, and journalists), and it had been an active participant in the debates since the early headscarf controversies, thereby also playing a key role in the construction of the French "Muslim question" as a political problem (Beaugé and Hajjat 2014). I will return to the HCI, its changing composition and internal fractions later in this work. For now, suffice it to note that the HCI, with its high profile and its particular position at the intersection of political, administrative, and academic arenas, was one of the major actors in the debates, therefore also adding authority to its members' public appearances.

Besides Ferry, Juppé, Baroin, and Jégo, other high-profile figures taking a stance against the wearing of the headscarf in public schools were Minister of Social Affairs François Fillon (UMP) and former Minister of Education Jack Lang (PS). Although Lang had been a supporter of Jospin's tolerant approach during the Creil affair, he had since changed his mind and had announced, in January 2003, his support for excluding religious symbols from schools.[89] After Sarkozy's speech, he reiterated this position in favor of a new law, and explained why he had changed his opinion:

> I remain confident in the virtues of integration of our republican school and in its capacity to handle differences; it is the only true melting pot of our society. Everything should be done to support and to help its teachers. My position on the question of the veil has evolved because the domestic and international situation has itself changed. We cannot but note that Islamism has progressed, particularly in the ghettos […].[90]
>
> Friends, activists, intellectuals – particularly men and women of the Muslim faith – have informed me of this situation and have told me to what extent certain young girls are manipulated. What appeared to be, at one time, a fashion or a way to stand out

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[87] "*Puisque le bon sens laïc et républicain ne triomphe pas de lui-même, il est urgent de légiférer*," quoted in *La Tribune*, "Yves Jégo souhaite une loi qui 'interdise le port de tout signe religieux'," April 22, 2003.

[88] *Haut Conseil à l'Intégration*.

[89] *Le Figaro*, "Lang souhaite une loi pour interdire le foulard à l'école," January 28, 2003.

[90] "*Je demeure toujours confiant dans les vertus intégratrices et les capacités à brasser les différences de notre école républicaine, qui reste le seul vrai creuset de notre société. Il faut tout faire pour la soutenir et pour aider ses maîtres. Ma position sur la question du voile a évolué parce que la situation nationale et internationale a elle-même changé. On ne peut pas ne pas constater que l'islamisme a progressé, notamment dans les ghettos* […]," quoted in *L'Express*, "Jack Lang – 'Interdire tout signe religieux'," April 30, 2003.

> without serious consequences, in reality sometimes adopts ostentatious forms and claims of a militant religion. As this is the case, my thinking has evolved: the *avis* of the Council of State, which I had felt, until now, to be quite just, does not seem appropriate to me anymore. The times have changed: today we have to assert the requirement of *laïcité* and neutrality with great force.[91]

The reason Ferry offered for reversing his position was the progression of Islamist fundamentalism – a fear probably propelled by the general post-9/11 context (Deltombe 2007, 267-292). In the same interview, published in *L'Express* on April 30, 2003, Lang admitted that that the liberal position that he, among others, had endorsed during the early controversies, had been "a little naïve" and "gullibly optimistic":[92] he no longer believed that republican integration could be accomplished if ostentatious symbols were admitted in the classroom. Lang was one of the first central figures of the "tolerant" camp to change his position during the 2003–2004 debates. Although others would soon follow, in the spring of 2003 many politicians were still hesitant concerning new legislation. For example, at the opening ceremony of the French Council for Muslim Faith (CFCM), taking place two weeks after the Le Bourget incident, both Prime Minister Raffarin and Minister of the Interior Sarkozy expressed their views on the headscarf issue. Although Sarkozy had been the one to rekindle the debate, and although he was clearly opposed to Islamic headscarves in public schools, he was not (yet) in favor of a new law. At the launch of the CFCM, the Minister of the Interior suggested that such a law would be "humiliating" for Muslims,[93] and soon afterwards, he spoke in favor of "dialogue" and "appeasement," wishing to avoid all "provocation."[94] Prime Minister Raffarin – who had previously stated that a new law should only be passed as a last solution – also adopted a rather cautious position:

> Concerning the question of the veil, I do not want an unnecessary conflict […]. The veil is a symbol for those who wear it. It is also a symbol for those who contest it […]. But

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[91] "*Des amis, des militants, des intellectuels - et notamment des hommes et femmes de religion musulmane - m'ont informé de cette situation et m'ont dit à quel point certaines jeunes filles étaient manipulées. Ce qui pouvait apparaître à une époque comme une mode ou une façon de se distinguer, sans implication très grave, prend en vérité dans certains cas des formes ostentatoires et revendicatrices d'appartenance à une religion combattante. Du coup, ma réflexion a évolué et l'avis du Conseil d'État, qui m'avait semblé jusqu'alors assez juste, ne me paraît plus adapté. Les temps ont changé : aujourd'hui, il faut affirmer avec une très grande force l'exigence de laïcité et de neutralité*," quoted in *L'Express*, "Jack Lang – 'Interdire tout signe religieux'," April 30, 2003.

[92] "*[…] [D]isons que nous étions peut-être un peu naïfs, ou, pour être plus positif, que nous avons fait preuve non pas d'inconscience, mais d'optimisme un peu candide*," quoted in *L'Express*, "Jack Lang – 'Interdire tout signe religieux'," April 30, 2003.

[93] "*Il ne faut humilier personne*," quoted in *Reuters FR*, "Raffarin et Sarkozy jouent l'apaisement sur le voile islamique," May 3, 2003.

[94] *AFP*, "Voile à l'école - M. Sarkozy prône le dialogue, 'sans faire de provocation'," May 23, 2003.

> […] we should approach the question by asking ourselves especially what leads certain students to refuse the rules of National Education and to take refuge in communalism.[95]

Sarkozy's and Raffarin's comments reveal that the pro-ban and pro-law positions were not always clear-cut. Whereas some were decisively in favor of a new law, and others did not wish for anything to change, there was also a third group that was distinctly opposed to the headscarf, but hoped for a solution that would not involve legislation (Bowen 2007, 104-105).[96] Although no agreement on the question had yet been found, it is clear that by May 2003, the issue of schools had, once again, become a definite focal point in the debate on *laïcité* (Figure 4.1 below).[97] In addition – and as had also been case during the early headscarf controversies – the "question of the veil" cut across political cleavages, creating fractions within the major political parties, the government,[98] and even within the Muslim community.[99] The initiative to legislate had been voiced by prominent members of the UMP, but the PS was quick to jump in during its May congress when Socialist leader Laurent Fabius – publicly opposed to the "veil" since 1989 – also took a stand in favor of a new law: "As much as everyone is free to practice his faith in the private sphere, the public space is no place for ostentatious religious sym-

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[95] "*Sur la question du voile, je ne veux pas ouvrir de conflit inutile […]. Le voile est un symbole pour celles qui le portent. Il l'est aussi pour ceux et celles qui le contestent […]. Mais […] il faut traiter la question en s'interrogeant surtout sur ce qui conduit certains élèves à refuser les normes de l'Education nationale et à se réfugier dans le communautarisme*," quoted in *AFP*, "Raffarin – 'ne pas ouvrir de conflit inutile' sur le voile islamique," May 3, 2003.

[96] Alternatives included the "proper" enforcement of existing legislation, clearer court rulings, a new code or ministerial decree.

[97] For example, in the parliamentary debate on *laïcité* on May 20, 2003, the discussion only concentrated on the school, and this tendency is also visible in the media.

[98] Come September 2003, Jean-Pierre Raffarin, Jean-Jacques Aillagon, François Fillon, Dominique Perben, Patrick Devedjian, and Alain Juppé were in favor of a law banning the headscarf from public schools; Nicolas Sarkozy, Jean-François Copé, and Pierre Bédier were against (*L'Express*, "La laïcité face à l'islam," September 18, 2003).

[99] In May 2003, the *Mouvement des musulmans laïcs* de France lauched a petition opposing the wearing of the Islamic headscarf (published in *Le Figaro*, "Appel de mai," May 12, 2003). Signed by a long list of "secular Muslims" – such as Leïla Babès, author and professor of the sociology of religions, and Soheib Bencheikh, the mufti of Marseille and member of CFCM – the petition called for ordinary Muslims to "defend the modern conception of Islam in tune with its time and the laws and values of the Republic, especially *laïcité* and the absolute equality of rights between citizens of both sexes" ("*[…] défendre une conception moderne de l'islam en phase avec son époque et les lois et valeurs de la République, en particulier la laïcité et l'égalité de droits absolue entre citoyens des deux sexes*"), quoted in *Ouest France*, "Les musulmans laïcs donnent de la voix," May 19, 2003.

bols… The republican school cannot become a testing ground for those who confuse politics and religion."[100] Indeed, pro-ban actors from both the UMP and the PS who shared this view seized the momentum and went on to prepare bills on banning religious insignia from public schools.[101]

By the end of May 2003, a special parliamentary committee was created to provide information and suggestions on the issue of religious symbols in public schools. Known as the Debré Mission,[102] the fact-finding commission started its work in June with the goal of "protecting the public school from all religious or political influences, and making it a place for citizenship education."[103] Soon afterwards, President Chirac appointed another commission – to be known as the Stasi Commission[104] after the name of its president, Bernard Stasi – meant to "reflect on the application of the principle of *laïcité* in the Republic"[105] and to produce a report on the issue of religious symbols in public schools. The process of legislating on the Islamic headscarf had begun – and would gain full momentum come fall and the hearings of the Stasi Commission (Figure 4.1 below).

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[100] "*Autant dans la sphère privée chacun est libre de pratiquer sa foi, autant dans l'espace public les signes religieux ostentatoires n'ont pas leur place... L'école républicaine ne peut pas devenir le terrain d'expérimentation de ceux qui confondent politique et religion*," quoted in *Les Échos*, "Port du foulard islamique - Fabius demande une loi," May 19, 2003.

[101] According to Winter (2008, 215), eight bills were presented to the National Assembly between October 2002 and November 2003: four from UMP, three from PS, and one from the Communist group.

[102] *Mission d'information sur la question du port des signes religieux à l'école*, or simply *Mission Debré* following the name of its president, Jean-Louis Debré.

[103] "*[…] préserver l'école publique de toute influence religieuse ou politique, et d'en faire le lieu d'apprentissage de la citoyenneté*," Jean-Marc Ayrault quoted in *Les Échos*, "Signes religieux à l'école – Mission d'information parlementaire," May 28, 2003.

[104] *Commission de réflexion sur l'application du principe de laïcité dans la République*, "Commission of Reflection on the Application of the Principle of *Laïcité* in the Republic."

[105] *AFP*, "Laïcité - Jacques Chirac confie une commission à Bernard Stasi," July 1, 2003.

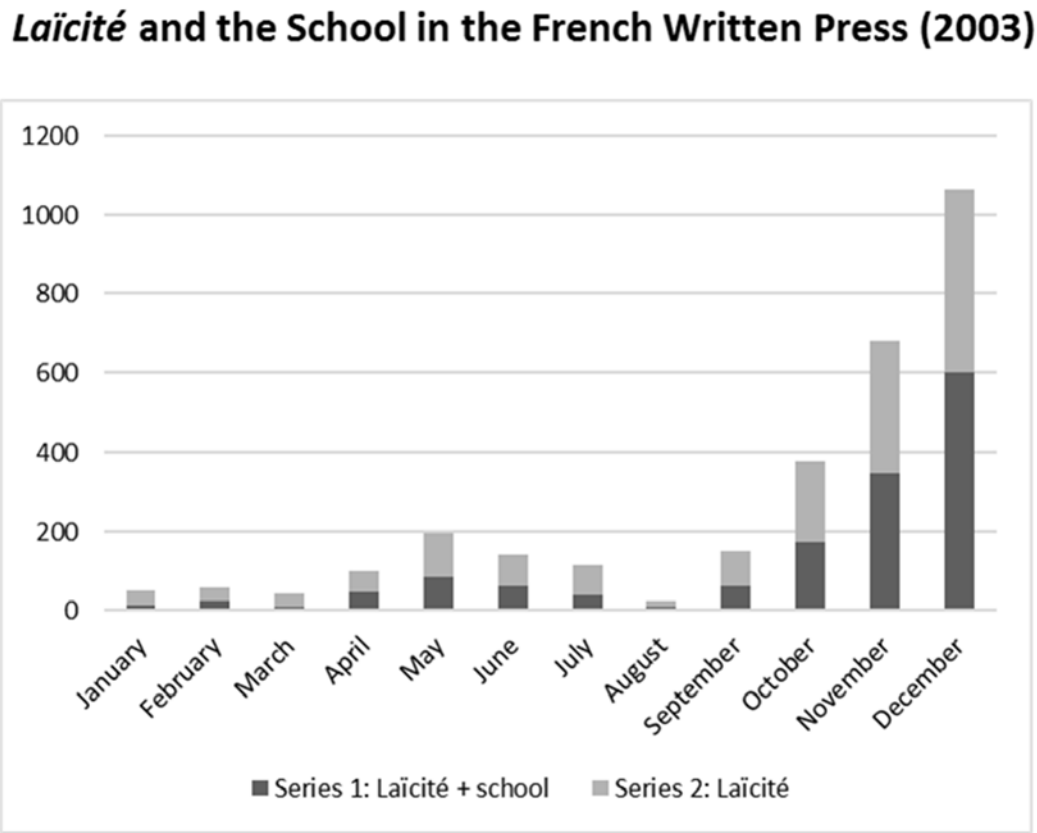

Figure 4.1* – Laïcité *and the School in the French Written Press (2003). *This histogram illustrates of how the topic of the school emerged alongside the renewed debate on* laïcité *in French public discourse. By November 2003, the republican school had in fact become the primary context of public debate on* laïcité*, as is attested by the fact that the majority of articles published on the issue of public secularism also touched on the school. Based on Factiva, Series 2 shows the number of articles published in the French written press that include the word "*laïcité*." Out of all those articles, Series 1 shows the proportion of texts that further correspond to the Boolean search criteria "AND école* OR scolaire* OR éducation."*

4.3 Reasserting Republican Values: Fighting the Sexism of the *Banlieues*

During the first stages of the Raffarin governments (2002–2003), the securitization of the "neighborhoods" and the reemergence of the debate on *laïcité* were not the only issues occupying French political elites' attention. Meanwhile the media was also increasingly interested in the topic of

sexism.[106] More specifically, and as we will soon see, the French public discussion of sexism was beginning to focus on the misogyny of "Muslim culture" and on the violations of "women's rights" in the impoverished immigrant *banlieues*.[107] This linking of Islam and gender discrimination in public discourse was foreshadowed by the publication, in French, of Oriana Fallaci's[108] book *The Rage and the Pride* (2002).[109] Written in the aftermath of the September 11 attacks, Fallaci's book is a manifesto that sparked widespread polemic – in France as elsewhere – because of its derogatory views on Islam. As the academics Cousin and Vitale noted at the time, Fallaci used her feminist notoriety to "justify her legitimacy to speak about Islam as a system for the oppression of women" (Cousin and Vitale 2002, 148). In so doing, she criticized, in particular, those who tolerated the wearing of the "veil":

> To the male cicadas, I mean the egoists who never open their mouth on this matter, never lift a finger against the burkah, I have nothing to say. The turpitudes that Moslem men commit on Moslem women do not concern their hypocritical interpretation of justice […]. Not seldom, in fact, they beat and abuse their wives. To the female cicadas […] I do have something to say. Take off your masks, you phony Amazons. […] Can you tell me why, when it comes to your Moslem sisters, to the women who are tortured and humiliated and assassinated by the real male-chauvinist-pigs, you imitate the silence of your little men? […] Have you all fallen in love with the enemy, with Mr. Bin Laden? Do you all dream of being raped by him? Or do you simply not give a damn for your Moslem sisters because you consider them inferior? (Fallaci 2002, 113-114, translated by Fallaci herself.)

Fallaci's polemical book became a success that sold out in a matter of weeks. The content of her pamphlet – that *Le Figaro* described as a "bomb against Islam"[110] – was later taken up by the courts, as the longstanding French antiracist organization MRAP[111] argued that it was an incitement to racial and religious hatred.[112] Despite the violent views expressed in *The Rage and the Pride*, several public figures – such as the philosophers Alain Finkielkraut and Pierre-André Taguieff, both proponents of the headscarf ban, as well as *Charlie Hebdo*'s chronicler, philosopher Robert Misrahi – sympathized with

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[106] A search in the Factiva database with the search term "sexis*" yielded 94 articles for 2002 and 197 for 2003.

[107] The number of articles corresponding to the search criteria "sexis* and islam* or musulm* or banlieue* or cité* or quartier*" were 36 in 2002 and 79 in 2003.

[108] Oriana Fallaci – an Italian journalist and writer – was a vocal critic of Islam, known, among other things, for having removed her headscarf during an interview with the Ayatollah Khomeini.

[109] *La rage et l'ogueil*, published on May 23, 2002, by Éditions Plon.

[110] *Le Figaro*, "Fallaci - une bombe contre l'islam," June 4, 2002.

[111] MRAP was supported in its court case by Ligue des droits de l'homme and Ligue contre le racisme et l'antisémitisme.

[112] The editor and the author were later found not guilty.

Fallaci's ideas (Deltombe 2007, 300-301). They claimed that the Islamist fundamentalism that Fallaci attacked was a real danger in France, and in the *banlieues* in particular. Indeed, as the Raffarin government was at the time tacking the insecurity of the "neighborhoods," some people took Fallaci's book only as further proof of the progression of militant Islam. This was also the view held by *Le Figaro*'s[113] Yvan Rioufol – a well-known conservative commentator[114] who would follow the "veil affair" closely in his weekly column in the right-leaning newspaper:

> *The Rage and the Pride* is a polemical tract against fundamentalist Islam. A book that shouts, condemns, accuses. A book that also caricatures, spins out of control, insults. […] Faced with a concealed threat, Fallaci shouts her head off. What she says is true: belligerent Islam has launched a "crusade" against the West, and we, the cicadas, do not see it coming. What she says is false: all Muslim immigrants cannot be considered invaders in the name of Allah.[115]
>
> The French are old enough to see the difference. It is distressing to see to what extent our country remains subjected to the totalitarian temptation of "antiracism": an ideology that insists upon books that are "clean," sterilized, admissible […].[116]
>
> […] A word still on MRAP: [the organization] that puts so much effort in wanting to silence Madame Fallaci would be better off denouncing the Islamists of the social housing projects who endorse the holy war and anti-Semitism. By wanting to forbid this book, the antiracist movement deludes us into believing that there is no fundamentalist threat that would merit such an uproar. A curious blindness.[117]

Rioufol was not the only one linking the Islamist fundamentalism that was supposedly be taking root in France – and in the *banlieues* in particular – with the rise of anti-Semitism. On the contrary, the need to tackle anti-Semitism was a recurring theme in the discussions, especially after the publication

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[113] *Le Figaro* had already taken a position in favor of a new law on religious symbols in its editorial published on May 23, 2003.

[114] Rioufol defended his "neo-reactionary" political position in the book *De l'urgence d'être réactionnaire* (2012).

[115] "*La Rage et l'Orgueil est un brûlot sur l'islam intégriste. Un livre qui hurle, dénonce, accuse. Egalement un livre qui caricature, dérape, insulte. […] Fallaci s'époumone devant un danger occulté. Ce qu'elle dit est vrai : l'islam conquérant a lancé sa 'croisade' contre l'Occident et nous, les cigales, ne voyons rien venir. Ce qu'elle dit est faux : tous les musulmans immigrés ne se considèrent pas comme des 'envahisseurs' au nom d'Allah*," *Le Figaro*, "Le bloc-notes," June 14, 2002.

[116] "*Les Français sont assez grands pour faire le tri. Il est consternant de constater à quel point notre pays reste soumis à la tentation totalitaire de l''antiracisme' : une idéologie qui veut imposer des livres propres, aseptisés, admissibles […]*," *Le Figaro*, "Le bloc-notes," June 14, 2002.

[117] "*Encore un mot sur le Mrap : lui qui met tant de convictions à vouloir imposer le silence à Mme Fallaci serait mieux inspiré de dénoncer les islamistes des cités, qui poussent à la guerre sainte et à l'antisémitisme. En voulant faire interdire ce livre […] le mouvement antiraciste laisse accroire qu'il n'existerait pas de danger intégriste méritant tel raffut. Curieux aveuglement*," *Le Figaro*, "Le bloc-notes," June 14, 2002.

of Emmanuel Brenner's[118] edited volume *Les territoires perdus de la République*[119] (2002) which depicted a part of the French Muslim youth from the "neighborhood" schools as carriers of anti-Semitism, racism, and sexism.[120] Pierre-Andrée Taguieff voiced a similar idea in the book *La nouvelle judéophobie* (2002) which identified France's Muslim population as the source of growing anti-Semitism, and anti-Semitism as a more widespread problem than anti-Arab prejudice.[121]

In these publications, the authors linked anti-Semitism and racism with the "rise of Islamism" that Fallaci and her sympathizers warned against. This link between anti-Semitism and France's Muslim population is also observable in a demonstration that took place in Paris on May 6, 2003. The event, organized "for *laïcité*, against racism," brought together political parties as well as Jewish organizations. During the proceedings, a small group of women wearing the Islamic headscarf were "discreetly taken away from the demonstration by the police."[122] The women later appealed to the Mayor of Paris in a letter describing the hostility of the crowd towards them, and by stressing their own attachment to republican values.[123] The incident suggests that, in the fight "for *laïcité*, against racism," political organizations and even the police labelled some as victims and others as perpetrators. It further illustrates how difficult it was for the minorities themselves to form a common front against *all* forms of prejudice. Instead, the headscarved women – even when mobilized against racism – suffered the consequences of the perceived intolerance of "Muslim culture." Finally, the fact that the police excluded headscarf-wearing Muslim women from this demonstration is proof that ideas such as *laïcité* – and who threatens

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[118] Emmanuel Brenner is the penname for French historian Georges Bensoussan.

[119] The full title of the book is *Les territoires perdus de la République : antisémitisme, racisme et sexisme en milieu scolaire*, which translates as "The Lost Territories of the Republic: Anti-Semitism, Racism, and Sexism in the School Environment."

[120] The cover of the book describes its contents in the following manner: "At the height of the anti-Semitic push in France, the violence that is perpetuated in the school environment is evidence of the decrepitude of the values that are the foundation of the Republic and that ensure the integration of new citizens around a minimal consensus at a time when anti-Semitism, racism, sexism, disrespect and an atmosphere of latent violence […] assert themselves anew." ("*À l'apogée de la poussée antisémite en France, cette violence perpétrée en milieu scolaire témoigne de la décrépitude des valeurs qui fondent la République et assurent l'intégration des nouveaux citoyens autour d'un consensus minimal alors que s'affirment à nouveau l'antisémitisme, le racisme, le sexisme, l'irrespect et un climat de violence larvée […]*.")

[121] Taguieff's thesis was later challenged by Vincent Geisser in his book, *La nouvelle islamophobie* (2003) – one of the rare works in France, especially at the time, to engage explicitly with the issue of Islamophobia.

[122] "*Six jeunes femmes, qui portaient le voile islamique […] ont été discrètement écartées de la manifestation par la police*," quoted in *AFP*, "Politiques et associations réaffirment les 'principes de la laïcité et de la République'," May 6, 2003.

[123] < http:// www.saphirnews.com/Le-voile-exclu-d-une-manifestation_a398.html >.

it – do not exist "only in discourses," but have material consequences – in this case, for those visibly identifiable as Muslim.

Besides anti-Semitism, it was the issue of sexism that the media took up ever more often. In fact, the attention that the French written press accorded to the issue of sexism more than doubled from 2002 to 2003, and the attention to the link between sexism and "Muslim culture" more than tripled.[124] Almost all of the articles that were written in 2002 on sexism and Muslim minorities were written *after* the publication of Fallaci's book,[125] thus indicating that *The Rage and the Pride* set a precedent for talking about Islam as a system of oppression of women. This seems to have been the case, at least, for the public intellectual Alain Finkielkraut. As seen above, Finkielkraut had been, since the Creil affair, one of the leading proponents of the intransigent approach to the question of the "veil." In May, 2002, when Fallaci's book came out, he directly took up the author's ideas by linking them to French issues, arguing that she had the rare courage to denounce things for what they were:

> […] here we are now told to make space for the Islamic headscarf in the republican school, to deal with arranged marriages, and to speak – in the name of a multicolored idyll – in favor of a universal *banlieue* where all youngsters would wear their caps backwards and speak a demolished language. Oriana Fallaci has the remarkable merit of not letting herself be fooled by this virtuous lie. She talks about the elephant in the room, she makes an effort to face the facts. She rejects the penitential narcissism that makes the West the culprit instead of the victim.[126]

Finkielkraut's opinion piece is illustrative of the ways in which French public discourse on Islam and integration became entangled with the fear of terrorism, how the socio-economic problems of the *banlieues* were regularly interpreted through the prism of Muslims' *cultural* attributes, and how that culture was repeatedly reduced to its problematic gender relations – crystallized in the wearing of the headscarf. Moreover, Finkielkraut's text offers an example of the analogy that the carriers of a pro-ban discourse often drew between the "question of the veil" and other gender-based practices such as

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[124] A search in the Factiva database with the search term "sexis*" yielded 94 articles for 2002 and 197 for 2003. The corresponding results for "sexis* and islam* or musulm*" was 12 and 41 respectively.

[125] Thirty out of the thirty-five above-mentioned articles, which can be considered disproportionate, since Fallaci's book was published on May 23.

[126] "*[…] nous voici sommés de faire une place au foulard islamique dans l'école républicaine, de nous arranger des mariages arrangés et de plaider en guise d'idylle multicolore pour la banlieue universelle où tous les jeunes porteront leur casquette à l'envers et parleront une langue dévastée. Oriana Fallaci a l'insigne mérite de ne pas se laisser intimider par le mensonge vertueux. Elle met les pieds dans le plat, elle s'efforce de regarder la réalité en face. Elle refuse le narcissisme pénitentiel qui rend l'Occident coupable de ce dont il est victime*," *Le Point*, "Fallaci tente de regarder la réalité en face," May 24, 2002.

forced marriages, polygamy, and even female circumcision or gang rapes. Through these focal points, the argument emerged that the integration of French Muslims was hampered, in particular, by the clash of gender systems. This was also the problem that the High Council for Integration (HCI) – playing an important role in the construction of the French "Muslim problem" (Beaugé and Hajjat 2014) – tackled in its report delivered to Prime Minister Raffarin in July 2003:

> According to the High Council, the question of forced marriages concerns more than 70 000 adolescent girls; 35 000 young girls or women are mutilated or threatened by circumcision; and although polygamy is no longer authorized in France, public protection under the law [*l'ordre public*] "recognizes some of the effects of marriages that are entered into abroad," observes the report. According to a majority of the organizations auditioned by the HCI, forced marriages are on the rise […].[127]

The anti-sexist spark that had been kindled by Fallaci's book caught full flame when a 17-year-old girl, Sohane Benziane, was burnt alive in the Parisian suburb of Vitry-sur-Seine in October 2002. Sohane's brutal death dominated French public discussion throughout the winter of 2002–2003. Although the rumors according to which Sohane's murder was linked to gang violence or to her refusal to engage in sexual activities were proven groundless,[128] Sohane became an instant symbol for the poor conditions of young women living in the *banlieues*.[129] Mainstream media depicted the "neighborhoods" as particularly dangerous living environments for young women, especially if they refused to comply with the requirements of the Islamic faith, such as the wearing of the headscarf. The publication of Samira Bellil's autobiographical book *Dans l'enfer des tournantes*[130] (2002), in which she describes three incidences of gang-rape, added fuel to the fire by offering another heart-wrenching story of the physical and sexual violence endured by the girls of the housing projects.[131] The mobilization of young women

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[127] "*Selon le Haut Conseil, plus de 70 000 adolescentes seraient ainsi concernées par la question des mariages forcés ; 35 000 jeunes filles ou femmes seraient mutilées ou menacées d'excision ; et si la polygamie n'est plus autorisée en France, l'ordre public 'reconnaît certains effets aux unions conclues à l'étranger', constate le rapport. Selon la plupart des associations entendues par le HCI, les mariages forcés ont tendance à progresser […]*," *Le Figaro*, "Le Haut Conseil à l'intégration au secours des droits des femmes," July 3, 2003.

[128] The culprit was a bitter ex-boyfriend who claimed to have only wanted to "rattle" her (*Ouest France*, "Il voulait 'impressionner' Sohane avec de l'essence,", October 8, 2002; *Le Figaro*, "Sohane brûlée par dépit amoureux," October 8, 2002).

[129] On the importance of the memory of Sohane for the French feminist movement, see Charpenel (2012).

[130] *Tournantes* is a word referring to the phenomenon of gang-rapes (or literally, "pass-arounds" or "rotations"). The title translates as "In gang-rape hell," and the book has been published in English under the title *To Hell and Back: The Life of Samira Bellil* (2008).

[131] In his study on the media coverage of Bellil's book (as well as of the 2000 film *La squale*, also dealing with the topic of gang-rape), Mucchielli (2005) has shown that the scope of the phenomenon of "pass-arounds" – as well

of immigrant origin to denounce the rampant sexism and violence of their underprivileged neighborhoods soon led to the emergence[132] of the movement *Ni putes ni soumises* (NPNS):[133]

> Never forget. To fight, the face uncovered, against the harassment of boys and the sexist weight of traditions. In memory of their friend Sohane […], young girls have decided to establish their own militant organization. A spontaneous and unprecedented initiative […] aiming also to denounce the oppressive hellhole of their concrete-built cages. Could the code of silence of the *banlieues* slowly be breaking?[134]

The anti-sexist movement that was born in the aftermath of Sohane's murder quickly established itself under the direction of Fadela Amara, president of the *Fédération Nationale des Maisons des Potes* (FNDMP).[135] This development culminated in marches and demonstrations organized throughout France,[136] as well as in the delivery, on International Women's Day (March 8, 2003), of a petition to Prime Minister Raffarin. Titled "Ni putes ni soumises," the letter demanded "the rights of liberty and emancipation" for the girls of the *banlieues*, and it became the founding document of the *Ni putes ni soumises* (NPNS) organization. Fadela Amara later described the warm reception that the NPNS movement received from the French government:

> On the day the March arrived in Paris we received a phone call from the prime minister's office extending an invitation from Jean-Pierre Raffarin to meet with the marchers. You can imagine our emotion! […] [I]t was indeed incredible: we had begun the March in a climate of general indifference and, on arrival, we had been invited to meet the Prime Minister!

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as the percentage of perpetrators of immigrant origin – were largely exaggerated by popular media. Muchielli's analysis also illustrates the conflation that operated between Islam and gang-rapes: the publication of Bellil's book added to the stigmatization of Muslim culture as violent and misogynist.

[132] The roots of the NPNS movement are found in appeals that were published in March and April 2002 (Amara and Zappi 2003), but the movement only gained media attention in the spring of 2003.

[133] The name of the organization translates freely as "Neither Whores nor Oppressed."

[134] "*Ne pas oublier. Lutter, à visage découvert, contre le harcèlement des garçons et la chape sexiste des traditions. En mémoire de leur copine Sohane, […] jeunes filles ont décidé de monter leur propre association militante. Une initiative spontanée et inédite […] visant aussi à dénoncer l'enfer quadrillé de leurs cages de béton. L'omerta des banlieues commencerait-elle à se fissurer ?*," *L'Express*, "Cités - les filles se rebiffent," December 5, 2002.

[135] The FNDMP ("National Federation of Solidarity Houses") had been created in the aftermath of the *Marche des beurs* (officially titled *La marche pour l'égalité et contre le racisme*), a historical march organized, in 1983, by the saw so-called *beur* generation demanding their rights. The FNDMP had close ties with the Socialist Party as well as with *SOS-Racisme*. It brought together a wide range of community-based NGOs working for civil education and the fight against discrimination in underprivileged neighborhoods.

[136] Titled *Marche des femmes des quartiers contre les ghettos et pour l'égalité*, the marches followed the model of the nationwide demonstrations that had taken place in 1983 by immigrant youth (*les beurs*) against racism.

> Thus, several hours before the demonstration in Paris we found ourselves sitting in the salon of the Prime Minister's residence at Hôtel Matignon. He was accompanied by François Fillon, the Minister of Social Affairs, Jean-Louis Borloo, the Secretary of State for Urban Policy, and Nicole Ameline, the Deputy Minister for Gender Parity and Professional Training. We had a frank discussion about what was happening in the projects and we presented our five priority proposals […]. We had the impression that our demands were truly heard. (Amara and Zappi 2006, 137-138.)

In this description, Amara and Zappi go on to describe the government's positive to reaction to each of the marchers' specific policy proposals (Amara and Zappi 2006, 138-141). Indeed, the ideas carried by the new feminist movement were quickly taken up by the Raffarin government.[137] In its new program to "end violence against women," the government stated the problem of "machismo in the *banlieues*" in second place, directly after prostitution. Deputy Minister Nicole Ameline (UMP),[138] in charge of equality issues, publicly voiced her support to Sohane's sister – one of the visible leaders of the group – and stressed that "[e]verything has to be done to render the women of immigrant origin more visible and heard. The integration contract has to take into account the specificity of the situation of these women. We have to reassert republican values in these neighborhoods."[139] The problem of sexism in the disadvantaged neighborhoods brought together actors from across the political spectrum in support of the new feminist movement. By the end of June 2003, the *Parti socialiste* had proposed a new law "regarding the prevention of violence against women," and Deputy Minister Ameline had suggested a range of specific policy measures to support the NPNS and to provide assistance for female victims residing in the *banlieues*.[140] These events illustrate how the political elite constructed the issue of the "women of the *banlieues*" as a public problem. The fact that these women publicly shared their difficult experiences, named the machismo of the *cités* as the source of the problem, and claimed their republican rights of liberty and equality, opened the door for arguing that political action on the issue needed to be taken (Thiéblemont-Dollet 2003).[141]

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[137] *Le Figaro*, "Priorité pour les filles des quartiers," May 22, 2003.

[138] *Ministre déléguée à la parité et à l'égalité professionnelle*.

[139] "*Il faut tout faire pour rendre plus visibles et plus audibles les femmes issues de l'immigration. Le contrat d'intégration doit prendre en compte la spécificité de la situation de ces femmes. Il faut […] réaffirmer dans ces quartiers les valeurs républicaines*," *Le Figaro*, "Ameline – La violence contre les femmes est une barbarie," January 21, 2003.

[140] *AFP*, "Violence sexiste - proposition de loi PS et annonces gouvernementales," June 29, 2003.

[141] This process corresponds to the construction of public problems through "naming, claiming, and blaiming" (Felstiner, Abel, and Sarat 1980).

Of interest to us here is the ideological dimension of these events. Indeed, when political representatives constructed "reasserting republican values in the *banlieues*" as a priority, they also put forth a specific understanding of what those values were and of who could be their carriers. This is particularly evident if we look at a specific event that took place in the summer of 2003. In celebration of Bastille Day (July 14) – and only some ten days after President Chirac had announced the creation of the Stasi Commission to reflect on the issue of *laïcité* in the Republic – the French National Assembly launched an exhibition that consisted of portraits of young women from the social housing projects. Titled "*Mariannes d'aujourd'hui*,"[142] the exhibition was born out of an initiative of the NPNS movement – a group of women who wanted to "pay tribute to the Republic."[143] It was opened, on July 12, by Jean-Louis Debré,[144] president of the National Assembly, in the presence of Fadela Amara, president of NPNS. The impressively sized artwork was hung on the very pillars of the *Palais Bourbon*, thereby covering the façade of the National Assembly with the colors of the national flag (Figure 4.2).

Figure 4.2 – The Exhibition "Mariannes d'aujourd'hui" (2003). *This image shows the way in which the exhibition was displayed on the façade of the Palais Bourbon in July 2013. (Source: Assemblée Nationale)*

[142] Translates as "Modern-day Mariannes."

[143] *"Mariannes d'aujourdhui" – hommage des femmes des cités à la République*. The description of the event can be found on the website of the National Assembly: < http://www.assemblee-nationale.fr/evenements/mariannes.asp >.

[144] At the time, Debré was also head of the parliamentary committee reflecting on the issue of religious symbols in public schools.

As could be expected, none of the fourteen female portraits showed signs of religious affiliation. On the contrary, the women in the photographs were wearing Phrygian caps – a Republican symbol[145] dating back to the French Revolution and usually worn by Marianne – the female figure that incarnates the Republic in French national imaginary, public discourse, and the arts (Agulhon 1979; Agulhon 1989; Agulhon 2001; Agulhon, Becker, and Cohen 2006). Indeed, a few months earlier, Laurent Fabius (PS) had stated that "Marianne cannot be veiled."[146] Fabius's comment presaged the exhibition insofar as the women in the photographs, although visibly "diverse," had renounced all signs of particularistic affiliation in exchange for the emblems of the Republic, thereby transforming themselves into modern Mariannes.

Figure 4.3 – Photos of the Exhibition "Marianne d'aujourd'hui" (2003).

On the left, we see one of the photos displayed in the exhibition: a portrait of Sahia. It was accompanied by the following citation: "I am afraid that Marianne is threatened today. I have the impression that Marianne no longer means very much to a lot of French people. We have to be careful not to forget her. Laïcité*, justice, equal rights, we have to make an effort to defend them.*

On the right, a photo of Samira Bellil (author of the highly mediatized book Dans l'enfer des tournantes*) with the citation: "For me, Marianne is a rebellious woman who leads the way. She is someone who is not afraid to speak out, even in the face of danger. It is the rebellious side that draws me to her" (Source: Assemblée Nationale).*

[145] Originally, the red Phrygian cap was a symbol of liberty in ancient Rome (Agulhon 1976, 149).

[146] "*Marianne ne peut pas être voilée*," quoted in *Le Nouvel Observateur*, "Dijon : les premiers pas de la reconquête socialiste," May 17, 2003.

The exhibition was laden with ideological elements. It was literally a display of the French political elites' engagement in supporting the women of the *banlieues*, and, what is more, this demonstration took place at the National Assembly, the very heart of the Republic. The exhibition also illustrated the extent to which NPNS and its supporters embraced republicanism: not only did these women don its visible symbols, but they also adopted its central concepts (liberty, equality, fraternity) which were taken up in the quotes that accompanied the portraits. More specifically, the women chosen for the exhibition advocated a version of republicanism in which *laïcité* was in need of defense and women should "speak out" and "lead the way" (Figure 4.3 above). In so doing, these women conveyed a message that was not incompatible with the discourse that was carried by the advocates of the headscarf ban.

Furthermore, in the "*Mariannes d'aujourd'hui*" exhibition, it was the women from the *banlieues* who exemplified the ideal female citizen – courageous and emancipated – and who thereby became the living symbols of the French Republic. The National Assembly published a description of the event on its webpage, which confirmed that these women were equal in courage to the Mariannes who had come before them:

> This reinterpretation of Marianne, one of the most ancient symbols of our Republic, is as welcome as it is natural, for if it is true that she is always in need of renewed support, these young women incarnate Marianne in total respect of her enduring spirit… Marianne, an embodiment of our Republic, was born with it in the Revolution. A woman of the people, she is also an elite citizen who courageously rises up against tyranny, who is determined to rebel against inequalities, and who fights for liberty and fraternity with force and pride.[147]
>
> Before, as the woman from the neighborhoods of Paris galvanizing the crowd against tyrants and hunger, or as the liberated woman affirming her dignity as a citizen equal to men, she appears today, a citizen of mixed race [*metissée*], determined to defend the protective and emancipatory values of our Republic against all attempts at national

[147] "*Cette réinterprétation de l'un des plus anciens symboles de notre République est aussi bienvenue que naturelle, tant il est vrai que si Marianne a toujours besoin de nouveaux soutiens, ces jeunes femmes l'incarnent dans le respect total de son esprit de toujours…Marianne, incarnation de notre République, est née avec elle, sous la Révolution. Femme du peuple, elle est en même temps une citoyenne d'élite, qui s'élève avec courage contre la tyrannie, se révolte contre les inégalités avec détermination, et combat avec force et fierté pour la liberté et la fraternité*," < http://www.assemblee-nationale.fr/evenements/mariannes.asp >.

> disunity – whether they come from discrimination or communalism – against the barbaric practices of "might makes right," against the freedom-destroying despair of the *banlieues*.[148]
>
> At a time when integration is sometimes questioned, when women's rights – their freedom, their dignity, their physical integrity, or even their life (as has been hideously proven by the death of Sohane Benziane, burnt alive in an area for trash cans area last year) – are threatened, these women have patiently but fiercely reasserted that they are fully French, and that the Republic is their best protection, their biggest hope, and their daily battle, whatever their origins may be.[149]
>
> At a time when the debate on *laïcité* develops in France, they have decided to cover their heads with the Phrygian cap.[150]

It was through these types of discursive displays that by fall 2003, alongside – and linked with – the government's renewed interest in *laïcité*, the fight against sexism received political attention. More importantly, as the "*Mariannes d'aujourd'hui*" exhibition illustrates, the National Assembly represented the women of the *banlieues* as beacons of republican integration, citizenship, and emancipated femininity. Through the brutal death of Sohane Benziane, and through the gruesome experiences of Samira Bellil, NPNS gained unprecedented visibility in the public sphere.[151] In adopting a republican vocabulary and in espousing national symbols, the women of NPNS carried a particular view on "women's rights" – one that was compatible with the version of republican ideology which favored limiting the wearing of religious symbols, and one that certain ministers and pro-ban actors consequently used to gain support for a strict interpretation of *laïcité*. According to that view, integration in the French Republic was primarily hindered by the oppressive gender-system of "Muslim culture," and sexism was

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[148] "*Hier femme des faubourgs de Paris galvanisant la foule contre les tyrans et la faim, hier femme libérée affirmant sa dignité de citoyenne égale des hommes, elle réapparaît aujourd'hui, citoyenne métissée, décidée à défendre les valeurs protectrices et libératrices de notre République contre toutes les tentations de désunion nationale, qu'elles soient discriminatoires ou communautaires, contre toutes les dérives barbares de la loi du plus fort, contre le désespoir liberticide des banlieues*," < http://www.assemblee-nationale.fr/evenements/mariannes.asp >.

[149] "*Au moment où l'intégration est parfois remise en question, où les droits des femmes - leur liberté, leur dignité, leur intégrité physique ou même leur vie (comme l'a horriblement prouvé la mort de Sohane Benziane, brûlée vive dans un local à poubelles l'an dernier) - sont menacés, elles ont redit patiemment mais farouchement qu'elles étaient pleinement françaises, et que la République était leur meilleure protection quelles que soient leurs origines, ainsi que leur plus bel espoir et leur combat quotidien,*" < http://www.assemblee-nationale.fr/evenements/mariannes.asp >.

[150] "*Au moment où s'amplifie en France le débat sur la laïcité, elles ont décidé de coiffer le bonnet phrygien*," < http://www.assemblee-nationale.fr/evenements/mariannes.asp >.

[151] On the public reception of NPNS, see Benabdessadok (2004); Garcia and Mercader (2004); Thiéblemont-Dollet (2005); Thiéblemont-Dollet (2008); Lemercier (2007); Dalibert (2012).

a problem that persisted mainly in the "neighborhoods" – the last bastions of gender-based domination within a national space where equality between citizens was otherwise seen to be blooming. The wearing of the Islamic headscarf crystallized these issues into one visible symbol that was, according to the NPNS representatives, a bad solution to the general problem of gendered violence – one that the girls clung to as a desperate last attempt to keep male harassment at bay. By incarnating Marianne – an icon of liberty, equality, and fraternity – the young women of immigrant origin made a direct appeal to the Republic. How would the Republic answer their call?

4.4 Defending *Laïcité* in Schools in Order to Protect Women's Emancipation

The question of the Islamic headscarf reemerged, in 2003, at the intersection of public discourses on security, *laïcité*, the *banlieues*, and the fight against sexism. Above we have seen how security concerns had given way to a discussion about reinforcing *laïcité*, and how, once again, both pro-ban and anti-ban actors had presented arguments focusing on the crucial role of the public school system in forging republican citizens. In parallel, the Raffarin government had made "women's rights" one of its political priorities, and the women of NPNS had arrived in the public eye as representatives of ideal republican integration. In this subsection, we will see that, as the headscarf debates progressed during the summer and fall of 2003, the concepts of *laïcité* and gender equality drew closer together, producing a discourse of sexularism which confounded the two issues. More specifically, we will observe that both those in favor and those against banning religious insignia from public schools appealed, in their republican discourses, to the values of public secularism and gender equality. Therefore, the debate on the school and the Islamic headscarf did not only ingrain the cleavages that already existed between competing visions of *laïcité*, but it also created further disagreements on the role that the Republic was meant to play in guaranteeing women's emancipation.

As the headscarf debates progressed in 2003, French public discourse gradually shifted from the general danger of Islamist communalism and violent sexism towards the specific problem of ostentatious religious symbols in public schools. In this process, some participants saw the republican classroom as a solution to the wider problems of fundamentalism and sexism. As this happened, the concepts of *laïcité* and gender equality started to appear together more often (Figure 4.4 below). For example, when the "question of the veil" reemerged in April 2003, François Baroin – spokesperson for the UMP and a visible opponent of conspicuous religious symbols – had argued the following:

"[I]f the question of the veil – which serves as a ram to smash the republican foundation that is *laïcité* – is important, it is not the only question. We cannot avoid a wider debate that will include the problems of equity or of gender equality. In schools, but also elsewhere."[152]

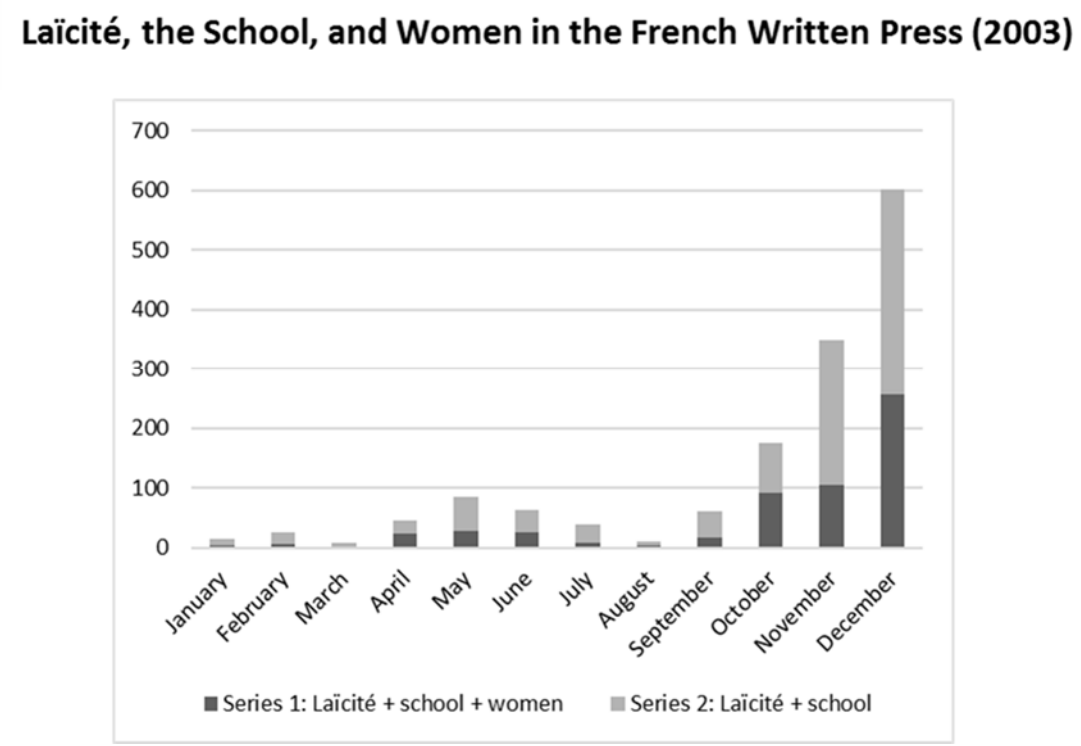

Figure 4.4 – Laïcité, the School, and Women in the French Written Press (2003)*. This figure illustrates how the French public debate on* laïcité *and the school incorporated the situation of women. Based on Factiva, this figure shows the number of articles published in the French written press that correspond to the Boolean search criteria "laïcité AND école* OR scolaire* OR éducation" (Series 2) or "laïcité AND école* AND femme* OR fille* OR sex* OR fémin*" (Series 1).*

In June 2003, Baroin submitted a report to Prime Minister Raffarin titled *Pour une nouvelle laïcité* (Baroin 2003). In it he argued that "*laïcité* surfaces today as a particularly necessary principle in order for the French to regain their trust in the Republic. For us to respond to the shock of April 21,

[152] "*[S]i la question du voile qui sert de bélier pour enfoncer ce fondement républicain qu'est la laïcité est importante, elle n'est pas unique. On n'échappera pas à un plus vaste débat englobant également les problèmes d'équité ou d'égalité des sexes. À l'école mais pas seulement*," quoted in *Le Figaro*, "Laïcité - le gouvernement cherche sa voie," April 24, 2003.

2002, our country has to reassert its values."[153] In order for this to happen, Baroin suggested the creation of a new "code on *laïcité*"[154] that would, among other things, prohibit the wearing of the Islamic headscarf in public schools, thereby transforming *laïcité* from state neutrality to individual neutrality. Come July, Baroin had shifted his focus even more towards the school space. In an interview published in *Le Nouvel Observateur* on July 2, 2003, Baroin asserted:

> The school has to be made a sanctuary because it is a place where human awareness is forming and therefore needs to be protected from visible symbols of any type of group affiliation. Because some of those symbols are rams that are used to crush the principles of our Republic.[155]
>
> We need the courage to say that there are, today, in our country […] people who have a vision of women that dates back to the 20th century and who place their religious convictions above the laws of the Republic. It is inacceptable.[156]

When pro-ban actors took the headscarf to represent archaic gender relations and a particularistic identity that were incompatible with the republican public space, they quickly eliminated the question of whether a woman might *choose* to wear it. This discursive strategy is illustrated, for example, in a petition published in *Libération* on May 6, 2003, by a group of well-known public intellectuals. The signatories – Catherine Kintzler, Pierre-André Taguieff, Bernard Teper, and Michèle Tribalat – were familiar participants in the debate on *laïcité* and the Islamic headscarf. Catherine Kintzler had been part of the group which, in 1989, had argued that allowing the wearing of the "veil" in the classroom would equal the "Munich of the republican school." Pierre-André Taguieff, as we have seen, was a philosopher known for his work on anti-Semitism and his critical views on Muslim integration. Bernard Teper was president of the *Union des familles laïques* – an organization campaigning in favor of the law. Michèle

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[153] "*La laïcité apparaît aujourd'hui comme un principe particulièrement nécessaire pour redonner confiance aux Français dans la République. Pour répondre au choc du 21 avril 2002, notre pays doit réaffirmer ses valeurs*," < http://www.voltairenet.org/article10188.html >.

[154] *Code de la laïcité*.

[155] "*[…] l'école doit être sanctuarisée parce qu'elle est le lieu où les consciences sont en formation et doivent donc être protégées des manifestations extérieures d'appartenance à quelque communauté que ce soit. Car certaines de ces manifestations sont autant de béliers utilisés pour renfoncer les principes de notre République*," *Le Nouvel Observateur*, "François Baroin – 'L'école doit être sanctuarisée'," July 2, 2003.

[156] "*Il faut avoir le courage de dire qu'il y a aujourd'hui dans notre pays […] des gens qui ont une vision de la femme qui date du vingtième siècle et qui placent leurs convictions religieuses au-dessus des lois de la République. Ce n'est pas acceptable,*" *Le Nouvel Observateur*, "François Baroin – 'L'école doit être sanctuarisée'," July 2, 2003.

Tribalat, a demographer, was the author (with Jeanne-Hélène Kaltenbach) of a book titled *La République et l'islam: entre crainte et aveuglement*[157] (2002). She was also a former member of the High Council for Integration (HCI) who had resigned from her position due to the publication of HCI's report *L'islam dans la République* (2000) and who had gone on to criticize the HCI for supporting the Council of State's 1989 decision instead of positioning itself firmly against religious symbols in schools.[158] In the summer of 2003, these four people came together to publish a petition titled "*Une loi pour interdire tout signe religieux à l'école*" ("A law to ban all religious signs in schools").[159] In their public appeal, the group focused on the "veil" – a symbol of female subjugation:

> Since the first "veil affair" broke out in 1989, noble souls have preached tolerance […]. And could one imagine a victim more perfect than the veiled young girl? How could the universalist republican rigor lash out at her, the daughter of immigrant Muslims, living in the *banlieue*, enslaved? So the postcolonial guilt of well-off neighborhoods made her untouchable […].[160]
>
> Even if the wearing of the veil in the public school could be reduced to the expression of a religious opinion deriving from "personal choice," it would still be reprehensible […], but everyone can observe that it goes well beyond that dimension. Brandished sometimes as a political symbol […], the veil marks the imprisonment of women in a self-segregated community. On the pretext of "protecting" her by covering her, the veil strips her from all characteristics and reduces her to a particularism that she has not chosen […].[161]
>
> […] through the position of women and beyond, the calamitous tolerance […] that has dominated on this issue for too long now raises the general question of the recognition of forced affiliations. The principle is that the school should be shielded from the pressure of any and all politico-religious groups. Religious conviction, as it belongs to the realm of liberty, cannot apply as an absolute (or non-negotiable) rule in the public

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[157] Translates as "The Republic and Islam: Between Fear and Obliviousness."

[158] See, for example, *Libération*, "Crise au Conseil à l'intégration," December 7, 2002.

[159] *Libération*, May 6, 2003.

[160] "*Lorsque la première 'affaire du voile islamique' a éclaté en 1989, les belles âmes ont prêché la tolérance […]. Et puis pouvait-on imaginer une figure plus parfaite de la victime qu'une jeune fille voilée ? Comment la rigueur universaliste républicaine pouvait-elle oser s'en prendre à elle, fille d'immigré musulman, banlieusarde, asservie ? La culpabilité postcolonialiste des beaux quartiers l'a ainsi laissée à sa condition d'intouchable […],*" *Libération*, "Une loi pour interdire tout signe religieux à l'école," May 6, 2003.

[161] "*Quand bien même le port du voile à l'école publique serait réductible à la manifestation d'une opinion religieuse issue d'un 'choix personnel', il n'en serait pas moins condamnable […], mais tout le monde peut constater qu'il excède largement cette dimension. Brandi parfois comme signe politique […], il signe l'enfermement de la femme dans une communauté de repli. Sous prétexte de la 'protéger' en la couvrant, il la dépouille de toute qualité en la réduisant à une particularité qu'elle n'a pas choisie […],*" *Libération*, "Une loi pour interdire tout signe religieux à l'école," May 6, 2003.

> school – the decisive place where the freedom of a citizen develops – and even more so, it definitely cannot appear there through a stranglehold on a part of the population in the name of sexual roles that are assigned in an authoritarian manner.[162]

This petition, published in the left-leaning *Libération*, sums up many of the main arguments that those in favor of a new law used throughout the year. These include the idea that the "veil" cannot be a purely personal choice; that it represents communalism; that it renders its wearer dehumanized or imprisoned; and that the school space needs to be protected against all forms of particularistic affiliations. Most importantly, though, this petition shows that the issue of "women's rights" was gaining centrality. Whereas, in 1989, pro-ban actors had referred to female submission in the periphery of their discourse on intransigent *laïcité*[163] (and even the simple fact that the controversy concerned *girls* had seldom been emphasized), in this 2003 appeal, the gender dimension was relevant to the authors' message. Indeed, Kintzler, Taguieff, Tepe and Tribalat saw gender oppression and "assigned sexual roles" as part of the pressures from which the school was supposed to protect its students.

The high-profile petition did not go unanswered. In fact, on May 20, 2003, a rebuttal was published in the very same pages. The counter-petition was signed by several left-wing academics who had been opposed to the exclusion of headscarved girls since the Creil affair: Françoise Gaspard, a well-known feminist academic and activist;[164] Étienne Balibar, philosopher; Saïd Bouamama, sociologist and trade unionist in the *Confédération générale du travail* (CGT, General Confederation of Labor); Catherine Lévy, sociologist and activist, president of *l'École des citoyens*; and Pierre Tévanian, professor of philosophy at Drancy and member of SNES (union of high-school teachers). This second group argued in favor of a secular school that would foster not only the development of autonomy and emancipation, but also the principle of inclusiveness:

> The headscarf covers diverse realities, and we have different – sometimes several diverging – assessments of its meaning; but all of us agree that in any case (whether the

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[162] "*[…] la tolérance funeste […] qui règne depuis trop longtemps sur ce point pose maintenant, à travers le statut des femmes et au-delà de lui, la question générale de la reconnaissance d'une obligation d'appartenance. Le principe est que l'école doit être soustraite à la pression de tout groupe politico-religieux quel qu'il soit. […] La conviction religieuse, puisqu'elle est de l'ordre de la liberté, ne peut pas se manifester comme un absolu (ou une norme non négociable) à l'école publique - lieu décisif où la liberté du citoyen se forme -, a fortiori elle ne peut certainement pas s'y signaler par une mainmise sur une portion de la population au nom de rôles sexuels autoritairement réglés*," *Libération*, "Une loi pour interdire tout signe religieux à l'école," May 6, 2003.

[163] See, for example, the petition "*Profs, ne capitulons pas !*".

[164] At the time, Françoise Gaspard was sociologist in the *École des Hautes Études en Sciences Sociales* and member of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

> headscarf is imposed on young girls or whether it is a choice), exclusion is the worst solution.[165]
>
> We are not "in favor of the veil"; we are simply supporters of a secular school that strives for the emancipation of all, and not for exclusion. For *laïcité* […] is an obligation that concerns the premises, the teaching program, and the personnel, not the students.[166] […]
>
> We are not forgetting gender equality, quite to the contrary. But whether the headscarf is chosen or imposed, we cannot consider the veiled young girl as the culprit, and it is definitely not for her to "pay the price." Whatever the case may be, it is by welcoming her to the secular school that we can help her emancipate herself by giving her the means for autonomy; it is by expelling her that we condemn her to oppression.[167]

In this counter-petition, the writers attempted to separate the issue of the headscarf – what it represents, why it is worn, whether it is positively or negatively valued – from the issue of whether or not "veiled" girls should be excluded from public schools. According to the signatories, inclusion in the secular school should be guaranteed, for it is within the school that young girls, "veiled" or not, could attain autonomy. We can now see how both those in favor and those against the law used arguments that were similarly centered on the role that the school was meant to play in the development of republican citizens. This part of the argument was to be expected, for both sides had already appealed to the issue of republican integration during the early controversies. What is more surprising, however, is that both groups evoked the specific question of gender equality by arguing that the school was essential in nurturing *women's* emancipation. This argument, which had not been widely used in the previous debates, had, by summer 2003, become one of the central themes. For those in favor of the law, adolescent girls (as well as all other students) were to be protected against the pressure from religious

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[165] "*Ce foulard recouvre des réalités diverses, et nous avons des appréciations diverses, voire divergentes, de sa signification ; mais nous sommes tous d'accord pour estimer que, dans tous les cas (que le foulard soit imposé aux jeunes filles ou qu'il résulte d'un choix), l'exclusion est la pire des solutions*," *Libération*, "Oui au foulard à l'école laïque," May 20, 2003.

[166] "*Nous ne sommes pas des 'partisans du voile' ; nous sommes simplement partisans d'une école laïque qui œuvre à l'émancipation de tous, et non à l'exclusion. Car la laïcité […] est une obligation qui concerne les locaux, les programmes scolaires et le personnel enseignant, et non les élèves*," *Libération*, "Oui au foulard à l'école laïque," May 20, 2003.

[167] "*Nous n'oublions pas l'égalité des sexes, bien au contraire. Mais, que le foulard soit l'objet d'un choix ou qu'il soit imposé, on ne peut pas considérer la jeune fille voilée comme coupable, et ce n'est en aucun cas à elle de 'payer'. Dans tous les cas, c'est en l'accueillant à l'école laïque qu'on peut l'aider à s'émanciper, en lui donnant les moyens de son autonomie, et c'est en la renvoyant qu'on la condamne à l'oppression*," *Libération*, "Oui au foulard à l'école laïque," May 20, 2003.

authorities and patriarchal "Muslim culture" by obliging them, through the threat of expulsion, to remove their headscarves in the school space. For those against the law, women's emancipation was best fostered by insuring the right to education and by welcoming everyone to attend school – with or without religious symbols. In other words, the public discussion of whether or not to legislate on religious symbols was structured around the decontestation of both *laïcité* and women's emancipation – two issues that had become closer as the debates progressed.

Since the position of the pro-law camp was firmly rooted in the idea that supporting a law was a way of saying "no" to the veil – not only in the school, but also elsewhere – those who opposed the law quickly saw themselves grouped with certain representatives of the Muslim faith who spoke in favor of the headscarf as a religious obligation. This polarization of discursive positions is apparent in the counter-petition quoted above. Although the authors explicitly stated that they were *not* "in favor of the veil" – and that, in fact, they did not agree on the issue – *Libération* published the petition under the title "Yes to the veil in the secular school."[168] Indeed, some days later, on May 24, 2003, the newspaper published a specification: "The authors of the appeal against the exclusion of veiled students […] 'wish to make it known that the title […] was not that of their original appeal. They want to clear up all confusion: it is not the headscarf that they say 'yes' to, but the right of all boys and girls to attend school'."[169] The shortcut taken by *Libération* in choosing the title exposes the general dynamic present in the debates: any opposition to the law tended to be viewed as support for the wearing of the Islamic headscarf. The original title of the counter-petition had been "No to laws of exclusion"[170] – a message that was not easily transmitted in the atmosphere of growing tension between two opposing poles.

While the Debré Mission and the Stasi Commission were at work reflecting on the need to legislate on religious symbols in public schools, a new incident took place which drew further attention to the issue of the headscarf and revealed some of the ideological dynamics in play. Two sisters, Lila and Alma Lévy, aged 18 and 16, were expelled, on September 24, 2003, from their high school[171] in the Parisian *banlieue* of Aubervilliers. The reason for their expulsion was the wearing of an outfit (*tenue*)

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[168] *Libération*, "Oui au voile à l'école laïque," May 20, 2003.

[169] "*Les auteurs de l'appel contre l'exclusion des élèves voilées […] 'tiennent à faire savoir que le titre* Oui au foulard à l'école laïque *n'est pas le titre originel du texte d'appel. Ils tiennent à dissiper toute ambiguïté : ce n'est pas au foulard qu'ils disent oui, mais au droit à l'école pour tous et toutes'*."

[170] "*Non aux lois d'exclusion*."

[171] *Lycée Henri-Wallon*.

that the school administration judged "ostentatious" – namely the Islamic headscarf.[172] Yet the Lévy sisters did not easily fit into the mold that the pro-law camp had constructed of young girls oppressed by sexist "Muslim culture." In fact, daughters of a Jewish-atheist father and a non-practicing Kabylian mother, all signs pointed to the fact that the sisters had found the Muslim faith on their own. Indeed, both parents – though defending the girls' right to an education as well as to their religious convictions – announced their opposition to the "veil." Moreover, Lila and Alma themselves confirmed that they were practicing their religion independently: they were not even visiting a Mosque, but said to have learned about Islam from "books bought at FNAC."[173] The Lévy sisters explicitly and publicly rebuffed the interpretation according to which the headscarf would be a tool for "provocation," and confirmed that they were wearing it "for modesty," and "because it forms a part of [their] religious practice."[174] "For me, [the headscarf] is a religious prescription, it is a choice and a religious act,"[175] said Alma.[176]

Although some anti-racist organizations[177] mobilized to defend the girls, others were in favor of the school's decision. For example, *SOS-Racisme*, an organization with close ties to the Socialist Party that had in 1989 condemned the exclusions, now welcomed the decision of the Aubervilliers school.[178] Moreover, following the sisters' expulsion, a group of teachers from the school in question publicly

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[172] Moreover, in its notice of expulsion, the school had referred to the sisters' refusal to remove their veils during gym class, and to them having "disturbed public order," thereby taking up the justifications allowed by the Council of State's 1989 decision (Bowen 2007, 111).

[173] *Le Figaro*, "Deux lycéennes voilées définitivement exclues," October 11, 2003. FNAC is a major retail company that sells, among other things, mainstream literature.

[174] "*Selon les deux sœurs, 'ce n'est pas de la provocation de porter le voile'. Elles ont réaffirmé porter le voile 'en grande partie par pudeur', 'par conviction religieuse' et 'parce que cela fait partie de (leur) pratique religieu*se'," *AFP*, "Aubervilliers – les sœurs voilées réfutent être à l'origine d'une polémique," October 14, 2003.

[175] "*Pour moi, c'est la religion qui l'impose, c'est un acte de choix et religieux*," quoted in *AFP*, "Aubervilliers – les sœurs voilées réfutent être à l'origine d'une polémique," October 14, 2003.

[176] Later, in February 2004, the Lévy sisters explained their views in more detail in a book published by *La Découverte* (Lévy et al. 2004). Titled *Des filles comme les autres*, the book's cover shows a photograph of the girls wearing their pastel-colored headscarves.

[177] These included MRAP – the employer of the girls' father – and *Ligue des droits de l'homme*. For MRAP, the exclusion of the Lévy sisters was "a denial of their right to education, the defeat of dialogue, and opening the door to the development of denominational schools" ("*un déni du droit à l'éducation, une défaite du dialogue et la porte ouverte au développement d'écoles confessionnelles*"), quoted in *AP French Worldstream*, "Affaire du foulard à Aubervilliers : les deux jeunes filles passent vendredi en conseil de discipline," October 9, 2003.

[178] According to *SOS-Racisme,* the school's decision "has permitted the secular spirit to be enforced" ("*qui a permis de faire respecter l'esprit laïc*"), *AFP*, "Les soeurs voilées exclues à Aubervilliers démentent être manipulées,", October 13, 2003. The *Ligue internationale contre le racisme et l'antisémitisme* (LICRA) also pronounced itself "against the veil in the school" (*Reuters*, "La Licra oppose au foulard à l'école mais contre une loi," November 14, 2003).

displayed their support for the decision by arguing that "the wearing of the veil, even when freely chosen, especially when it is done by adolescents, is a breach of the freedom of all women."[179] Although the exclusion of the Lévy sisters was not based on an existing law,[180] it was nonetheless considered legitimate by the government as well as by the political opposition. For example, the Minister of Justice, Dominique Perben (UMP), stated that the expulsion "seemed to be in accordance with the law" – while, at the same time, expressing his preference for a new law on the "veil."[181] The decision of expulsion was further welcomed by Minister of the Interior, Nicolas Sarkozy (UMP), who stressed that the "rules of *laïcité* apply to everyone"[182] as well as by François Hollande, leader of PS, who argued that "the law must be upheld. We are a secular country."[183] According to Alain Seksig (Inspector General of the school district in question and a fervent defender of a strict interpretation of *laïcité*),[184] antiracist organizations were "confusing the respect of *laïcité* with antiracism. It is not young Muslim women who are excluded, but religious symbols."[185] Although banning religious insignia mainly concerned adolescent girls, the justification that pro-ban actors often offered was the fight again sexism, thereby revealing the adjacency that was forming between public secularism and gender equality:

> The Deputy Minister of Education, Xavier Darcos, spoke out very strongly […] against the wearing of the Islamic veil in schools and declared that he "could not but approve" of the decision of a high school in Aubervilliers to exclude the two Lévy sisters.[186]

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[179] "*[L]e port du voile, même consenti, surtout par des adolescentes, est une atteinte à la liberté de toutes les femmes*," quoted in *AP French Worldstream*, "Affaire du foulard à Aubervilliers : les deux jeunes filles passent vendredi en conseil de discipline," October 9, 2003.

[180] The school's decision was based on its internal regulations which were in contradiction with the Council of State's decision.

[181] *AFP*, "Les sœurs voilées exclues à Aubervilliers démentent être manipulées," October 13, 2003.

[182] *"Les règles de la laïcité s'imposent à tout le monde*," quoted in *AP French Worldstream*, "Exclusion des lycéennes voilées : les politiques satisfaits, les associations inquiètes," October 11, 2003.

[183] "*La loi doit s'appliquer. Nous sommes dans un pays laïc*," quoted in *AP French Worldstream*, "Exclusion des lycéennes voilées : les politiques satisfaits, les associations inquiètes," October 11, 2003.

[184] Seksig had expressed his hostility to the "veil" already in 1999 (*Libération*, "En acceptant le foulard à l'école, on risque de transformer chaque musulman en intégriste," November 12, 1999). He later became a member of the High Council for Integration in charge of the issue of *laïcité*.

[185] "*Ces associations confondent le respect de la laïcité et l'antiracisme. Ce ne sont pas des jeunes musulmanes qui sont exclues, mais les signes religieux*," quoted in *Le Figaro*, "Deux lycéennes voilées définitivement exclues," October 11, 2003.

[186] "*Le ministre délégué à l'Enseignement scolaire, Xavier Darcos, s'est très fermement prononcé […] contre le port du voile islamique à l'école et déclaré 'ne pouvoir qu'approuver' la décision du lycée d'Aubervilliers d'exclure les deux sœurs Lévy*," *AFP*, "M. Darcos se prononce très fermement contre le port du voile au lycée," October 14, 2003.

> "I cannot but approve of the fact that the law is being enforced," declared the Minister […]. "I am surprised that parents encourage their daughters to shut themselves away in some sort of 'tarp' that signifies sexist discrimination," he added.[187]
>
> We respect the school of the nation for which symbols of discrimination, sexist symbols, and the confusing of religion and public secularism are not acceptable. If someone does not like the French Republic, they should go elsewhere," the Minister reconfirmed.[188]

Through these pronouncements, the Deputy Minister of Education defended a version of republican ideology that placed not only *laïcité*, but also anti-sexism at its very center. In other words, in his pro-ban discourse, Darcos defended not only an intransigent interpretation of *laïcité*, but also a specific interpretation of sexism. Indeed, he drew a political frontier between those who accepted these understandings of secularism and gender equality and those who did not, thereby creating a republican "Us" which excluded headscarved schoolgirls. In urging the latter group to "go elsewhere," the Minister quite literally placed those opposing this specific discourse outside of the sphere of legitimate republicanism. The girls' father, Laurent Lévy – a lawyer employed by MRAP – was shocked by the Minister's discourse:

> These remarks would be outrageous even if they concerned foreigners. As it happens, they concern two young girls who are perfectly French, born in France from two parents who are themselves French by birth. Two young girls who have never, for that matter, expressed a rejection of either their nationality or of the republican system.[189]

In his reaction, Laurent Lévy unsurprisingly argued that his daughters should be accepted as deserving republican citizens. Yet we can observe that he referred neither to the principle of religious freedom nor to the fact that the requirement of *laïcité* legally concerned only the state and its employees. Instead, Lévy evoked his daughters' attachment to the nation and to its republican values. In so

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[187] "*'Je ne peux qu'approuver qu'on applique la loi', a déclaré le ministre […]. 'Je suis surpris que des parents encouragent leurs filles à s'enfermer dans une espèce de "bâche" qui signifie une discrimination sexiste', a-t-il ajouté,*" *AFP*, "M. Darcos se prononce très fermement contre le port du voile au lycée," October 14, 2003.

[188] "*'Nous respectons l'école de la nation pour laquelle les signes discriminatoires, les signes sexistes et la confusion du confessionnel et du laïque n'est pas acceptable. Si l'on n'aime pas la République française, il faut aller ailleurs', a encore affirmé le ministre*," *AFP*, "M. Darcos se prononce très fermement contre le port du voile au lycée," October 14, 2003.

[189] "*Ces propos seraient déjà scandaleux s'ils concernaient des étrangers. Ils concernent en l'occurrence deux jeunes filles parfaitement françaises, nées en France de deux parents eux-mêmes Français de naissance. Deux jeunes filles qui n'ont par ailleurs jamais exprimé de rejet ni de leur nationalité, ni du système républicain,"* quoted in *AFP*, "Le père des lycéennes d'Aubervilliers scandalisé par des propos de M. Darcos," October 15, 2003.

doing, he, too, spoke with a republican vocabulary. The two different views on what it meant to be "republican" did not coincide, however, as can be concluded from the Minister's quick reply:[190]

> I meant what I said: I approve of the decision of exclusion taken by the high school's administrative council – exercising its sovereign power – against the two young girls who wear the Islamic headscarf. When someone thus displays a symbol that is discriminatory, sexist, ostentatious, and, in addition, smacks of provocation, they place themselves outside of the values of *laïcité* and the Republic […].[191]
>
> By using the term "elsewhere," I naturally did not mean "outside of France," but "in places where republican principles are not compulsorily applied" […].[192]
>
> I prefer it when difficulties get settled through dialogue rather than conflict, but when provocation replaces arguments, I go back to republican principles that do not accept either sexist symbols, forms of discrimination, or the confusion between religion and secularism […].[193]

Again, Deputy Minister Darcos (UMP) described the school as a space where republican values – including not only *laïcité*, but also gender equality – were to be protected against the sexism that the Islamic headscarf, according to him, crystallized. In so doing, he made the Lévy sisters' expulsion out to be a victory for this specific form of republicanism which embraced "women's rights" through its rejection of conspicuous religious symbols. Later the same month, a similar view was expressed by Gisèle Halimi, a lawyer and well-known feminist activist,[194] who argued that the decision taken in the Lévy case was "just and courageous." In her opinion piece, published in *Le Monde* on October 24, 2003,

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[190] *AFP*, "Xavier Darcos - le père de Lila et Alma 'fait semblant de ne pas comprendre'," October 15, 2003.

[191] "*Je maintiens ce que j'ai dit, j'approuve la décision d'exclusion prise souverainement par le conseil d'administration du lycée à l'encontre des deux jeunes filles qui portent un foulard islamique. Lorsqu'on affiche ainsi un signe discriminatoire, sexiste, ostentatoire, et que de surcroit on entre dans une logique de provocation, on se met hors des valeurs de la laïcité et de la République*," quoted in *AFP*, "Xavier Darcos - le père de Lila et Alma 'fait semblant de ne pas comprendre'," October 15, 2003.

[192] "*En utilisant le terme 'ailleurs', je ne voulais bien sûr pas dire 'en dehors de France' mais 'dans des lieux où ne s'exercent pas obligatoirement les principes républicains'* […]," quoted in *AFP*, "Xavier Darcos - le père de Lila et Alma 'fait semblant de ne pas comprendre'," October 15, 2003.

[193] "*Je préfère que les difficultés se règlent pas le dialogue plutôt que par le conflit mais quand la provocation tient lieu d'argument, j'en reviens aux principes républicains, qui n'acceptent ni les signes sexistes, ni les formes discriminatoires ni la confusion du confessionnel et du laïc,*" quoted in *AFP*, "Xavier Darcos - le père de Lila et Alma 'fait semblant de ne pas comprendre'," October 15, 2003.

[194] Gisèle Halimi was (and still is) the president of the feminist organization *Choisir la cause des femmes*. She has been a Socialist MP and is the author of numerous publications, including *Rapport de la commission pour la parité entre les femmes et les hommes dans la vie politique* (1996).

Halimi, too, joined the growing group of actors who argued that a law on the headscarf was necessary to protect women's dignity:

> The veil is a horrible sign of women's submission. I am not extrapolating at all. This is the very meaning of its prescription in the Coran. Defined in relation to the man, to his desires, to his urges, the woman must hide everything that could seduce, provoke sexual transgression.[195]
>
> A separation from being with others, with the rest of the world, brought about by the imperviousness of the veil. An imprisonment that bears the submissive seal of charia (polygamy, repudiation, legal incompetence, being a juvenile for life…). An ancestral inferiority that the veil helps, within its folds, to interiorize. […] Through the veil, the woman is relegated to genuine sexual apartheid.[196]
>
> What happens, in these conditions, to gender equality, a constitutional principle, a republican value? What remains of women's dignity, which is suffocated under the veil, simultaneously a gag and a symbol?[197]
>
> The irreducibility of this religious symbol to our supreme law should be enough to ban the Islamic veil for good from our schools.[198]

We have now seen that the adjacency of *laïcité* and gender equality was mainly driven by pro-ban actors. Those defending an intransigent view on *laïcité* articulated the prohibition of religious symbols in public schools increasingly as a solution both to the problem of religious fundamentalism *and* sexism. The growing proximity of the topics of *laïcité* and "women's rights" did not meet with many obstacles, for the opponents of the headscarf ban, too, embraced the value of gender equality within a republican vocabulary, thereby contributing to the discourse of sexularism which confounded the two issues. As this was the case, all major actors were laying claim, in their own way, to republicanism,

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[195] *"Le voile est un terrible signe d'infériorisation de la femme. Je n'extrapole point. C'est le sens même de la prescription du Coran. Définie par rapport à l'homme, à ses désirs, à ses pulsions, la femme se doit de cacher tout ce qui pourrait séduire, appeler à la transgression sexuelle," Le Monde*, "Laïcité : une loi pour la cohésion," October 23, 2003.

[196] *"Séparation d'avec l'autre, d'avec le reste du monde par l'étanchéité du voile. Enfermement pour se marquer du sceau infériorisant de la charia (polygamie, répudiation, incapacité civile et minorité à vie...). Infériorisation atavique que le voile aide, dans ses plis, à intérioriser. […] Par le voile, la femme est reléguée dans un véritable apartheid sexuel*," *Le Monde*, "Laïcité : une loi pour la cohésion," October 23, 2003.

[197] "*Que devient dans ces conditions l'égalité entre les sexes, principe constitutionnel, valeur républicaine ? Que reste-t-il de la dignité de la femme, asphyxiée sous le voile, bâillon et symbole à la fois ?,*" *Le Monde*, "Laïcité : une loi pour la cohésion," October 23, 2003.

[198] "*[I]irréductibilité de ce signe religieux à notre loi suprême devrait suffire à bannir définitivement le voile islamique de nos écoles*," *Le Monde*, "Laïcité : une loi pour la cohésion," October 23, 2003.

laïcité, and feminism. More specifically, the pro-law coalition wanted to reinforce public secularism so that the school would be insulated against the sexism of Muslim culture; the anti-law group wanted to preserve the principle of *laïcité* (as it had been articulated by the Council of State's 1989 decision) in order to ensure young girls' right to an education.

In these debates, many politicians – for the most part, men – who had not previously been particularly interested in issues of gender discrimination, now took up the issue of sexism to argue in favor of the headscarf ban. As seen in Section 2.4, women's rights have not traditionally been of major concern for French republicans. Although the Parliament passed the law on *parité* in 2000, the issue of women's inclusion had not been immediately endorsed by French politicians (Bereni 2015, 207-237). Against this background, the French political elites' sudden engagement with "women's rights" and the pro-ban camp's discourse on "republican feminism" stands out. While those who were rallying in favor of a headscarf ban were gaining supporters for a specific vision of *laïcité* and gender equality, the headscarf controversy was also creating new cleavages within feminist groups.

4.5 Feminists Divided Over the Headscarf Issue

If the issue of the Islamic headscarf in the republican school divided the political left, the right, and the government as well as anti-racists, nowhere were the fractures as apparent as within the French feminist field. Although everyone seemed to be speaking in favor of "women's rights," for most feminist associations, the headscarf controversy was no straightforward matter. In fact, traditional feminist organizations, such as *Collectif national pour le droit des femmes* (CNDF), *Mouvement pour le planning familial* (MPPF), and *Collectif d'associations pour le droit à l'avortement et à la contraception* (CADAC), were almost completely absent from the public debates surrounding the headscarf.[199] The CNDF – a major federation bringing together feminist organizations, unions, and left-wing political parties – was clearly divided on the issue. Although CNDF seemed to be against the practice of veiling (Dot-Pouillard 2007, 3-4), it did not take a position on whether or not a new law was necessary.[200] CNDF did not want to focus on the issue of the headscarf, but instead attempted to call attention to "all violence

[199] Taken together, they appeared in the French written press only about two dozen times between April 2003 and March 2004, almost always in relation to other topics (whereas, in the same period, NPNS was mentioned in well over 200 articles).

[200] *AFP*, "Les femmes et des hommes dénoncent 'toutes les violences' envers les femmes," November 25, 2003.

against women": prostitution, pornography, domestic abuse, sexual harassment, etc.[201] This was unsurprising, for as Dot-Pouillard has noted, feminist organizations such as CNDF, MPPF, and CADAC had traditionally been skeptical of both the state and religion and were, in fact, aiming to "preserve the historical feminist heritage" (Dot-Pouillard 2007, 4-5). Mainly, though, they saw the headscarf issue as directing attention away from more far-reaching problems.

Although traditional feminist organizations were not directly involved in the headscarf debates, these discussions propelled the creation of a number of new women's movements, thereby attesting to the importance that the veiling issue held for French feminists. To begin with, and as I have shown, during the spring and summer of 2003, *Ni putes ni soumises* (NPNS) rose to national fame. Indeed, if the 1983 *Marche des beurs* had been an important moment in the public visibility of the "second generation," the march of the "women from the neighborhoods," organized in March 2003, had been a defining moment for the political mobilization of women of immigrant origin. NPNS carried a discourse that focused on the problem of sexism in the housing projects and emphasized female emancipation through secular education. As the year progressed, both the Raffarin government and prominent Socialist figures continued to shower NPNS with support. In October 2003, when NPNS launched what was to become its annual conference, Prime Minister Raffarin voiced his support and "admiration" for the organization's initiatives, whereas Jean-Louis Borloo (Minister for Urban Affairs), Nicolas Ameline (Deputy Minister for Gender Equality), and Laurent Fabius (MP, PS) participated in person in the discussions that NPNS organized.[202] The themes of these round-tables included "women's rights, a universal combat," "the ghettos and their downward spiral," and "*laïcité*, a concern for the Republic,"[203] thus illustrating the movement's political priorities and the link that its discourse formed between *laïcité* and women's rights – particularly with regard to the sexism of the (Muslim-populated) *banlieues*. During the conference, Fadela Amara – who had already gained the support of important members of the political elite – made an appeal to President Chirac, urging him to make "women's rights" a "national cause."[204]

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[201] *AFP*, "Les femmes et des hommes dénoncent 'toutes les violences' envers les femmes," November 25, 2003.

[202] *AFP*, "Soutien de Jean-Pierre Raffarin à l'université des femmes des quartiers," October 3, 2003; *Le Figaro*, "Le mouvement Ni putes ni soumises organise son combat," October 4, 2003.

[203] "*Les droits des femmes, un combat universel*," "*les ghettos et ses dérives*," "*la laïcité, un enjeu pour la République*", see *AFP*, September 5, 2003.

[204] "*Le mouvement 'Ni putes ni soumises' lance un appel au chef de l'État*," *AFP*, October 5, 2003.

Although NPNS played a crucial role in bringing the question of women's rights to the public eye, and though it was clearly not in favor of the Islamic headscarf, originally the organization was against any new law on the issue of religious symbols in public schools.[205] Indeed, in October 2003, around the anniversary of the murder of Sohane Benziane,[206] Amara published a book by the title *Ni putes ni soumises*[207] (2003) (in collaboration with Sylvia Zappi, a journalist from *Le Monde*). This autobiographical book touched on Amara's childhood in the housing projects and discussed the different stages of the mobilization of the women of the "neighborhoods." In a section titled "The Headscarf as Symbol of Female Oppression," Amara states her position in favor of a headscarf ban, but against a new law which, according to her, could lead to dramatic consequences:

> When the phenomenon first appeared in the late 1980s, with tensions at school over a handful of girls wearing the headscarf, I was among those who said that these young women should not be excluded. […] Unfortunately, ten years later the policy [set by the Council of State's decision] has proved to be a failure.[208] […]
>
> In my opinion, it is urgent that we return to the legal texts and apply the ban against religious symbols in the public sphere such as the school.[209] […]
>
> Our reaffirmation of secularism need not be in the form of a law; I think it would be unwise to make more rules on such a sensitive topic. […] For some, wearing a headscarf is a new political argument for stigmatizing Muslims and the suburbs. […] The youth may react very badly [to a new law]. Because it will involve Islam, they are going to feel that once again they are targeted […]. And probably then certain women will be forced to wear burkas, not just headscarves.[210]

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[205] "*Voile islamique - le MRAP, 'Ni putes ni soumises' et les Verts opposés à une loi*," *AFP*, October 10, 2003.

[206] For this occasion, a commemorative steel slab was placed in proximity of the tomb of Simone de Beauvoir. The text on the slab read "In memory of Sohane Benziane, burnt alive so that boys and girls may better live together in peace and respect" (*AFP*, "Une plaque en souvenir de Sohane près de la tombe de Simone de Beauvoir," October 1, 2003).

[207] Published in English under the title *Breaking the Silence: French Women's Voices from the Ghetto* (2006).

[208] "*Quand, à la fin des années 1980, le phénomène est apparu avec les premières tensions à l'école autour d'une poignée de filles qui sont venues voilées dans l'enceinte scolaire, j'ai fait partie de ceux qui disaient qu'il ne fallait pas les exclure. […] Malheureusement, dix ans après, [l'avis du Conseil d'État] c'est un échec*" (Amara and Zappi 2003, 77).

[209] "*À mes yeux, il est urgent de revenir aux textes légaux et d'appliquer l'interdiction des signes religieux dans les sphères publiques comme l'école*" (Amara and Zappi 2003, 77).

[210] "*Je ne pense pas que cette réaffirmation de la règle commune doive passer par une loi et qu'il soit judicieux de légiférer à nouveau sur un thème si sensible. […] Le port du voile est devenu pour certains un nouvel argument politique permettant de stigmatiser les musulmans et les banlieues. […] Les réactions des jeunes risquent d'être terribles. Ils vont encore une fois se sentir vises parce qu'on touchera à l'islam […]. Il est alors probable que ce ne sera plus des voiles qu'on imposera à certaines femmes mais des burqas"* (Amara and Zappi 2003, 78-79)

By early November 2003, though, Amara changed her position,[211] explaining that "the *Ni putes ni soumises* movement has always asked for a clarification. For us, the veil has no religious connotation. It marks the humiliation of women. […] [The law] should reaffirm, at the same time, the principles of *laïcité* and of gender equality, by specifying the behaviors that breach these principles." Only a few weeks after NPNS had officially joined the pro-law camp, the *Comité Laïcité République*[212] (CLR) handed out the National Prize for *Laïcité* (*Prix de la laïcité*) to Amara's book.[213] The Committee had been established in the aftermath of the early headscarf controversies to protect the Republic and its keystone, *laïcité*,[214] and it brought together a number of pro-law actors. The fact that CLR honored Amara's book with a prize is further proof of the affinity that had formed between the pro-law group and the specific discourse that NPNS carried.[215] Indeed, the award was given out during the CLR's annual conference,[216] which was organized, in 2003, around the theme "neither crosses, scarves, nor kippas in the republican school."[217] The jury was presided by Élisabeth Badinter, and other members included Henri Peña-Ruiz, who was a member of the high-profile Stasi Commission (still, at the time, deliberating over the headscarf issue), and Christiane Taubira, Socialist MP for French Guiana (who was later to become Minister of Justice and a high-profile victim of racist slurs).[218] At the same event, the jury also handed out an International Prize for *Laïcité* (*Prix international de la laïcité*). This second award went to Chahdortt Djavann – an Iranian dissident and author of the pamphlet *Bas les voiles !* ("Down with the Veil!").[219] Djavann and Amara were chosen by the jury for their commitment in favor of "all women."[220] Both had written books about their personal experiences growing up in Muslim culture: Djavann in Iran, where she had been forced to wear the veil, and Amara in a working-class city in central France. Both were

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[211] See *Elle* petition below.

[212] This committee had been founded by Claude Nicolet, French historian and specialist of republicanism (see e.g. Nicolet 1992; Nicolet 2000; Nicolet 2014).

[213] As CLR would continue to hand out its awards in the following years, its list of recipients would come to form something of a "hall of fame" for a specific way of understanding the relationship between republicanism, *laïcité*, and gender equality.

[214] CLR's website < http://www.laicite-republique.org/clr-declaration-de-principes-et.html >.

[215] Below we will see that Amara's book would, in February 2004, also win the Award for Best Political Book of the year.

[216] From November 29 to December 1, 2003.

[217] "*Ni croix, ni foulard, ni kippa à l'école de la République*."

[218] Taubira would also later publish a book on the challenges and virtues of republican integration (Taubira 2007).

[219] Djavann's other books include *Je viens d'ailleurs* (2002), *Que pense Allah de l'Europe ?* (2004), and *Comment peut-on être français ?* (2006).

[220] *Sud-Ouest*, "La laïcité n'est pas une valeur franco-française," November 30, 2003.

highly mediatized figures (Fernando 2009), and, as we will see below, both were also invited to speak in front of the Stasi Commission.

Although NPNS was supported by an important part of French political elites (and in particular by pro-ban actors), not all feminists accepted its interpretation of *laïcité* and "women's rights." In fact, the headscarf controversy created important fractures within traditional French feminism, and although organizations such as CNDF did not mobilize either against or in favor of the law, some of its members went on to advocate contrasting positions on the issue. This fracture between opposing feminist poles is visible, for example, in the positions adopted by two figures both drawing on the heritage of Simone de Beauvoir: Anne Zelensky and Christine Delphy (Rochefort 2002, 87). Anne Zelensky, President of *Ligue des droits des femmes* and a "historic" activist of the French feminism of the 1970s,[221] adopted a particularly severe attitude towards the headscarf. In a letter that Zelensky wrote with Anne Vigerie (member of *Cercle d'étude de réformes feministes*), published in *Le Monde*[222] on May 29, 2003, the two authors created a clear parallel between feminism, public secularism, and the exclusion of "veiled" students. Having opened the letter with the recurrent argument that the wearing of the "veil" symbolizes women's submission (instead of religious conviction), Vigerie and Zelensky claimed that "France is a nation which respects two principles: *laïcité*, which presupposes the separation of religion and politics, and equality between the sexes."[223] They then went on to argue that *laïcité* "implies the neutrality of public space, free of all religious beliefs,"[224] and that religious symbols such as the "veil" should therefore be prohibited in all levels of education (including university), in places of "public life" (*vie commune*) such as administration and companies, and eventually even in the streets. Vigerie and Zelensky's letter was, at the time, among the strictest interpretations on *laïcité.* (We will later see that it would take several more years until their suggestions would gain momentum.) Yet what is of most interest for us here is the specific logic of the argument they presented which was summarized in the

[221] For Zelensky's account of the development of the French feminist movement, see Zelensky-Tristan (2005)

[222] Several editorials published by *Le Monde* during 2003 expressed hostility towards the idea of a new law on the headscarf. However, *Le Monde*'s editorial committee and journalists were divided on the issue, and, for example, Philippe Bernard, who covered the work of the Stasi Commission during the fall of 2003, was openly in favor of a law (Thomas 2008a; see also Thomas 2008b).

[223] "*La France est une nation qui respecte deux principes : la laïcité, qui suppose la séparation du religieux et du politique, et l'égalité des sexes*," < http://mapage.noos.fr/anne.zelensky/laicarde.pdf >.

[224] "*La laïcité suppose un espace public neutre, libre de toute croyance religieuse […].*"

title "*Laïcardes*,[225] *puisque féministes*" ("*Laïcardes*, because feminists"). Indeed, Vigerie and Zelensky argued that they defended a strict interpretation of public secularism because they were feminists, thereby creating an explicit parallel between two issues that had previously been distant. In so doing, they represented an emergent form of feminism, one founded on the ardent defense of intransigent *laïcité* and the embracing of republican principles – and therefore a reversal of traditional French feminism which had usually been skeptical towards the emancipatory values of the Republic. I will call this form of feminism – adopted by Zelensky and Vigerie as well as by Élisabeth Badinter, Caroline Fourest, Gisèle Halimi, the *Pro-choix* journal, NPNS, and others – "republican feminism" to distinguish it from the "historical feminism" of CNDF, MPPF, and CADAC.

In opposition to "republican feminism" – and also originating from "historical feminism" – another group of actors formed a third feminist coalition. Whereas Zelensky thought that the feminist vocation should include the reinforcement of *laïcité*, and therefore support for the law,[226] her contemporary and former collaborator,[227] Christine Delphy, adopted a position against the exclusion of headscarved girls. In December 2003, Delphy was one of the signatories of a petition against the headscarf ban.[228] Other signatories included Mireille Ferry, spokesperson for the Greens; Françoise Gaspard, sociologist well known for her work – among other things – on the headscarf;[229] Dounia Bouzar, an anthropologist who has published extensively on the Islam of France;[230] Nicole Savy, Vice-president of *Ligue des droits de l'homme*; Pierre Tévanian, a philosophy professor known for his activism against

[225] *Laïcarde* is a word that was usually used in a pejorative way to denote excessive enthusiasm for *laïcité*. Here, however, the authors proudly adopted the label.

[226] Zelensky reiterated this position in a letter – written with Catherine Deudon, Liliane Kandel, and Annie Sugier (president of *Ligue du droit international des femmes*) – published in *Le Monde* on December 5, 2003 with the title "*Les féministes se dévoilent*" ("Feminists unveil themselves").

[227] Notably in the *Mouvement de libération des femmes* (MLF) between 1968 and 1970 (Chaperon 2014, 182; Duchen 2003, 209).

[228] The petition was titled "Un voile sur les discriminations" and it was published in *Le Monde* on December 17, 2003.

[229] Gaspard and Khosrokhavar (1995).

[230] Bouzar and Kada (2003); Bouzar (2001); Bouzar (2007a); Bouzar (2007b); Bouzar (2008); Bouzar and Bouzar (2009).

"laws of exclusion";[231] Éric Fassin, a sociologist working on issues concerning racial and sexual minorities;[232] and Nilüfer Göle, a sociologist specializing in Islam.[233] These authors – some of whom had already previously expressed their opposition to excluding headscarved students – pointed to some of the paradoxes of the debate:

> The "headscarf affair" has become a national debate, "the" national debate […]. It teaches us things: that for a great number of politicians the equality of the sexes is a priority – what do you know! Whereas for certain feminists, it is in the fight against fundamentalist Islam – necessarily fundamentalist – that the fate of women in France will be decided. What do you know again![234]
>
> Alliances, unimaginable a couple of months ago, are forming, *laïco*-feminist fronts whose common denominator is a collection of apocalyptic fantasies […].[235]
>
> Everyone knows that the law that is being presented to us as a "law for *laïcité*" targets, in first place, the headscarf […]. We strongly express our opposition to any law stigmatizing Islam, and particularly Muslim women.[236]

In this petition, titled "*Un voile sur les discriminations*" ("Veiled discriminations"), the authors emphasized two things. Firstly, they pointed to the absurdity of the fact that the pro-law group was firmly defending "women's rights," yet completely disregarding the majority of gender-based discriminations taking place in France. Secondly, they stressed the issue of racism and the post-colonial construction of French Muslims as "an inferior caste." Much in a similar vein, in February 2004, Delphy and her collaborators organized a demonstration under the banner *Collectif une école pour tou-te-s* ("The collective for a school for everyone"). The participants – left-wing activists and some Muslim organiza-

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[231] See, for example, Tevanian (2002); Tevanian (2004).

[232] See, for example, Fassin (2005); Fassin and Fassin (2006); Fassin (2006).

[233] See, for example, Göle (1996).

[234] *"L''affaire du foulard' est devenue un débat national, 'le' débat national […]. On y apprend des choses : que pour nombre d'hommes politiques l'égalité entre les sexes est une priorité - tiens ! Tandis que, pour certaines féministes, c'est dans la lutte contre l'islam intégriste - forcément intégriste - que se joue le sort des femmes en France. Re-tiens !,"* *Le Monde*, "Un voile sur les discriminations," December 17, 2003.

[235] "*Des alliances, inimaginables il y a quelques mois, se forment, des fronts laïco-féministes qui ont pour dénominateur commun un fonds de fantasmes apocalyptiques […],*" *Le Monde*, "Un voile sur les discriminations," December 17, 2003.

[236] "*Chacun sait que cette loi qu'on nous présente comme 'une loi pour la laïcité' vise en premier lieu le foulard […]. Nous manifestons très fermement notre opposition à toute loi stigmatisant l'islam, et les femmes musulmanes en particulier*," *Le Monde*, "Un voile sur les discriminations," December 17, 2003.

tions – demanded equal access to education and condemned the law that was being prepared as discriminatory. This feminist movement opposing the law led to the creation of the organization *Collectif féministes pour l'égalité* (CFPE), associated with the feminist journal *Nouvelles Questions Féministes* (NQF). CFPE articulated an anti-racist feminism which was directly opposite to NPNS's discourse, for it considered the law to be sexist, racist, and essentializing (Dot-Pouillard 2007, 7): sexist since it concerned women, racist because it targeted Muslims, and essentializing insofar as it took the headscarf to (only) signify women's submission.[237]

This "antiracist feminism" that Delphy and her collaborators promoted did not, however, gain significant public support. It was rather the republican feminist discourse that was taken up by the wider public. An example of this is a pro-ban petition published, on November 8, in the women's magazine *Elle*. Addressed to President Chirac "in the name of *laïcité* and gender equality," the petition came out only some days before the publication of the report of the Stasi Commission, and was signed by a long list of women. The names that *Elle* published included not only Fadela Amara and Élisabeth Badinter, but also actresses and singers such as Isabelle Adjani, Émmanuelle Béart, Isabelle Huppert, Nicole Garcia, Jane Birkin, Line Renaud, and Sandrine Kimberlain; psychoanalysts Julia Kristeva and Elisabeth Roudinesco; former Minister of Women's rights, Yvette Roudy; writer Edmonde Charles-Roux; as well as fashion designer Sonia Rykiel.[238] The appeal that these women made to Chirac focused exclusively on the issue of gender equality and articulated a strict interpretation of *laïcité* as its protector:[239]

> The Islamic veil sends all of us [women], Muslims and non-Muslims, back to a discrimination against women that is intolerable. Any tolerance in this respect would be seen by every woman in this country as a breach of her personal dignity and liberty Accepting the Islamic veil in school and in public service is legitimizing a visible symbol of female oppression in places where the state has to be the protector of strict equality between the sexes.[240]

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[237] Later this group would be joined by the newly formed *Indigènes de la République* (IDLR).

[238] *AFP*, "Signes religieux à l'école – 'Elle' lance un appel des femmes à Jacques Chirac," December 3, 2003.

[239] *AFP*, "Signes religieux à l'école – 'Elle' lance un appel des femmes à Jacques Chirac," December 3, 2003.

[240] "*Le voile islamique nous renvoie toutes, musulmanes et non musulmanes, à une discrimination envers la femme qui est intolérable. Toute complaisance à cet égard serait perçue par chaque femme de ce pays comme une atteinte personnelle à sa dignité et à sa liberté. Accepter le voile islamique à l'école et dans l'administration publique, c'est légitimer un symbole visible de la soumission de la femme dans les lieux où l'Etat doit être garant d'une stricte égalité entre les sexes*," quoted in *Le Monde*, "Dans 'Elle', un appel à M. Chirac de femmes favorables à une loi," December 8, 2003.

> […] we ask for a law accompanied by decrees for implementation, which not only re-affirms the principle of *laïcité* by prohibiting all visible religious symbols from the school and public service, but also gives those responsible of these public services the legal tools to enforce the principle of gender equality.[241]

The message of the petition was clear: *laïcité* is a way of enforcing gender equality. Moreover, as had been the case with Vigerie and Zelensky's "*Laïcardes, puisque féministes*," the signatories positioned themselves in favor of a law as women and feminists. For the pro-law camp, then, the causes of defending public secularism and gender equality had become joined. Yet it was precisely the adjacency of these two issues that created cleavages between "republican feminists" and other feminist groups. These fractures were blatantly evident in March 2004 when NPNS refused to participate in the traditional demonstration organized by CNDF for International Women's Day (March 8). NPNS thought that the appeal of CNDF was too critical towards the government and did not take sufficiently into account the primacy of the values of *laïcité* and gender equality.[242] Furthermore, NPNS made it clear that it would not march with organizations that "tolerated the veil," and publicly distanced itself from CNDF by arranging its own, parallel demonstration "firstly for *laïcité*, equality, and diversity [*mixité*[243]]."[244]

CNDF and NPNS organized their respective marches at the same time and along the same route, but the separate corteges illustrated the recent split that had taken place within the feminist field – on the one side, those who considered that the headscarf issue was not a priority,[245] on the other, those who viewed the defense of *laïcité* as an essential part of the feminist vocation. A third, though much smaller, group was formed by *Collectif une école pour tout-e-s* which brandished slogans such as "veiled

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[241] *"[…] nous demandons une loi appuyée par des décrets d'application, qui non seulement réaffirme le principe de laïcité en interdisant tous les signes visibles religieux à l'école et dans les services publics mais donne aussi clairement aux responsables de ces services publics les moyens juridiques de faire respecter le principe d'égalité des sexes,*" quoted in *Le Monde*, "Dans 'Elle', un appel à M. Chirac de femmes favorables à une loi," December 8, 2003.

[242] "'*Je suis très heureuse de voir que des femmes s'engagent quelle que soit leur appartenance politique', a déclaré Fadela Amara. Son mouvement avait refusé de signer l'appel du collectif national pour les droits des femmes qui dénonce en priorité 'les attaques sociales du gouvernement', en estimant que le combat pour l'égalité et la défense de la laïcité doit être prioritaire*," *AFP*, "Fadela Amara 'heureuse' de manifester entre Mmes Guedj et Laguiller," March 6, 2004.

[243] *Mixité* refers to cohabitation (or non-segregation). In the context of the school, it can be understood as "coeducation" – between people of different genders, religions, etc.

[244] *AFP*, "'Ni putes, ni soumises' manifeste samedi 'd'abord pour la laïcité et la mixité'," March 2, 2004.

[245] "*Nous dénonçons le voile, mais nous disons que les attaques sociales du gouvernement sont toutes aussi graves*," quoted in *AFP*, "Journée internationale des femmes - le voile divise la manifestation parisienne," March 6, 2004.

or not, solidarity against sexism."[246] The message of this third group (consisting of headscarved as well as bareheaded women) was denounced by one of the other participants as "appalling" and having nothing to do with women's rights.[247] In the marches that took place during the event, both CNDF and NPNS had their supporters. CNDF was joined, for example, by Marie-George Buffet (PCF), Alain Krivine (LCR), and Martine Billard (the Greens), whereas NPNS was supported by *Coordination féministe et laïque* (CFL) and SOS-Racisme. Present in the demonstration organized by NPNS were also Nicole Guedj, Secretary of State and member of the Stasi Commission; Arlette Laguiller, spokesperson for *Lutte ouvrière*; and Georges Sarre, spokesperson for *Mouvement républicain et citoyen* (MRC). Although the PS officially supported CNDF, several PS members joined the NPNS group. These included Julien Dray (co-founder of *SOS-Racisme*), Malek Boutih (former president of *SOS-Racisme*), and Jack Lang who stated that he was "happy to be with friends he had been supporting from the beginning."[248]

We have now seen that feminists, too, were divided over the headscarf issue. More specifically, it was the contiguity of the themes of *laïcité* and gender equality that led to their disagreements. The feminist movement was fractured into two opposing poles – and a relatively silent majority in the middle. As some high-profile feminist figures supported NPNS and others CFPE, the participants in this discursive struggle were not only competing to impose meanings on republican values such as *laïcité*, but also on the "authentic" feminist heritage.[249] All in all, out of the three feminist groupings outlined in this section – historical feminists, many of whom kept their distance from the headscarf controversy, republican feminists mobilized in favor of a law, and antiracist feminists opposed to the instrumentalization of *laïcité* and gender equality – it was the discourse of the republican feminists that was often taken up by political representatives and the media.[250] In fact, the political elites' support for "republican feminism" was further illustrated in February 2004 when Amara's book *Ni Putes Ni Soumises* won

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[246] *AFP*, "Voilée, non voilée, solidarité contre le sexisme," March 6, 2004.

[247] "*Je trouve ça révoltant. Elles ne défendent pas le droit des femmes. Elles n'ont rien à faire dans la manifestation*," quoted in *AFP*, "Journée internationale des femmes - le voile divise la manifestation parisienne," March 6, 2004.

[248] *AFP*, "Fadela Amara 'heureuse' de manifester entre Mmes Guedj et Laguiller," March 6, 2004; *AFP*, "Journée internationale des femmes - plusieurs milliers de personnes à Paris," March 6, 2004.

[249] See, for example, the petition "*Des féministes se dévoilent*."

[250] As has attested the visibility of the NPNS movement.

yet another prize – the one for the "best political book of the year" (*Le Prix du Livre Politique*).[251] The jury consisted of a number of journalists,[252] and the award was handed out in a ceremony that took place in the *Palais Bourbon* during a day dedicated to debates concerning *laïcité* and integration. At the same event, the deputies of the National Assembly also voted on a selection of books[253] and chose Amara as the winner (*Le Prix des Députés*). The president of the Assembly, Jean-Louis Debré, described Amara's book as a "republican act of faith" ("*un acte de foi républicain*"), while, at the very same time, the opponents of the headscarf ban were demonstrating outside.[254]

Textbox 3 – Fadela Amara

Fadela Amara was born in 1964. Her father emigrated to France in 1955 from Algeria, where he returned in 1960 to marry Amara's mother. Fadela Amara was one of ten children born in France, growing up in a slum area outside the city of Clermont-Ferrand where, according to her, 99 percent of the population was Arab. In the late 1970s, Amara transferred to a new school, later stating that it was the republican school which "made her what she is." In her writings and public appearances, she has always stressed the emancipatory role of the public school system: "It was at the republican school that I learnt to love what is most noble about France: the Republic."

Amara participated in the 1983 *Marche des Beurs* before joining *SOS-Racisme*. In 2000, she was elected as the head of the *Fédération Nationale des Maisons des Potes* (FNMP), and in 2002, she participated in the writing of the "Ni putes ni soumises" manifesto, becoming the newly-born NPNS organization's first president and a well-known public figure determined to protect the women of the *banlieues* from extremist pressures and sexual violence. In 2003, Amara voiced her support for a law banning headscarves from public schools, and it was also under her leadership that NPNS rose to national fame and organized the *Mariannes d'aujourd'hui* exhibition at the National Assembly. In 2007, Amara was appointed as Secretary of State in François Fillon's (UMP) second government. (Source: Gemie 2010, 66-82.)

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[251] *Le prix du livre politique*. Two years later, in 2006, the same prize would be attributed to Caroline Fourest – another prominent pro-ban figure and editor of the feminist journal *Pro-choix* – for her book *La tentation obscurantiste* (2005).

[252] The webpage of the National Assembly: < http://www.assemblee-nationale.fr/evenements/livre-politique-2004-1.asp >.

[253] Other laureats included Caroline Fourest and Fiammetta Venner's *Tirs croisés: la laïcité à l'épreuve des intégrismes juif, chrétien et musulman* (2003), Chahdortt Djavann's *Bas les voiles !* (2003), and Alain Finkielkraut's *Au nom de l'autre. Réflexion sur l'antisémitisme qui vient* (2003).

[254] *Le Parisien*, February 8, 2004.

4.6 The Stasi Commission Deliberates and Renders Its Report

In the process of legislating on religious symbols, the so-called Stasi Commission played a pivotal role. When President Chirac appointed this "Commission of wise men"[255] in June 2003 to reflect on "the principle of *laïcité* in the Republic," he was probably expecting it to end up suggesting something short of a new a law (Lorcerie 2005, 13; Bowen 2007, 112-113). In fact, Chirac was one of the many people who was not yet in June in favor of a law,[256] but who would change positions by the end of the year. If the pro-law camp gained supporters from the wider political elite at the same time it also won over members of the Stasi Commission as some who had originally been against the law gradually came to change their minds (Baubérot 2004a).[257] So it was that the report that the Stasi Commission, submitted to President Chirac in December 2003, suggested (among other things) a law prohibiting the wearing of conspicuous religious symbols in public schools. The position adopted by the high-profile Commission – with only one dissenting voice[258] – offered validation for the pro-law discourse that had become dominant, and thereby provided an important stepping stone towards the passage of a law.

Before examining the Stasi Report, let us look at the composition and auditions of the presidential Commission.[259] The Commission was comprised of twenty people from different spheres of the French political and intellectual elite.[260] To begin with, Chirac chose his friend, Bernard Stasi (Ombudsman at the time, with a long political career behind him),[261] to head the Commission. Among the members, scholars were also well represented. Besides the high-ranking academics Maurice Quenet (Chancellor of Paris Universities) and René Remond (historian and President of *Fondation Nationale des Sci-*

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[255] In public discourse, the Stasi Commission was often referred to as a "*Commission des sages*."

[256] See Chirac's comments published in *Le Monde*, June 18, 2003.

[257] This was the case for Patrick Weil who explained his change of heart in "Lifting the Veil" (2004).

[258] Jean Baubérot was the only one voting against the suggestion for a law on the issue.

[259] Lorcerie among others has noted that specific members played a significant role in the deliberative process (Lorcerie 2005, 16, 22).

[260] The list of members can be found on the presidential website: < http://www.jacqueschirac-asso.fr/archives-elysee.fr/elysee/elysee.fr/francais/actualites/a_l_elysee/2003/decembre/liste_des_membres_de_la_commission_stasi_sur_la_laicite.6707.html >.

[261] Stasi was known to be a centrist. He is the author of *L'immigration, une chance pour la France* (1984).

ences Politiques), the Commission included several researchers specializing in Islam and Muslim integration: Mohammed Arkoun (Professor Emeritus of Islamic Thought and a known secularist),[262] Jacqueline Costa-Lascoux (a sociologist, specialist of integration and a member of the HCI),[263] Gilles Kepel (a political scientist specializing in Islam),[264] and Patrick Weil (a historian specializing in questions of citizenship and immigration).[265] Two of the members – Jean Baubérot and Henri Peña-Ruiz – were recognized scholars of *laïcité*. Other academics included Régis Debray and Alain Touraine, both of whom, as seen above, had already intervened publicly with regard to the headscarf controversy. Two further members of HCI were invited to become members of the Stasi Commission: Gaye Petek (President of *Elele*[266]) and Hanifa Chérifi (state mediator for issues concerning the headscarf). There were also several political figures within the Commission: Michel Delebarre (former Socialist minister), Nicole Guedj (UMP secretary of state),[267] Marceau Long (honorary vice-president of the Council of State),[268] and Nelly Olin (UMP senator). The Commission also included Ghislaine Hudson (principal of *Lycée Dammarie-lès-Lys*[269]) and Raymond Soubie (former political advisor turned businessman). Finally, Rémy Schwartz was appointed rapporteur. Schwartz was a member of the Council of State who had for many years opposed the institution's liberal interpretation of *laïcité* (Lorcerie 2005, 16).

This group was diverse in some ways but not in others. To begin with, President Chirac had appointed individuals known for their intransigent views on *laïcité* (e.g. Régis Debray and Henri Peña-Ruiz) as well as others who favored a more liberal approach (e.g. Jean Baubérot and Alain Touraine). Also, the members of the Stasi Commission came from both the political left and the right. However,

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[262] Arkoun has published extensively in a number of languages. Some of his books written in French include *Pour une critique de la raison islamique* (1984), *Religion et laïcité: Une approche laïque de l'Islam* (1989), *Ouvertures sur l'Islam* (1989), *Penser l'Islam aujourd'hui* (1993), and *L'Islam: approche critique* (2002).

[263] Costa-Lascoux has published books such as *Les Algériens en France* (1985, with Émile Temime), De l'immigré au citoyen (1989), and *Les trois âges de la laïcité* (1996).

[264] Kepel's books include *Le Prophète et Pharaon. Les mouvements islamistes dans l'Égypte contemporaine* (1984), *Les banlieues de l'islam. Naissance d'une religion en France* (1987), *À l'ouest d'Allah* (1994), *and Jihad. Expansion et déclin de l'islamisme* (2000).

[265] Weil's books include *La France et ses étrangers* (1991), *Qu'est-ce qu'un Français ?* (2002), *La République et sa diversité: Immigration, intégration, discriminations* (2005).

[266] An organization promoting Turkish people's integration.

[267] Guedj would later quit her position when she would be appointed Minister, thereby reducing the final number of commissioners to 19.

[268] Long had been vice-president of the Council of State when it had rendered its 1989 ruling (Bowen 2007, 115). He had also been the first president of the High Council for Integration.

[269] A high school in a south-eastern suburb of Paris.

only five women were included in the Commission – most of whom had close ties to the government – and only one of the academics was female (Winter 2008, 217-218). Moreover, though three of the members were of Muslim background (Arkoun, Chérifi, and Petek), none of them were known as practicing Muslims.

The Commission began its work in July 2003 and started a major round of auditions in September.[270] More than a hundred of these auditions were public (Stasi 2003, 70-77).[271] The Commission auditioned members of the government (e.g. François Fillon, Luc Ferry, Xavier Darcos, Jean-Louis Borloo, Nicolas Sarkozy, Nicole Ameline); representatives of political parties (e.g. François Hollande, François Bayrou, Alain Juppé, Marie-George Buffet, Gilles Lemaire, Bruno Gollnisch); and many organizations (e.g. *Union des familles laïques*, *Comité national d'action laïque*, SOS-Racisme, MRAP, *Ligue internationale contre le racisme et l'antisémitisme*, and *Ligue des droits de l'Homme*). Several feminists and feminist organizations were also auditioned. Although the Commission heard Françoise Gaspard who was opposed to the headscarf ban, the majority of feminists auditioned were already publicly in favor of a law. This was the case for Gisèle Halimi, Annie Sugier, Chahdortt Djavann, Elisabeth Roudinesco, and Yamima Benguigi, all of whom had signed petitions in favor of the intransigent interpretation of *laïcité*. Fadela Amara was heard in her role as president of NPNS, and *Femmes contre les intégrismes* and *Union française des femmes musulmanes* were equally auditioned. The Stasi Commission further heard statements from trade unions, religious authorities (including Dalil Boubakeur, the rector of the Paris Mosque), members of national education (such as Alain Seksig), school principals and teachers, as well as some high-school students and academics. Other public figures included in the list of auditions were Georges Bensoussan, author (under the penname Emmanuel Brenner) of the book *Les territoires perdus de la République*, and Alain Gresh, editor-in-chief of *Le Monde Diplomatique* (and opposed to the headscarf ban). Finally, the hearing of Jean-Paul Costa, who was at the time Vice-president of the European Court of Human Rights, was particularly important (Belbah and Galembert 2008, 245-246). In his intervention, Costa – who had, as a member of the Council of State, been a long-time supporter of a headscarf ban – stressed the necessity of a legislative response and implied that a new law would not contravene the European Convention of Human Rights – an issue that had worried pro-law

[270] For a full list of the auditions, see Stasi (2003, 70-77).

[271] In fact, they were broadcast live by the government cable station *Public Sénat* (cf. Stasi 2003, 6). Later a documentary (titled "Behind the Veil") was also produced about the work of the Commission.

advocates from the beginning of the controversy (Galembert 2007, 24-35; see also Lorcerie 2005, 16-17).

Despite the large number of auditions, the Commission only heard testimony from two "veiled" women: Saïda Kada, a Lyon-based activist and coauthor[272] of the book *L'une voilée, l'autre pas* (2003) ("One Veiled, the Other Not"), and Fatiha Ajbli who accompanied her. Kada and Ajbli were heard during the Commission's last session of auditions (Belbah and Galembert 2008, 246). No headscarf-wearing students nor teachers comfortable with Islam were invited to appear before the Commission (Lorcerie 2005, 22). As this was the case, several anti-law actors and academics later criticized the procedure for having been biased (e.g. Lorcerie 2005; Gresh 2004). This was also the issue taken up by Louisa Larabi Hendaz (2005) in her book *Le voile humilié* ("The Humiliated Veil"), published with the subtitle *Les auditions manquées de la commission Stasi* ("The missed auditions of the Stasi Commission").[273] The final part of Larabi Hendaz's book includes testimonies from Muslim women that should have, according to the author, been heard by the Commission.

The Stasi Commission delivered its report to President Chirac on December 11, 2003. Some seventy pages long, the report summarized the Commission's hearings, drew conclusions, and offered policy proposals. Its four sections were titled "*Laïcité*, universal principle, republican value," "*Laïcité* French-style, a legal principle applied with empiricism," "The challenge of *laïcité*," and "Asserting a firm *laïcité* which unites."[274] Not surprisingly, the report echoed the discourses that had circulated in the public sphere since the beginning of the headscarf controversy. For example, the problems related to immigrant integration, the rise of Islamist fundamentalism, and the insecurity of the *banlieues* figured prominently in the report. As Stasi himself noted in the foreword of the report:

> The machinations detrimental to *laïcité* are more and more numerous, especially in public space. […] The difficulties of integration, […] the conditions of life in the many *banlieues* of our cities, […] explain that [immigrants] lend a benevolent ear to those who incite them to fight against what we call the values of our Republic. We must be

[272] With Dounia Bouzar, an anthropologist and prominent figure within the anti-prohibitionist camp.

[273] The cover of the book shows a dramatic image of a woman taking off her headscarf to reveal a shaved head – a reference to the punishment suffered by French women suspected of sexual involvement with German occupiers.

[274] "*Laïcité, principe universel, valeur républicaine*," "*La laïcité à la française, un principe juridique appliqué avec empirisme*," "*Le défi de la laïcité*," "*Affirmer une laïcité ferme qui ressemble*."

> lucid: fundamentalist groups are indeed at work in our country to test the resistance of the Republic and to push certain youngsters to reject France and its values.[275]

Moreover, and again, predictably, since the "specialists" heard by the Stasi Commission were the same whose voices had been heard in the larger public debate throughout the year, the Commission saw this rise of Islamist fundamentalism as particularly detrimental to young women. For example, in a section titled "A serious regression in the situation of young women,"[276] the report quoted testimonies describing the social situation of women in the *banlieues*. The picture that the report painted of women's lives in immigrant neighborhoods was very familiar:

> Young women find themselves victims of a resurgence of sexism which is apparent in diverse pressures as well as in verbal, psychological, and physical violence. Young people demand that they wear clothing that is covering and asexual, that they lower their eyes when seeing a man; if they do not conform to this, they are stigmatized as "whores" [*putes*].[277]
>
> These young women, once veiled, can go through the stairwells of apartment blocks and go out in public without fear of being shouted at, even abused, as they were before, bare-headed. The veil thus offers them, paradoxically, the protection that the Republic should guarantee. Those who do not wear it and see it as a sign of inferiority which imprisons and isolates women are referred to as "indecent," even "infidels." Young women are also victims of other forms of violence: sexual mutilation, polygamy, repudiation.[278]

Although Islam was not explicitly mentioned in these passages, it is obvious that the Commission considered that it was the young women of immigrant origin who needed protection from the

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[275] "*Les agissements attentatoires à la laïcité sont de plus en plus nombreux, en particulier dans l'espace public. […] Les difficultés de l'intégration […], les conditions de vie dans de nombreuses banlieues de nos villes, […] expliquent qu'ils prêtent une oreille bienveillante à ceux qui les incitent à combattre ce que nous appelons les valeurs de la République. Car il faut être lucides : oui des groupes extrémistes sont à l'œuvre dans notre pays pour tester la résistance de la République et pour pousser certains jeunes à rejeter la France et ses valeurs*" (Stasi 2003, 6-7).

[276] "*Une grave régression de la situation des jeunes femmes*."

[277] "*Les jeunes femmes se retrouvent victimes d'une résurgence du sexisme qui se traduit par diverses pressions et par des violences verbales, psychologiques ou physiques. Des jeunes gens leur imposent de porter des tenues couvrantes et asexuées, de baisser le regard à la vue d'un homme ; à défaut de s'y conformer, elles sont stigmatisées comme 'putes'*" (Stasi 2003, 46).

[278] "*Les jeunes filles, une fois voilées, peuvent traverser les cages d'escalier d'immeubles collectifs et aller sur la voie publique sans craindre d'être conspuées, voire maltraitées, comme elles l'étaient auparavant, tête nue. Le voile leur offre ainsi, paradoxalement, la protection que devrait garantir la République. Celles qui ne le portent pas et le perçoivent comme un signe d'infériorisation qui enferme et isole les femmes sont désignées comme 'impudiques', voire 'infidèles'. Des jeunes femmes sont aussi victimes d'autres formes de violences : mutilations sexuelles, polygamie, répudiation*" (Stasi 2003, 47).

misogyny of Muslim culture – seen as particularly rampant in the housing projects.[279] Again, a parallel was also drawn between the practice of veiling and gender-based violence such as female circumcision. Moreover, building on the testimonies of politicians, representatives of associations, and teachers, the Stasi Commission made it clear that it was the young women who had appealed to the Republic in order to gain protection (Stasi 2003, 58) – much in the vein of the pleas made by the Mariannes of the Bastille Day exhibition. Indeed, the above-quoted passages suggested that women only "veiled" themselves for protection; if the Republic offered this shield, the headscarf would no longer be necessary. In other words, the headscarf could be replaced by the reassertion of republican values – condensed into a law, symbolized by the Phrygian cap.

Furthermore, the Stasi Report explicitly stated that the situation had changed since 1989. It presented the often-voiced argument that "communalist" movements had multiplied, yet interestingly, it also noted that when Jospin had called upon the Council of State in 1989, the issue of gender discrimination had not been mentioned (Stasi 2003, 29). Thus, according to the report, "the evolution in the terms of the debate in fifteen years allows [us] to measure the rise of the problem."[280] In other words, drawing in part on the public discourses surrounding the issue of gender equality, the Commission was of the opinion that both the problems of fundamentalism and sexism had exacerbated, and therefore required new solutions. Above we have seen how pro-law advocates, in particular, had identified the republican school as a solution to these problems. As could be expected, the question of secular schools also figured prominently among the themes of the Stasi Report. More specifically – and again, resembling the wider political discourse of its time – the Stasi Commission took up the issue of gender equality, articulating it as essential in the educational context:

> For those [women] who do not wear it, the Islamic veil signifies the stigmatization of the "young pubescent girl or the woman as solely responsible for men's desire," a vision which is fundamentally opposed to the principle of equality between men and women. For the whole educational community, the wearing of the veil is too often a source of conflict, of division, and even of suffering. The visibility of a religious symbol is felt by many to be contrary to the mission of the school which should be a space of neutrality and a place for the wakening of critical thought. It is also a breach in the

[279] Hence the reference to "apartment blocks" and their stairways – and issue which had been widely discussed in relation to the 2001 law on civil protection.

[280] "*L'évolution des termes du débat en quinze ans permet de mesurer la montée en puissance du problème*" (Stasi 2003, 29).

> principles and values that the school has to teach, especially the equality between men and women.[281]

From this citation, we can see how the themes of *laïcité* and gender equality, which were near to each other in French public discourse, were similarly adjacent in the Stasi Report. The Commission reiterated that the role of the school was not simply the development of critical capacities but also the transmission of republican values, and that gender equality was one of these fundamental principles. What is more, the Stasi Commission went as far as to argue that *laïcité* could not be understood without reference to the equality of the sexes, producing a discourse of sexularism:

> As the foundational principle of the school, *laïcité* is a major theme of civic education. Today, laïcité cannot be conceived without a direct link with the principle of the equality of the sexes. The Commission suggests that *laïcité,* which incorporates gender equality, become the object of significant study and debates, for example during a "Marianne Day" which could be instituted during the International Week against Racism.[282]

Mirroring the argument that "feminism signifies secularism,"[283] the Stasi Report asserted that support for *laïcité* entailed the promotion of gender equality. These statements are, in fact, simply different ways of conceiving the adjacency between the two concepts: for "republican feminists," the issue of public secularism had become essential for the defense of women's rights; for "intransigent *laïcistes*," the question of gender equality had become central to the promotion of republican values. In both of these discourses, then, an idea that had been distant had become adjacent to the conceptual core as conceptualized in Chapter 2, thereby rendering the two morphological structures compatible with each other.

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[281] "*Pour celles qui ne le portent pas, la signification du voile islamique stigmatise 'la jeune fille pubère ou la femme comme seule responsable du désir de l'homme', vision qui contrevient fondamentalement au principe d'égalité entre les hommes et les femmes. Pour l'ensemble de la communauté scolaire, le port du voile est trop souvent source de conflits, de divisions et même de souffrances. Le caractère visible d'un signe religieux est ressenti par beaucoup comme contraire à la mission de l'école qui doit être un espace de neutralité et un lieu d'éveil de la conscience critique. C'est aussi une atteinte aux principes et aux valeurs que l'école doit enseigner, notamment l'égalité entre les hommes et les femmes*" (Stasi 2003, 57).

[282] *"En tant que principe fondateur de l'école, la laïcité est un thème majeur de l'éducation civique. Aujourd'hui, la laïcité ne peut être conçue sans lien direct avec le principe d'égalité entre les sexes. La commission propose que la laïcité, intégrant l'égalité entre l'homme et la femme, fasse l'objet d'un temps fort d'étude et de débats, par exemple au cours d'une 'journée de Marianne' qui pourrait être instituée pendant la semaine internationale de lutte contre le racisme*" (Stasi 2003, 51-52).

[283] Or "*laïcardes, puisque féministes*."

This "isomorphism" between a specific version of feminism and a distinct understanding of *laïcité* is visible in the coalitions that pro-ban actors formed throughout the year. Moreover, we can now see that the Stasi Commission – comprised of members belonging to the pro-ban group, and also auditioning individuals that gave voice to this position – adopted a discourse which was centered on the adjacency of *laïcité* and women's rights. As such, the Commission's final report concluded that "the issue at hand is no longer freedom of conscience but public order,"[284] and that the familial and social pressures that urged young women to wear the "veil" were disruptive of the learning environment. The issue of women's emancipation was therefore one of the primary justifications that the Commission presented in favor of a new law:

> The Republic cannot ignore the distressing cry of these young girls. The school space has to remain, for them, a place of liberty and emancipation. This is why the Commission proposes inserting in a law concerning *laïcité* the following provision: "In the respect of freedom of conscience and the specific nature of private schools under contract [with the state], the wearing of symbols demonstrating religious or political affiliation is prohibited in schools, junior high schools, and high schools."[285]

The Stasi Commission then went on to specify that the ban concerned "conspicuous"[286] (*ostensible*) symbols such as sizeable crosses, veils, or skullcaps (Stasi 2003, 58). Besides the new law on *laïcité*, the presidential Commission also put forth a number of other recommendations, such as encouraging social integration in the *banlieues*, teaching *laïcité* in schools, and respecting various burial practices. Some of the more specific recommendations included the suggestion that Jewish Yom Kippur and Muslim Eid al-Adha be recognized as public holidays in state schools and private workplaces (Stasi 2003, 65), as well as the proposal for the creation of a "National Institute for Islamic Studies" (*École nationale d'études islamiques*) (Stasi 2003, 63). Aside from the recommendation for the creation of a new Anti-Discrimination Authority,[287] the government never took up most of the proposals made by the Commission. Indeed, especially the idea of adding two more national holidays received a lot of criticism and

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[284] "*[L]a question n'est plus la liberté de conscience, mais l'ordre public*" (Stasi 2003, 58).

[285] "*La République ne peut rester sourde au cri de détresse de ces jeunes filles. L'espace scolaire doit rester pour elles un lieu de liberté et d'émancipation. C'est pourquoi la commission propose d'insérer dans un texte de loi portant sur la laïcité la disposition suivante : 'Dans le respect de la liberté de conscience et du caractère propre des établissements sous contrat, sont interdits dans les écoles, collèges et lycées les tenues et signes manifestant une appartenance religieuse ou politique*" (Stasi 2003, 58).

[286] This formulation shifted attention from the question of provocation (implied in the term '*ostentatoire*') to the question of visibility (Winter 2008, 222).

[287] The *Haute autorité de lutte contre les discriminations et pour l'égalité* (HALDE) was created in 2004 (but has since been dismantled).

was soon quashed by Chirac.[288] Yet, as we will soon see, on the basis of the Commission's recommendations, Minister of Education Luc Ferry would present to the National Assembly a bill banning conspicuous religious symbols from public schools.

Jean Baubérot, holder of the Chair of History and Sociology of *Laïcité*,[289] was the only member who abstained from voting in favor of the proposal for a new law concerning students' religious insignia.[290] However, two commissioners – Régis Debray and Maurice Quenet – were absent the day of the vote, and René Remond and Alain Touraine had "held out before finally voting with the majority" (Bowen 2007, 124). A few of the members later admitted that they had felt pressured to conform to the majority opinion, and Touraine said that he had voted in favor of the proposal because he did not want the internal divisions of the Commission to take attention away from the contents of the report (Bowen 2007, 124).

Finally, it should be added that the Debré Mission,[291] set up around the same time as the Stasi Commission, reached similar conclusions as the presidential body. As Lorcerie has noted, the parliamentary committee was from the very beginning hostile to the "veil" – clearly more so than the Stasi Commission (Lorcerie 2008, 7-8). It therefore came as no surprise that the report of the Debré Mission, published in November 2003, favored the perspective on *laïcité* adopted by the intransigents, and mostly defined the headscarf as the result of family and social pressure (Debré 2003). It quoted extensively from Hanifa Chérifi (state mediator and member of the Stasi Commission) who had argued that there were no religious symbols in Islam, and that the headscarf, therefore, was only a symbol of fun-

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[288] See, for example, *Le Figaro*, "Jours fériés - la classe politique embarrassée," December 13, 2003; *AFP*, "Elisabeth Badinter 'réticente' aux jours fériés pour l'Aïd et Kippour," December 14, 2003; *AP*, "Près de 60% des Français opposés à la création d'un jour férié juif et d'un autre musulman dans les écoles publiques," December 15, 2003; *AP French Worldstream*, "Laïcité: Jean-Pierre Raffarin hostile à la création de deux nouveaux jours fériés," December 15, 2003; *Sud Ouest*, "Alain Juppé contre les jours fériés," December 15, 2003; *AFP*, "L'UMP contre l'octroi de deux jours fériés supplémentaires," December 15, 2003.

[289] *Chaire histoire et sociologie de la laïcité*.

[290] Already well-known at the time for his extensive publications on French public secularism, Baubérot went on to argue that the law of 2004 presented a major rupture within republican thought and *laïcité* in particular. He became an important member of the anti-prohibitionist group, centered, for example, around the group *Les mots sont importants* and the network *Islam & laïcité*. He soon wrote an "inside story" of the Stasi Commission's work (Baubérot 2004a). Some of Baubérot's other critical works include *L'intégrisme républicain contre la laïcité* (2006), *La laïcité expliquée à M. Sarkozy* (2008), and *La laïcité falsifiée* (2012).

[291] *Mission d'information sur la question du port des signes religieux à l'école*.

damentalism and proselytizing (Debré 2003, 74-81). Chérifi was also quoted as saying that the headscarf was incompatible with individual freedom. Drawing on these elements, the Debré Mission, too, proposed a law banning religious symbols from public schools. The reports of these two committees offered official weight to the demands for a headscarf ban and were therefore an important push towards the National Assembly legislating on the issue.

4.7 A National Consensus? A Law Is Adopted (2004)

Once the Stasi Report was published, the government quickly took official action to pass a law on *laïcité* and religious symbols. An important event leading up to this took place on December 17, 2003, when President Chirac spoke publicly in favor of the law. In fact, Prime Minister Raffarin had instructed members of his government not to give statements regarding *laïcité* before the President had had the chance to express himself.[292] Less than a week after the Stasi Commission had submitted its report, Chirac addressed a large audience – members of the government, political delegates, religious authorities, and associations (including many feminist figures and signatories of the *Elle* petition) – in the Élysée Palace. In this speech,[293] Chirac focused on *laïcité,* yet also forcefully emphasized the issue of gender equality. In the beginning of the speech, he referred to the primacy of *laïcité* and to the republican principles of liberty, equality, and fraternity:

> *Laïcité* is inscribed in our traditions. It is at the heart of our republican identity. The question today is not about restructuring it or modifying its boundaries. It is about making it a reality and ensuring its contemporary relevance by remaining loyal to the equilibria we have invented and to the values of the Republic.[294]
>
> For more than two hundred years now the Republic has constructed and reinvented itself on the basis of liberty, guaranteed by the primacy of the law over particular interests, on the equality between women and men, on equal opportunities, rights, and

[292] *Le Figaro*, "Jours fériés - la classe politique embarrassée," December 13, 2003.

[293] *Discours prononcé par Monsieur Jacques Chirac Président de la République relatif au respect du principe de laïcité dans la République*: < http://www.lemonde.fr/societe/article_interactif/2007/05/15/les-discours-de-jacques-chirac_910136_3224_8.html >.

[294] "*La laïcité est inscrite dans nos traditions. Elle est au cœur de notre identité républicaine. Il ne s'agit aujourd'hui ni de la refonder, ni d'en modifier les frontières. Il s'agit de la faire vivre en restant fidèle aux équilibres que nous avons su inventer et aux valeurs de la République.*"

> responsibilities, on the fraternity between all Frenchmen, whatever their social status [*condition*] or origin may be.[295]

As we can see, Chirac let it be known that the interpretation of *laïcité* that he would put forward in the speech would be a modification; he would rather speak in favor of applying the principle better and in accordance with the "true" republican tradition. Moreover, Chirac mentioned equality firstly in relation to gender, and only secondly in relation to "opportunities, rights, and responsibilities." In what followed, the President described the development of French republican thought since the Revolution by putting an emphasis on the contemporary challenges to public secularism: "At a moment when great ideologies are subsiding, obscurantism and fanaticism are gaining ground."[296] In this context of growing fundamentalism and "ghettoization," according to Chirac (as many others), the school was "a republican sanctuary" that had to be defended not only in the name of its civic teaching mission, but also in order to promote the equality of the sexes and to protect children from communalism.[297] Chirac told the audience that – having carefully studied the reports of the Stasi Commission and the Debré Mission – he had come to the conclusion, "in all good conscience," that "the wearing of clothing or symbols that conspicuously [*ostensiblement*] demonstrate religious affiliation have to be forbidden in public schools."[298] The President took up the exact position of the Stasi Commission regarding "conspicuous" versus "discreet" symbols, therefore arriving to the conclusion that "a law is obviously necessary. I hope it will be adopted by the Parliament and that it will be fully applied at the beginning of the next school year."[299] Chirac's specific appeal to the National Assembly was far from insignificant given the central

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[295] "*Voici plus de deux cents ans que la République se construit et se renouvelle en se fondant sur la liberté, garantie par la primauté de la loi sur les intérêts particuliers, sur l'égalité des femmes et des hommes, sur l'égalité des chances, des droits et des devoirs, sur la fraternité entre tous les Français, quelles que soient leur condition et leur origine*."

[296] "*Au moment où s'affaissent les grandes idéologies, l'obscurantisme et le fanatisme gagnent du terrain*."

[297] "The school is a republican sanctuary that we must defend in order to preserve equality in the acquiring of values and knowledge, equality between girls and boys, diversity [*mixité*] in all education, especially in sports. In order to protect our children. In order for our youngsters not to be exposed to the malicious winds which divide, separate, and set some against the others." ("*L'école est un sanctuaire républicain que nous devons défendre, pour préserver l'égalité devant l'acquisition des valeurs et du savoir, l'égalité entre les filles et les garçons, la mixité de tous les enseignements, et notamment du sport. Pour protéger nos enfants. Pour que notre jeunesse ne soit pas exposée aux vents mauvais qui divisent, qui séparent, qui dressent les uns contre les autres*.")

[298] "*J'ai étudié le rapport de la Commission Stasi. J'ai examiné les arguments de la Mission de l'Assemblée nationale, des partis politiques, des autorités religieuses, des grands représentants des grands courants de pensée. En conscience, j'estime que le port de tenues ou de signes qui manifestent ostensiblement l'appartenance religieuse doit être proscrit dans les écoles, les collèges et les lycées publics*."

[299] "*[U]ne loi est évidemment nécessaire. Je souhaite qu'elle soit adoptée par le Parlement et qu'elle soit pleinement mise en œuvre dès la rentrée prochaine*."

role that the president occupies within the French political system. Yet it was also important insofar as Chirac had, earlier in the year, expressed doubts concerning the headscarf ban,[300] but was now claiming that the law was "obviously necessary." If the President, as one of the highest representatives of the Republic, argued in favor of a law, why would others not follow?

As mentioned above, Chirac's December 2003 speech took up the issue of women's rights. This was especially the case towards the end of his speech, where the President made gender equality out to be one of the major achievements of the Republic, though one that was being threatened by regressive forces:

> Finally, our combat for the values of the Republic has to lead us to be firmly committed to the promotion women's rights and their genuine equality with men. This combat is one of those that will shape the face of the France of tomorrow. The degree of development of a society is firstly measured by the place that it accords to women. One has to remain vigilant and intransigent in the face of the threats of backtracking which exist.[301]
>
> We cannot accept that some people, taking shelter behind a tendentious conception of the principle of *laïcité*, look to undermine the gains of our Republic which are the equality of the sexes and the dignity of women. I solemnly proclaim: The Republic will oppose everything that separates, everything that cuts off, everything that excludes! The rule is non-segregation [*mixité*] because it brings together, because it puts all individuals on equal footing, because it refuses to distinguish between sex, origin, color, or religion.[302]

The political elites reacted to Chirac's speech in a generally positive fashion. For example, Prime Minister Raffarin – who had previously been hesitant with regard to legislating – immediately responded by stating that Chirac taking a stand was "an important step towards reinforcing the principle of *laïcité* within the Republic," and by assuring that he would take quick action so that a law could be

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[300] Though he had also, some days before the speech during a trip to Tunisia, stated that "in public education, the veil is something aggressive […] which presents a problem of principle" ("*dans notre enseignement public, la présence du voile a quelque chose d'agressif qui […] pose un problème de principe*"), *Le Figaro*, December 6, 2003.

[301] "*Enfin, notre combat pour les valeurs de la République doit nous conduire à nous engager résolument en faveur des droits des femmes et de leur égalité véritable avec les hommes. Ce combat est de ceux qui vont dessiner le visage de la France de demain. Le degré de civilisation d'une société se mesure d'abord à la place qu'y occupent les femmes. Il faut être vigilant et intransigeant face aux menaces d'un retour en arrière et elles existent*."

[302] "*Nous ne pouvons pas accepter que certains, s'abritant derrière une conception tendancieuse du principe de laïcité, cherchent à saper ces acquis de notre République que sont l'égalité des sexes et la dignité des femmes. Je le proclame solennellement : la République s'opposera à tout ce qui sépare, tout ce qui retranche, tout ce qui exclut ! La règle, c'est la mixité parce qu'elle rassemble, parce qu'elle met tous les individus sur un pied d'égalité, parce qu'elle se refuse à distinguer selon le sexe, l'origine, la couleur, la religion*."

voted before the beginning of the next school year.[303] According to Alain Juppé (UMP), Chirac had presented "a genuine republican speech, a true speech of a president of the Republic," one with which Juppé hoped "all Frenchmen would identify."[304] Bernard Stasi was equally happy about the President's reaction to the report he had submitted: "It is a speech that can be understood and appreciated by all French people, whatever their political or religious convictions are."[305] The political left also congratulated Chirac. Almost as an omen, Jean-Marc Ayrault, leader of the Socialist group in the National Assembly, called for "a law of national consensus"[306] and expressed his hope that "polemics, divisions and misunderstandings" could be avoided and that the issue would "proceed quickly."[307] Even religious authorities seemed to accept Chirac's suggestions. Dalil Boubakeur, the rector of the Paris Mosque known for his secular views, appealed to the French Muslim population to remain "calm" and to see in Chirac's speech "only the general interest without any sense of discrimination or stigmatization of our community."[308] The positions adopted by the representatives of the Jewish and Catholic faiths were equally accommodating. Only the Secretary General of the Union of Islamic Organizations of France (UOIF), Fouad Alaoui, pointed to the fact that the version of *laïcité* that Chirac defended would "exclude and limit religious freedom."[309] Others, such as Marie-George Buffet (PCF), settled for mainly criticizing the lack of concrete suggestions presented in Chirac's speech.

As could be expected, republican feminists welcomed Chirac's speech. Many of the signatories of the *Elle* petition were in fact among the audience (e.g., Sonia Rykiel, Anne Vigerie, and Yamima Benguigui). Élisabeth Badinter, who had heard Chirac's address in person, said that she had been "waiting

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[303] "*On vient de franchir une étape importante pour renforcer au sein de la République la valeur de la laïcité*," quoted in *AFP*, "Raffarin – 'une étape importante pour renforcer la valeur de la laïcité'," December 17, 2003.

[304] "*C'est un vrai discours républicain, un vrai discours de président de la République. J'espère que tous les Français s'y reconnaîtront […]*," quoted in *AP French Worldstream*, "Le discours de Jacques Chirac reçoit un accueil positif," December 17, 2003.

[305] "*C'est un discours qui peut être compris et apprécié par tous les Français, quelles que soient leurs convictions politiques, leurs convictions religieuses*," quoted in *AP French Worldstream*, "Les principales réactions au discours de Jacques Chirac," December 17, 2003.

[306] "*Une loi de concorde nationale […] Je souhaite qu'on évite les polémiques, les divisions et les malentendus, que l'on aille vite*," quoted in *AP French Worldstream*, "Le discours de Jacques Chirac reçoit un accueil positif," December 17, 2003.

[307] "*Je souhaite qu'on évite les polémiques, les divisions et les malentendus, que l'on aille vite*," quoted in *AP French Worldstream*, "Le discours de Jacques Chirac reçoit un accueil positif," December 17, 2003.

[308] "*[Q]ue l'intérêt général sans aucun esprit de discrimination ni de stigmatisation de notre communauté*," quoted in *AP French Worldstream*, "Le discours de Jacques Chirac reçoit un accueil positif," December 17, 2003.

[309] "*Une version de la laïcité qui exclut et limite au maximum la liberté religieuse*," quoted in *AP French Worldstream*, "Le discours de Jacques Chirac reçoit un accueil positif," December 17, 2003.

for this moment for fourteen years, since the affair of the first veiled girls of Creil."[310] Therefore, she was "happy and reassured that the highest authority of the state brings back the great principles [of *laïcité*, *mixité*, and gender equality]."[311] Badinter further stated that she had the impression that Chirac's discourse helped "regain some of the lost territory of the Republic"[312] – an allusion to Brenner's (2002) book on the *banlieues*. As far as NPNS was concerned, Fadela Amara stated: "We have no choice, we have to reassert the neutrality of public space. The President has set the bar high. Now it is for the national representatives to take up the values that he has reaffirmed."[313] Gisèle Halimi (*Choisir*) and Nicole Ameline (Deputy Minister of Gender Equality) also welcomed Chirac's call for gender equality in the workplace.

On January 28, 2004, Minister of Education Luc Ferry presented the bill[314] to the National Assembly. The debates that followed (February 3–10) were particularly devoid of substantive arguments against the law. Indeed, the discussions that took place in the French Chamber of Deputies were not so much a debate as they were a monotonic series of appeals in favor of "republican values," "sacred principles," and the notion of "living together": "This law is a starting point for reaffirming republican values […]"[315] (Jean Leonetti, UMP); "[A law] is necessary, first and foremost, to defend in schools the respect of the republican values to which we are attached – *laïcité*, tolerance, freedom of conscience […]"[316] (Pierre-André Périssol, UMP); "*Laïcité* is a sacred value. […] We have to make the school into a

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[310] *"[…] attendu ce moment depuis quatorze ans, depuis l'affaire des premières jeunes filles voilées de Creil*," quoted in *AFP*, "M. Chirac conforte les femmes dans leur lutte pour l'égalité et la dignité," December 18, 2003.

[311] "*Je suis heureuse et rassurée que la plus haute autorité de l'État rappelle les grands principes*," quoted in *AFP*, "M. Chirac conforte les femmes dans leur lutte pour l'égalité et la dignité," December 18, 2003.

[312] "*Avec le discours de Jacques Chirac j'ai eu l'impression qu'on reprenait un peu du territoire perdu de la République*," quoted in *AFP*, "M. Chirac conforte les femmes dans leur lutte pour l'égalité et la dignité," December 18, 2003.

[313] "*Nous n'avions pas le choix, il fallait réaffirmer la neutralité de l'espace public. Le président a mis la barre très haut. Maintenant, c'est à la représentation nationale de se saisir des valeurs qu'il a réaffirmées*," quoted in *AFP*, "Loi sur les signes 'ostensibles' – 'on n'avait pas le choix', selon 'Ni putes ni soumises'," December 17, 2003; see also *AFP*, "Laïcité – 'globalement, on va dans la bonne voie', selon Ni putes ni soumises," December 11, 2003.

[314] *Projet de loi relatif à l'application du principe de laïcité dans les écoles, collèges et lycées publics, n° 1378, déposé le 28 janvier 2004.*

[315] "*Cette loi est un point de départ pour réaffirmer les valeurs républicaines* […]" (troisième séance du mardi 3 février 2004).

[316] "*[La loi] est nécessaire, tout d'abord, pour défendre à l'école le respect des valeurs républicaines auxquelles nous sommes attachés - laïcité, tolérance, liberté de conscience […]*" (deuxième séance du mercredi 4 février 2004).

sanctuary, admit that there is something sacred in the Republic […]"[317](André Gerin, PCF); "*Laïcité* is the key that allows us to live together in the Republic, in accordance with our differences […]. *Laïcité* is this 'living together in the Republic'"[318] (Jean Glavany, PS). The MPs also referred repeatedly to the issue of women's rights:

> Because it signifies the submission of the woman to the man, the Islamic veil takes on a symbolic character that should not be accepted in the school, a place for the learning of republican values[319] (Nicolas Perruchot, UDF).
>
> The central question that the veil raises is the equality of the sexes and republican values. The presence, in public space, of young veiled girls is a breach of dignity [*respect de soi*] and constitutes an infringement on the principle of gender equality. […] The wearing of the veil violates the principle of equality of men and women and is, as such, anti-constitutional. Asserting republican values is not an act of exclusion […][320] (Conchita Lacuey, PS).
>
> [*Laïcité*] is a beacon for women who are prisoners of obscurantism and for oppressed minorities[321] (Jean-Marc Ayrault, PS).
>
> I wish to address, in the first place, the question of gender equality, for it is at the heart of the debate on *laïcité*. So there will be a law which will reconfirm the principle of *laïcité* in the school and clearly preserve the principle of the equality of the sexes. Women's rights and *laïcité* are two non-negotiable principles[322] (Nathalie Gautier, PS).

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[317] " "*La laïcité est une valeur 'sacrée'. […] Nous devons sans crainte sanctuariser l'école, admettre qu'il y a quelque chose de 'sacré' dans la République […]*" (troisième séance du mardi 3 février 2004).

[318] "*La laïcité est aussi la clé nous permettant de vivre ensemble dans la République, dans le respect de nos différences […]. La laïcité, c'est ce 'vivre ensemble dans la République' […]*" (première séance du mercredi 4 février 2004).

[319] "*Parce qu'il signifie la soumission de la femme devant l'homme, le voile islamique revêt un caractère symbolique et ne saurait être accepté à l'école, lieu d'apprentissage des valeurs républicaines*" (troisième séance du mardi 3 février 2004).

[320] "*La question centrale que soulève le voile concerne l'égalité entre les sexes et les valeurs républicaines. La présence dans l'espace public de jeunes filles voilées porte atteinte au respect de soi et constitue une entorse au principe d'égalité entre les sexes. […] Le port du voile porte atteinte au principe d'égalité entre hommes et femmes et il est, à ce titre, anticonstitutionnel. Affirmer des valeurs républicaines n'est pas un acte d'exclusion […]*" (troisième séance du mardi 3 février 2004).

[321] "*Elle [laïcité] est une lumière pour les femmes prisonnières de l'obscurantisme, elle est un espoir pour les minorités opprimées*" (deuxième séance du mardi 3 février 2004).

[322] "*Je veux aborder, en premier lieu, la question de l'égalité entre la femme et l'homme, car elle est au cœur du débat sur la laïcité. Il y aura donc une loi, qui réaffirmera le principe de laïcité à l'école et préservera clairement le principe de l'égalité entre les sexes. Les droits des femmes et la laïcité sont deux principes non négociables*" (première séance du jeudi 5 février 2004).

> In my opinion, and as many colleagues have said, the veil is foremost the symbol of the inequality of the sexes, a symbol imposed by men of women's submission. Some will tell us that it can be worn voluntarily, but for the huge majority of women who cover themselves with it, we all know that it is a discriminatory constraint that affects their innermost selves, their dignity and their social status[323] (Germinal Peiro, PS).

Out of the votes that were cast by the National Assembly on February 10, 494 were in favor of the law and only 36 against.[324] The great majority of the UMP and PS groups voted in favor,[325] the UDF was split, while the PCF was mostly against. The law was then passed on to the Senate where it was similarly discussed and adopted on March 3, 2004 (277 in favor, 20 against).[326] Finally, it was signed by President Chirac and published[327] as "*La loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.*" The short text of law, known as the "law of March 15, 2004" included the following provision: "In public schools, middle schools, and high schools, the wearing of symbols or clothing which conspicuously manifest students' religious affiliation is prohibited"[328] (Article 1). The law became effective at the beginning of the 2004–2005 school year.

In some ways, the ratification of the law offered a conclusion to the debate that had been going on since 1989 between those advocating an intransigent *laïcité* and those favoring a tolerant approach. As seen throughout this chapter, a coalition of pro-ban actors – comprised of (generally leftist) defendants of strict *laïcité* and (usually right-wing) conservative critics of Muslim integration – succeeded in gradually gaining support for its understanding of republican values. Despite the growing influence of the coalition, the legal framework had remained liberal until the law of 2004 solidified the intransigent view of public secularism. The passage of the law therefore marked a significant shift from rights-centered to unity-based *laïcité* (Joppke 2009, 51). Prohibiting the wearing of the "veil" was no longer the

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[323] "*À mon sens, comme l'ont dit d'ailleurs plusieurs collègues, le voile est avant tout le symbole de l'inégalité entre les sexes, le signe imposé par l'homme de la soumission de la femme. Certains nous diront qu'il peut être porté volontairement, mais, pour l'immense majorité des femmes qui s'en couvrent, nous savons tous que c'est une contrainte discriminatoire qui les affecte dans leur personne, leur dignité et leur statut social*" (deuxième séance du jeudi 5 février 2004).

[324] *Scrutin public sur l'ensemble du projet de loi relatif à l'application du principe de laïcité dans les écoles, collèges et lycées publics*, < http://www.assemblee-nationale.fr/12/scrutins/jo0436.asp >.

[325] Though some, such as Édouard Balladur (UMP), abstained.

[326] Scrutin n°155, < http://www.senat.fr/scrutin/s03-209.html >.

[327] *Journal officiel n° 65 du 17 mars 2004*.

[328] "*Dans les écoles, collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit*."

exception to the rule; it became the rule itself. Throughout this process, we have seen that the pro-law coalition promoted a version of republicanism that was centered on *laïcité* and gender equality, creating a discourse of sexularism. In the concluding section, I will summarize the empirical and theoretical contributions of this chapter.

4.8 Sexularism: The Adjacency of *Laïcité* and Gender Equality

Empirically, this chapter offers an analysis of the long-lasting controversy surrounding the wearing of the Islamic headscarf in the republican school system. To begin with, I examined events that led to reigniting the headscarf controversy in 2003, and I demonstrated that those opposed to the "veil" saw it as a threat to the Republic and its underlying values. More specifically, they took it to symbolize extreme forms of Islamism – a dangerous backwardness against which the Republic, and, in particular, the principle of public secularism, needed to be guarded. This depiction of Muslim culture as fundamentalist revolved around images of gendered violence, most often set in the context of disadvantaged immigrant neighborhoods. Hence those in favor of the headscarf ban argued that reinforcing public secularism not only protected the Republic against religious fanatics by relegating visible religiousness to the private sphere, but also offered a shield against the violation of women's rights by prohibiting the use of a garment taken to symbolize female submission. In this discussion – and in contrast to earlier debates – most participants identified themselves as "feminist." One of the most vocal groups consisted of Muslim (or Muslim-born) women who embraced the promise of secular education while denouncing the practice of veiling as misogynist. This led to the entanglement of particular "feminist" and "*laïque*" subject positions within the dominant discourse, thus creating new cleavages within the feminist field and marginalizing voices that spoke in favor of a looser interpretation of the requirements of *laïcité*. These discourses led to the passage of the 2004 law which excluded headscarf-wearing girls from public schools.

In a 2009 lecture, Joan Scott pointed to the "unconscious association that takes the form of metonymic slippage: from secularism to sexism," resulting in the typographical error *sexularism* (Scott 2009, 1; see also Scott 2011, 91-116). If – as Scott noted – the assumption that public secularism offers tools for overcoming women's oppression appears in many present-day accounts on modernity, it is particularly relevant for contemporary discussions about Muslims. Indeed, as seen in this chapter, in

France the republican principle of *laïcité* has been increasingly articulated as an instrument for overcoming the backwardness of Muslim culture through the protection of women's emancipation. As a result, a growing number of republican advocates have come to assume that "*laïcité* cannot be conceived without a direct link with the principle of the equality of the sexes" (Stasi 2003, 51), and that "being feminist" equals "supporting an intransigent view of *laïcité*."

When I titled this chapter "The Success of Sexularism," it was therefore no typographical error. It was an attempt to describe, on the one hand, the confounding of public secularism with the question of sexual equality, and, on the other hand, the impressive progression with which this confusion gained ground in French public discourse. Moreover, I have shown that this convergence of issues is anything but given. Although the (male) citizenship that emerged from the French Revolution later became a springboard for women's rights, the Republic has not always offered the best framework for women's emancipation (Scott 1998; Jenson and Sineau 1995). An analysis of the early "veil affairs" (1989–2004), then, is a description of the discursive processes through which these questions became linked — a demonstration of how sexularism was constructed.

What does this empirical demonstration tell us about the development of dominant republican morphology? Several theoretical conclusions can be drawn from my analysis. To begin with, the 2003–2004 headscarf controversy reveals the discursive processes through which the concepts of *laïcité* and gender equality gradually drew closer together. More specifically, I have shown how the issue of women's rights, which was rather marginal in the beginning, gradually moved closer to the concept of *laïcité* which already held a central position within republican morphology. As a result, the two concepts became *adjacent*. In fact, as we can now conclude, it is this adjacency (the proximity of the two concepts) that reproduces sexularism (the slippage from one issue two the other) – and vice versa. Moreover, as I have demonstrated, this adjacency is not simply logical (cf. Freeden 1996, 68); it is cultural, born out of a specific discursive context in which a major part of the French political elite came to approach the issue of Muslim integration through their understanding of women's rights.

Moreover, my analysis shows that the adjacency of *laïcité* and gender equality created shifts within dominant republican morphology. Indeed, as the concept of women's rights moved closer to the republican core and as it became adjacent to *laïcité*, these two concepts gained prominence, produced a discourse of sexularism, and started influencing the ways in which the core concepts of liberty and equality were understood. As a result, equality was increasingly interpreted as gender equality, and

other possible ways of fixing meaning to equality were downplayed. Similarly, French political actors employed the concept of liberty to stress the importance of freedom from misogyny and freedom from Islamic fundamentalism, thereby pushing the issue of freedom of religion further from the core and opening the door for the restriction of visible religiosity in the republican school system.

Finally, my empirical analysis illustrates the transformation of the principle of *laïcité*. As seen in this chapter, it was during the 2003–2004 discussions that the intransigent interpretation of *laïcité* gained enough supporters to become formalized in law. This new version of *laïcité* was not only stricter than the understanding that the Council of State and many French politicians had previously promoted; more importantly, it was based on the argument that besides the state and its employees, *laïcité* could also concern private individuals such as schoolchildren. The fact that *laïcité* came to concern students was a major transformation – so much so that scholars have since then struggled to decide how to qualify this "new" *laïcité* (Hennette Vauchez and Valentin 2014; see also Baubérot 2012). The mutation of *laïcité* into a "way of being" is a major conceptual change which, as subsequent chapters will show, has opened the door for further restrictions on religious freedom.

To conclude, the analysis that I have presented in this chapter revels the ideological shifts undergirding the passage of the 2004 law. Although the 2004 law only referred to the principle of *laïcité*, an analysis of the public discourses leading up to its adoption leaves no doubt that the law offered validation for a republican morphology upheld by a specific understanding of women's rights. Focusing on this "success of sexularism" is important not only because it reveals the construction of the adjacency of *laïcité* and sexual equality, but also because it helps us understand the processes through which the meanings assigned to liberty and equality shifted within the dominant republican ideology, as freedom of religion was pushed further from the core. In addition, it illustrates the extent to which the restructuring of the contemporary French feminist movement in intertwined with the development of republicanism and public secularism. Yet these are only some of the reasons why sexularism and its effects on republican morphology should be of interest – for, as we now know, what could have been the end of the headscarf controversy, was really only the beginning.

Chapter 5

The Burqa in Public Space: Constructing the Republican Social Order

On October 12, 2010, the *Journal officiel de la République française*[1] published a law stating that "no one may, in public space, wear clothing designed to conceal the face."[2] What kind of clothing is meant by this law? Instead of specifying the forbidden pieces of clothing, the law enumerates exceptions to its application. Article 2 indicates that the prohibition on face-covering does *not* apply if such clothing is "prescribed or authorized by legislative or regulatory provisions," if it is "justified for health reasons or on professional grounds," if it is worn in "practicing sports" or as part of "artistic or traditional festivities or events."[3] What are we left with then? A hint can be found in Article 4: "Whoever shall, by means of threats, duress, constraint, undue influence, or misuse of authority, compel another person*, by reason of the sex of said person*, to conceal the face, shall be liable to one year's imprisonment and a fine of €30,000" (emphasis added).[4] In other words, besides making *some* cases of face-

[1] The *Journal officiel* (JO) is the official French government registry in which the Republic publishes all of its laws, decrees, and other legal information.

[2] "*Nul ne peut, dans l'espace public, porter une tenue destinée à dissimuler son visage*," Article 1 of *Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*.

[3] "*L'interdiction prévue à l'article 1er ne s'applique pas si la tenue est prescrite ou autorisée par des dispositions législatives ou réglementaires, si elle est justifiée par des raisons de santé ou des motifs professionnels, ou si elle s'inscrit dans le cadre de pratiques sportives, de fêtes ou de manifestations artistiques ou traditionnelles*," Article 2 of *Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*.

[4] "*Le fait pour toute personne d'imposer à une ou plusieurs autres personnes de dissimuler leur visage par menace, violence, contrainte, abus d'autorité ou abus de pouvoir, en raison de leur sexe, est puni d'un an d'emprisonnement et de 30 000 € d'amende*," Article 4 of *Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*.

covering in and of themselves into a criminal offense (Article 3), the law also states that forcing someone to cover the face is a crime when and only when it is done *because of that person's sex* (Article 4). Through these formulations – without ever mentioning either the Islamic veil or that it is worn specifically by women – this law excluded women wearing full veils[5] from French public space. How did this prohibition come about?

The passage, in 2010, of a law banning face-covering is a sign that republican reasoning continued to evolve following the 2003–2004 headscarf controversy. Although the law of March 2004 offered validation for the pro-prohibitionists' understanding of *laïcité* and gender equality, it in no way halted the development of the debate surrounding the French Republic and the Islamic veil. On the contrary, as political actors continued to voice their opinions in the public arena, their views evolved and their focus shifted. While French political elites had in 2003–2004 been primarily interested in the headscarves of young girls going to public schools, in 2009 their attention shifted to Muslim women wearing face veils within France. Whereas, in 2004, the French Republic had excluded headscarved girls from its school system, six years later, the parliament criminalized the wearing of full veils in public space. How did the prohibition on the wearing of face veils become part of the dominant republican creed, and what does this shift tell us about the development of French republican ideology?

The aim of this chapter is threefold. First, by focusing on the so-called "burqa debates," I will show that there is continuity within the dynamics of dominant republican morphology. Although ideologies are never fixed, their development can nonetheless follow relatively stable paths if those who construct them consistently highlight certain values over others. My detailed empirical analysis of the 2009–2010 discussions concerning full veils will demonstrate that a major part of the French political elite continued to promote gender equality as part and parcel of the "true" republican ideology. In fact, as a number of advocates consistently gave weight to the assumption that republican values such as *laïcité* offer tools for women's emancipation, this idea started to appear in French public discourse as a *fait accompli*. The discourse of sexularism, which had become predominant in 2003–2004, led political

[5] With the term "full veil" I refer to the garment that is, in France, commonly known as *voile intégral*. Two types of full veils exist. The *niqab* is a veil that covers a part of the face but usually leaves the area around the eyes uncovered. The *burqa* is the most concealing of all Islamic veils: it covers the body from head to toes, leaving only a mesh for the eyes. As the niqab and the burqa cover the face, I will refer to them by employing the terms "full veil," "face veil," and "full-face veil" interchangeably. I will also use the term "veil" as a general word for female clothing related to *hijab* (including but not limited to headscarves such as the *shayla*, the *al-amira*, the *khimar*, and the *chador*).

actors to argue that the prohibition of headscarves in republican schools was not enough. Indeed, if one accepted that the wearing of the Islamic headscarf was against the republican ethos, how could one tolerate full veiling – a more radical form of this supposedly oppressive practice? As we will see in this chapter, a many of the actors who were, in 2009, looking to ban the burqa, wanted to do so precisely on the grounds that this garment was a breach of women's dignity. By employing arguments about women's rights and the proper limits of religious expression, much of the French political elite came to conclude that face-covering simply did not belong on French soil. Through these discursive processes, pro-ban advocates contributed to consolidating the adjacency of gender equality and the republican-ideological core.

Second, my examination of the 2009–2010 discussions will show that the exclusion of women wearing face veils from public space did *not* come about through the same processes as the banning of headscarves from republican classrooms. Although French politicians justified the burqa ban in large part by appealing to women's emancipation and republican integration, my analysis will demonstrate that the adjacency of *laïcité* and gender equality was not the only conceptual issue that attracted public attention. On the contrary, in seeking to gain support for their view, the large coalition of actors that was campaigning to "ban the burqa" made use of a number of other republican values. More specifically, my empirical analysis will demonstrate that, in aiming to ban face-covering veils, French political and legal actors ended up reviving and transforming the notion of public order. It was through the construction of a new understanding of social order that the passing of the 2010 law became feasible. While this dynamic suggests that the combination of *laïcité* and women's rights was not by itself a sufficient tool for banning face veils from public space, it also reveals the significant impact that this adjacency has had on the republican value system. Indeed, as the issue of "women's rights" became adjacent to *laïcité* and, consequently, to the republican-ideological core, this restructuration opened the door for further redefinitions. Although the actors who participated in the burqa discussions gradually stopped focusing on *laïcité*, they continued to argue that women's dignity was in and of itself a republican value that should be protected. Through several discursive twists and turns, this led political actors to transform the notion of public order, which, as I will argue, constitutes a shift within dominant republican morphology.

Third, and most importantly, in offering an analysis of the 2009–2010 discussions and the morphological shifts undergirding them, I will also discuss the implications of this gradual change. As we

have seen, when a large number of political actors reconfigure central conceptual clusters, the outcomes can appear – and be analyzed – on a number of different levels. To begin with, morphological change can be and, indeed, often is accompanied by policy change. In the case of the "burqa debates," the reformulation of republican values was reflected in the passage of the 2010 law banning face-covering in public space. Yet in modifying the internal anatomy of an ideology, conceptual shifts also have an effect on its overall nature. For example, in Chapter 4 I have, broadly put, shown how dominant French republicanism was constructed as a "feminist" enterprise. In this chapter, I will show how, six years later, the advocates of this ideology renounced the precarious balance that had traditionally existed in republican thought between rights-based and unity-based elements, and decided to limit individual freedom further – this time, in the name of the "minimal" requirements of social life. In fact, the actors who took part in finding a solution to the "burqa problem" constructed a new understanding of social order and the obligation for each individual to adhere to its rules of mutual respect and communication. As a result, French republican ideology took an important turn towards the protection of shared values and social cohesion.

From a theoretical point of view, I will argue that this shift towards social cohesion implies a nascent transformation within the very core of the republican-ideological construct. Indeed, a careful analysis of the public discourses surrounding the issue of face veils will allow us to observe a change within the republican triad of liberty, equality, and fraternity. Fraternity has traditionally been something of a "poor relation" in comparison to liberty and equality (Ozouf 1988, 731). My analysis of the 2009–2010 discussions will reveal that although French political actors continued to refer to the values of liberty and equality, an increasing number of them – in favoring social cohesion over freedom of religion – also took up the issue of fraternity. While liberty and equality refer to individual *rights*, fraternity is more easily understood as a moral *requirement*: an obligation to maintain the republican social bond. Hence I will argue that the construction of the republican social order – the favoring of social conformity at the expense of individual rights and liberties – should, in fact, be viewed as a revival of the latent idea of fraternity. As we will see in later chapters, this transformation within the republican conceptual core has had significant consequences. For the time being, suffice it to note that when political and legal actors argued, during the 2009–2010 burqa discussions, that full veils were disruptive of social order, they contributed to French republicanism emerging as a "civil religion" – a substantive

value system that, from a theoretical point of view, rejects axiological pluralism and, in practice, restricts the range of morally acceptable lifestyles within the French territory. In this chapter, I will focus on the discursive processes through which this change was constructed.

Bearing in mind these three processes – morphological continuity, morphological change, and their profound effects on republican ideology – I will examine the "burqa affair" in a loosely chronological order. Whereas, in the 2003–2004 headscarf debates, pro-ban actors constructed a discourse which gradually gained steam and finally became formalized in the 2004 law, the burqa discussions developed in a much less straightforward manner. To begin with, we will see that those who wished to ban the burqa in the name of *laïcité* and women's rights met with significant legal obstacles. Although one might have expected staunchly secular, feminist republicans to move from one success to another, in reality, pro-ban actors had a hard time developing a notion of women's rights that would allow them to restrict individual rights and liberties to the extent of prohibiting full-veils from public space. Hence, pro-ban advocates adjusted their discourse and turned to a number of other arguments – many of which were also inefficient from a legal point of view. Because of these difficulties, political actors tended to develop several discursive themes simultaneously, almost as if trying to maximize their chances of a successful outcome. Throughout the 2009–2010 discussions, actors vacillated between different justifications for a general burqa ban, trying to find one that would somehow be in line with existing jurisprudence and not lead to a backlash from the courts. Not knowing what was feasible from a judicial point of view, they engaged in a dialogue with legal experts, which created further thematic to-and-fros and confusion between both groups of actors. For example, although the solution to the legal dilemma was mentioned early on, anti-ban actors did not recognize it as such until much later, and although the question of "human dignity" remained central throughout the discussions, the parliamentary commission did not, in the end, employ it as a legal basis for the law. Given these dynamics, my analysis will reveal a difficult, winding process of discursive construction and negotiation amongst actors who were, for the most part, favorable to the idea of legislating.

I will proceed in the following manner. I will start my empirical demonstration by presenting a few 2008 precedents (Section 5.1) to the eruption of the "burqa debates" in 2009 (Section 5.2). Throughout this chapter, I will focus on the co-construction of French public discourse, dominant republican ideology, and the exclusion of women wearing face veils from public space. By analyzing the work of a 2009 parliamentary commission, I will illustrate key actors' efforts to redefine *laïcité* (Section

5.3), French feminists' and high-ranking politicians' attempts to frame the full veil as a breach of human dignity (Section 5.4), Dounia Bouzar's and Abdennour Bidar's early formulations of the social responsibilities of republican cohabitation (Section 5.5), and legal experts' reformulation of the notion of public order (Section 5.6). Finally, I will examine the bumpy road from the publication of the parliamentary commission's report to the Council of State's March 2010 stance on individual rights (Section 5.7), and from the Constitutional Council's position on republican *vivre-ensemble* to the passage of the law (Section 5.8). I will conclude this chapter by discussing the gradual yet fundamental shift within dominant republican ideology from the protection of individual rights towards the promotion of fraternity, *vivre-ensemble*, and social cohesion (Section 5.9).

5.1 Integration Requires Gender Equality: The Burqa Becomes a Problem (2008)

In 2008, three cases concerning the wearing of the burqa introduced the issue of full veils into French public discussion and framed it as a problem for republican integration. To begin with, on June 27, 2008, the Council of State confirmed the refusal to grant French nationality to a Moroccan woman on the grounds that her religious practice was "radical" and hence "incompatible with the essential values of the French community, especially with gender equality."[6] Although the Council's *arrêt* did not explicitly refer to the issue of veiling, its message was clear: the problem was the burqa worn by the applicant – a mother of three, married to a Frenchman, living in the Yvelines region. The legal basis for the decision was found in the French Civil Code which states that nationality can be refused if there is a "lack of assimilation."[7] In this case, the lack was not linguistic: The Council explicitly stated that the woman in question, known as Faiza M., was proficient in French. The problem was rather one of social assimilation: the fact that Faiza M. wore a burqa was considered at odds with the essential values of

[6] "*[U]ne pratique radicale de sa religion, incompatible avec les valeurs essentielles de la communauté française, notamment avec le principe d'égalité des sexes,*" Council of State, *arrêt* of June 27, 2008 (n° 286798): < http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT0000190812-11&fastReqId=1065400642&fastPos=1 >.

[7] The French Civil Code, Article 21-4: "*défaut d'assimilation, autre que linguistique*." This article was established by the law of November 26, 2003.

French society.[8] The success of "feminist" republican reasoning is apparent in the wording of the Council of State's decision, as gender equality was the *only* "essential" republican value mentioned by the highest administrative court. Although the Council based its verdict on "radical religious practice," it also specified that it did not wish to – and indeed, *did not* – limit the petitioner's freedom of religion.[9] In other words, the Council took the wearing of a burqa to be something that lay outside of the realm of religious practice protected under the law.

The case of Faiza M. was not the first time that the Council of State had been asked to render a verdict concerning Muslim integration and "essential French values." However, in two previous cases concerning the interpretation of the same article, the Council had overturned the administrative decisions that had refused nationality. Both cases had concerned men who were members of Islamist organizations. In these cases, according to the judges, the sole fact of membership in such a network had not been sufficient proof that the candidates rejected essential French values or refused to assimilate into the national community.[10] Moreover, in a third case dating from 1997, the Council had arrived at a similar conclusion, granting nationality to a strictly observant Muslim whose wife wore the veil.[11] Indeed, given the vague wording of the law, the Court had some leverage in interpreting what constituted "lack of assimilation" or "essential French values." The members of the Council ruled that the wearing of a full veil was, in itself, proof of the fact that its wearer rejected the French value of gender equality.

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[8] Actually, the issue at hand was not immigrant integration in the traditional sense, but rather republican assimilation (or lack thereof): Faiza M. had not worn the burqa whilst living in Morocco, but had taken it up after moving to France.

[9] "*Le décret lui refusant la nationalité française pour défaut d'assimilation n'a ni pour objet, ni pour effet de porter atteinte à sa liberté religieuse*."

[10] Council of State, *arrêt* of June 7, 1999, n° 187526 ("*La circonstance qu'une personne a entretenu des relations suivies avec un membre actif d'un réseau islamiste ne suffit pas à établir qu'elle milite en faveur du rejet des valeurs essentielles de la société française,*" < http://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000007986795 >); Council of State, *arrêt* of June 7, 1999, n° 187662 ("*[…] aucun autre élément de son comportement personnel invoqué par l'administration n'est de nature à révéler un défaut d'assimilation de l'intéressé […]*," <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CTATEXT000007986868&fastReqId=577141129&fastPos=1 >.

[11] Council of State, November 19, 1997, n° 169368 ("*La circonstance que M. B. s'affirme comme un musulman croyant et de stricte observance et a épousé une Française qui est elle-même de religion musulmane et porte le voile islamique n'est pas de nature à révéler, à elle seule, un défaut d'assimilation*."): < http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000007953180&fastReqId=584219085&fastPos=1 >.

French political elites welcomed the Council of State's decision to refuse nationality to Faiza M. First in line to react was none other than Fadela Amara, former president of *Ni putes ni soumises* who had, in 2007, been appointed Secretary of State in François Fillon's (UMP) second government.[12] Amara thought that the Council of State's decision was "excellent, legitimate, and particularly credible because it is founded on the values of our Republic,"[13] and repeated her well-known view that the headscarf and the burqa are the same thing – a "prison" and a "symbol of women's oppression."[14] Valérie Pécresse (UMP), Minister of Education, joined Amara in arguing that the "principle of the equality of the sexes is not negotiable in the French Republic."[15] According to François Hollande, the First Secretary of the *Parti socialiste*, the Court's decision had been "a good application of the law."[16] The French Council for the Muslim Faith (CFCM), however, criticized the Council of State's vague use of the notion of religious practice. As CFCM's president Mohammed Moussaoui noted, the Council could have, for example, referred to Faiza M.'s social behavior as being incompatible with women's rights; instead, it referred to religious practice, thereby presuming that the marginal practice of full veiling would be something specific to the Muslim faith.[17] According to Moussaoui, the issue was put forward *because* it concerned a Muslim applicant.[18] One might add that the decision also concerned a woman; in the previous cases where the Council of State had granted nationality, the applicants had been men.

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[12] The Fillon government had been appointed in 2007 in the aftermath of the election of Nicolas Sarkozy as President of the Republic. Although Amara had been elected Socialist Deputy for the municipal council of Clermont-Ferrand in 2002, her left-wing ties – though widely discussed – had not hindered her appointment as Secretary of State for Urban Affairs (*Secrétaire d'État à la politique de la Ville*) in the UMP-led Fillon government.

[13] "*Elle est excellente, légitime, particulièrement crédible, parce qu'elle se fonde sur les valeurs de notre République. […] La burqa, c'est une prison,*" quoted in *Le Point*, "Le voile et la burqa, c'est la même chose," July 16, 2008.

[14] "*La burqa, c'est une prison, une camisole de force* […]," quoted in *AFP*, "Amara: 'on est en train de réaffirmer le principe de l'égalité des sexes'," July 15, 2008; "*Un signe d'oppression des femmes, et non un signe religieux*," quoted in *Le Point*, "Le voile et la burqa, c'est la même chose," July 16, 2008.

[15] "[*L]e principe de l'égalité des sexes n'est pas négociable*," quoted in *Le Point*, "Nationalité française refusée à une femme portant la burqa : Pécresse approuve," July 12, 2008.

[16] "*Le juge a fait une bonne application de la loi*," quoted in *AFP*, "Hollande (PS) approuve le refus de nationalité pour port de la burqa," July 13, 2008.

[17] *AFP*, "Refus de nationalité lié à la 'burqa' : le CFCM regrette l'imprécision de la décision," July 16, 2008.

[18] "*Ce qui est étonnant, c'est que ça soit mis en exergue parce que ça concerne les musulmans. On a l'impression qu'on cherche dans les fonds de tiroir quelque chose à se mettre sous la dent dès qu'il s'agit de religion musulmane*," quoted in *AFP*, "Refus de nationalité lié à la 'burqa' : le CFCM regrette l'imprécision de la décision," July 16, 2008.

Later the same year, in September 2008, the French Anti-Discrimination and Equal Opportunities Authority (*Haute autorité de lutte contre les discriminations et pour l'égalité*, hereafter the HALDE, see Textbox 4 below) rendered a verdict which sparked further discussion about the practice of full veiling and republican integration. The Anti-Discrimination Authority had been called upon by the National Agency for the Reception of Foreigners and Migrants (*Agence nationale de l'accueil des étrangers et des migrants*, hereafter ANAEM)[19] to validate a decision that the latter had taken in May 2008 to exclude a burqa-wearing woman from one of its French language courses. According to the newly introduced integration contract (*contrat d'accueil et d'intégration*), French classes had become obligatory for immigrants who were lacking in French language skills. However, when a woman wearing a burqa appeared in such a course offered by ANAEM, the teachers concluded that her clothing hampered the proceedings of the language class. A full veil such as the burqa covers the face, thereby preventing the instructor from observing the student's facial expressions. ANAEM had referred the issue to the HALDE in order to gain support for its decision to exclude the woman from the course.

In its decision, the HALDE confirmed the exclusion. The Anti-Discrimination Authority quoted the Council of State's decision by stating that "radical religious practice" such as wearing a burqa was "against the values of a democratic society and the principle of gender equality." The HALDE went on to assert that the very goal of the newly-created integration contract was to prepare immigrants for republican assimilation. The HALDE's verdict clearly shows that the idea of integration had come to include an element of adherence to the "republican" value of gender equality:

> […] the Constitution clearly identifies the principle of equality between men and women as a republican value in the heart of France's democratic foundations. […] The burqa conveys a meaning of women's submission – a signification that goes beyond its religious significance and could be thought of as jeopardizing the republican values that are instrumental to the integration process and to the organization of teaching activities […].[20]

[19] In 2009, ANAEM became *Office français de l'immigration et de l'intégration* (OFII).

[20] "*Par ailleurs, la Constitution pose clairement le principe d'égalité entre les hommes et les femmes comme une valeur républicaine au cœur des fondements démocratiques de la France. […] La burqa porte une signification de soumission de la femme qui dépasse sa portée religieuse et pourrait être considérée comme portant atteinte aux valeurs républicaines présidant à la démarche d'intégration et d'organisation de ces enseignements, obligatoires pour les étrangers admis pour la première fois au séjour en France*" (HALDE 2008).

Textbox 4 – The HALDE

The HALDE was created by the law of December 30, 2004 (*Loi n°2004-1486 du 30 décembre 2004 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité*) following the 2003–2004 headscarf debates. Indeed, the creation of an anti-discrimination authority had been one of the many recommendations of the Stasi Commission, and the existence of such an independent body was also an obligation set by the EU directive on the equality of treatment (known, especially in France, as the "race directive"). As Chappe has shown, the discursive strategy adopted by President Chirac in the aftermath of April 21, 2002, had been to frame the creation of the HALDE as a "reworking of the republican pact," and the fight against discrimination as an essential part of the rejection of communautarisme. In other words, the HALDE had been created as a republican project, and those who had participated closely in its elaboration had shared a strong attachment to the republican model of integration. In March 2005, President Chirac appointed Louis Schweitzer as the HALDE's first president. One of the members appointed to the HALDE by the President of the National Assembly was Fadela Amara, a further indication of the privileged role that the former NPNS-leader had come to play in the political arena. Since its creation in 2005, the HALDE had become a high-profile institution whose members participated actively in public discussion on issues related to equality, discrimination, and integration.

(Source: Chappe 2011, 118-120.)

The HALDE further referred to the "requirements of public security" and the "need to identify students" in arguing that their burqa ban was not in contradiction with the principle of non-discrimination.[21] In other words, in a similar vein to the Council of State, the HALDE considered full veils to be incompatible with republican values and integration, thereby placing the wearing of the burqa outside of protected religious practice.[22] The president of the HALDE, Louis Schweitzer, defended the decision by stating that "religious freedom is not absolute: it can be restricted if there is sufficient reason."[23] Yet the exclusion of women wearing full veils from ANAEM's language classes was no a small matter, for

[21] Articles 9 and 14 of the European Convention of Human Rights (ECHR).

[22] It should be noted that the same fall, the HALDE considered that the exclusion of a headscarved women from vocational training taking place in a public school building was discriminatory. *(Délibération n° 2008-168 du 1er septembre 2008 relative au refus par un organisme public de formation d'accès à une formation se tenant dans les locaux d'un lycée public en raison du port du foulard islamique*.)

[23] "*[La liberté religieuse] n'est pas absolue: elle peut être restreinte s'il existe un motif suffisant*," quoted in *AP*, October 9, 2008.

language training had become a necessary step for renewing residence permits and for obtaining permanent residency.

Finally, a third incident concerning the wearing of the burqa was related to subsidized public housing. In July 2008, a couple was refused access to social housing in Vénissieux, a suburb of Lyon. In the decision, the lessor noted that "madame G. wears the burqa outside, which is typical of a radical practice of religion incompatible with the essential values of the French community and with the principle of gender equality."[24] Once again, we can see that the wording of the text is almost identical to the *arrêt* that the Council of State had rendered the previous month. Although antiracist organizations such as *Mouvement contre le racisme et pour l'amitié des peuples* (MRAP) mobilized to condemn the treatment of the couple as discriminatory, the city's Communist mayor, André Gerin, tried to brush the issue off by stating that the woman's clothing had in reality had no bearing on the decision.[25] Yet the mayor also publicly called for the Republic to take a stance on the burqa problem: "The Republic needs to make known whether or not we have to accept that women are confined in these prisons made of fabric."[26] A similar position was defended by Mustapha Gouila (UMP), a deputy from the same city of Vénissieux: "One cannot turn one's back on France, live as in Afghanistan, and demand social housing. A minimal effort for integration is required."[27]

These three public decisions – the Council of State's *arrêt*, the HALDE's verdict, and an administrative decision that was later overturned – are important insofar as they introduced the issue of face veils into French public discussion. As Figure 5.1 below shows, the topic of burqas and niqabs had not

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[24] "*Mme G. revêt la burqa, à l'extérieur, ce qui caractérise une pratique radicale de la religion, incompatible avec les valeurs essentielles de la communauté française et le principe de l'égalité des sexes*," quoted in *Le Figaro*, "Le port de la burqa crée de nouveau la polémique," April 10, 2009.

[25] Gerin said that the affair was "a damp squib: the burqa is not a criterion for the attribution of social housing" ("*pétard mouillé : la burqa n'est pas un critère d'attribution de logement socia*l"), quoted in *Le Figaro*, "Le port de la burqa crée de nouveau la polémique," April 10, 2009.

[26] "*Il faudra bien que la République française s'exprime (et dise) si l'on doit ou non accepter que des femmes soient enfermées dans ces prisons de tissus*," quoted in *Le Figaro*, "Le port de la burqa crée de nouveau la polémique," April 10, 2009.

[27] "*On ne peut pas tourner le dos à la France, vivre comme en Afghanistan et exiger un logement social. Il faut un minimum d'effort d'intégration*," quoted in *Le Figaro*, "Le port de la burqa crée de nouveau la polémique," April 10, 2009.

attracted significant attention in the French written press prior to 2008. While the question of the Islamic headscarf continued to attract consistent attention following the 2003–2004 debates,[28] the issue of the wearing of full veils in France was different: it was introduced into public consciousness through the three cases presented above.[29]

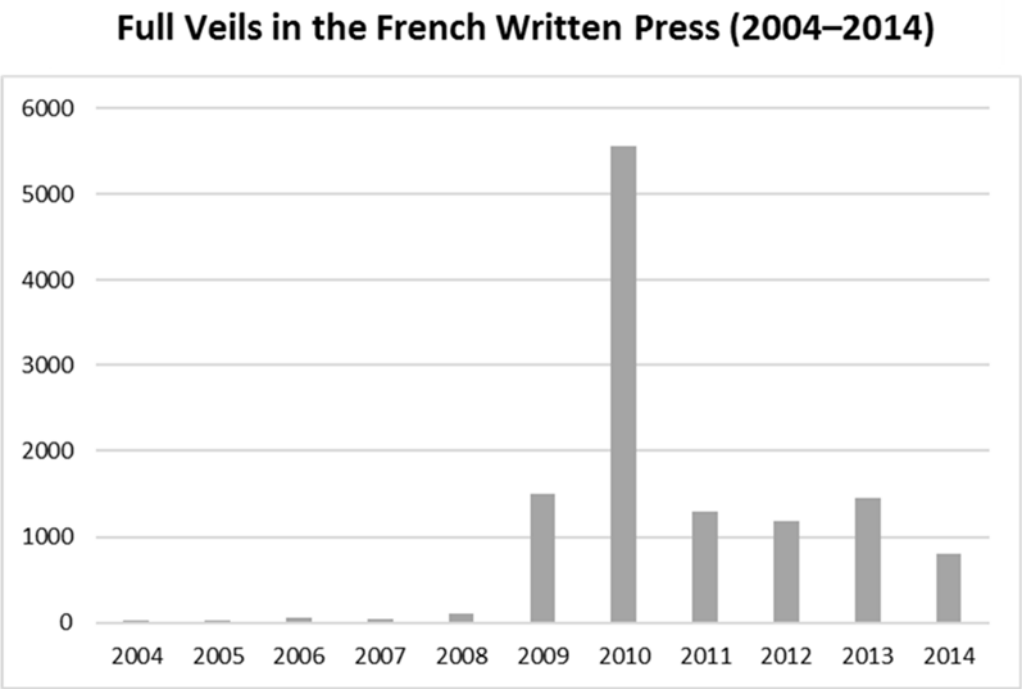

Figure 5.1 – Full Veils in the French Written Press (2004–2014)*. This chart shows the number of articles published in the French written press between 2004 and 2014 on the issue of full veils. Based on Factiva, it presents the number of articles corresponding to the Boolean search criteria "niqab OR burqa OR 'voile intégral'."*

[28] A search in the Factiva database shows that even after 2004, the number of articles published on the topic of the Islamic headscarf ("foulard OR voile OR hijab") remained relatively stable: 6845 in 2004, 5861 in 2005, 6068 in 2006, 6314 in 2007, and 7565 in 2007. The slight increase in 2007 is due to the so-called "Truchelut affair" where the owner of a *gîte* refused access to a family because two of the women wore the headscarf. Yvette "Fanny" Truchelut had defended herself by arguing that "the veil is a tool for women's oppression," but received a suspended sentence in 2007 for religious discrimination.

[29] Hence when the "burqa debates" would erupt in 2009, these precedents already existed, offering validation for the idea that face veils were contrary to republican assimilation.

Moreover, these three decisions show that public officials had come to articulate gender equality as a fundamental value that needed to be embraced if republican social integration was to be attained. In other words, these decisions serve as examples of the ongoing construction of gender equality as a value adjacent to the republican-ideological core. More importantly, these decisions also put emphasis on the adoption of "shared values" as proof of social integration. These 2008 discourses suggest that the consolidation of the adjacency of *laïcité* and women's rights influenced the understanding that public institutions and private agents alike had about the requirements of successful republican cohabitation. Indeed, when the Council of State, the HALDE, administrators from Vénissieux, as well as a number of other political actors constructed the burqa as a sign of its wearer's refusal to integrate, they simultaneously defined the absence of face veils as a minimal condition of membership in the national community. Whereas in 2003–2004 French political elites had come to view conspicuous religious symbols as incompatible with the goals of the public school system, in a similar vein in 2008 full veils were defined as a potential impediment to obtaining formal inclusion in the Republican community (nationality), support for social integration (language classes), and even welfare benefits (social housing). These three cases therefore also reveal how the new republican logic was gradually reaching into new fields.

Finally, it should be mentioned that these decisions – which hypothetically might have received little attention – were instead accompanied by a renewed political interest in the veiling issue, as new bills were put forward. In July 2008, following the Council of State's *arrêt*, Françoise Hostalier (UMP) proposed prohibiting the wearing of religious symbols in establishments where public services were provided.[30] In September 2008, following the HALDE's decision, Jacques Myard (UMP) proposed a bill specifically to ban the burqa.[31] Myard argued the following: "If the wearing of the Islamic headscarf is a distinctive feature of religious affiliation […], the wearing of a full veil is the most extreme form of

[30] N° 1080, *Proposition de loi visant à interdire le port de signes ou de vêtements manifestant ostensiblement une appartenance religieuse, politique ou philosophique à toute personne investie de l'autorité publique, chargée d'une mission de service public ou y participant concurremment*.

[31] N° 1121, *Proposition de loi visant à lutter contre les atteintes à la dignité de la femme résultant de certaines pratiques religieuses*.

drift into communalism, and it directly harms the willingness to live together in a diversified and democratic society founded on gender equality."[32] Although these bills did not move forward, the debate on the burqa did catch fire.

5.2 Protecting Shared Values: The National Assembly Creates a Commission (2009)

The French controversy on the wearing of full veils erupted in June 2009 at the intersection of international events, diplomacy, and domestic mobilization. On June 4, 2009, Barack Obama, the recently elected president of the United States, delivered a speech at Cairo University in Egypt. Titled "A New Beginning," the speech presented the approach that Obama wanted to adopt with regard to Islam. In a short section towards the end of his speech, the President made the following remark:

> [I]t is important for Western countries to avoid impeding Muslim citizens from practicing religion as they see fit – for instance, by dictating what clothes a Muslim woman should wear. We cannot disguise hostility towards any religion behind the pretense of liberalism. […] I reject the view of some in the West that a woman who chooses to cover her hair is somehow less equal, but I do believe that a woman who is denied an education is denied equality.[33]

Although Obama did not mention a specific country, many – in France in particular – took his speech as criticism of the French approach to Muslim integration. Indeed, Obama's mention of hair-covering, equality, and education seemed to be related to the French law of March 2004. Media attention in France hence focused on the above-quoted passage as observers inferred that Obama was openly condemning French policies. For example, *Agence France-Presse* (AFP) titled its story "Obama criticizes France on the question of the Islamic veil,"[34] and the following day *Ni putes ni soumises* (NPNS) declared that "in attacking *laïcité* and in defending the wearing of the veil, Obama is launching a crusade

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[32] "*Si le port du foulard islamique constitue un signe distinctif montrant l'appartenance à une religion […], le port du voile intégral constitue la forme la plus extrême des dérives communautaristes, et porte directement atteinte au vouloir vivre ensemble dans une société diversifiée et démocratique, fondée sur l'égalité des sexes*," N° 1121, Proposition de loi visant à lutter contre les atteintes à la dignité de la femme résultant de certaines pratiques religieuses.

[33] The White House, Remarks by the President at Cairo University, June 4, 2009:
< https://www.whitehouse.gov/the-press-office/remarks-president-cairo-university-6-04-09 >.

[34] *AFP*, "Obama égratigne la France sur la question du voile islamique," June 4, 2009.

against women."[35] According to NPNS, Obama's speech "jeopardized the struggle of millions of women" who were combatting fundamentalism.[36] The timing of the American president's speech was crucial to its French reception, for Obama was expected to arrive in France the same week to commemorate the 65th anniversary of the Normandy landings by Western Allied forces. As this was the case, NPNS appealed to the President of the Republic, Nicolas Sarkozy,[37] to seize the occasion of Obama's visit in order to "reaffirm *laïcité* as a conveyor of women's emancipation."[38]

Despite NPNS's plea, in a joint press conference organized for the two presidents in Caen on June 6, 2009, Sarkozy announced that Obama's speech had been "remarkable" and that he was "entirely in agreement" with its message, "including the issue of the Islamic veil."[39] Sarkozy stressed that "in France, every young girl who wants to wear the veil is allowed to do so. It is her right."[40] The French president only mentioned two limitations. First, the fact that France is a secular state, and that all public employees, whatever their religion might be, are therefore prohibited from displaying symbols of religious affiliation in the workplace. Second, Sarkozy specified that the wearing of the veil must result from "free choice."[41] The president conveniently left out a third issue: the fact that students were prohibited by law from wearing headscarves in public schools – a law that Sarkozy, as Minister of the Interior, had himself supported only five years previously.[42] The position that the President adopted in the Caen speech led to some confusion. For example, *Le Point* titled its story "Sarkozy supports the wearing

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[35] "*[E]n attaquant la laïcité et en défendant le port du voile, Obama part en croisade contre les femmes*," quoted in *AFP*, "Obama sur le voile : 'Une croisade contre les femmes', selon Ni putes ni soumises," June 5, 2009.

[36] "*[L]e Président des Etats-Unis, dans son discours au Caire, a mis à mal le combat de millions de femmes qui paient de leur vie tous les jours pour sortir de la violence des fondamentalistes*," press release of NPNS, June 4, 2009, < http://sisyphe.org/breve.php3?id_breve=1335 >.

[37] Sarkozy had been elected Chirac's successor in May 2007, leaving Socialist Ségolène Royal to second place.

[38] "*[R]éaffirmer la laïcité comme vecteur d'émancipation des femmes*," quoted in *AFP*, "Obama sur le voile: 'Une croisade contre les femmes', selon Ni putes ni soumises," June 5, 2009.

[39] "*Je suis totalement d'accord avec le discours du président Obama, y compris sur la question du voile islamique*," quoted in *AFP*, "Sarkozy soutient le port du voile, sous conditions, sans évoquer l'école," June 7, 2009.

[40] "*En France toute jeune fille qui veut porter le voile peut le faire. C'est sa liberté,*" quoted in *AFP*, "Sarkozy soutient le port du voile, sous conditions, sans évoquer l'école," June 7, 2009.

[41] "*La deuxième réserve que nous avons, c'est que les jeunes filles musulmanes [qui] portent le voile, ce n'est absolument pas un problème, à condition que ce soit une décision émanant de leur libre choix, et non pas d'une obligation qui leur soit faite par leur famille ou par leur entourage*," quoted in *Le Monde*, "La proximité affichée et sans chaleur de Barack Obama et Nicolas Sarkozy," June 8, 2009.

[42] Despite Sarkozy's conciliatory tone, Obama's visit to France proceeded in a tense atmosphere, particularly because Obama had not accepted Sarkozy's invitation to meet at the Élysée Palace. See, for example, *Sud-Ouest*, "Obama-Sarkozy, la mésentente cordiale," June 6, 2009; *Le Parisien*, "Le jour le plus long," June 7, 2009.

of the veil,"[43] and Deputy Minister Luc Chatel (UMP) had to appear in public to emphasize that there was no change in the government's position on the issue of Islamic headscarves in public schools.[44]

The following Monday (June 9, 2009), a group of deputies filed a proposition in the National Assembly for the creation of a parliamentary commission (*commission d'enquête*) that would examine the issue of the wearing of full veils on French national territory.[45] The initiative came from André Gerin – the Communist deputy who had previously, as mayor of Vénissieux, argued that the burqa was problematic for republican integration.[46] Gerin's proposition was cosigned by 58 deputies from across the political spectrum and especially from the UMP.[47] The request that they submitted was centered on the idea that the veil was a threat to the republican value of public secularism. In parallel – and also in line with dominant discourse – they saw full veils as an extreme practice that put women's dignity and their very social existence in peril:

> When *laïcité* is threatened, the French society as a whole is threatened […]. We are today confronted, in the neighborhoods of our cities, with certain women wearing the burqa, veiling and confining their body from head to toe to actual walking prisons, or in the niqab that only reveals the eyes.[48]
>
> If the Islamic headscarf was a distinctive symbol of religious affiliation, we are here at the extreme stage of that practice. The issue is no longer ostentatious religious expression, but the infringement of the dignity of women and of the assertion of femininity. Dressed in a burqa or in a niqab, she is in a situation of seclusion, exclusion, and unbearable humiliation. Her very existence is denied.[49]

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[43] *Le Progrès*, "Sarkozy soutient le port du voile," June 7, 2009.

[44] *AP French Worldstream*, "Il n'y a 'aucun changement' de cap sur l'interdiction du voile à l'école, assure Luc Chatel," June 10, 2009.

[45] *Proposition de résolution tendant à la création d'une commission d'enquête sur la pratique du port de la burqa ou du niqab sur le territoire national*: < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[46] Gerin is also the author of *Les ghettos de la République* (2007).

[47] Out of the signatories, 43 were from UMP, 7 from PS, 3 from PCF, 2 from NC (*Nouveau Centre*), and 3 were independent. A few days after the submission of the proposition, the 58 signatories were joined by six further UMP deputies, including Nicole Ameline, former minister in charge of equality issues.

[48] "*Quand la laïcité est menacée, la société française l'est dans son unité […]. Nous sommes aujourd'hui confrontés, dans les quartiers de nos villes, au port par certaines femmes musulmanes de la burqa, voilant et enfermant intégralement le corps et la tête dans de véritables prisons ambulantes ou du niqab qui ne laisse apparaître que les yeux*," < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[49] "*Si le foulard islamique constituait un signe distinctif d'appartenance à une religion, nous sommes là au stade extrême de cette pratique. Il ne s'agit plus seulement d'une manifestation religieuse ostentatoire mais d'une atteinte à la dignité de la femme et à l'affirmation de la féminité. Vêtue de la burqa ou du niqab, elle est en situation*

The proposition went on to quote the Council of State's *arrêt* from June 2008 which had stated that the burqa constituted "radical religious practice" and was hence contrary to the essential values of French society. The text also mentioned the HALDE's verdict in the case concerning language training, indicating that the exclusion of a burqa wearer had been judged non-discriminatory and thus in conformity with the European Convention of Human Rights. Through these discursive steps, the deputies arrived at the conclusion that "the burqa conveys the meaning of women's submission which goes beyond its religious significance and could be considered 'contrary to the republican values that are instrumental to the integration process' […]."[50] They further declared that the legal justifications that existed for obliging women to remove their veils were not sufficient for coping with the gravity of the situation.[51] The objective of the new commission would be to gather information and to suggest solutions in order to protect individual liberties, women, and shared republican values:

> That is why we suggest that the National Assembly takes up this issue and creates a parliamentary commission. It would follow on from the work of the Stasi Commission which, already in 2003, noted the threats that weighed on individual liberties and the serious deterioration of the situation of young women.[52]
>
> The task of the new parliamentary commission would be to make an assessment and to specify recommendations in order to put an end to this communalist spiral that is contrary to our principles of *laïcité*, to our values of liberty, equality, and human dignity.[53]

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de réclusion, d'exclusion et d'humiliation insupportable. Son existence même est niée," < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[50] "*La burqa comporte une signification de soumission de la femme qui dépasse sa portée religieuse et pourrait être considérée comme portant atteinte aux valeurs républicaines présidant à la démarche d'intégration […]*"' < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[51] "The obligation of removing the niqab or the burqa could be justified by legitimate reasons which are the requirements of public security, the identification of persons, or the protection of the rights and liberties of others. These legal precedents are useful, but they are not sufficient for coping with these practices that we cannot tolerate in France" ("*L'obligation de retirer le niqab ou la burqa pourrait être justifiée par des buts légitimes qui sont les exigences de la sécurité publique, d'identification des personnes ou encore la protection des droits et liberté d'autrui. Ces jurisprudences sont utiles mais ne sauraient suffire à faire face à ces pratiques que nous ne pouvons tolérer en France*.") < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[52] "*C'est pourquoi il est proposé que l'Assemblée nationale se saisisse de ce dossier et que soit créée une commission d'enquête. Elle s'inscrira dans la poursuite du travail de la 'Commission Stasi', qui, déjà en 2003, relevait les menaces qui pesaient sur les libertés individuelles et la grave régression de la situation des jeunes femmes*" < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

[53] "*Celle-ci aura pour mission de dresser un état des lieux et de définir des préconisations afin de mettre un terme à cette dérive communautariste contraire à nos principes de laïcité, à nos valeurs de liberté, d'égalité, de dignité humaine*" < http://www.assemblee-nationale.fr/13/pdf/propositions/pion1725.pdf >.

The analogy that the authors drew between the Stasi Commission, appointed by President Chirac in 2003, and the newly-planned parliamentary body is worth noting. Although the two issues were quite different – for example, the headscarf controversy had concerned the application of *laïcité* in republican classrooms, whereas the question of full veils was taken to concern the national territory – the signatories repeatedly referred to the decision that had been previously taken to prohibit the wearing of religious symbols in state schools. Seeing as it had been widely agreed in 2004 that the headscarf was at odds with *laïcité* and gender equality, the deputies saw the ban on full veils as a logical extension of this particular understanding of republican values. They thus called for a commission that would examine the wearing of full veils and "fight against methods that constitute a breach of individual liberties on the national territory."[54] The explicit objectives of this maneuver were the protection of individual (women's) rights and the promotion of "shared values" on French soil.[55]

As had by then become customary, the first to react publicly to the proposition was *Ni putes ni soumises* (NPNS). The feminist organization's new president, Sihem Habchi,[56] appeared in the media to argue that a discussion of the issue of full veils was needed: "We must not be afraid to talk about it, we must render the reality and the deterioration of the circumstances of women visible […]. The law of 2004 on *laïcité* was necessary but not sufficient: we must reopen the debate."[57] Secretary of State Fadela Amara also expressed her opinion, stating in her usual manner that "in the name of democracy, the Republic, and respect for women, […] everything must be done to stop the propagation of burqas."[58] Referring to the burqa as "a sort of casket for women which kills fundamental liberties,"[59] Amara suggested that those against Gerin's proposition should themselves be made to wear the burqa.[60]

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[54] "*[L]utter contre des méthodes qui constituent une atteinte aux libertés individuelles sur le territoire national*."

[55] The proposition did not refer to "public space," but to "national territory" ("*territoire national*") and "the soil of the French Republic" ("*le sol de la République française*").

[56] Habchi had been elected president of NPNS in 2007 when Amara was nominated Secretary of State.

[57] "*Il ne faut pas avoir peur d'en parler, il faut rendre visible la réalité et la dégradation de la condition des femmes […]. La loi de 2004 sur la laïcité était nécessaire mais pas suffisante ; il faut rouvrir le débat […]*," quoted in *AFP*, "Des députés demandent une commission d'enquête sur le port du voile intégral," June 17, 2009.

[58] "*Au nom de la démocratie, de la République, du respect des femmes […], on doit tout faire pour stopper la propagation des burqas*," quoted in *AFP*, "Fadela Amara : 'tout faire pour stopper la propagation des burqas'," June 18, 2009.

[59] "*Cercueil qui tue les libertés fondamentales*," quoted in *AFP*, "Fadela Amara favorable à une loi contre la burqa," June 19, 2009.

[60] "*On n'est pas dans un débat sur la liberté, ceux qui sont contre [sa proposition] je leur demande de porter la burqa*," quoted in *AFP*, "Fadela Amara : 'tout faire pour stopper la propagation des burqas'," June 18, 2009.

NPNS's former leader was in favor of a "complete ban on the burqa in our country" and called for the swift ratification of a new law – an idea which had been on the table since Jacques Myard's 2008 bill.[61]

Faced with this mobilization to ban the burqa, the Fillon government was, in the beginning, divided. Government spokesperson Luc Chatel (UMP) came out at the end of the week stating that the possibility of a new law should not be excluded. For Chatel, the necessity of legislative action depended on whether the burqa was a choice or whether it was imposed:

> If the burqa would prove to be imposed, that is, if it was contrary to republican principles, then naturally the Parliament would draw conclusions. […] Symbols of [religious] affiliation must be voluntary, they cannot be imposed, notably on women, by others […]. As far as the burqa is concerned, it is true that we really must wonder."[62]

Within the Fillon government, Deputy Minister Nadine Morano (UMP) was also in favor of a discussion of the burqa and the possibility of legislating. Much like Chatel, Morano stated that the problem with the burqa was the fact that women were subjected to it: "When I see a burqa, for me, it's sort of a symbol of submission […]. As a woman, it shocks me, because deep inside, I think it is imposed more than it is personal will."[63] Xavier Darcos (UMP), Minister of Labor (and former Minister of Education), was also favorable to the establishment of a new commission on the issue of full veils. When asked about the wearing of burqas in the street, however, Darcos's attention shifted to previous battles, notably to the republican school, hence illustrating the extent to which the two controversies tended to blend together: "I respect everyone's convictions, but for me, [the burqa] is oppression. […] Imagining for one second that a young girl would arrive in a burqa at a school of the Republic, for me, is repugnant. It is out of the question."[64]

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[61] "*Je suis favorable à l'interdiction totale de la burqa dans notre pays*," quoted in *Le Monde*, "Fadela Amara en faveur d'une loi contre la burqa," June 19, 2009.

[62] "*S'il s'avérait […] que le port de la burqa était subi, c'est-à-dire que c'était contraire aux principes républicains, eh bien naturellement le Parlement en tirerait toutes les conséquences. […] Il faut que les signes d'appartenance [religieuse] soient volontaires, ils ne peuvent pas être imposés, notamment aux femmes, par d'autres, extérieurs à la famille par exemple. Concernant la burqa, c'est vrai qu'on peut sérieusement s'interroger*," quoted by *AFP*, "Une loi envisageable sur le port du voile intégral (Chatel)," June 19, 2009.

[63] "*Lorsque je vois une burqa, pour moi, c'est un peu un symbole de soumission […]. En tant que femme, ça me choque parce qu'au fond de moi, je pense que (c'est) plus imposé que ça n'est une volonté personnelle*," quoted in *AFP*, "Le question de la burqa 'mérite un débat' selon Nadine Morano," June 18, 2009.

[64] "*Je respecte les convictions des uns et des autres, mais pour moi c'est une oppression […]. Imaginer une seconde qu'une jeune fille arrive en burka à l'école de la République, c'est pour moi une horreur. Il n'en est évidemment pas question*," quoted in *Le Point*, "Darcos dénonce une forme d''oppression'," June 18, 2009.

Despite these ministers suggesting that action needed to be taken, other members of the Fillon government were against the idea of a new law. According to Éric Besson (UMP), Minister of Immigration and Integration, it was not appropriate to relaunch the debate on religious symbols. Although Besson stated that he was personally against the wearing of the full veil "which sanctions the supposedly inferior position of women in the Muslim world,"[65] he did not wish to modify the existing legal framework:

> The law has already formulated a certain number of rules for collective life: the law states that one cannot wear the veil in a certain number of administrations, in public service, and in school. A balance has been found in France and it would be dangerous to call it into question.[66]
>
> We must fight against the spread of the burqa but we should do so through education, pedagogy, and dialogue. A law would be inefficient and it would create tensions that are not needed at the moment.[67]

From the very outset, those who were against the idea of legislating on the burqa tended to argue that a law on the issue would only marginalize women who were already in a vulnerable position. For example, Socialist leader Martine Aubry was against "simplistic solutions" and wondered whether a law would not lead women to stay at home rather than to take off their veils.[68] The General Secretary of the Greens, Cécile Duflot, advanced a similar position, suspecting that a ban on full veils would lead women to "disappear from sight," thereby rendering their situation even worse:

> The wearing of the full veil pains me as a woman and as a feminist, but I do not think that stigmatization is a good solution. I do not think that a brutal ban can result in anything positive. *Laïcité* is a self-evident fact, but the problem is how to address these

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[65] "*'A titre personnel', Eric Besson dit qu'il n'est pas favorable au port du voile intégral 'qui consacre un statut supposé inférieur de la femme dans le monde musulman'*," quoted in *AFP*, "Voile intégral : 'il n'est pas opportun de relancer une polémique' (Besson)," June 18, 2009.

[66] "*La loi a déjà énoncé un certain nombre de règles du vivre ensemble, la loi dit qu'on ne peut pas porter le voile dans un certain nombre d'administrations, de services publics et à l'école. Un équilibre a été trouvé en France et il serait dangereux de le remettre en cause*," quoted in *AFP*, "Voile intégral : 'il n'est pas opportun de relancer une polémique' (Besson)," June 18, 2009.

[67] "*Il faut lutter contre le développement de la burqa mais par l'éducation, la pédagogie, le dialogue. Une loi serait inefficace et créerait des tensions qui n'ont pas lieu d'être en ce moment,*" quoted in *AFP*, "Besson: une loi sur le port du voile intégral serait 'inefficace'," June 19, 2009.

[68] "*C'est un vrai sujet, moi je demande là-dessus qu'on essaie de réfléchir de la manière la moins simpliste possible. Si une loi interdit la burqa, ces femmes auront toujours la burqa mais elles resteront chez elles, on ne les verra plus*", quoted in *AFP*, "Loi sur le voile intégral : Aubry (PS) contre les solutions simplistes", June 19, 2009.

> women […]. I strongly believe in the necessity of education, in giving them access, if they need it, to language classes, and allowing them to integrate into society.[69]

As Duflot's comments illustrate, the question of full veils was, especially in the very beginning of the burqa discussions, articulated in relation to the values of *laïcité* and gender equality. Pro-ban actors had – through their 2003–2004 discourses and with the indirect cooperation of the anti-ban group – constructed an adjacency between the two concepts, leading to a repetitive slippage from one issue to the other, that is sexularism. In 2009, when the burqa issue emerged in public discourse, pro-ban and anti-ban actors alike continued to articulate gender equality as a value that was adjacent to *laïcité* and, therefore, to the republican conceptual core. As this was the case, they considered both *laïcité* and gender equality to be relevant for republican integration. Indeed, if social integration was understood as the process of espousing central republican values, respecting *laïcité* was not enough; newcomers and deserving republican citizens also needed to accept gender equality. Hence, even Duflot – who was against restrictive measures – saw the burqa as a problem for feminism and integration. Morphologically, then, a position such as the one that Duflot adopted "as a woman and as a feminist" was not that different from the pro-ban stance: both of them stressed that full veils were in contradiction with the republican values of *laïcité* and gender equality. The issue of contestation was rather whether a formal ban was the best solution for ensuring adhesion to "shared values," or whether such a measure would be counterproductive insofar as it could lead to seclusion.

The reactions of French Muslim organizations to the proposed parliamentary commission were varied. For the Union of Islamic Organizations of France (UOIF), Gerin's suggestion was a strategy aiming to contribute to the conflation between the wearing of full veils abroad and the marginal practice that existed in France.[70] Mohammed Moussaoui, the president of CFCM, agreed:

> We are surprised by this proposition. It is a new stigmatization of Islam and the Muslims of France. A significant majority of us only aspires to practice our religion in moderation and tolerance. Asking for a parliamentary commission is something serious,

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[69] "*Le port du voile intégral me heurte humainement en tant que femme, en tant que féministe, mais la stigmatisation, ça ne me semble pas être une bonne solution. Je ne pense pas que l'interdiction brutale va amener quelque chose de positif. La laïcité c'est une évidence mais le problème c'est comment on s'adresse à ces femmes-là […]. Moi je crois beaucoup à la nécessité de l'éducation, au fait qu'on puisse leur donner accès, si elles en ont besoin, à des cours de langue française et leur permettre de s'intégrer dans la société*," quoted in *AFP*, "Duflot (Verts) contre une éventuelle 'interdiction' du voile intégral," June 18, 2009,

[70] *AFP*, "Des députés demandent une commission d'enquête sur le port du voile intégral," June 17, 2009.

> something that is usually reserved for major topics of society. We would have wanted for this issue which is marginal in France to be treated differently.[71]

Moussaoui went on to further emphasize that face veils were not a religious prescription, but a marginal practice among people of the Muslim faith. When asked whether the full veil constituted a breach of individual liberties, he answered: "It is a practice that does not permit the woman to have a normal social life."[72] Despite Moussaoui's position against the creation of a parliamentary commission, *Le Point* took up this comment and titled the interview "Moussaoui (CFCM): Women cannot have a normal social life."[73] As for the Paris Mosque, Dalil Boubakeur – its rector who was known for supporting a moderate Islam compatible with *laïcité* – was more hesitant to condemn Gerin's initiative. Indeed, according to Boubakeur, "the wearing of the *hijab* indicates a return to the past, in conformity with the vision of the fundamentalists and of their radical preachers."[74] Boubakeur stressed that "the Muslim community must live in the present and adapt to the public space where it lives,"[75] adding that France is a "land of integration that is secular, not communalist."[76]

When the public discussion of full veils was only starting, Nicolas Sarkozy intervened on the issue. In a historic event that took place on June 22, 2009, the President of the Republic addressed the French Parliament at the Congress of Versailles.[77] In a 45-minute speech, Sarkozy addressed a number

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[71] "*Cette proposition nous étonne. C'est une nouvelle stigmatisation de l'islam et des musulmans de France. Or, la très grande majorité d'entre nous n'aspire qu'à vivre sa religion dans la modération et la tolérance. Demander une commission d'enquête correspond à quelque chose de lourd, qui est normalement réservé aux sujets majeurs de société. Nous aurions aimé que ce sujet, marginal en France, soit traité autrement*," quoted in *Le Point*, "Moussaoui (CFCM) : 'La femme ne peut pas vivre une vie sociale normale'," June 18, 2009.

[72] "*C'est une pratique qui ne permet pas à la femme de vivre une vie sociale normale*," quoted in *Le Point*, "Moussaoui (CFCM) : 'La femme ne peut pas vivre une vie sociale normale'," June 18, 2009.

[73] "Moussaoui (CFCM) : La femme ne peut pas vivre une vie sociale normale," *Le Point*, June 18, 2009.

[74] "*Le port du hijab marque un retour vers le passé de l'islam, conformément à la vision des fondamentalistes et de leurs prédicateurs radicaux*," quoted in *AFP*, "Burqa : une commission d'enquête jugée plus inopportune qu'efficace," June 18, 2009.

[75] "*La communauté musulmane doit vivre avec son temps et s'adapter à l'espace public où elle vit*," quoted in *AFP*, "Burqa : une commission d'enquête jugée plus inopportune qu'efficace," June 18, 2009.

[76] "*Terre d'intégration, laïque et non communautaire*," quoted in *AFP*, "Burqa : une commission d'enquête jugée plus inopportune qu'efficace," June 18, 2009.

[77] The Congress of the French Parliament, held in the Versailles Palace, brings together the National Assembly and the Senate. Traditionally, it has convened to vote on constitutional issues, but since the law of July 23, 2008, the Congress can also be convened to hear addresses from the President of the Republic. Sarkozy's 2009 appearance at the Congress was the first time that a French president made use of this right. It was not until 2015 that a second such event occurred, as Sarkozy's successor François Hollande addressed the Congress following the November 2015 terrorist attacks.

of topics such as pensions, fiscal reform, and the carbon tax. Yet the president also stressed the importance of republican values by expressing his hostility towards the burqa:

> The burqa is not a religious symbol, it is a symbol of enslavement, and it is a symbol of humiliation. I want to state this solemnly. The burqa will not be welcome on the territory of the French Republic. We cannot accept in our country women imprisoned behind a mesh, cut off from all social life, deprived of all identity. This is not how the French Republic understands women's dignity.[78]

Although Sarkozy did not mention the request for a parliamentary commission nor the possibility of a new law – and although the political opposition criticized the speech as "empty"[79] – the President's change of tone[80] was good news for the pro-ban group. Sarkozy was essentially giving his support for the parliamentary inquiry to move forward (Galembert 2014, 653). On the following day, June 23, two weeks after the MPs had submitted their proposal, the presidential committee[81] of the National Assembly established a parliamentary commission (*Mission d'information parlementaire,* hereafter referred to as the MIP)[82] to "examine the wearing of full veils within the national territory."[83] The commission consisted of 32 members.[84] André Gerin (PCF) became its president, and Éric Raoult (UMP) was

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[78] "*La burqa, ce n'est pas un signe religieux, c'est un signe d'asservissement, c'est un signe d'abaissement. Je veux le dire solennellement. Elle ne sera pas le bienvenu sur le territoire de la République française. Nous ne pouvons pas accepter dans notre pays des femmes prisonnières derrière un grillage, coupées de toute vie sociale, privées de toute identité. Ce n'est pas l'idée que la République française se fait de la dignité de la femme*," *discours de Nicolas Sarkozy devant le Parlement réuni en congrès à Versailles*, < http://www.ina.fr/video/3940705001013 >.

[79] *Le Monde*, "Sarkozy devant le Congrès : première majeure, consensus mineur," June 22, 2009.

[80] As seen above, Sarkozy's Caen speech from a few weeks earlier had stressed women's right to wear the Islamic veil; on the specific issue of the burqa, the president adopted a totally different view.

[81] *La conférence des présidents* is the organization within the National Assembly which is in charge of fixing its agenda. Headed by the president of the National Assembly, its members include the presidents of all permanent parliamentary commissions.

[82] The commission that was created was not the *Commission d'enquête* that had initially been suggested, but a *Mission d'information parlementaire* that followed the format adopted by the so-called "Debré Mission." For more information on the two types of commissions, on their similarities and differences, see:

< http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/les-fonctions-de-l-assemblee-nationale/les-fonctions-de-controle-et-l-information-des-deputes/les-commissions-d-enquete-et-les-missions-d-information-creees-par-la-conference-des-presidents >.

[83] *Mission d'information sur la pratique du port du voile intégral sur le territoire national.*

[84] The commission was composed of 17 deputies from UMP, 11 from PS, 2 from NC (*Nouveau centre*), and 2 from GDR (*Gauche démocrate et républicaine*). The members were: André Gerin (president), Arlette Grosskost, Danièle Hoffman-Rispal, Georges Mothron, Nicolas Perruchot (vice presidents); Christian Bataille, Éric Diard, Christophe Guilloteau, Françoise Hostalier (secretaries); Éric Raoult (rapporteur); Yves Albarello, Nicole Ameline, François Baroin, Patrick Beaudouin, Gilles Bourdouleix, Pierre Cardo, Pascale Crozon, Pierre Forgues, Jean-Paul Garraud, Jean Glavany, Michel Lefait, Colette Le Moal, Lionnel Luca, Jeanny Marc, Martine Martinel, Sandrine Mazetier,

appointed as the rapporteur. Amongst the deputies assigned to the commission were Françoise Hostalier (UMP), Nicole Ameline (UMP), François Baroin (UMP), and Jacques Myard (UMP) – all of whom, as I have shown, had already on many occasions publicly demonstrated their aversion to Islamic veils. The very composition of the parliamentary commission thus suggested that its purpose was not so much to gather information (as its name, *Mission d'information parlementaire*, implied), as it was to explore options for banning the burqa (Galembert 2014, 654).

5.3 Public Secularism, Private Beliefs? *Laïcité* Becomes Social

When the National Assembly created the MIP to examine the issue of full veils, one of the questions that the deputies focused on was the application of *laïcité*. Indeed, as shown above, André Gerin and his colleagues had justified the creation of such a parliamentary commission by referring to the values of *laïcité* and gender equality. Moreover, the MPs had taken the 2003 Stasi Commission, whose official task had been to ponder the application of *laïcité*, as an explicit model for the new parliamentary body. Although there was nothing surprising about the pro-ban group's insistence on the value of public secularism, it should be noted that Gerin and his colleagues' proposition did *not* refer to *laïcité* primarily as a legal principle guaranteeing freedom of conscience and the neutrality of public institutions. Although their text mentioned the law of 1905 as well as other legal provisions, the meanings that they assigned to public secularism went well beyond its legal definition. For example:

> […] *laïcité* is the driver of integration for everyone in society. It creates a balance between the recognition of the right to individuality, the respect of personal beliefs, and the social bond. In connecting national unity, the neutrality of the Republic, and the recognition of diversity, *laïcité* creates – beyond each person's traditional community – a common destiny founded on shared values, the will and the desire to live together.[85]

Judging by this quote, the message of the pro-ban group seemed to be that *laïcité* was important because of its *social effects*. According to this coalition of deputies, *laïcité* was "the driver of

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Jacques Myard, George Pau-Langevin, Bérengère Poletti, Jacques Remiller, Chantal Robin-Rodrigo, François de Rugy.

[85] "*La laïcité est le vecteur de l'intégration de tous dans la société. Elle crée l'équilibre entre la reconnaissance du droit à une identité propre, le respect des convictions individuelles et le lien social. En articulant unité nationale, neutralité de la République et reconnaissance de la diversité, la laïcité fonde, au-delà les communautés traditionnelles de chacun, une communauté de destin appuyée sur des valeurs communes, une volonté et un désir de vivre ensemble*" (Assemblée nationale 2009, 3).

integration for everyone in society" – something balancing personal life and public engagement, thereby creating a "common destiny." In the passage quoted above, *laïcité* appears as the very social fabric weaving individuals together. Through this understanding of public secularism, Gerin and his colleagues made full veils out to be a threat not only to women's dignity, but also to the whole community: "When *laïcité* is threatened, French society as a whole is threatened […]."[86] Later in this chapter we will see how republican advocates would gradually let the issue of *laïcité* recede into the background, while at the same according increasing attention to the unity of the national community and to the social dimension of cohabitation.

Gerin and his colleagues' emphasis on the unifying power of *laïcité* was nothing new. It was reminiscent, for example, of François Bayrou's 1994 circular, in which the Minister of Education had referred to French republicanism as something that consisted of individual rights yet also formed a "common destiny." Traditionally, there has been vacillation within republican thought between the individual and the *corps républicain* – the organic whole formed by the members of the republican community. The public discourses examined in Chapter 4 illustrated how French republican arguments tend to vary between appeals for the protection of individual liberties and for the preservation of the unity of the Republic. In fact, if we examine the passage of the 2004 law through the lens of liberty versus unity, we can see how exclusion was constructed as a mechanism that would protect the republican "civic body" from the contagion of pluralism (Simard 2014, 74). In other words, by constructing the value of gender equality as adjacent to *laïcité* and the republican-ideological core, the proponents of the headscarf ban aimed to protect the cohesion of the republican body – its monism – by expelling those whose visible difference and dissident views were seen as a threat to it. From this viewpoint, the law of 2004 can be described as a first step that limited individual freedom in the name of republican unity. As we will soon see, in the burqa discussions, French political actors would move even further in this direction. In defining, among other things, *laïcité* as a social norm rather than as a legal principle guaranteeing freedom of religion, they would abandon the delicate balance that had previously existed between guaranteeing individual rights and protecting the social fabric.

This tension between the protection of individual liberties and the requirements of collective life characterized the work of the parliamentary commission. In a similar vein to the Stasi Commission, the work of the parliamentary body consisted of a large round of auditions that took place with the aim

[86] "*Quand la laïcité est menacée, la société française l'est dans son unité […]*" (Assemblée nationale 2009, 4).

of producing an official report.[87] Between July 8 and December 16, 2009, the *Mission d'information parlementaire* (MIP) auditioned more than two hundred people, not only in Paris but also in Lille, Lyon, Marseille and Brussels. As many of these hearings were public,[88] media coverage of the issue of full veils during the latter part of 2009 tended to focus on the appearances of a variety of public figures who had been asked to present their views in front of the commission. In parallel, however, Jean-François Copé, the leader of the National Assembly's UMP group, had established his own "working group" on the issue of full veils. Bringing together more than 60 deputies[89] from the UMP (including former ministers Nicole Ameline and François Baroin, both of whom were also members of the MIP), Copé's group's openly publicized goal was to arrive at a law that would "ban the burqa."[90] Copé's initiative illustrates, on the one hand, that a variety of political actors were aiming to intervene on the issue of full veils, and on the other hand, that this issue created political cleavages even within parties such as the UMP. The latter is confirmed by Bernard Accoyer's (UMP) disapproval of Copé's statements: according to the president of the National Assembly, everyone should wait for the conclusions of the MIP and not get ahead of themselves in declaring that a law was necessary.[91] Although Copé succeeded in stealing the limelight briefly at the time when the parliamentary commission was created,[92] as soon as the MIP's auditions started in July 2009, attention shifted to the people who were called to express their views.

In these auditions, many individuals constructed *laïcité* in a way that did not focus on the protection of individuals' freedom of religion, but rather on the requirements of republican cohabitation. In so doing, they often invested the principle of public secularism with powers that it did not *de facto* –according to existing law – have. For example, according to Jean-Michel Balling, member of the *Grande Loge de France*, "it is *laïcité* that allows for everyone to live his belief or non-belief – which fall under

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[87] The original due date was November 30, 2009, but the report was submitted on January 26, 2010.

[88] These auditions were broadcast and are available at the National Assembly's website: < http://www.assemblee-nationale.fr/13/commissions/voile-integral/ >.

[89] For a full list, see *Bulletin Quotidien*, "Le président du groupe UMP à l'Assemblée nationale Jean-François Copé animera un groupe de travail sur le port de la burqa avec les anciens ministres François Baroin et Nicole Ameline," July 1, 2009.

[90] *Le Parisien*, "Assemblée – 'Sur la burqa, il faut une loi en deux temps'," July 8, 2009.

[91] *AFP*, "Accoyer (UMP) : 'trop tôt' pour se prononcer sur une loi anti-burqa," July 9, 2009; *Les Échos*, "Burqa : Bernard Accoyer remet Jean-François Copé à sa place," July 10, 2009.

[92] *Le Figaro*, "Copé crée un groupe de travail sur la burqa," June 29, 2009; *AFP*, "Copé animera un groupe de travail UMP avec Baroin et Ameline," June 20, 2009.

the private sphere – *without religious convictions ever interfering in the public domain* (emphasis added)."[93] Balling's view illustrates the staunchly secular assumption that religious beliefs could only be expressed in the strictly private sphere – for example, in a private household or in a place of worship. In looking to confine all religious expression to the private realm, many of those who participated in the MIP's deliberations painted a particularly wide picture of the sphere in which the requirement of neutrality could be applied, generally considering that anything outside of the private household amounted to "public space."[94] However, this commonly held view – according to which *laïcité* would somehow already have the capacity to banish "radical" religious symbols from the streets, for example – met with opposition from legal experts.[95] As Bertrand Mathieu, professor of public law, explained:

> *Laïcité* is ineffective in regulating this practice [of the wearing of full veils], because in French law, this principle cannot lead us to a general prohibition of the public expression of religious opinions in the social sphere. It is, in fact, the state, public authorities, and administrations which are subjected to the principle of *laïcité*, not individuals, the social body, and public space. One therefore cannot base general regulations about the wearing of religious clothing on this principle, for this issue involves individual relationships and not the relationship between individuals and public authorities or public service. Besides, one would then need to regulate the use of all clothing which marks religious identity in public, which is not imaginable.[96]

Mathieu clearly stated what many anti-ban actors had been trying to argue from the very beginning of the veil affairs: that the traditional legal principle of *laïcité* could not be used to regulate individual people in their private dealings with others. Yet, as we have seen, the passage of the law of

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[93] "*C'est la laïcité qui permet à chacun de vivre librement sa croyance ou sa non-croyance – lesquelles relèvent de l'espace privé – sans que les convictions religieuses interfèrent jamais dans le domaine public*," MIP minutes no 12, November 12, 2009.

[94] See, for example, Jean Glavany (PS) comments on November 4 (MIP minutes no 11), or even Tariq Ramadan's formulation from December 2 (MIP minutes no 15).

[95] In order of appearance: Denys de Béchillon (professor of public law, Université de Pau), Anne Levade (professor of public law, Université Paris II), Bertrand Mathieu (research director, Université Paris-II), Guy Carcassonne (professor of constitutional law, Université Paris X), Jean-Pierre Marguénaud (professor of private law, Université de Limoges), Bertrand Louvel (Court of Cassation), and Cécile Petit (Court of Cassation).

[96] "*Le principe de laïcité est inopérant pour réglementer cette pratique [de port du voile intégral] car, en droit français, il ne peut pas conduire à interdire de manière générale la manifestation publique d'opinions religieuses dans la sphère sociale. Ce sont, en effet, l'État, les pouvoirs publics et les services publics qui sont soumis au principe de laïcité, non les individus, le corps social et l'espace public. On ne peut donc pas fonder sur ce principe une réglementation générale du port de vêtements manifestant une opinion religieuse, dès lors que sont en cause non pas les rapports entre les individus et les pouvoirs publics ou les services publics, mais les rapports interindividuels. En outre, il faudrait alors réglementer l'usage de tout vêtement marquant une identité religieuse en public, ce qui n'est pas imaginable*," MIP minutes no 14, November 25, 2009.

2004 had been a first step in modifying this idea of strictly *public* secularism. Applying *laïcité* to students had been a significant precedent to arguing that the requirement of neutrality could involve individuals beyond the specific context of public services. As this was the case, the discussions that took place within the parliamentary commission did not so much focus on *whether* the obligation of religious neutrality could be imposed on individuals, but they rather revolved around defining *where* this could be done and on what legal grounds.

The question of how "public space" could be defined was particularly controversial, and politicians and legal experts held different views on this issue. As Languille has pointed out, at the heart of the disagreement was the definition that each group tended to accord to the adjective "public" (Languille 2015, 41). For lawyers, "public" referred to institutions such as the state or the National Assembly (Languille 2015, 41), as well as to public authorities and services; beyond these spheres, individuals were in their private lives. This was also the view held by Bertrand Louvel, Presiding Justice (*président de chambre*) of the Court of Cassation:

> Private life is the space where a person does not enter into a legal relationship with others. It does not simply mean her home. A person is in her private life when she walks in the street without asking anyone for anything, when she stops on a public bench, when she buys her bread, and when she enters a bar. In the absence of a relationship with others, the restrictions that could be applied to the liberty to dress oneself would not easily correspond to one of the objectives of general interest mentioned in the conventions that apply.[97]

In contrast, politicians tended to view "public" as something that referred to "shared space" – for example, streets and all sorts of other public thoroughfares (*voies publiques*) (Languille 2015, 41). Indeed, it is not surprising that lawyers would give preference to the legal definition of *laïcité*, and that others would be more inclined to refer to it as a *social norm* – one that is, as such, more easily open to re-definition. In other words, legal experts were limiting the meaning of *laïcité* and of the "public" to their legal attributes, while politicians were trying to open the value of public secularism up for redefinition, that is processes of decontestation. As de Galembert has noted, the position held by the legal

[97] "*La vie privée est l'espace dans lequel une personne n'entre pas en relation juridique avec des tiers. Cela ne veut pas dire simplement chez elle. Une personne est dans sa vie privée aussi quand elle se promène dans la rue et ne demande rien à personne, quand elle s'arrête sur un banc public, quand elle achète son pain ou quand elle entre dans un bar. En l'absence de lien avec des tiers, les restrictions qui pourraient être apportées à la liberté de se vêtir pourraient difficilement répondre à l'un des objectifs d'intérêt général évoqués par les conventions applicables*," MIP minutes no 17, December 9, 2009.

experts heard before the commission – hesitant with regard to the possibility of passing a general ban on religious symbols – attested to the relative "autonomy of the law" (Galembert 2014, 657). Although some of the lawyers who were auditioned were favorable to the idea of legislating, they could not but arrive at the conclusion that the legal framework in place simply did not allow for a general ban. As Denys de Béchillon, one of the professors of law auditioned by the MIP, put it: "I do not like the burqa, it appalls me, but I think that we have neither the tools nor the political culture to ban the wearing of that piece of clothing on the territory of the Republic."[98]

5.4 On Seeing and Sharing Space: Republican Responsibilities Reformulated

From the very beginning of the auditions, discussions concerning full veils vacillated between two broad positions: politicians wishing to extend *laïcité* to private individuals in public space, and lawyers pointing out the impossibility of such a maneuver. Consequently, early on those hoping to ban the burqa were already trying to find a solution so that people's private beliefs could be restricted, if not in the name of *laïcité* then in the name of another value. *La Croix* picked up this dilemma and its possible solutions already on June 29, 2009:

> In any case, lawyers seem convinced that a potential legislative intervention would not be possible on the basis of defending *laïcité*, but on the basis of the dignity of the person, even of the respect of public order. Any piece of clothing, religious or not, which aims to conceal the identity of a person is incompatible with life in society […].[99]

Although the issues of human dignity and public order – which would soon become dominant in the burqa discussions – did not immediately appear as potential solutions to the problem of full veils, from the very first auditions of the MIP, the issue of the *social* aspects of republican cohabitation was present. The first person heard by the commission was anthropologist Dounia Bouzar, whose audition took place on July 8, 2009. Author of several books[100] about French Islam, Bouzar had become known

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[98] "*Je n'aime pas la burqa, elle me révolte, mais je crois que nous n'avons ni les outils ni la culture politique pour interdire le port de ce vêtement sur le territoire de la République*," MIP minutes no 8, October 14, 2009.

[99] "*Les juristes paraissent en tout cas persuadés qu'une éventuelle intervention législative ne pourrait pas se faire sur le terrain de la défense de la laïcité, mais sur celui du respect de la dignité de la personne, voire sur celui du respect de l'ordre public. Tout vêtement, religieux ou non, qui vise à masquer l'identité d'une personne est incompatible avec la vie en société […],*" *La Croix*, June 29, 2009.

[100] Some of Bouzar's books include *L'islam des banlieues* (2001), *À la fois française et musulmane* (2002), *L'une voilée, l'autre pas* (2003), *Être musulman aujourd'hui* (2003), *"Monsieur islam" n'existe pas* (2004), *Ça suffit !*

at the time of the publication of *L'une voilée, l'autre pas* (2003), and, as seen in Chapter 4, she had also joined Christine Delphy, Françoise Gaspard and others in signing a 2003 petition against the ban on headscarves in public schools. In 2003, President Sarkozy had appointed her to the newly created French Council for the Muslim Faith (CFCM), but Bouzar had resigned her seat in 2005, claiming that the government was "Islamizing social and political problems."[101] When the topic of full veils emerged in French public discussion in 2009, Bouzar had also been one of the first specialists solicited by the media. In an interview given to *L'Humanité* on June 23 – directly following the creation of the parliamentary commission – Bouzar had strongly stated that face-veils such as the niqab and the burqa were not prescribed by the Coran, but rather a marginal phenomenon existing within extremist groups.[102] According to Bouzar, public discourse on the issue should be adjusted so that it would stop according legitimacy to Salafism at the expense of the moderate Muslim mainstream. On July 8, the members of the MIP asked Bouzar to draw on her expertise to make an assessment of the practice of full-veiling in France.

At the beginning of her audition, Bouzar repeated that face-veils were a sectarian practice. As this was the case, she suggested that the debate should not concern religion, but rather security. According to Bouzar, banning the concealment of one's identity on the grounds of security would have several advantages:

> Prohibiting all citizens from deliberately and permanently concealing their identity, whatever the means may be – hood, niqab, burqa, and who knows what else – would allow us to treat all citizens in the same way, in accordance with our philosophy, to reaffirm that every person is a different and differentiated individual living in a diverse society. Simultaneously, it would allow us to do away with the argument that France does not accept its own diversity. On the contrary, it is the niqab that appears as anti-diversity by advocating a homogenization of women which makes it impossible to distinguish one from the other. In prohibiting the niqab, we claim the right to be different [*droit à la différence*]; […] to liberate, if need be, the victims who have been forced to veil; all this without attacking or stigmatizing Islam.[103]

(2005), *Quelle éducation face au radicalisme religieux ?* (2006), *L'intégrisme, l'islam et nous* (2007b), *Allah, mon boss et moi* (2008), *Allah a-t-il sa place dans l'entreprise ?* (2009), and *La République ou la burqa* (2010).

[101] *Libération*, "Le gouvernement islamise les problèmes sociaux," January 6, 2005.

[102] *L'Humanité*, "Le niqab n'est pas un signe religieux mais sectaire," June 23, 2009.

[103] "*Interdire à tous les citoyens la dissimulation délibérée et permanente d'identité, quel que soit le moyen utilisé – cagoule, niqab, burqa, que sais-je encore ? – permettrait à la fois de traiter tous les citoyens de la même façon, conformément à notre philosophie, de réaffirmer que tout individu est une personne différente et différenciée, qui*

From this portion of Bouzar's audition, we can see how the anthropologist flipped the issue of "the right to difference" on its head. Indeed, usually, the expression "*droit à la difference*" had been associated with minorities' cultural demands that, according to mainstream republican discourse could be in contradiction with republican unity. Here, however, Bouzar argued that it was in fact radical Islam – and not republican ideology – which required all women to "be the same" insofar as full veils had a homogenizing function. Hence, according to Bouzar, it was the ban on face veils – and not the accommodation of minority demands – that would allow for people to fully express and experience their difference and individuality. In Bouzar's presentation, this discursive twist was also accompanied by more usual republican assumptions: that prohibiting everyone from wearing specific items of clothing would create equality, and that the banning of full veils would liberate the women who wore them. Directly following these comments, however, Bouzar went on to state that she hoped that the discussion would *not* be focused on the issue of women's rights, since such an approach could be interpreted as the Western world "giving lessons" to Muslims. Instead, here is what Bouzar suggested:

> As President Obama stated, it is time that all mankind join hands in order to arrive at certain shared values, whatever the chosen means may be. What is important is not whether one shows one's hair or not […], but protecting certain values: equality, and specifically equality between men and women, liberty, fraternity. In order for us to make progress together, in a common project, with all our memories, we must see things clearly and see each other clearly.[104]
>
> I will conclude this presentation with a personal wish. I hope, for the sake of national cohesion, that the influence of sectarian discourse will be dismantled by framing the debate in terms of security. That way all republican democrats, be they atheist, agnostic, Jewish, Christian, or Muslim, will be able to join hands in this typically French combat.[105]

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vit dans une société diverse, ce qui permettrait d'ailleurs d'en finir avec l'argument selon lequel la France n'assumerait pas sa diversité ; au contraire, c'est le niqab qui apparaît comme l'anti-diversité en prônant une uniformisation des femmes qui ne les rend plus discernables les unes des autres – en interdisant le niqab, nous revendiquons le droit à la différence, […] *de libérer, le cas échéant, les victimes voilées de force ; tout cela sans attaquer ni stigmatiser l'islam,*" MIP minutes no 2, July 8, 2009.

[104] "*Comme le président Obama l'a énoncé, il est temps que tous les Hommes se donnent la main pour arriver à certaines valeurs communes, quel que soit le moyen choisi. Ce qui compte, ce n'est pas de montrer ses cheveux ou pas, de s'arrêter à tel ou tel prophète, de croire ou pas, mais de défendre des valeurs : l'égalité, et notamment l'égalité entre les hommes et les femmes, la liberté, la fraternité. Pour avancer ensemble, dans un projet commun, avec toutes nos mémoires, encore faut-il y voir et encore faut-il se voir*," MIP minutes no 2, July 8, 2009.

[105] "*Je conclurai cette présentation par un souhait personnel. J'espère, pour la cohésion nationale, que l'autorité du discours sectaire sera désamorcée, en posant le débat sur le plan de la sécurité. Ainsi, tous les démocrates*

On the one hand, Bouzar's concluding remarks illustrate the ongoing construction of the issue of gender equality as adjacent to the republican ideological core. In this 2009 audition, Bouzar named, in first place, the value of equality – specifying the primacy of equality between the sexes – before mentioning liberty and fraternity. On the other hand, Bouzar explicitly wished to move the focus of the discussion from the issue of "protecting women's rights" to the consolidation of fraternity, as is apparent in her mention of "joining hands," "mak[ing] progress together," "common project," and "national cohesion." Indeed, Bouzar explicitly stated that public discussion should not focus on the veil or on women's rights, but rather on "shared values" framed in terms of security.[106] Yet even she linked the issue back to veiling in stating that the construction of shared values requires republican democrats to see each other. In other words, the justification for banning face veils would not be *laïcité* or gender equality *per se*, but rather the social dimension of republican cooperation.

Bouzar confirmed this position later during the audition when replying to questions. According to her, "a dysfunction that is contrary to social cohesion must be penalized, whatever the person's religion may be."[107] More specifically, Bouzar wanted to move away from a discussion of religion towards a discussion of the shared responsibilities of all republicans: "Democratic and republican Muslims of course need to have room, as citizens, to fight against everything that hinders national cohesion, but not as believers. This is the debate we must have."[108] Although Bouzar acknowledged that the "social rupture" that full veils created concerned women, in particular, "as a Muslim and a feminist," Bouzar emphasized the need to move beyond the issue of women's rights. In other words, in contrast to the 2003–2004 discourses which had mainly revolved around the issues of liberty and equality, Bouzar was emphasizing the third republican core value: fraternity.

This social dimension of republican cohabitation is even more developed in the MIP's second audition with philosopher Abdennour Bidar. André Gerin (PCF) presented Bidar to the commission not only as a philosopher and professor, but also as the author of "noteworthy" work which labelled the

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républicains, qu'ils soient de référence athée, agnostique, juive, chrétienne ou musulmane, pourront se donner la main dans ce combat typiquement français," MIP minutes no 2, July 8, 2009.

[106] The notion of "public order" would appear at the following session on July 15, 2009, when André Gerin, Anne Sugier, and Michèle Vianès mentioned it (MIP's minutes 3).

[107] "*Un dysfonctionnement qui s'oppose à la cohésion sociale doit être sanctionné, quelle que soit la religion de la personne concernée*," MIP minutes no 2, July 8, 2009.

[108] "*Il faut certes que les musulmans démocrates et républicains aient une place, en tant que citoyens, pour lutter contre tout ce qui entrave la cohésion nationale, mais pas en tant que religieux. Voilà le débat que nous devons avoir*," MIP minutes no 2, July 8, 2009.

burqa as a "pathology" of Muslim culture,[109] citing by name Bidar's books *Un islam pour notre temps* (2004) and *L'islam sans soumission* (2008).[110] In his address, Bidar considered that the burqa[111] was problematic with regard to women's "subjective," free choice to veil, as well as with regard to the "objective perception of the burqa in public space," that is, the issue of republican "*vivre ensemble*."[112] Having touched on the different reasons for veiling and whether they resulted from free choice or not, Bidar went on to address the requirements for living together in a shared space. Because of the importance that Bidar's views would acquire later during the discussions, I will quote his speech at length:

> […] finally, I will broach the objective perception of the burqa in public space. Here, the question is no longer the subjective perception that the women wearing the burqa have of their practice, but the objective reception of this attitude by the other occupants of public space. It seems to me necessary to move to this issue rather than remain in the swampland of individual motivations. Otherwise we will be exposed to a multiplicity of justifications, all of which are presented in the name of individual liberty, when the space in which this liberty manifests itself requires that the liberty of other individual minds be taken into account. This is exactly the problem which I have called the "shareability [*partageabilité*] of public space."[113]
>
> Our vision of the latter is in fact that of a shared – and hence, sharable – space. It follows that its occupants fulfill, with regard to one another, a certain number of duties, and that they cannot shut themselves away in a logic of asserting their individual rights and liberties. This is one of the conditions of "living together." A very important

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[109] Bidar had, on June 29, 2009, published an article in *Libération* with the title "*Le burqa : une pathologie de la culture musulmane*." When asked, during the audition, whether the title had not been chosen by the editors, Bidar firmly stood behind the qualification included in this title.

[110] Bidar's other books include *Self islam: histoire d'un islam personnel* (2006), *L'islam face à la mort de dieu* (2010), and later, *Lettre ouverte au monde musulman* (2015a), *Plaidoyer pour la fraternité* (2015b), as well as *Les rencontres de la laïcité et religion dans la France d'aujourd'hui* (2016).

[111] While Bouzar had talked of full veils (*voile intégral*) and niqabs, Bidar spoke of the burqa specifically.

[112] "*Pour ce qui est de la nature du problème, la première question qui se pose est celle du choix personnel : quelles raisons les femmes portant la burqa peuvent-elles invoquer pour légitimer cette pratique d'un point de vue subjectif ? Ensuite, le port de la burqa est-il – et, le cas échéant, dans quelle mesure – une question religieuse ? Enfin, quelle est la perception objective de la burqa dans l'espace public ? Cette dernière question est celle du 'vivre ensemble' dans l'espace public et de la conception que nous en avons en France*," MIP minutes no 2, July 8, 2009.

[113] "*[…] enfin, j'aborderai la perception objective de la burqa dans l'espace public. Ici, il n'est plus question de la perception subjective que les femmes portant la burqa ont de leur pratique, mais de la réception objective de cette attitude par les autres occupants de l'espace public. Il me paraît nécessaire de se déplacer sur ce terrain plutôt que de rester dans le marécage des motivations individuelles. À défaut, on s'expose à une multiplicité de justifications, toutes présentées au nom de la liberté individuelle, alors que l'espace dans lequel s'exprime cette liberté lui impose de prendre en compte la revendication de liberté d'autres consciences individuelles. C'est tout le problème de ce que j'ai appelé la 'partageabilité de l'espace public',*" MIP minutes no 2, July 8, 2009.

> argument against the wearing of the burqa is thus that the surrounding cultural environment would not be able to accept a practice that the majority sees as a demonstration of a kind of symbolic violence.[114]
>
> Indeed, the primary condition of meeting someone is dealing with their face. As Emmanuel Levinas stated, "the face of the other speaks to me." In our cultural tradition, this part of the body has always been the mirror of the soul. In not allowing me to see her face, the other sets out an opposition between the refusal to receive [*une fin de non-recevoir*] and the requirement of communication that is inherent to public space. In this respect, I am justified in considering the behavior as a symbolic violence inflicted upon me.[115]

Although Bidar was only the second person that the commission auditioned, the above-quoted passage of his speech includes several of the ideas that would, but only in 2010, come to form the basis for banning the wearing of face-covering in public space. And, even though it was Guy Carcassonne who would, several months later, offer the *legal* justification for such a ban, the philosophical basis for Carcassonne's argument is already apparent in Bidar's discourse. Several issues therefore deserve our attention here.

Bidar developed his argument in three steps. To begin with, since – according to the philosopher – trying to determine what motivates certain women to wear the burqa was a never-ending "swamp" of speculation, he argued that we should shift our attention to the other individuals who occupied public space. What Bidar meant was that instead of focusing on individual religious freedom, we should rather weigh different rights and liberties against each other. This is, of course, nothing new: the modern political system invariably implies the balancing of and compromises between different rights and liberties (Leca 1996; Ahdar and Leigh 2013; Feinberg 2014). In a second argumentative step, however, Bidar built on the idea of the "shareability" of public space in order to put specific emphasis on the social aspects of democratic cohabitation. In a nutshell, Bidar's logic went something like this:

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[114] "*Notre vision de ce dernier est en effet celle d'un espace partagé, et donc partageable. Il en résulte que ses occupants remplissent, les uns vis-à-vis des autres, un certain nombre de devoirs, et ne peuvent se cantonner dans une logique d'affirmation de leurs droits et libertés individuels. C'est une des conditions du 'vivre ensemble'. Un argument très important que l'on peut opposer au port de la burqa est donc que le milieu culturel environnant ne saurait accepter une pratique que la majorité perçoit comme manifestant une certaine violence symbolique,*" MIP minutes no 2, July 8, 2009.

[115] "*En effet, la condition première pour rencontrer quelqu'un est d'avoir affaire à son visage. Comme le disait Emmanuel Levinas, « le visage de l'autre me parle ». Dans notre tradition culturelle, cette partie du corps a toujours été le miroir de l'âme. En ne me donnant pas à voir son visage, l'autre oppose une fin de non-recevoir à l'exigence de communication inhérente à l'espace public. À ce titre, je suis fondé à considérer son comportement comme une violence symbolique qui m'est infligée,*" MIP minutes no 2, July 8, 2009.

Public space is, by definition, a shared space. Logically, then, something more than space needs to be shared, and that something is the duties that everyone has towards each other. Bidar seems to suggest that this obligation implies, in a general sense, the possibility of *contact* with others which is dependent on the possibility of seeing and being seen. Here we can clearly observe the shift from liberty and equality towards fraternity. In Bidar's discourse, the moral obligation to maintain the republican social bond outweighs the assertion of individual rights. More specifically, Bidar articulated fraternity not only as the obligation to take into account others' rights and liberties and to remain open to republican dialogue, but also, interestingly, as the requirement of conforming – at least to a minimal degree – to the views of the majority. Hence, according to Bidar, the fact that the majority of the French did not approve of the burqa was a major argument in favor of banning it. It goes without saying that this is a clear prioritization of social conformity over individual religious freedom. However, Bidar goes even further than this. Building on the assumption that the "rights of others" as well as the moral obligation to minimal communication must be taken into account, Bidar argued that the burqa – in disrupting the republican social bond – violated both collective life *and* individual rights. In this third argumentative step, Bidar stated that, in denying others the capacity to see oneself, the burqa-clad woman was in fact *inflicting a form of symbolic violence on others*.

Bidar's mention of the well-known French philosopher Emmanuel Levinas[116] is particularly interesting. In referring to Levinas' essay, *Le visage de l'autre* (2001), Bidar implied that he was grounding some of his thinking on that philosopher's work. He also mentioned Levinas in order to illustrate the importance accorded to the human face not only in contemporary discussions concerning the burqa, but in the Western philosophical tradition more generally. A few very general remarks are therefore in order.

Levinas's philosophy is mainly concerned with ethics. For Levinas, one of the most fundamental dimensions of human experience is the face-to-face encounter with the Other. To offer a broad simplification, in Levinasian philosophy, the face-to-face relation – the *social* and *ethical* experience of being in the presence of another person – is the very starting point of discourse and fraternity. Indeed, if "the face of the Other" did not exist, there would be no language or ethics at all. It is the other human being

[116] Emmanuel Levinas (1906–1995) was a Jewish philosopher writing in the second half of the 20th century. Some of his most important books include *Totalité et l'infini : essai sur l'extériorité* (1961), *Autrement qu'être ou au-delà de l'essence* (1978), *Difficile liberté : essais sur le judaisme* (1983), and *Éthique et infini* (1993).

who – symbolically, at least – "calls out" and creates a moral obligation for some kind of response – the very beginning of a human relation and the intersubjective experience (Levinas 1979, 194-201). Because of the core role that the face-to-face encounter plays in Levanasian ethics, and because of the many moral implications that it holds, Bidar's mention of Levinas is significant. As a professor of philosophy, Bidar was surely aware of the effect that his reference of Levinas would have on those in the audience who were even superficially familiar with the famous French philosopher's work. Hence his mention of Levinas served to reinforce his message about the face-to-face encounter being an intrinsically ethical relationship. Although Bidar did not explicitly mention fraternity, we know from Levinas's work that it is the "face of the Other" which creates fraternity and responsibility (Levinas 1979, 214-215).

The philosophical issue of "face-to-face" and the moral obligations related to seeing and being seen in public space did not, however, immediately spark the MIP's interest. Instead, the questions that its members addressed to Bidar concerned Islamist fundamentalism, the relationship between the burqa and Islam, and the issue of women's oppression. Christian Bataille (PS) also asked Bidar whether the burqa was a breach of the constitutional principle of *laïcité*. In his reply, Bidar did not explicitly refer to *laïcité*, but stated that full veiling was an illustration of the problematic issue of Islam and women. While Bouzar had sought to emphasize that the wearing of the full veil should be disconnected from Islam, Bidar saw it as a related phenomenon in the same way as hooliganism was connected to football. According to Bidar, the veil was, indeed, imposed upon women, and Islam was and "always had been" an "archaic religion."

To sum up, both Dounia Bouzar and Abdennour Bidar attempted to shift attention from the issue of *laïcité* and women's rights towards the social imperatives of living in a republican-democratic context. While Bouzar emphasized national cohesion, Bidar stressed the moral obligation of fraternity and republican communication. Yet both explicitly mentioned the importance of seeing and being seen in republican public space. Interestingly, these same themes were echoed in Élisabeth Badinter's audition which took place on September 9. Although Badinter had usually been amongst the first to focus on *laïcité* and gender equality, this time she, too, moved beyond sexularism in a speech that resembled Bidar's:

> I finally want to underline how the wearing of the full veil is contrary to the principle of fraternity – this fundamental principle to which we so rarely have the chance to

> refer to – and beyond, to the principle of civility, the relationship to others. The wearing of the full veil means a total refusal to come into contact with others, and more precisely, refusal of reciprocity: a woman dressed like that assumes the right to see me but refuses to be seen. In addition to the symbolic violence of this lack of reciprocity, I cannot help myself from seeing in it the expression of a pathological contradiction: on the one hand, one refuses to show one's face on the pretext that one does not want to be the object of impure glances […], and on the other hand, one engages in a real exhibition of oneself, as everyone fixates on this non-identifiable object.[117]

5.5 A Festival of Indignation: Politicians and Lawyers Clash on Human Dignity

As the ban on the burqa did not appear possible simply be evoking the value of public secularism, and as the members of the MIP were not (yet) particularly interested in the issue of fraternity, they turned to the idea that the full veil was incompatible with "human dignity." When the auditions resumed on July 15, 2009, a week after Bouzar's and Bidar's appearances, the president of the commission opened the session by stating that the wearing of full veils was an important issue for several reasons: the dignity of women, the equality of the sexes, and public order.[118] He further specified that face-veils constituted a breach of "public liberties and femininity."[119] Indeed, on the day in question, the commission had invited several feminist organizations to join in a round-table discussion about the issue of women's rights. The people who participated in the session were Françoise Morvan, vice-president of *Coordination française pour le lobby européen des femmes* (CLEF); Nicole Crépeau, president of *Fédération nationale solidarité femmes* (FNSF); Sabine Salmon (president) and Carine Delahaie (member) from *Femmes solidaires* (former *Union des femmes françaises*); Annie Sugier,[120] president of *Ligue du droit international des femmes* (LDIF); Françoise Laurent (president) and Marie-Pierre Martinet

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[117] "*Je tiens enfin à souligner combien le port du voile intégral est contraire au principe de fraternité – ce principe fondamental auquel on a si peu souvent l'occasion de se référer – et, au-delà, au principe de civilité, du rapport à l'autre. Porter le voile intégral, c'est refuser absolument d'entrer en contact avec autrui ou, plus exactement, refuser la réciprocité : la femme ainsi vêtue s'arroge le droit de me voir mais me refuse le droit de la voir. Outre la violence symbolique de cette non réciprocité, je ne peux m'empêcher d'y voir l'expression d'une contradiction pathologique : d'une part, on refuse de montrer son visage au prétexte que l'on ne veut pas être l'objet de regards impurs […] d'autre part, on se livre à une véritable exhibition de soi, tout le monde fixant cet objet non identifié*," MIP minutes no 4, September 9, 2009.

[118] MIP minutes no 3, July 15, 2009.

[119] "*Le port du voile intégral constitue une atteinte à nos libertés publiques et à la féminité*," MIP minutes no 3, July 15, 2009.

[120] Sugier had, in 2003, joined Anne Zelensky in signing a letter in favor of banning headscarves from public schools (*Le Monde*, December 5, 2003), and she had also been auditioned by the Stasi Commission.

(secretary general) from *Mouvement français pour le planning familial* (MFPF); Olivia Cattan, president of *Paroles de femmes*; and Michèle Vianès,[121] president of *Regards de femmes*.[122]

None of the feminists who delivered their opinions on July 15 were against the idea of a law banning full veils from public space. Indeed, all of the individuals and associations seemed to be in favor of such a law,[123] though several[124] stated that a legislative solution should be accompanied by supportive education or preventive measures. As could be expected from the positioning of these associations, they were also in favor of an interpretation of *laïcité* which placed it in close proximity with the issue of gender equality:

> **Françoise Morvan (CLEF)**: Being opposed to the wearing of the burqa – and to any other form of clothing with a religious connotation – does not only mean standing in the way of religious fundamentalism, it means guaranteeing gender equality in a democratic and secular society. *Laïcité* and the emancipation of women are linked, for religious fundamentalism does not respect gender equality.[125]
>
> **Sabine Salmon (*Femmes solidaires*)**: For us, the full veil is an ostentatious sign of inequality and discrimination of women before being an ostentatious religious symbol, but we also firmly defend the principle of *laïcité*, for without *laïcité*, there are no women's rights.[126]

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[121] Author of *Silence, on manipule : les islamistes en manœuvre* (2004a) and *Un voile sur la République* (2004b), Vianès was known for her hostility towards veiling. In October 2009, Secretary of State Fadela Amara had awarded her with the distinction of being included in the French Legion of Honor.

[122] Other feminists, such as Sihem Habchi from *Ni putes ni soumises*, Gisèle Halimi from *Choisir la cause des femmes,* as well as Ismahane Chouder and Monique Crinon from *Collectif des féministes pour l'égalité*, were to be heard individually some months later.

[123] "*Interdire la burqa dans la rue est une bonne chose*" (Olivia Cattan); "*S'opposer au port de la burqa, ce n'est pas seulement faire barrage aux fondamentalistes religieux, c'est défendre l'égalité des sexes*" (Françoise Morvan).

[124] Annie Sugier, Françoise Laurant, and Olivia Cattan.

[125] "*S'opposer au port de la burqa – comme à tout signe vestimentaire à connotation religieuse –, ce n'est pas seulement faire barrage au fondamentalisme religieux, c'est garantir l'égalité des sexes dans une société démocratique et laïque. La laïcité et l'émancipation des femmes sont liées, car les fondamentalistes religieux ne respectent pas l'égalité des sexes*," MIP minutes no 3, July 15, 2009.

[126] "*Pour nous, le voile intégral est un signe ostentatoire d'inégalité et discrimination des femmes avant d'être un signe ostentatoire religieux, mais nous défendons aussi fermement le principe de laïcité, car sans laïcité, pas de droits des femmes*," MIP minutes no 3, July 15, 2009.

> **Michèle Vianès (*Regards de femmes*)**: The Islamic veil is an attack against the Republic. Derogatory demands, the provocative outfits worn by women – but also by men – ostensibly proclaim the refusal to respect the republican principles of *laïcité* and equality between women and men.[127]

Besides these types of formulations – which had become commonplace in 2004 – the auditions of the group of feminist organizations also reveal that, either directly or indirectly, Bidar's remarks about the importance of social contact (and thus fraternity) had gained a certain echo. Indeed, it is not unlikely that some of those to be auditioned on July 15 would have watched the very first auditions of July 8 when they had been broadcast, and would therefore have heard the presentations of Bouzar and Bidar. Whatever the case may be, in these comments, feminist actors put the value of fraternity explicitly forward in relation to women's rights:

> **Nicole Crépeau (FNSF)**: In France, the wearing of the burqa is a symbol of differentiation which makes the woman invisible to others and prevents all contact. While it is hard to pass judgement on the clothing of women, it is unacceptable to come across women whose faces cannot be seen. This absence of possible exchange sparks off fear and defiance and prevents the establishment of a true relation, fraternity and solidarity.[128]

> **Michèle Vianès (*Regards de femmes*)**: Our decision is clear: we support women who want to exercise their free will against politico-religious dictates. The argument of fundamental liberties does not hold, because a perverted liberty creates the rule of might […]. In the national motto, liberty is associated with equality and fraternity because republican fraternity prevents liberty from creating privilege and equality from producing oppression. Only the law allows for the liberties of various individuals to coexist without confrontation, to reinforce and to limit each other, to be free together.[129]

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[127] "*Le voile islamique est une attaque contre la République. Les demandes dérogatoires, les tenues provocatrices portées par les femmes – mais également par les hommes – proclament ostensiblement le refus de respecter les principes républicains de laïcité et d'égalité entre les femmes et les hommes*," MIP minutes no 3, July 15, 2009.

[128] "*En France, le port de la burqa est un signe de différenciation qui rend la femme invisible aux autres et empêche tout contact. Si l'on peut difficilement porter un jugement sur la tenue vestimentaire des femmes, il est insupportable de croiser des femmes dont on ne peut voir le visage. Cette absence d'échange possible suscite la peur et la défiance et empêche d'établir une réelle relation, une fraternité et une solidarité*," MIP minutes no 3, July 15, 2009.

[129] "*Notre choix est clair : nous soutenons les femmes qui veulent exercer leur libre arbitre par rapport aux diktats politico-religieux. L'argument des libertés fondamentales ne tient pas, car une liberté dévoyée engendre la loi du plus fort […]. Dans la devise nationale, la liberté est associée à l'égalité et à la fraternité parce que la fraternité républicaine empêche la liberté d'engendrer des privilèges et l'égalité d'engendrer l'oppression. La loi seule permet aux libertés des uns et des autres de cohabiter au lieu de s'opposer, de se renforcer en se limitant mutuellement, d'être libres ensemble*," MIP minutes no 3, July 15, 2009.

In both extracts, fraternity is presented as the value which balances the idea of liberty. While Crépeau emphasized the issue of social contact which is only possible if women do not cover their faces, Vianès defined fraternity as the capacity to produce collective freedom. If we accept Vianès' argument that liberty would, by itself, produce chaos, and equality oppression, then fraternity could indeed be interpreted as the essential piece of the republican puzzle guaranteeing peace and prosperity. Although these types of discourses were not the main focus of feminist interlocutors, they illustrate a gradual shift. Whereas, in 2003–2004, *laïcité* together with women's rights had very clearly been the main justification for banning headscarves, by 2009, in comparison, public discourses were less focused on *laïcité* and more concerned with shared values and social order:

> **Anne Sugier (LDIF)**: Since 1989, we have spoken in favor of banning the veil from public space. Even if it is only a symbol, the veil is an infringement of the values of our society. […] The veil, as all the French understand it, signifies segregation and establishes an inferior status. Any person who believes in the values of the Republic feels attacked by the wearing of the veil. In this sense, it does constitute a breach of public order.[130]

The issue of public order – which would later become necessary for the passing of the 2010 law – was also mentioned by Michèle Vianès on the same day: "The law must permit us to prohibit what is a major problem for public order."[131] In the numerous auditions of the commission, many themes tended to blend together to the point where it is difficult to discern a chronology in the discursive development. For example, the issues of shared social life and public order were mentioned early on, only to reappear from time to time during the MIP's auditions – sometimes as major, sometimes as minor topics. However, one theme that clearly stood out throughout the MIP's discussions was the idea that the burqa was against women's dignity. Although the deputies seemed to lose interest in *laïcité* when they realized that it was not a solid legal justification for banning full veils, the same was not true for the issue of human dignity. As I will soon show, even when faced with a united front of legal experts contradicting the idea that dignity could be preserved by limiting individuals' life choices, the members of the MIP were visibly hard pressed to let go of their desire to pass a law on these specific grounds.

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[130] "*Dès 1989, nous nous sommes prononcés pour l'interdiction du voile dans l'espace public. Même s'il n'est qu'un symbole, le voile porte atteinte aux valeurs de notre société. […] Le voile, tous les Français le comprennent, signifie la ségrégation et instaure un statut d'infériorité. Toute personne qui croit dans les valeurs de la République se sent agressée par le port du voile. En ce sens, il constitue bien une atteinte à l'ordre public*," MIP minutes no 3, July 15, 2009.

[131] "*La loi doit nous permettre d'interdire ce qui est un trouble majeur à l'ordre public*," MIP minutes no 3, July 15, 2009.

Gisèle Halimi,[132] president of the feminist association *Choisir la cause des femmes*, also expressed a firm opinion on the topic of women's dignity (while also arguing that a "repressive law" should be put on hold):

> Is it [the burqa] contrary to the dignity of women? To this question, we reply firmly in the affirmative and consider that it is precisely for that reason that its wearing should be forbidden. These women are imprisoned: they are denied the right to develop relationships with others […].[133]

When the auditions resumed on September 9, 2009, President Gerin opened the session by stating that "we share the opinion that the wearing of the full veil calls into question the liberty and dignity of women."[134] On that day, the commission heard from Sihem Habchi, president of NPNS – an organization that was, according to Gerin, "well known for being at the forefront of the fight for respecting the dignity of women and promoting equality between boys and girls in neighborhoods."[135] At the time of her audition with the MIP, Habchi was also a member of the HALDE, and thereby committed to the fight against discrimination. In the beginning of her speech, Habchi equated the issue of veiling with other major feminist battles, such as women's suffrage and reproductive rights. She then went on to talk at length about the work that NPNS did in disadvantaged neighborhoods in order to work towards women's emancipation, mentioning the tragic death of Sohane Benziane in October 2002 and telling the story of a woman whose violent husband had forced her to veil: "Reduced to a sexual object, she no longer had an identity. She was no longer a person."[136] It was this idea of the veil – and the full veil specifically – as the negation of personhood and of identity that led a number of participants to argue that the veil denied human dignity. As Michèle Vianès put it: "More and more women wrap

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[132] Besides her long-lasting role as president of *Choisir*, Halimi has also been a Socialist MP. She is a lawyer and the author of numerous books, including *Droits des hommes et droits des femmes* (1995), *La nouvelle cause des femmes* (1997), and *Ne vous résignez jamais* (2010). As we have seen, in 2003 she had previously taken a strong stance in favor of the Lévy sisters' expulsion, and she had also appeared in front of the Stasi commission.

[133] "*Est-il contraire à la dignité de la femme ? À cette question, nous répondons résolument par l'affirmative et considérons que c'est précisément à ce titre que son port doit être proscrit. Ces femmes sont emprisonnées : on leur refuse le droit de nouer des relations avec autrui […]*," MIP's minutes no 6, September 29, 2009.

[134] "*Nous partageons tous le sentiment que le port du voile intégral met en cause la liberté et la dignité des femmes*," MIP minutes no 4, September 9, 2009.

[135] "*Ni putes ni soumises, association bien connue qui est à la pointe du combat pour le respect de la dignité des femmes et la promotion de l'égalité entre garçons et filles dans les quartiers*," MIP minutes no 4, September 9, 2009.

[136] "*Réduite à un objet sexuel, elle n'avait plus d'identité. Elle n'était plus personne*," MIP minutes no 4, September 9, 2009.

themselves in a burqa that covers them entirely so that, even outside, they are not identifiable. This piece of clothing robs them of their identity."[137]

Habchi's discourse also illustrates the pro-ban group's insistence that the burqa was a bigger problem than official statistics would suggest. From the beginning of the discussions, those who were skeptical about the possibility of a law had argued that such a measure would be an exaggerated response given the small number of women who actually wore face-covering veils in France. In fact, in July 2009, the French Ministry of the Interior had published a memo stating that the issue concerned less than 400 women.[138] Habchi argued that such statistics could not be relied upon, at least not to evaluate the gravity of the situation:

> Yes, there is an increase in the numbers of veiled women. As far as the figures that have appeared in the press are concerned, they are produced by those who sneered in the 1990s and defended the veil in the school! In 1989, there were two veiled girls. Today, hundreds, even thousands of girls are caged.[139]
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> The wearing of the full veil is a question of principle, not of numbers, and when one cedes on the principles, it is the social model that is put in question. The choice is clear: it is either the Republic or the burqa.[140]

Habchi went on to reaffirm the importance of *laïcité* in guaranteeing "social interaction between men and women" and to mention the Council of State's decision to refuse nationality to a woman wearing the burqa. Habchi took the Council's decision as validation of the fact that it was shared republican values that permitted the French to live together in setting certain limits to individual freedoms. According to her, human dignity was one of these fundamental values that should be protected

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[137] "*De plus en plus de femmes sont enveloppées dans une burqa qui les couvre entièrement afin que, même dehors, elles restent dedans et ne soient pas identifiables. Ce vêtement leur vole leur identité*," MIP minutes no 4, September 9, 2009.

[138] *Bulletin Quotidien*, "Moins de 400 musulmanes – 367 précisément – porteraient en France le voile intégral," July 30, 2009.

[139] "*Oui, il y a une progression du nombre de femmes voilées. Quant aux chiffres parus dans la presse, ils sont produits par ceux-là mêmes qui ricanaient dans les années 1990 et défendaient le voile à l'école ! En 1989, on comptait deux filles voilées. Aujourd'hui, des centaines, voire des milliers de filles sont mises sous cage*," MIP minutes no 4, September 9, 2009.

[140] "*Le port du voile intégral est une question de principe, pas de chiffres, et, lorsqu'on cède sur les principes, c'est le modèle social qui est remis en question. L'alternative est claire : c'est la République ou la burqa*," MIP minutes no 4, September 9, 2009.

for the sake of women and, by extension, the community: "[…] human dignity must be respected. Women must be respected both as human beings and as a component of public order."[141]

Interestingly, in order to develop the issue of human dignity and its link to public order, Habchi referred to a legal precedent: a ruling of the Council of State from October 27, 1995. This case concerned the decision taken by the mayor of the municipality of Morsang-sur-Orge who had prohibited the practice of dwarf-tossing as contrary to human dignity. A person who had founded a business precisely to offer performances of tossing himself around was thereby prohibited from using his body in such games. The Council of State's 1995 ruling had confirmed the mayor's view that the practice of dwarf-tossing, even when done voluntarily, was inacceptable. In so doing, the Council of State had already broadened the scope of public order to include the notion of "human dignity." Habchi was the first – and not the last – to attempt to create an analogy between the issues of dwarf-tossing and the wearing of the burqa: "So, if a woman wants to wear the burqa, it can be denied in the name of human dignity."[142]

Not only had the topic of dignity been dominant since the beginning of the burqa discussions, the reference to the Council of State's 1995 decision meant that this argument now also had a legal basis. In 2009, a number of French deputies and other activists tried to create an analogy between the two issues, arguing that it was not up to the burqa-clad women to define their own dignity, but that the Republic needed to force them to be free.[143] The idea of human dignity was, in particular, carried by Rémy Schwartz, member of the Council of State (and former rapporteur of the Stasi Commission), the first lawyer to appear in front of the Commission. Surely enough, Schwartz was asked to develop on the legal aspects of a potential burqa ban.[144] For example, Jean Glavany (PS) explicitly asked Schwartz how full veils could – from a legal point of view – be prohibited: by employing the notion of

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[141] "*[…] la dignité de la personne humaine doit être respectée. Les femmes doivent être respectées à la fois en tant que personnes humaines et en tant que composantes de l'ordre public*," MIP minutes no 4, September 9, 2009.

[142] "*Donc, si une femme veut porter la burqa, on peut le lui interdire au nom de la dignité de la personne humaine,"* MIP minutes no 4, September 9, 2009.

[143] "*Le port du voile n'est pas une liberté, mais une atteinte à la liberté*" (Nicole Ameline); "*Le port du voile intégral, même s'il est présenté comme librement consenti, porte atteinte à toutes les femmes: à celles qui le portent, qui se trouvent en situation de soumission, mais aussi à toutes les autres. Cette notion de libre consentement n'est pas acceptable*" (Sabine Salmon); "*On ne saurait tolérer n'importe quoi au nom de telle ou telle tradition ou d'une distorsion dévergondée du droit. Le choix personnel n'est pas un droit que la République doit accorder*" (Michèle Vianès), MIP minutes no 3, July 15, 2009.

[144] MIP minutes no 7, October 7, 2009.

public order, in the name of fighting "barbaric" ideologies, the necessity of seeing each other's faces (as required by fraternity), or as a manifestation of "violence against women"? The questions of the other members were very similar:

> **Jacques Myard (UMP)**: If public space is a space of liberty, can I go completely naked into the street without anyone reacting? There are still and all limits to freedom, for example in the name of the constitutional principles of human dignity and gender equality.[145]
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> **Christian Bataille (PS)**: I also think that we cannot ban the wearing of the burqa in the name of the principle of *laïcité*. Indeed, in that case, why would we not also prohibit nuns' wimples, the skullcap, the cassock, or freemasons' aprons. But there is still the basis of violence against women and public order. I have two questions. If we won't leave things be, must we resort to a law or to a regulation? Could we not state in the law that everyone who is in public space must have the face uncovered, rather than prohibit covering one's face? That way the law would be written in a positive and not a repressive way.[146]

In order to answer these questions, Schwartz reminded the members of the MIP of the fact that the legal notion of public order had always included not only the issues of security, tranquility, and hygiene, but also of public morality. For example, Schwartz stated that it was in the name of public order that the Council of State had, in 2005, decided in favor of the refusal to grant a visa to a woman who had, before entering the consulate, refused to take off her veil so that her identity could be verified. Moreover, Schwartz mentioned that the highest administrative court had validated the legality of circulars requiring that identity photos be taken with the head uncovered, and that this limitation had been approved by the European Court of Human Rights on the grounds of public order (ruling of December 4, 2008). Yet Schwartz did not consider that a ban on the burqa could be based simply on the protection of public order: "[…] while public order requires the ability to verify identities, this control is not permanent. We cannot impose on citizens the need to be in a permanent state of control. […] It

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[145] "*Si l'espace public est l'espace de la liberté, je peux aller tout nu dans la rue sans que personne ne me dise rien ? Il y a quand même des limites à la liberté, au nom par exemple de principes constitutionnels que sont la dignité de la personne humaine et l'égalité des sexes*," MIP minutes no 7, October 7, 2009.

[146] "*Je pense également que l'on ne peut pas interdire le port de la burqa au nom du principe de laïcité. En effet, dans ce cas, pourquoi ne pas interdire aussi la cornette des religieuses, la kippa, la soutane ou les tabliers des francs-maçons. Mais il reste le fondement des violences faites aux femmes et de l'ordre public. J'aurais deux questions. Si l'on ne laisse pas les choses en l'état, faut-il avoir recours à la loi ou au règlement ? Ne pourrait-on pas écrire dans la loi que toute personne qui se trouve dans l'espace public doit avoir le visage découvert plutôt que d'interdire de se couvrir le visage ? Ainsi, la loi serait rédigée de manière positive et non pas répressive*," MIP minutes no 7, October 7, 2009.

would be very difficult, in my opinion, to justify a permanent and general prohibition solely on the grounds of public order."[147]

Yet, as Sihem Habchi's comments have illustrated, the issue of public order could also be linked to the question of human dignity. Schwartz acknowledged that some of the possible justifications for the burqa ban were linked to women's dignity. Indeed, he referred to the Council of State's 1995 decision concerning dwarf-tossing to state that "human dignity makes it possible to justify measures which restrict liberties."[148] He further referred to decisions of the Constitutional Council from 1994 and 1995, which had made the preservation of human dignity into a constitutional value, and to the European Convention of Human Rights (which asserts human dignity) as well as to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by France in 1980. According to Schwartz, the deputies needed to determine whether the covering of a woman's body could be considered a breach of human dignity in general, and women's dignity in particular. Although Schwartz himself, as a member of the Council of State, was hesitant to take a stance on the issue, the members of the commission were eager to grasp at the legal tools that Schwartz had hinted at, as is illustrated by this exchange between Schwartz, Myard, and Glavany:

> **Jacques Myard (UMP)** [addressing Schwartz]: I think you have found a solution with the notion of dignity of the person which is already included in the founding texts of the Republic. It seems to me that we can confirm that the practice of wearing a veil is contrary to the dignity of the person and that it is not acceptable.[149]
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> **Rémy Schwartz**: I do not know if it is possible to prohibit the wearing of the full veil in the name of human dignity, especially in accordance with other constitutional and conventional principles, such as religious freedom and freedom of conscience.[150]

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[147] "*Mais si l'ordre public nécessite de pouvoir reconnaître les identités, ce contrôle n'est pas permanent. On ne peut pas imposer aux citoyens d'être en état de contrôle permanent*. […] *Il serait très difficile, sur le seul terrain de l'ordre public, à mon sens, de justifier une interdiction permanente et générale*," MIP minutes no 7, October 7, 2009.

[148] "*La dignité de la personne humaine permet de justifier des mesures restrictives aux libertés*," MIP minutes no 7, October 7, 2009.

[149] "*Je crois que vous avez trouvé la solution avec la notion de dignité de la personne, qui est déjà présente dans les textes fondateurs de la République. Il me semble que l'on peut affirmer que la pratique du port du voile est contraire à la dignité de la personne et donc qu'elle n'est pas acceptable*," MIP minutes no 7, October 7, 2009.

[150] "*Je ne sais pas s'il est possible au nom de la dignité de la personne humaine d'interdire le port du voile intégral, au regard notamment des autres principes constitutionnels et conventionnels, tels que la liberté religieuse et la liberté de conscience*," MIP minutes no 7, October 7, 2009.

> **Jean Glavany (PS)**: You tell us that [using the notion of] public order would require us to justify a permanent and general prohibition, which seems difficult. But you also point out to us that the notion of human dignity could be a better basis and that the legislator could condemn ideologies which advocate inequality between men and women, as men do not wear the full veil. But you have not said anything about the question of fraternity. Is there a principle of fraternity in law? This might help us present the thing in a positive way.[151]
>
> **Rémy Schwartz**: I do not think that we can present in a positive light something that is in reality a prohibition. It does not change anything. By the way, fraternity has never been seen as a legal principle.[152]

As is clear from Schwartz's audition as well as from many others, the members of the MIP seemed favorable to banning the burqa, but were clearly in search of legal tools that would allow for such a measure. The political will to prohibit face-covering was there, but there was also vacillation between different grounds of justification: should a potential law be founded on the issue of public order, dignity, women's rights, or perhaps fraternity?

Though Myard and Glavany seemed to read into Schwartz's comments the idea that human dignity did render the ban possible, other legal experts refuted this interpretation. Although the notion of human dignity had been accorded an "objective dimension" – as is attested by the Council of State's 1995 decision concerning dwarf-tossing – it also clearly held a "subjective dimension" which was rooted in the capacity of each individual to make autonomous decisions. Denys de Béchillon, professor of public law from the University of Pau, underlined this latter dimension when giving, on October 14, a detailed presentation on the topic of human dignity. Besides discussing the 1995 case of Morsang-sur-Orge, de Béchillon also referred to a decision taken by the European Court of Human Rights (ECHR)[153] in a 1997 case concerning sadomasochistic sex between consenting adults.[154] Although the ECHR had

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[151] "*Vous nous dites que l'ordre public nécessiterait de justifier une interdiction permanente et générale, ce qui semble difficile. Mais vous nous indiquez aussi que la notion de dignité de la personne humaine pourrait être un meilleur fondement et que le législateur pourrait condamner les idéologies qui prônent l'inégalité entre les hommes et les femmes puisque les hommes ne portent pas le voile intégral. Mais vous n'avez rien dit de la question de la fraternité. Est-ce qu'il existe un principe de fraternité en droit ? Cela reviendrait à présenter positivement la chose*," MIP minutes no 7, October 7, 2009.

[152] "*Je ne pense pas que l'on puisse présenter positivement ce qui est en réalité un interdit. Cela revient au même. D'ailleurs, la fraternité n'a jamais été regardée comme un principe juridique*," MIP minutes no 7, October 7, 2009.

[153] Although the abbreviation ECHR is commonly also used to refer to the European Convention of Human Rights, for purposes of clarity, I only use it in this work to refer to the European Court of Human Rights.

[154] Laskey, Jaggard and Brown v. the United Kingdom.

condemned these sexual practices as contrary to human dignity, it had later revised this position, putting emphasis, instead, on individuals' right to make autonomous decisions about their own body and behavior. De Béchillon stressed that the case of dwarf-tossing had been something of an exception in the jurisprudence, and that the Council of State would probably no longer defend the position that it had adopted in 1995. According to de Béchillon, the law clearly emphasized the *subjective* dimension of human dignity – individual free will and autonomous decision-making:

> […] dignity is the right that all men have to not be dominated or subjugated by anyone; it is the prerogative of being able to refuse orders from someone else. It thereby also establishes and showcases the equal liberty of wanting and consenting, that is, the liberty to freely dispose of oneself. In the sense of 1946, dignity brings together equality and liberty, and attributes the biggest role to free will: each person has the same free will, the same right as the next person to control his own body and his behavior in society. This is the legal and philosophical legacy from which the Constitutional Council has forged the constitutional principle of dignity. If we stick with these solid premises, there is nothing to justify the external control of bodies and minds. On the contrary, there is everything that is needed to protect the liberty of each person to behave how he wants while respecting the freedom of others.[155]
>
> On these bases, I can in no way coherently guarantee that the Constitutional Council or the European Court would accept without scorn the validity of a law prohibiting the burqa. Is the center of women's dignity not precisely the exercise of her free will, her liberty, including the liberty to wear the burqa if she so chooses?[156]

De Béchillon's speech was exceedingly clear: banning the burqa in the name of human dignity would mean dismissing one of the most fundamental principles of the modern political order. As it was impossible to know which women freely chose to veil and which did not, denying everyone the right to

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[155] "*[…] la dignité, c'est le droit dont disposent également tous les hommes de n'être dominés et asservis par personne ; c'est la prérogative de pouvoir refuser l'injonction d'un autre homme. Par voie de conséquence, c'est aussi l'égale liberté de vouloir et de consentir, c'est-à-dire la libre disposition de soi qui se trouve ainsi consacrée et mise en scène. Au sens de 1946, la dignité associe égalité et liberté, et attribue le plus grand rôle au libre arbitre : chacun a le même libre arbitre, le même droit que son voisin de gouverner son propre corps et son comportement dans la cité. Voilà le legs juridique et philosophique à partir duquel le Conseil constitutionnel a forgé le principe constitutionnel de la dignité. Si l'on en reste à ces solides prémisses, il n'y a rien là qui puisse justifier un gouvernement extérieur des corps et des consciences. Tout au contraire, il y a tout ce qu'il faut pour protéger la liberté de chacun de se comporter comme il l'entend dans le respect de l'égale liberté d'autrui*," MIP minutes no 8, October 14, 2009.

[156] "*Sur ces bases, je ne saurais aucunement garantir que, en cohérence, le Conseil constitutionnel ou un juge européen admettraient sans broncher la validité d'une loi de prohibition de la burqa. Le cœur de la dignité de la femme, n'est-il pas précisément contenu l'exercice de son libre arbitre, de sa liberté, y compris celle de porter la burqa si elle l'entend ?*" MIP minutes no 8, October 14, 2009.

choose how to dress would, according to de Béchillon, be a dangerous paternalistic precedent.[157] Furthermore, the professor stressed that liberty was always a form of "fiction": in reality, individuals were always subjected to a number of outside influences and even pressures, be they familial, social, economic, or something else. Finally, he stated that a law banning the burqa would be extremely fragile from a legal point of view: it could easily be rejected by the Constitutional Council as well as by the European Court of Human Rights.

The auditions of the MIP show that the possibility of censorship either from the Constitutional Council or from the European Court of Human Rights was a major concern for the deputies involved in the deliberations, especially after legal experts had confirmed that this worry was founded. As this was the case, the discussion about full veils came to concern institutional actors that had not, in 2003–2004, played a major role. As I have shown, in 2003–2004, the public debate on headscarves had mainly taken place through the media and on the floor of the two houses of the French Parliament. Although the Council of State's 1989 decision had held some sway, the pro-ban group had not really needed to worry about the reaction of the courts to a new law concerning schools.[158] In the "burqa affair," however, the possible responses of the Constitutional Council and the ECHR were highly relevant to the MIP's discussions, insofar as they limited the scope of what was feasible from a legal point of view. Later, as we will see, these institutions would become pivotal actors in contributing to the passing and public legitimization of the 2010 law.[159]

De Béchillon's statement about a possible backlash from the courts seemed to leave the members of the MIP at something of a loss. In contrast to other auditions which had received compliments and congratulations,[160] in de Béchillon's case, the members of the commission asked for few clarifications before turning from dignity to other values, such as equality and fraternity. Yet the issue of a legal basis for a ban on face-covering was still not resolved. After Rémy Schwartz and Denys de Béchillon, the next legal expert who appeared in front of the commission was Anne Levade, professor of public

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[157] Some weeks later, de Béchillon repeated this argument in an opinion piece published in *Les Échos*, titled "La dignité contre la burqa? Paradoxes et contradictions" (November 5, 2009).

[158] This was the case especially after Jean-Paul Costa, vice-president of the ECHR, had stated that the ban on headscarves in schools would not be contrary to the European Convention on Human Rights.

[159] The Council of State would, on the contrary, publish a report stating that such a prohibition would entail serious risks for individual rights and liberties (Conseil d'État 2010).

[160] For example, the controversial views presented by Sihem Habchi and Élisabeth Badinter had received an outpouring of congratulations.

law at the University of Paris XII. On November 18, 2009, André Gerin addressed Levade explicitly by asking how, from a legal point of view, the banning of full veils would become feasible. Through an examination of the three possible legal grounds for such a prohibition, Levade came to the following conclusion:

> […] neither *laïcité*, dignity, nor public order can, as is, justify a general and absolute prohibition which would specifically target the wearing of the full veil. Nor do they justify a prohibition that would be extended to all kinds of symbols and clothing that display a religious affiliation […]. […] Besides, for the reasons that I have mentioned, I do not think that the principle of dignity is liable to form the basis of limitations. Dignity is not something that is applied, it is a fact; consequently, it is not possible to regulate a practice on the basis of this principle.[161]

Levade's views on dignity were similar to de Béchillon's: she pointed to the difficulty and to the dangers involved in aiming to prove that the exercise of liberty could in fact lead to the negation of dignity.[162] Moreover, Levade noted that if the burqa really was defined as contrary to human dignity, then it would have to be banned everywhere and in all circumstances, not just in public space. In a similar vein to de Béchillon's audition, the reactions to Levade's hearing revealed the clear divide that existed between legal experts' and politicians' understandings of human dignity. As seen above, the professors of public law defined dignity as the use of one's free will, which meant that it was taken to include freedom of religion and freedom of conscience. For the deputies, dignity was something that could be defined objectively, without consideration to the views held by the veiled woman herself. As Nicole Ameline (UMP) put it: "The wearing of the veil is not a freedom, it is a breach of freedom."[163] Or as Pierre Forgues (PS) pointed out in addressing Levade:

> The overview that you have offered, Professor, does not help us much in finding a solution. We cannot arrive at a solution by starting off, as you do, with the notion of

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[161] "*[…] ni la laïcité, ni la dignité, ni l'ordre public ne peuvent, en l'état, justifier une interdiction générale et absolue visant spécifiquement le port du voile intégral. Ils ne justifient pas davantage une interdiction étendue à l'ensemble des signes ou tenues manifestant une appartenance religieuse […]. […] Par ailleurs, pour les raisons que j'ai indiquées, le principe de dignité ne me paraît pas susceptible de fonder des limitations. La dignité ne se met pas en œuvre, elle est un fait ; par conséquent, on ne peut pas encadrer une pratique en se fondant sur ce principe*," MIP minutes no 13, November 18, 2009.

[162] "*[…] il faudrait parvenir à démontrer, alors que la liberté est le propre de l'homme, que l'exercice d'une liberté conduit à la négation de sa dignité. Ce débat me paraît dangereux, et c'est pourquoi ce fondement ne me semble pas le plus pertinent*," MIP minutes no 13, November 18, 2009.

[163] "*[…] le port du voile intégral n'est pas une liberté, mais une atteinte à la liberté*," MIP minutes no 13, November 18, 2009.

> liberty. The right starting point is the fact that the wearing of the full veil is slavery, discrimination, a breach of liberty.[164]

Indeed, from the transcriptions of the auditions, it is exceedingly clear that the members of the MIP were looking for a justification for banning the burqa – and disappointed to find that the law set limits to what they could realistically hope to achieve. Besides the legal arguments invoked by de Béchillon and Levade, a further difficulty with the notion of dignity was pointed to by Bertrand Louvel, presiding judge (*président de chambre*) of the Court of Cassation.[165] Louvel stressed the fact that the law should be neutral with regard to cultural definitions of concepts:

> Should we go further, in the name of the principle of women's dignity which is often evoked – a principle which would lead us to think that the wearing of the veil, and the full veil in particular, expresses an intolerable situation of women's submission to men? This question is difficult because it relies on a cultural judgement, which, by the way, goes beyond the judgement about the dignity of woman. […] Here we arrive at a much more delicate reasoning, or in any case much less legal, since we are addressing men and women who support, exactly in opposition to this thesis, that the wearing of the veil is, according to their culture, precisely meant to protect these women's dignity. Here we have a cultural debate which takes us away from the law and about which a lawyer can only express very serious reservations.[166]

As a legal expert, Louvel had a strictly liberal interpretation, according to which the law was meant to offer certain rights, but should not intervene in value judgements, let alone in debates about cultural difference. As Louvel himself stated, defining "women's dignity" in the case of the burqa was beyond the scope of the law. As this was the case, the members of the MIP found that even though the issue of dignity was useful insofar as it crystallized many people's immediate reaction to the burqa, it was as inefficient as *laïcité* in overcoming the legal impasse. When legal experts did not agree with their

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[164] "*Le panorama que vous avez dressé, Madame le professeur, ne nous aide pas beaucoup à trouver la solution. On ne peut pas y parvenir en partant comme vous le faites de la notion de liberté. Le bon point de départ est le fait que le port du voile intégral est un asservissement, une discrimination, une atteinte à la dignité*," MIP minutes no 13, November 18, 2009.

[165] MIP minutes no 17, December 9, 2009.

[166] "*Faut-il aller plus loin, notamment au nom du principe de dignité de la femme, souvent évoqué, qui conduirait à penser que le port du voile, et en particulier du voile intégral, exprimerait une situation intolérable de subordination de la femme à l'homme ? La difficulté de cette question est qu'elle repose sur un jugement culturel, qui dépasse d'ailleurs le jugement porté sur la dignité de la femme. […] Nous entrons là dans une démarche beaucoup plus délicate, en tout cas beaucoup moins juridique car nous nous adressons à des hommes et à des femmes qui soutiennent, exactement à l'inverse de cette thèse, que le port du voile par la femme est précisément destiné, selon leur culture, à protéger la dignité de celle-ci. Il y a là un débat culturel qui nous fait sortir du droit, mais à l'égard duquel le juriste ne peut qu'émettre des réserves très sérieuses*," MIP's minutes no 17, December 9, 2009.

interpretation of the burqa as a negation of women's dignity and republican liberty, they reached for the value of fraternity. For example, when de Béchillon argued that the notion of dignity could not be used to ban the burqa, Colette Le Moal (NC) asked him whether covering one's face was not contrary to the republican principle of fraternity. In a similar vein, when Levade joined her colleague in pointing to the fact that dignity was inefficient as a legal tool, Pierre Cardo (UMP) looked to the value of fraternity to solve the issue:

> You have brought up the principle of liberty, but our Republic also proclaims the principles of equality and fraternity. When a person appears wearing the full veil, she refuses one of the ways that individuals have of expressing themselves in public space. Is this not a case of inequality – not of treatment but of behavior – an inequality on which we could rely for legality? As for the principle of fraternity, which of course has a subjective character, is it being respected when some think it necessary to impose a protection against all people of the male sex?[167]

De Béchillon replied by pointing to the fact that no one really knew what fraternity implied as a legal requirement: "It is one of the rare constitutional norms with which we do not know what to do […]. Really, imposing fraternity by prohibiting the burqa leaves me skeptical […]. I have a hard time seeing how we could arrive at a solid legal measure with the notion of fraternity."[168] Again, the legal understanding of fraternity was different from its commonplace definition. For example, according to Patrick Gaubert, president of LICRA and of the High Council for Integration, "one cannot make use of one's liberty when that liberty is in contradiction with two fundamental principles of our Republic: equality and fraternity."[169] Indeed, perhaps precisely because of its vagueness, politicians clung to the value of fraternity in a way that was different from the 2003–2004 discussions. Their willingness to ban the burqa was clear; they were simply lacking the legal basis for giving such a recommendation to the National Assembly. Soon, however, Guy Carcassonne would offer a way out of this legal impasse.

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[167] "*Vous avez évoqué le principe de liberté, mais notre République affiche aussi les principes d'égalité et de fraternité. Lorsqu'une personne apparaît en portant le voile intégral, elle refuse l'un des modes d'expression des individus dans l'espace public. N'y a-t-il pas là une inégalité, non de traitement, mais de comportement, sur laquelle on pourrait s'appuyer juridiquement ? Quant au principe de fraternité, qui certes a un caractère subjectif, est-il respecté quand certains jugent nécessaire d'imposer une protection contre tous les représentants du sexe masculin […]*?," MIP's minutes no 13, November 18, 2009.

[168] "*C'est une des rares normes constitutionnelles avec laquelle on ne sait pas faire grand-chose […]. Vraiment, imposer la fraternité par la prohibition de la burqa me laisse dubitatif […]. J'imagine mal comment on pourrait aboutir à un dispositif juridiquement solide avec la notion de fraternité*," MIP's minutes no 8, October 14, 2009.

[169] "*Eh bien non, pour nous, à la LICRA, on ne dispose pas de sa liberté quand celle-ci tourne le dos aux deux principes fondamentaux de notre République : l'égalité et la fraternité*," MIP's minutes no 13, November 18, 2009.

5.6 The New Public Order: A Legal Application of a Political Ideology

Throughout the MIP's work, the political will to legislate on the burqa clashed with legal realities, and universal legal categories collided with French politicians' normative views. As the president of the MIP, Gerin, put it, the burqa question was highly political, "because this practice puts into question the foundations of the republican pact and because the struggle that lies ahead concerns values as essential as the dignity of women and the equality of the sexes."[170] Yet the legal problem remained: how could the burqa be banned in a country that prided itself as being the defender of human rights and individual freedom?

The MIP started its November 25 session by hearing Bertrand Mathieu, professor of public law at the University of Paris I Panthéon-Sorbonne. Mathieu started his presentation by stating that the wearing of full veils was "a social behavior that symbolically harms the values of society."[171] He chose to position himself clearly on the side of the protection of "shared values."[172] Having stated that a law on the issue was necessary, Mathieu went on to note that the values of *laïcité* and women's dignity were not effective for attaining this goal. However, according to Mathieu, "public order and the protection of others' rights […] are principles that could be mobilized."[173] Mathieu considered that two options existed. First, the French Parliament could pass a law that would establish a general restriction on the wearing of the burqa. However, Mathieu considered that such a law could quite possibly be condemned by the ECHR as well as by the Constitutional Council. The second option would be to establish a measure according to which every person in public space would, in the name of security, have the right to verify the identity of the people with whom they entered into contracts. According to Mathieu, this measure could be combined with a full ban on veils in certain public spaces, such as banks

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[170] "*Cette réponse doit, à l'évidence, revêtir un caractère politique, parce que cette pratique met en cause les fondements du pacte républicain et que le combat à mener porte sur des valeurs aussi essentielles que la dignité de la femme et l'égalité des sexes*."

[171] "*On peut d'emblée affirmer que le port du voile intégral est un comportement social qui heurte symboliquement les valeurs de la société […]*," MIP's minutes no 14, November 25, 2009.

[172] "*Personnellement, je pense qu'il est nécessaire de lutter contre des dérives qui menacent notre système de valeurs, sous peine de voir se développer dans l'avenir des comportements qui, faute d'une réaction de principe suffisamment précoce, seront devenus incontrôlables. Vous me pardonnerez cette prise de position qui n'est pas une affirmation de juriste, mais ce n'est qu'après avoir fait un choix que l'on peut poser la question des instruments juridiques*," MIP's minutes no 14, November 25, 2009.

[173] "*L'ordre public et la protection des droits d'autrui sont […] des principes mobilisables*," MIP's minutes no 14, November 25, 2009.

and public transportation – again, in the name of security. Despite the fact that Mathieu was clearly in favor of a law and trying to find a legally solid solution to the "burqa problem," Jacques Myard (UMP) expressed his discontent:

> Well, I am not in agreement with what I just heard! I am surprised that our professors of law remain prisoners of judicial constructions and existing jurisprudence… One must liberate oneself of judicial rulings! What is a judicial ruling anyway? It is a decision that is rendered, in a specific legal system, by an independent authority. That is not the case here.[174]
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> […] no one can repudiate her dignity as a person, for dignity is inalienable. Even if I accept to be tortured, torture remains disgraceful. Subsequently, if a law is necessary – and I think that it is – we must base it on human dignity and gender equality, and not, like you suggest, on public order and public security […][175]

Myard's comments illustrate that although several legal experts had already argued that the notion of human dignity did not offer a legally solid justification for the burqa ban, politicians had a hard time giving up on the idea that a new law should include a mention of the fact that full veils were contrary to human dignity. This opinion was shared by Françoise Hostalier (UMP), according to whom a law based on security would not solve the problem: "Society must protect people, even if they voluntarily allow themselves to be tortured, mutilated, or forced to wear disgraceful garb."[176] Unsurprisingly, the legal limitations that Professor Mathieu had noted in his speech created further frustration, as can be seen from Pierre Forgues's (PS) response:

> Professor, I understand that a judge can be prisoner of existing law, but I have a hard time accepting that this is the case for a professor and a researcher. You start from the idea that the wearing of the veil is a freedom, but as you yourself say, it is a fiction. The

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[174] "*Eh bien, moi, je ne suis pas d'accord avec ce que j'ai entendu ! Je m'étonne que nos professeurs de droit restent ainsi prisonniers des constructions juridiques et jurisprudentielles existantes... Il faut se libérer des décisions de justice ! Qu'est-ce qu'une décision de justice ? C'est un jugement rendu, dans un cadre juridique donné, par une autorité indépendante. Nous ne sommes pas dans ce cas*," MIP's minutes no 14, November 25, 2009.

[175] " *[…] nul ne peut renoncer à la dignité de la personne, parce que la dignité est inaliénable. Même si j'accepte qu'on me torture, la torture demeure un traitement indigne. Dès lors, s'il faut une loi – et je pense qu'il en faut une –, nous devons la fonder sur la dignité des personnes et l'égalité des sexes, et non, comme vous nous le proposez, sur l'ordre public et la sécurité publique […],*" MIP's minutes no 14, November 25, 2009.

[176] "*La société doit protéger les personnes, quand bien même elles se laisseraient volontairement torturer, mutiler, imposer un accoutrement indigne,*" MIP's minutes no 14, November 25, 2009.

> lawmaker must not let himself be limited by fabrications; his role is to create law in the name of and in the interest of the people.[177] […]
>
> It is normal that intellectuals study these questions from all sides, but as for us, we must solve problems. Your suggestion of a minimal law […] seems to me like a renunciation.[178]
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> […] Whatever the difficulties may be, I think we need to legislate. When the problem is complex, one must start with simple ideas. In the case that concerns us, there is an infringement of human dignity, of gender equality and of the freedom of women. It seems to me that this is enough to form the legal basis for a law.[179]

Here we see two different discursive logics at play. Lawyers – even those, like Mathieu, who were in favor of a new law – presented their views in front of the commission, for the most part, in adopting the role of legal experts. They could not simply decide that human dignity was a sufficient legal basis for a new law, no matter how much it displeased politicians such as Myard and Forgues. In contrast, the deputies, in the role of lawmakers, saw that it was up to them to decide how the law should be made and interpreted. This is, of course, partially true. However, as Mathieu reminded them (with obvious regret), the legislative actions of the Parliament were monitored by the Constitutional Council and the ECHR. Although Mathieu presented himself as a "legal mechanic" (*méchanicien du droit*), he could only go so far in twisting existing law to his favor. And although he was personally in favor of an "objective" interpretation of human dignity, he reminded the deputies that others, such as Denys de Béchillon, held a different view, and that the liberal conception of dignity remained more prevalent in French and European jurisprudence. Hence dignity was not a safe basis for the restrictive measure that they were hoping to put in place. Although the deputies kept pushing Mathieu to make concessions on this point, the professor of law regretted the situation, but did not budge from his initial assessment: "I did not think that I was invited before this commission to be imaginative, but to offer a

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[177] "*Monsieur le professeur, je comprends qu'un juge puisse être prisonnier du droit existant, mais j'ai du mal à admettre qu'un professeur-chercheur le soit. Vous partez de l'idée que le port du voile est une liberté, mais comme vous l'avez dit vous-même, c'est une fiction. Le législateur ne doit pas se laisser enfermer dans des fictions, son rôle est de faire la loi au nom et dans l'intérêt du peuple*," MIP's minutes no 14, November 25, 2009.

[178] "*Il est normal que les intellectuels étudient ces questions dans toutes leurs dimensions, mais pour notre part, nous avons à résoudre des problèmes. Votre proposition d'une loi a minima […] me fait l'effet d'un renoncement*," MIP's minutes no 14, November 25, 2009.

[179] "*Quelles que soient les difficultés, je crois que nous devons légiférer. Lorsqu'un problème est complexe, il faut partir d'idées simples. Dans le cas qui nous occupe, il y a atteinte à la dignité des personnes, à l'égalité des sexes et à la liberté des femmes. Il me semble que cela suffit pour fonder juridiquement une loi*," MIP's minutes no 14, November 25, 2009.

legal viewpoint. This is what I have tried to do. Had you asked me what I thought would be good in and of itself, I would have offered another opinion."[180]

It should be noted that, on the whole, the exchanges that took place between legal experts and politicians during the round of auditions were strained. This tension is already apparent in the audition of Rémy Schwartz, the first legal expert to be heard by the MIP. When André Gerin asked Schwartz – former rapporteur of the Stasi Commission – to elaborate on the similarities and differences between the headscarf debate and the burqa issue, Schwartz replied by emphasizing their differences, suggesting that it would be very difficult to pass a general ban concerning public space. This reply led Jacques Myard to note that, "as always, Mr. Schwartz, when addressing lawyers, one has to remember […] Jean Giraudoux's *The Trojan War Will Not Take Place*."[181] As Myard then explained, in this famous play by the French author,[182] a legal counsel ends up, under the knife ("*sous la menace*"), changing an interpretation that he had previously offered. To Myard's allusion to the possibility of using force in order to bend legal opinion, Schwartz replied laconically, almost as if daring Myard try the strategy of coercion: "I doubt that you will be able to intimidate the Constitutional Council and the European Court of Human Rights in order to obtain a favorable decision."[183] Strikingly, Myard referred to Giraudoux's play yet another time when expressing his frustration with Anne Levade's presentation.[184] These comments show that the most ardent defenders of the burqa ban were indeed, to borrow de Galembert's (2014) formulation, trying to "force the law to speak against the burqa."

It was after this exchange with Bertrand Mathieu that Gerin asked Guy Carcassonne, professor of public law at the University of Paris-Ouest Nanterre, to express his views on the possible legal grounds for banning the burqa. Gerin wanted to know whether a law could rely on "human dignity as a component of public order," or whether another basis would be better. Carcassonne started his presentation by stating – as many had before him – that *laïcité*, dignity, and women's rights were not

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[180] "*Je ne pensais pas être invité devant votre mission pour faire œuvre d'imagination, mais pour donner un point de vue juridique. C'est ce que je me suis employé à faire. Si vous m'aviez demandé ce que je trouverais bon en soi, j'aurais tenu un autre propos*," MIP's minutes no 14, November 25, 2009.

[181] "*Comme toujours, M. Schwartz, quand on s'adresse à des juristes, il faut se souvenir de […] 'La guerre de Troie n'aura pas lieu' de Jean Giraudoux* […]," MIP's minutes no 14, November 25, 2009.

[182] Giraudoux (2015).

[183] "*[…] je doute que vous puissiez menacer le Conseil constitutionnel et la Cour européenne des droits de l'homme pour obtenir une décision favorable*," MIP's minutes no 14, November 25, 2009.

[184] MIP's minutes no 13, November 18, 2009.

suitable legal bases for such a measure. More specifically, on the issue of dignity, Carcassonne stated that the legislator should not engage in defining dignity, especially if its definitions came into conflict with the constitutional principle of liberty: "Legislation ceases to be democratic precisely when it decides to override liberty in order to tell citizens, under the cover of dignity, what they can or cannot do."[185] Indeed, Carcassonne thought that such a restriction in the name of dignity could lead to further demands – for example, for banning pornography, prostitution, or even piercings. Although the justification of "women's rights" had the same problem, all was not yet lost:

> These grounds, because of principle as well as of practical reasons, are inacceptable. Does this mean that all other ways forward are impossible? On the contrary, the solution is simple: it would be enough to pass a law founded on public order and security. Such a law would have the advantage of not being discriminatory, as it would not prohibit the wearing of the full veil, but of all garments that cover the face – with a few rare exceptions. It would be perfectly compatible with our values.[186]

With the notion of public order, Carcassonne offered the commission a legal solution on a silver platter. As seen above, the solution had already been presented in the first session of auditions. Indeed, philosopher Abdennour Bidar – the second person invited to appear before the commission in July 2009 – had defined public space through encounters and communication. In doing so, Bidar had argued that seeing other people's faces was the minimal condition for republican *vivre-ensemble* and for the preservation of the French social fabric. Furthermore, through this formulation, Bidar had considered that the violence of the burqa was no longer inflicted on its wearer (or, by extension, on all women), but on the person who encountered it. Since it fell on the legislator to protect the "rights of others," this "symbolic violence" could offer a justification for a general ban. It should be noted that Bidar interpreted the "rights of others" through the prism of the social norms that were prevalent in French society. Intentionally or not, on November 25, 2009, Carcassonne took up the reasoning that Bidar had presented the previous summer:

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[185] "*Le législateur cesse d'être démocratique précisément lorsqu'il décide de se superposer à la liberté, afin de dire aux citoyens, sous couvert de dignité, ce qu'ils doivent ou ne doivent pas faire*," MIP's minutes no 14, November 25, 2009.

[186] "*Ces fondements, aussi bien pour des raisons de principe que pour des raisons pratiques, sont inacceptables. Est-ce à dire que toute autre voie est impossible ? Au contraire, la solution est simple : il suffirait d'adopter une loi fondée sur l'ordre et la sécurité publics. Une telle législation présenterait l'avantage de ne pas être discriminatoire, puisqu'il ne s'agirait pas d'interdire le port du voile intégral, mais tout ce qui dissimule le visage – hormis quelques cas exceptionnels. Elle serait parfaitement conforme à nos valeurs*," MIP's minutes no 14, November 25, 2009.

> Why talk about public order? Social norms dictate that there are some parts of our body that we hide and others that we reveal. Perhaps a thousand years from now one will expose one's genitals and hide one's face, but for the time being, it is the contrary that is unanimously accepted. We have reason to think that what harms others, in the terminology of Article 4[187] of the Declaration of the Rights of Man and of the Citizen, is the fact that one hides one's own face from them, thereby signaling to them that they are not worthy, pure, or respectable enough to see it. Prohibiting face covering allows us to solve the problem that we are faced with while staying true to the values of the Republic, of democracy, and of life in society.[188]

Here we can see how, according to Carcassonne, since French social norms require one to reveal one's face, not doing so would be a breach of the right of other citizens to feel respected. In other words, Carcassonne built on the symbolic dimension of the republican public order to argue that the refusal to let oneself be seen by others was a breach of the social order that formed the basis of republican coexistence. Yet the deputies were not initially thrilled by this solution; it is clear from the reactions to Carcassonne's speech that they were still wondering whether gender equality or the notion of dignity could be legally mobilized.[189] And, as we know, a more fundamental problem remained: could the Constitutional Council or the ECHR dispute a law which was based on the social dimension of public order? Here is Carcassonne's reply to Éric Raoult's direct question:

> There is no risk of censorship from the Constitutional Council from the moment that the ban can align itself with Article 4 of the Declaration of the Rights of Man and of the Citizen. Moreover, according to Article 5,[190] the law can prohibit something that is harmful to society: we have the right to consider that the presence, in society, of individuals who refuse all communication constitutes a threat that must be taken very seriously […].[191]

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[187] "Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law" (France 1789).

[188] "*Pourquoi parler d'ordre public ? Les codes sociaux font qu'il y a des éléments de notre corps que l'on cache, d'autres que l'on montre. Peut-être dans mille ans exposera-t-on son sexe et dissimulera-t-on son visage, pour le moment, c'est l'inverse qui est unanimement admis. Nous sommes en droit de considérer que ce qui nuit à autrui, aux termes de l'article 4 de la Déclaration des droits de l'homme et du citoyen, est le fait qu'on lui cache son propre visage, lui signifiant ainsi qu'il n'est pas assez digne, pur ou respectable pour pouvoir le regarder. Prohiber la dissimulation du visage permet de résoudre le problème qui nous est posé tout en demeurant conforme aux valeurs de la république, de la démocratie et de la vie en société*," MIP's minutes no 14, November 25, 2009.

[189] As can be seen from the reactions of Nicole Ameline, Jacques Myard, Paul Forgues, and Françoise Hostalier.

[190] "The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain" (France 1789).

[191] "*Il n'existe aucun risque de censure par le Conseil constitutionnel, à partir du moment où l'interdit peut se réclamer de l'article 4 de la Déclaration des droits de l'homme et du citoyen. De plus, aux termes de l'article 5, la*

> A law that is based on public order would not expose France to sanctions from the ECHR: It would be quite something to see the Luxemburg court explain to France how concealing one's face from others is an inalienable and sacred right![192]

Carcassonne was the first legal expert to state in such a clear manner that the law – in the form that he suggested it – would not encounter problems from the Constitutional Council or the ECHR. According to Article 4 of the Declaration of the Rights of Man, individual freedom can only be limited if doing so is necessary to ensure the rights of others. Although the article is focused on the protection of individual rights, Carcassonne chose to emphasize the fact that some limitations of these rights were acceptable. Moreover, he also mentioned Article 5 which states the right to prohibit by law what is "injurious to society." Used in this way, these articles offered the professor just what he needed to argue that a new law was not in contradiction with human rights, but that those very principles might even require such a law. For once any mention of the Islamic veil (and hence of religion) was excluded from the wording, how could anyone seriously argue that face-covering was in and of itself a fundamental right?[193] Especially given that, "since 1789, there exists a social consensus, which I [Carcassonne] call – for reasons of simplicity – 'social norms' [*code social*], which rely on a bedrock of implicit values."[194]

To sum up, two justifications were at play in Carcassonne's suggestion. First, the lawyer based his argument on the universal principle of everyone's inalienable individual rights. Second, and more importantly, Carcassonne argued that face-covering was a breach both of the rights of others and of the good of the whole community because of the particular values of the French society. Together, according to Carcassonne, these two justifications made face-covering a breach of public order.

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loi peut interdire ce qui est nuisible à la société : nous sommes en droit de considérer que la présence en son sein de personnes refusant toute communication constitue une menace qu'elle doit traiter avec le plus grand sérieux […]," MIP's minutes no 14, November 25, 2009.

[192] "*Une loi fondée sur l'ordre public n'exposerait pas la France à une condamnation par la CEDH : il ferait beau voir que la Cour de Luxembourg expliquât à la France que le fait de cacher son visage aux autres est un droit inaliénable et sacré !*" MIP's minutes no 14, November 25, 2009.

[193] Mathieu had confirmed the same in his reply to Nicole Ameline: "[…] *il me paraît possible d'imaginer une loi en deux articles disposant, d'une part, que nul ne peut être contraint à porter une tenue masquant son identité et, d'autre part, affirmant le droit des tiers à identifier la personne avec laquelle ils sont en contact. Le fait d'écrire que*

'nul ne peut être contraint à porter une tenue masquant son identité' ne pose, à mon avis, aucun problème, bien au contraire," MIP's minutes no 14, November 25, 2009.

[194] "*Depuis 1789, il existe un consensus social, que j'appelle par commodité 'code social', reposant sur un socle de valeurs implicites*," MIP's minutes no 14, November 25, 2009.

Through these processes of decontestation, Carcassonne fixed a new signification to the concept of public order, thereby transforming it. Though the immaterial dimension of public order had existed (as we can see from the Council of State's decision concerning dwarf-tossing), this symbolic public order had not been taken to include issues such as communication (as understood by the showing of one's face) or respect of cultural – and hence, potentially contestable – "shared" values. While Carcassonne argued that, from a legal viewpoint, this extension of the notion of public order was feasible, its novelty cannot be overstated. Without discarding the idea of individual rights completely, in Carcassonne's interpretation, the issue of social cohesion colors any interpretation of individual rights. At first view, Carcassonne would seem to be relying on the basic Benthamian idea that the good of the community is none other than the "sum of the interests of the several members who compose it" (Bentham 1994, 18), which would provide an argument for restricting some individual rights for the benefit of the majority.[195] Yet society is, of course, more than a collection of individuals: as Carcassonne suggests, it is formed of social relationships. In Carcassonne's view, maintaining these relationships outweighs the importance of preserving any individual's or minority group's right to choose what to wear and how to cover themselves. It is here that the idea of fraternity becomes most apparent. In the discourse that Carcassonne, Bidar, and others formulated, the republican network of social relationships was important not only because of the individuals who were a part of it, but also *in and of itself*. The republican social body was related to a "common good" that could be different from the interests of the individuals who composed it (Rousseau 1947). Most importantly, though, through the idea of fraternity, the individual was responsible for respecting the particular cultural norms of the French society and for adhering to its social norms. In other words, responsibility (for fraternity) overrode rights (to liberty and equality). I argue that, in this discourse, we see the beginning of a change within the republican conceptual core: a new prioritization within the triad of liberty, equality, and fraternity.

5.7 Political Cleavages and Constitutional Concerns

Following Carcassonne's appearance, four other sessions of auditions took place. For instance, on December 8, 2009, the MIP heard from historian Nadeije Laneyrie-Dagen (ENS-Ulm) and sociologist Nilüfer Göle (EHESS) on the theme of "bodies and faces," and on December 9, it received Bertrand

[195] As we know, a purely Benthamian focus on the aggregation of benefits means that the interests of individuals and minorities could, in theory, be totally overridden.

Louvel and Cécile Petit from the Court of Cassation. While many did not wish to take a stand on the issue of legislating before the MIP's report was made public at the end of January 2010,[196] six months after the start of the auditions, it seemed that the coast was clear for a law. However, neither the members of the MIP nor of the government had yet reached agreement on the exact contents of such a law. Though there was a consensus between the political right and left that the full veil was "contrary to republican principles" (Éric Raoult, UMP) and an "intolerable practice" (Jean Glavany, PS), the exact measures that the parliament would adopt remained open to discussion.

While the MIP was still at work, a group of deputies from the UMP decided to take things into their own hands. At the initiative of Jean-François Copé, the leader of the UMP group of deputies in the National Assembly, a small group of MPs published a statement in *Le Figaro* demanding a law that would ban the burqa on the national territory. This December 16 opinion piece, published under the title "The Full Veil: A Law is Indispensable," was cosigned by François Baroin, Nicole Ameline, and Éric Raoult – all of whom were members of the MIP. In this text, the deputies referred to the work they had done within the MIP, and offered their "first conclusions." In so doing, this political fraction was clearly trying to get ahead of the work of the parliamentary commission.[197] Conscious as they were of the problem of disproportionality of a new law and of the constitutional problems that remained,[198] the group led by Copé tried to get ahead of the game and to look for political support outside of the MIP. At a moment when the *Front National* was capitalizing on the Swiss ban on minarets and the criticisms against President Sarkozy's "Great Debate on National Identity" were multiplying,[199] this political maneuver allowed Copé and his supporters to distinguish themselves from their political opponents, and perhaps also from those within the UMP who were hesitant with regard to the idea of legislating (for, as seen above, president Sarkozy himself had not, in the beginning, seemed favorable to a law). Here is what Copé and his colleagues wrote:

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[196] This was the case notably for PM François Fillon and for Bernard Accoyer (UMP), president of the National Assembly.

[197] As they had done when Copé had, in the summer of 2009, established his own UMP-based working group on the issue of full veils.

[198] They referred to these problems in the text.

[199] See, for example, *L'Est Républicain*, "Malaise à l'issue du vote suisse qui laisse planer dans l'Hexagone le risque d'une résurgence du FN," December 1, 2009; *Le Figaro*, "Minarets : la polémique rebondit en France," December 1, 2009; *La Croix*, "Risques de dérapages dans le débat sur l'identité," December 4, 2009; *Ouest France*, "Identité nationale : une belle idée, mais...," December 8, 2009; *Le Figaro*, "Régionales : Marine Le Pen surfe sur le débat autour de l'identité nationale," December 12, 2009.

> As national deputies, we think that the time for a political decision has arrived. We must fulfill our responsibility for guaranteeing republican principles. As lawmakers, we consider that the legal bases for justifying a ban exist.[200]
>
> To begin with, respect for human dignity, a principle that holds constitutional value! The burqa attacks women's dignity, it is a breach of their identity, it subjects them to an absurd discrimination, cutting them off from all social life.[201]
>
> This ban must also be founded on the imperative of public order: imagine the danger of a city where everyone would be wearing a mask all the time and dressed in the same way! […] Concealing one's face permanently in public space is not an expression of individual freedom. It is the negation of one's self, the negation of the other, a negation of life in society.[202]
>
> This is why we defend the principle of a law which would be preceded by a period of dialogue and explanation. The law will remind us of what was, until now, so self-evident that there was no need to inscribe it in law: seeing the face in public space is an indispensable requirement of "living together" and for guaranteeing security.[203]

In this opinion piece, a specific fraction of the UMP built on the ideas developed during the MIP auditions to call for a new law. Though the deputies mentioned human dignity, they mainly based their reasoning on the new symbolic social order. As we can see from the quote above, this social order was built not only on the traditional idea of security, but also on the social aspect of "living together": the republican contact with others, which was dependent on seeing and being seen. The group's message was clear: only a law was a sufficient means for combatting the practice of full veiling.

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[200] "*En tant qu'élus de la nation, nous pensons que le temps de la décision politique est venu. Nous devons assumer nos responsabilités pour garantir les principes républicains. En tant que législateurs, nous considérons qu'il y a des fondements juridiques solides pour justifier une interdiction*," quoted in *Le Figaro*, "Voile intégral : une loi indispensable," December 16, 2009.

[201] "*D'abord, le respect de la dignité humaine, principe à valeur constitutionnelle ! La burqa s'attaque à la dignité des femmes, elle porte atteinte à leur identité, les soumet à une discrimination absurde, les coupant de toute vie sociale*," quoted in *Le Figaro*, "Voile intégral : une loi indispensable," December 16, 2009.

[202] "*L'interdiction doit aussi se fonder sur l'impératif d'ordre public : imaginez le danger d'une ville où tout le monde serait masqué en permanence et vêtu de la même façon ! […] Se masquer le visage en permanence dans l'espace public, ce n'est pas l'expression d'une liberté individuelle. C'est une négation de soi, une négation de l'autre, une négation de la vie en société*," quoted in *Le Figaro*, "Voile intégral : une loi indispensable," December 16, 2009.

[203] "*Voilà pourquoi nous défendrons le principe d'une loi, précédée d'une phase de dialogue et d'explication. La loi rappellera juste ce qui était, jusqu'à présent, si évident qu'il n'y avait pas besoin de l'inscrire dans notre droit : la visibilité du visage dans l'espace public est une condition indispensable au « vivre ensemble » et un gage de sécurité*," quoted in *Le Figaro*, "Voile intégral : une loi indispensable," December 16, 2009.

Copé and his colleague's text was published on the same day that the MIP convened for its last session of auditions, and it received a lot of public attention.[204] Hence, in the media, the final auditions of the commission blended with the message of Copé's group. Moreover, Copé announced that he was, again, putting in place his own group to reflect on the issue. This group was to convene on the very day that the MIP would conclude its work. Copé also announced that, in his opinion, all infractions to the future law would have to be accompanied by a sizeable fine.[205]

On the final day of auditions, the MIP heard from three ministers: Brice Hortefeux (UMP), Minister of the Interior, Xavier Darcos (UMP), Minister of Labor, and Éric Besson (UMP), Minister of Immigration and Integration. Out of the three ministers, Besson was the one who was the most clearly in favor of a law. As we have seen, Besson had, the previous June, clearly stated his opposition to such a measure. By September, however, the Minister of Immigration had changed his mind, saying that he had been "shaken" by the testimonials offered, among others, by NPNS, and declared the burqa was "unacceptable."[206] Come December, Besson was not simply in favor of a law, but he called for a general ban on full veils in public space, which, according to him, would illustrate "a renewed republican voluntarism."[207] Moreover, the Minister of Immigration wanted the wearing of a face-veil to be "systematically considered as a lack of integration," and therefore an obstacle to obtaining French nationality.[208] Minister of the Interior Hortefeux – while arguing that "the burqa has no place in France"[209] – was more hesitant with regard to a law, which he considered to be fragile from a legal point of view. As a solution, Hortefeux suggested that the ban only be applied in places where public services are offered. Finally,

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[204] *AFP*, "Voile intégral : Jean-François Copé juge une loi 'indispensable'," December 16, 2009; *AFP*, "Voile intégral : dernières auditions, vers une loi d'interdiction," December 16, 2009; *Le Figaro*, "Les députés UMP souhaitent une interdiction totale de la burqa," December 16, 2009; *Le Parisien*, "Voile intégral - Copé veut une loi sur le port de la burqa," December 17, 2009; *Les Échos*, "Interdiction de la burqa : Copé enfonce le clou," December 18, 2009; *Ouest France*, "Voile intégral : Copé veut une loi et des amendes," December 18, 2009.

[205] *AFP*, "Copé (UMP) envisage une amende de 5e catégorie contre le port de la burqa," December 17, 2009.

[206] "*[J]ugeant la burqa 'insupportable',*" "*'ébranlé' par les arguments de Ni putes ni soumises*," quoted in *Le Figaro*, "Besson pour une loi sur la burqa," September 14, 2009.

[207] "*Une interdiction élargie à l'ensemble de l'espace public mérite d'être étudiée, même si elle pose un problème juridique nouveau. Ma conviction est que nous devons faire preuve d'un volontarisme républicain renouvelé*," MIP minutes no 18, December 16, 2009.

[208] "*Je veux que le port du voile intégral soit systématiquement considéré comme preuve d'une intégration insuffisante à la société française, faisant obstacle à l'accession à la nationalité*," MIP minutes no 18, December 16, 2009.

[209] "*[L]e port du voile intégral n'a pas sa place en France*," MIP minutes no 18, December 16, 2009.

Darcos took up the socially-based argument according to which republican cohabitation requires showing one's face ("*La République se vit à visage découvert*"). Instead of a law, Darcos suggested that the French Parliament adopt an official resolution which would gain the biggest possible consensus of republican values.

As the ministers' stances varied, Copé and his colleagues' letter can also be read as pressure on the government to lean in favor of a law. It received the immediate support of Gérard Longuet, the leader of the UMP group in the Senate: "A law is a way for the people to express that there are shared values and projects."[210] In fact, Jean-François Copé announced that, whatever the MIP's conclusions would be, his group was ready to submit a draft bill for a full ban.[211] In other words, if a consensus was not reached, Copé's group would go forward on its own. According to *Le Figaro*, some Socialists[212] were hoping that preventive actions would suffice and that a law would not be necessary. Others, such as Jean Glavany (PS) – and of course Communist André Guerin – were clearly in favor of a prohibition.

After the final audition of December 16, 2009, the MIP's rapporteur, Éric Raoult (UMP) – one of the signatories of Copé's letter – was tasked with drafting a report. The report was submitted to the commission in January 2010. As could be expected, Raoult's report mirrored the themes that had been prevalent during the auditions. The title of its first part can be translated as "Radical Practices: Between Cultural Archaism and Fundamentalist Proselytism."[213] This part offers a historical and contemporary overview of the practice of veiling, on extremist religious practice, and on the state of the issue in different national contexts. The second part, "A Practice That Is the Antithesis of the Values of the Republic,"[214] is particularly interesting. The first subsection discusses *laïcité* – which is situated at the "border" of the debate,[215] defining it as the "driving force" in the construction of republican integration and *vivre-ensemble* (Assemblée nationale 2010, 88).[216] As the report illustrates, this definition of *laïcité*, which

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[210] "*Une loi c'est l'expression du peuple sur l'idée qu'il a de valeurs ou de projets communs*," quoted in *AFP*, "Le président du groupe UMP au Sénat, Gérard Longuet, a déclaré mercredi que son homologue de l'Assemblée nationale, Jean-François Copé 'a raison' de vouloir faire une loi interdisant le port de la burqa," December 16, 2009.

[211] *Le Figaro*, "Les députés UMP souhaitent une interdiction totale de la burqa," December 16, 2009.

[212] Martine Aubry and François Hollande (*Le Figaro*, "Les députés UMP souhaitent une interdiction totale de la burqa," December 16, 2009).

[213] "*Des pratiques radicales, entre archaïsme culturel et prosélytisme intégriste.*"

[214] "*Une pratique aux antipodes des valeurs de la République*."

[215] "*Le principe de laïcité en lisière du débat*."

[216] "*Un principe moteur dans la construction de notre vivre-ensemble*."

had existed in the background of the debate since the early headscarf controversies, had become prevalent during the burqa discussions. Indeed, when French political actors emphasized the social aspects of *laïcité*, it was no longer something that concerned neutrality towards religions, the fight against communalism or for women's emancipation; it was also interpreted as a social norm that required everyone to leave the face uncovered in order for the members of a community of values to engage – at least theoretically – in dialogue. As this was the case, the final report of the commission, which had, in the very beginning of its mission, created parallels with the Stasi Commission, concluded that the issue of headscarves in schools and the question of full veils in public space were different.

The following subsections illustrate how some arguments presented in front of the commission were valued above others. For example, one such section – "The Negation of Liberty"[217] – presents the wearing of the full veil as the very opposite of liberty. Instead of referring to the number of legal experts who had emphasized that the wearing of the veil could be the manifestation of individual freedom, the rapporteur, Éric Raoult, after stating how strongly the freedom to choose how to dress oneself was protected by law, quickly moved on to state what Bertrand Mathieu had confirmed: that such a freedom could, in some cases, be limited either in the name of public order or of the rights of others (Assemblée nationale 2010, 96). Raoult's report then goes on to quote at quite some length Élisabeth Badinter and Sihem Habchi, both of whom had argued that the full veil was specifically a breach of women's freedom to dispose of their own bodies and of their sexuality (Assemblée nationale 2010, 97-100). Through these discursive processes, the report removed the concept of liberty from contest; it fixed the wearing of veils as the "negation of liberty," thereby pushing freedom of religion even further from the core.

The report also attaches specific importance to the issue of minors – a topic that had emerged from time to time during the auditions. Although the document mentions that the Minister of the Interior had informed the commission that only one percent of (the already small number of) women wearing the full veil were under 18 years old, it nonetheless seemed to put more weight on the testimony of Sabine Salmon, who had stated that she had "seen, several times, children of about eight years completely veiled."[218] Furthermore, basing its assessment on the views offered by Sihem Habchi, the

[217] "*La négation de la liberté*."

[218] "*Cette responsable associative a témoigné avoir vu à plusieurs reprises des enfants d'environ huit ans totalement voilées*" (Assemblée nationale 2010, 99).

report noted that the situation of young women and girls from the suburbs was horrendous, as they were constantly the object of outside pressures to hide their femininity. Indeed, the report spoke at some length about the veil as a "symbol of women's oppression."[219] In other words, Raoult's document described the concept of equality primarily as gender equality, and marginalized other possible ways of defining the republican core concept.

Interestingly, although the issues of liberty and equality clearly dominated the commission's report,[220] the value of fraternity was granted its own section which defined the full veil as a "refusal of fraternity" and as the "refusal of vivre-ensemble."[221] The remarks of philosopher Abdennour Bidar, and his reading of Levinas, figure prominently in it, as does the idea that the face is the "mirror of the soul" and that the refusal to show the face is therefore a "form of symbolic violence" (Assemblée nationale 2010, 112, 116, 119). What is more, the report goes on to cite Levinas' *Totalité et infini* (1961) about the nature of perceiving someone's face. The veil was further defined as a form of "incivility," whereas the Republic was founded on the values of "reciprocity and exchange" (Assemblée nationale 2010, 119). The third and final part of the report dealt with the various strategies through which women could be "liberated from the hold of the full veil."[222]

Raoult's report suggested 18 distinct measures that would help solve the problem of full veils. The first of these was that the French parliament would "pass a resolution that would condemn the wearing of the full veil as contrary to the values of the Republic" (Assemblée nationale 2010, 203). However, the report did not offer a clear recommendation for a new law:

> At this stage of the debate in our country, the commission can only note that – within this society as well as within the political groups that are represented in the Parliament – at least for the time being, there is no unanimity in favor of passing a law of a general and absolute prohibition on the wearing of the full veil in public space. A large number of the members of the commission are in favor of a law that would prohibit full veils, as well as all other pieces of clothing that cover the face completely, in public space, on the basis of the notion of public order.[223]

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[219] "*Le voile intégral comme symbole de l'infériorisation des femmes*," (Assemblée nationale 2010, 109-115).

[220] The whole report includes 733 mentions of *liberté*, 357 of *égalité*, and 65 of *fraternité*. For comparison, *laïcité* is mentioned 490 times.

[221] Both of these expressions figure in the titles of specific subsections (Assemblée nationale 2010, 116, 119).

[222] "*Libérer les femmes de l'emprise du voile intégral*" (Assemblée nationale 2010, 123).

[223] "*À ce stade du débat dans notre pays, la mission ne peut que constater que, tant en son sein que parmi les formations politiques représentées au Parlement, il n'existe pas – en tout cas pour l'heure – d'unanimité pour*

Instead of arguing in favor of a law banning full veils from public space, Raoult's report suggested prohibiting face-covering in public services, such as administrations, schools, and hospitals. The report stated that it was "indisputable" that public servants were put in a difficult position when having to receive veiled clients within various administrations, quoting as proof Carcassonne's audition where the professor had wondered what he would do if a student came to his class "completely veiled" (Assemblée nationale 2010, 157). Because of this "legal insecurity," Raoult suggested that the wearing of full veils be prohibited within all public services, including public transportation. Face veils would also be banned from parents coming to pick their children up from school in cases where they stepped inside of the school building (Assemblée nationale 2010, 158). (The relevance of this distinction will become apparent in Chapter 7 below.) In Raoult's suggestions, refusal to comply with these rules would not carry legal sanctions, but state functionaries would have the right to refuse service on the grounds that the client's face was covered. Such a law could be justified by referring to the notion of "public order," which the report identified as the "least risky" legal track.[224]

With these suggestions, Raoult aimed to find a "republican agreement that goes beyond customary cleavages."[225] If he was hoping that everyone in the MIP could agree on his propositions, he was sorely mistaken. On January 26, 2010, Raoult and Gerin presented the report to the MIP whose members discussed and voted on its contents in a tense atmosphere.[226] To begin with, although the Socialists agreed with the report's main conclusions,[227] they did not take part in the vote,[228] as they were protesting against President Sarkozy's "Great Debate on National Identity" and against Copé's

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l'adoption d'une loi d'interdiction générale et absolue du voile intégral dans l'espace public. Une grande partie des membres de la mission est favorable à une loi d'interdiction du voile intégral, comme de tout vêtement masquant entièrement le visage, dans l'espace public, sur le fondement de la notion d'ordre public" (Assemblée nationale 2010, 204-205).

[224] "L'ordre public, la piste la moins risquée" (Assemblée nationale 2010, 177-181).

[225] "*[…] un accord républicain qui dépasse les clivages habituels*" (Assemblée nationale 2010, 187).

[226] *Le Figaro*, "Le rapport sur la burqa adopté dans un climat de tension," January 27, 2010.

[227] "*Nous partageons le constat qui est fait dans le rapport quant à des pratiques extrémistes et minoritaires qui sont incompatibles avec la République et ses valeurs*" (Assemblée nationale 2010, 189).

[228] With the exception of Pierre Forgues who voted in favor.

"dictate," both of which they deemed "unacceptable."[229] What is more, seven members[230] of the UMP voted against the adoption of Raoult's report. Their main point of contestation was the report's statement that the Parliament should refer the issue to the Council of State before potentially examining the possibility of banning full veils from public space (proposition no 18).[231] Jacques Myard (UMP) asked that the word "potential" (*éventuel*) be removed, and that the report state more clearly that a new law was needed.[232] Myard was also opposed to the suggestions for the creation of a new "National Institute for Islamic Studies"[233] (proposition no 7) and for examining the issue of Islamophobia on the parliamentary level (proposition no 8). Bérengère Poletti (UMP), Jean-Paul Garraud (UMP), Jacques Remiller (UMP), François Baroin (UMP), and Pierre Forgues (PS) agreed with Myard, as did Lionnel Luca (UMP):

> The statements that the report makes are overwhelming: the negation of liberty, the rejection of the principle of equality, the refusal of fraternity. In other words, it is the foundations of the Republic that are at stake! This is why I cannot be content with the bland and toned-down formulation of proposition no 18: it gives the impression that the commission is backing off from the idea of proposing a law banning the wearing of full veils in public space.[234]

The members of the MIP proceeded to debating what the formulation of proposition 18 actually meant and how it related to Copé's bill, which had not yet been officially submitted to the National Assembly. Lionnel Luca (UMP) suggested a new formulation of proposition 18, which stated that the

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[229] "*Mais, comme nous avons eu l'occasion de le dire à plusieurs reprises, le débat a été doublement pollué : D'abord par le débat sur l'identité nationale liant celle-ci à l'immigration, aux minarets et à la burqa d'une façon inacceptable et choquante. Ensuite par l'oukaze [sic] de Monsieur Copé qui est inacceptable tant sur le fond que sur la forme*" (Assemblée nationale 2010, 189).

[230] Yves Albarello, François Baroin, Bérengère Poletti, Jacques Myard, Lionnel Luca, Jean-Paul Garraud, and Jacques Remiller.

[231] "*Recueillir l'avis du Conseil d'État en amont de l'éventuel examen d'une proposition de loi interdisant de dissimuler son visage dans l'espace public*" (Assemblée nationale 2010, 192).

[232] "*Enfin, la proposition n° 18 tend à 'recueillir l'avis du Conseil d'État en amont de l'éventuel examen d'une proposition de loi interdisant de dissimuler son visage dans l'espace public'. Ce texte existe et je demanderai donc que l'on supprime le mot 'éventuel', ce qui permettra de mettre sur le même pied la proposition d'interdiction dans l'espace public et celle qui se limite aux services publics*" (Assemblée nationale 2010, 192).

[233] *École nationale d'études sur l'islam*.

[234] "*Les constats établis dans le rapport sont accablants : négation de la liberté ; rejet du principe d'égalité ; refus de la fraternité. Autrement dit, ce sont les fondements de la République qui sont en jeu ! Voilà pourquoi je ne puis me satisfaire de la rédaction insipide et édulcorée de la proposition n° 18 : elle donne le sentiment que la mission recule sur l'idée d'une proposition de loi interdisant le port du voile intégral dans l'espace public*" (Assemblée nationale 2010, 193).

MIP would suggest that parliament "examine a bill for banning full veils from public space after receiving an *avis* from the Council of State."[235] According to Luca, this formulation was better, for everyone supposedly knew that starting the sentence with a reference to the Council of State would mean "admitting that we do not wish for the bill to be examined."[236] Rapporteur Éric Raoult and president André Guerin attempted to convince their colleagues that the changes and modifications that they requested could be submitted later in the form of addenda. As Raoult noted, the MIP only had thirty minutes left before needing to submit the report to the President of the National Assembly, the final document had already been printed, and 150 journalists were waiting outside to hear the MIP's conclusions (Assemblée nationale 2010, 196, 198, 200). According to Raoult, the members of the MIP would make fools of themselves if they did not vote in favor of the final report.[237] Yet the other members of the UMP, all of whom were firmly in favor of a law, were worried about how things would look to the outside, not only to the media, but also to their own party:

> **François Baroin (UMP)**: It would be a disaster not to vote in favor of the report. But we must vote on a synthesis which includes an amendment to proposition no 18, so that the members of the UMP will not be in a difficult position either with their group or because of the remarks you make in our name.[238] […]
>
> **Éric Raoult (UMP)**: I remind you that this is a multi-party commission! We are not in an UMP reunion![239]
>
> **Yves Albarello (UMP)**: Above all else, I feel French![240] […]

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[235] "*Examiner une proposition de loi interdisant de dissimuler son visage dans l'espace public, après avoir recueilli l'avis du Conseil d'État*" (Assemblée nationale 2010, 197).

[236] "*Vous le savez très bien, commencer cette phrase par l'avis du Conseil d'État, c'est avouer que l'on ne souhaite pas que cette proposition de loi soit examinée*" (Assemblée nationale 2010, 197).

[237] "*Nous nous ridiculiserions en ne votant pas ce rapport*" (Assemblée nationale 2010, 197).

[238] "*Ce serait un désastre que de ne pas adopter le rapport. Mais il faut soumettre au vote un texte de synthèse intégrant l'amendement à la proposition n° 18, afin que les membres UMP de la mission ne soient pas en porte-à-faux avec leur groupe, non plus qu'avec les propos que vous tiendrez en notre nom*" (Assemblée nationale 2010, 202).

[239] "*Je vous rappelle que cette mission est plurielle. Nous ne sommes pas dans une réunion UMP !*" (Assemblée nationale 2010, 202).

[240] "*Je me sens avant tout Français !*" (Assemblée nationale 2010, 202).

> **Jacques Myard (UMP)**: The members present here do not want to accept proposition no 18 as is. Until further notice, we are in a democracy: I will vote for the proposition as suggested by Lionnel Luca! [241]

During the heated debate, Éric Raoult reminded his colleagues that they had had ample chance to suggest modifications to the report the previous week, and that they should have made their disagreement known then. The rapporteur of the commission was clearly frustrated by his colleagues' last minute protestations, but the UMP deputies would not budge:

> **Éric Raoult (UMP)**: It is eleven o'clock. The President [of the National Assembly] Bernard Accoyer is waiting for us. Everyone must now act responsibly.[242]
>
> **Georges Mothron (UMP)**: An addendum to modify proposition 18 is needed.[243]
>
> **Éric Raoult (UMP)**: The minutes will state the new formulation![244]
>
> **Bérengère Poletti (UMP)**: No, it is not possible. An addendum is needed![245]
>
> **Jacques Myard (UMP)**: Accept your responsibilities! If there is no addendum, I will vote against the report! [246]
>
> **Éric Raoult (UMP)**: The president and myself will bring your proposition up verbally. But this is no longer the time nor the place to amend the text, the discussion was closed on Wednesday.[247]

In the end, the members of the MIP voted on the various suggestions of the report individually, accepting all except the most controversial propositions 7 (creation of a "National Institute for Islamic Studies"), 8 (launching a parliamentary committee on Islamophobia and anti-Muslim racism), and 18 (referral to the Council of State before potentially considering a law). Among the propositions that the

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[241] "*Les membres ici présents ne veulent pas de la proposition n° 18 en l'état. Jusqu'à nouvel ordre, nous sommes en démocratie : je voterai pour la proposition telle que rédigée par Lionnel Luca !*" (Assemblée nationale 2010, 202).

[242] "*Il est onze heures. Le président Bernard Accoyer nous attend. Chacun doit désormais prendre ses responsabilités*" (Assemblée nationale 2010, 202).

[243] "*Il faut un addendum pour modifier la proposition n° 18*" (Assemblée nationale 2010, 202).

[244] "*Le compte rendu fera état de la nouvelle formulation !*" (Assemblée nationale 2010, 202).

[245] "*Non, ce n'est pas possible. Il faut un addendum !*" (Assemblée nationale 2010, 202).

[246] "*Prenez vos responsabilités ! S'il n'y a pas d'addendum, je voterai contre le rapport !*" (Assemblée nationale 2010, 202).

[247] "*Le président et moi-même évoquerons oralement votre proposition. Mais ce n'est plus l'heure ni le lieu d'amender le texte ; la discussion a été close mercredi*" (Assemblée nationale 2010, 202).

MIP accepted were, for example, making adherence to "equality between men and women" and other republican values officially a precondition for gaining a temporary residence permit, family reunification, or receiving French nationality.[248] The whole report was accepted through a tight vote of 8 in favor and 7 against, as the UMP's Yves Albarello, François Baroin, Bérengère Poletti, Jacques Myard, Lionnel Luca, Jean-Paul Garraud, and Jacques Remiller refused to accept the fact that legislating on the burqa was not yet an absolute certainty.[249] The report was then submitted to Bernard Accoyer, president of the National Assembly.

The MIP's last meeting illustrates that the submission of the report did not eliminate the cleavages that existed within the political elite. Indeed, soon after its submission, Jacques Myard publicly denounced the conditions in which the MIP's report had been voted, blaming Éric Raoult for having refused to take into account the opinions of the majority,[250] and thereby adding to the division that existed within the UMP group between those siding with Jean-François Copé and those who adopted Nicolas Sarkozy's slightly less intransigent approach.[251] In a similar vein, directly following the submission of Raoult's report, UMP leader Copé announced his intention to submit a bill for banning full veils from public space, arguing that "if it [the full veil] is not prohibited everywhere in public space, it can give the impression that we would accept it."[252] Copé submitted his bill for a general ban on full veils on February 5, 2010.[253] It was cosigned by 190 UMP deputies.[254] The constitutionality of a general ban had been a major preoccupation during the MIP's deliberations and one of the reasons why the deputies had only voted in favor of prohibiting full veils from public services. Yet according to Copé, it would simply not make sense to limit the ban to public services: "How would a ban be more constitutional in

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[248] Propositions no 14 and no 15 (Assemblée nationale 2010, 204).

[249] *Le Figaro*, "Le rapport sur la burqa adopté dans un climat de tension," January 27, 2010.

[250] *AFP*, "Voile intégral : Jacques Myard juge 'inadmissibles' les conditions du vote du rapport," January 26, 2010.

[251] *AFP*, "Voile intégral : 'Moi, mon patron, c'est Sarko, pas Copé', lâche Raoult," January 26, 2010.

[252] "*Si on ne l'interdit pas sur l'ensemble de l'espace public, ça peut donner le sentiment qu'on l'autoriserait*" quoted in *AFP*, "Voile integral : Copé reste ferme sur une loi d'interdiction générale," January 26, 2010.

[253] *Proposition de loi visant à interdire le port de tenues ou d'accessoires ayant pour effet de dissimuler le visage dans les lieux ouverts au public et sur la voie publique* (no 2283).

[254] For a full list, see < http://www.assemblee-nationale.fr/13/propositions/pion2283.asp >.

hospitals than in the street?"[255] "How could we explain that the burqa would be prohibited in the post office or in a hospital, but not in the neighborhood bakery?"[256]

The right-wing *Centre national des Indépendants et Paysans* (CNIP) joined Copé in arguing for a full prohibition,[257] and the idea of a total ban also received support from the women members of the National Assembly. On February 1, 2010, a group of deputies[258] led by Michèle Tabarot (UMP) made their position known in a letter that appeared in *Le Figaro*. Published under the title "*La burqa est contre les femmes, les femmes sont contre la burqa*" ("The burqa is against women, women are against the burqa"), the letter called for a complete ban on the wearing of full veils in French public space:

> As women, we have been fighting for years in order to advance the equality of men and women. Public order is at stake. Security is not possible in a society where people have neither a face nor an identity. From a constitutional point of view, this explanation is, in our mind, sufficient for a complete ban on the full veil in public space.[259] […]
>
> A woman in a burqa is a woman to whom all social life is prohibited, to whom all personality is denied. We hear some women who wear the niqab explain that it is a free choice. So be it. But for all that, is it a legitimate choice when one chooses to live in society? Certain individual decisions are an insult to fraternity, one of the founding principles of our nation. Above all, it is a practice that puts considerable pressure on all the women of this country. Whether we want it or not, the wearing of the burqa is a practice that sends a message of submission and exclusion from which all women suffer.[260]

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[255] "*Comment va-t-on expliquer qu'une interdiction est plus constitutionnelle à l'hôpital que dans la rue ?*," quoted in *AFP*, "Voile intégral : vers une loi d'interdiction, divergences sur le périmètre," January 26, 2010.

[256] "*Comment expliquer qu'on interdirait la burqa à la poste ou à l'hôpital, mais pas à la boulangerie du quartier ?*," quoted in *Bulletin Quotidien*, "Le Premier ministre François Fillon saisit le Conseil d'Etat sur la question du voile intégral," February 1, 2010.

[257] *AFP*, "Le CNI pour l'interdiction du voile intégral, 'négation' de la personne," January 26, 2010.

[258] Besides Tabarot, the group included fourteen female deputies from UMP: Marie-Jo Zimmermann, Nicole Ameline, Valérie Boyer, Sophie Delong, Marianne Dubois, Marie-Louise Fort, Geneviève Levy, Henriette Martinez, Bérengère Poletti, Josette Pons, Marie-Josée Roig, Valérie Rosso-Debord, Isabelle Vasseur.

[259] "*En tant que femmes qui nous battons depuis des années pour faire progresser l'égalité des hommes et des femmes. L'ordre public est en jeu. Il n'y a pas de sécurité possible dans une société où les personnes n'ont ni visage ni identité. D'un point de vue constitutionnel, cette explication suffit à nos yeux pour justifier une interdiction totale du voile intégral dans l'espace public*," *Le Figaro*, "La burqa est contre les femmes, les femmes sont contre la burqa," February 1, 2010.

[260] "*Une femme en burqa, c'est une femme à qui toute vie sociale est interdite, à qui toute personnalité est déniée. […] Nous entendons certaines femmes portant le niqab expliquer qu'il s'agit d'un choix libre. Soit. Est-il pour autant légitime lorsque l'on fait le choix de vivre en société ? Certaines décisions individuelles sont une insulte à la fraternité, un des principes fondateurs de notre nation. Surtout, c'est une pratique qui fait peser une pression considérable sur l'ensemble des femmes de ce pays. Qu'on le veuille ou non, le port de la burqa est une pratique qui envoie*

> For us, a law of prohibition is indispensable before the phenomenon spreads. The law must be general. Otherwise it does not make sense.[261]

Although Copé, Tabarot, and many of their colleagues were convinced of the necessity of a general ban, not everyone agreed. For instance, several Socialists were not convinced of the necessity of a law, and Socialist leader Jean-Marc Ayrault announced that his group would not even participate in voting on the parliamentary resolution until the government put an end to the "Great Debate on National Identity,"[262] which prompted members of NPNS to protest outside of PS headquarters.[263] The Green's national secretary Cécile Duflot was firmly against a new law,[264] and Communist spokesperson Roland Muzeau stated that such a law would threaten national unity.[265] The National Consultative Commission on Human Rights (CNCDH) argued that a law would be excessive and contribute to the stigmatization of French Muslims.[266] Similarly, the Union of Islamic Organizations of France (UOIF) regretted that the MIP had rejected the idea of creating a parliamentary committee to examine the issue of anti-Muslim racism, claiming that Islamophobia remained a taboo in France.[267] Even UNESCO's Paris-based director-general, Irina Bokova, reacted to the issue, emphasizing her organization's commitment to gender equality. Bokova's criticism of the proposed law can be read between the lines: "It is extremely important to work to change societies, to change certain mentalities, traditions. […] We do so through education, all our programs for equality, girls' education, women's literacy: these are real actions on the theme of women's equality."[268]

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un message de soumission et d'exclusion dont toutes les femmes pâtissent," *Le Figaro*, "La burqa est contre les femmes, les femmes sont contre la burqa," February 1, 2010.

[261] "*Pour nous, une loi d'interdiction est indispensable avant que le phénomène ne prenne de l'ampleur. Elle doit être générale. Ou alors, elle n'a pas de sens*," *Le Figaro*, "La burqa est contre les femmes, les femmes sont contre la burqa," February 1, 2010.

[262] *AFP*, "Voile intégral : Ayrault (PS) demande d'abord l'arrêt du débat sur l'identité nationale," January 26, 2010.

[263] *Ouest France*, "Voile intégral : vers une loi limitée," January 26, 2010.

[264] *AFP*, "Voile intégral : une loi 'inappropriée' et 'inapplicable' (Duflot, Verts)," January 26, 2010.

[265] *AFP*, "Mission sur le voile intégral : 'une opération politicienne' (Muzeau, PCF)," January 26, 2010.

[266] CNCDH's resolution voted on January 21, 2010:
< http://www.cncdh.fr/sites/default/files/10.01.21_avis_sur_le_port_du_voile_integral.pdf >.

[267] *AFP*, "L'islamophobie est un 'sujet tabou' en France, selon Fouad Alaoui (UOIF)," January 26, 2010.

[268] "*Il est extrêmement important qu'on travaille pour changer les sociétés, pour changer certaines mentalités, traditions. […] Nous le faisons à travers l'éducation, tous nos programmes pour l'égalité, l'éducation des filles, l'alphabétisation des femmes : ce sont de vraies actions sur le thème de l'égalité des femmes*," quoted in *AFP*, "Voile islamique : l'Unesco défend 'l'égalité des femmes' (Bokova)," January 26, 2010.

Amid these divisions and the confusion surrounding the constitutionality of proposing a law, Bernard Accoyer (UMP) called for a pact and a unanimous adoption of the resolution suggested in Raoult's report.[269] The President of the National Assembly went as far as to urge Jean-François Copé to stop his "forced march" towards a general ban.[270] The President of the Senate, Gérard Larcher (UMP), also set the issue of a new law aside, concentrating instead on the resolution which would condemn the full veil as "contrary to republican values."[271] Former Prime Minister Jean-Pierre Raffarin (UMP), too, favored a parliamentary resolution that could gain the widest possible support.[272] Indeed, the adoption of such a resolution had become possible with the constitutional reform of 2008; however, a resolution is not restrictive in the way that a law or a decree is (Niquège 2011). As this is the case, some perhaps considered it as a convenient option to avoid legislating, while others might have seen it as a first step towards a law.

As far as the French government was concerned, a simple resolution was not sufficient. According to Prime Minister François Fillon (UMP), "with [President] Nicolas Sarkozy, we indeed intend to legislate. There must not be the least ambiguity about this question. In the past, I was one of the few ministers to take a stance, from the very beginning, in favor of a law prohibiting the veil in schools. I do not need lessons on *laïcité* from anyone."[273] However, as the problem of constitutionality remained, on January 29, 2010, Prime Minister Fillon referred the issue to the Council of State, asking for clarifications about the legal possibilities of a general ban on full veils:

> This practice [of face-veiling] is indeed contrary to our republican understanding of social life. […] The government is convinced that the wearing of the full veil is not ac-

[269] *AFP*, "Bernard Accoyer en appelle à la 'concorde' face au voile intégral," January 26, 2010.

[270] *AFP*, "Voile intégral : Accoyer appelle Copé à 'arrêter' avec sa proposition," January 27, 2010.

[271] *AFP*, "Voile intégral : Larcher (UMP) se réjouit de la proposition d'une résolution," January 26, 2010; see also Assemblée nationale (2010, 203).

[272] *AFP*, "Voile intégral : Raffarin pour un 'rassemblement large et pluraliste' sur la résolution, January 27, 2010.

[273] "*Avec Nicolas Sarkozy, nous avons bien l'intention de légiférer. Il ne doit pas y avoir la moindre ambiguïté sur cette question. Par le passé, j'ai été l'un des rares ministres à me prononcer dès le départ pour une loi interdisant le port du voile à l'école, je n'ai donc aucune leçon de laïcité à recevoir de quiconque*," quoted in *Bulletin Quotidien*, "Le Premier ministre François Fillon saisit le Conseil d'Etat sur la question du voile intégral," February 1, 2010.

> ceptable in our Republic, because, as a sign of communalist withdrawal [*repli communautariste*], it is contrary to the principle of equality between men and women as well as to our understanding of human dignity.[274]

The Prime Minister asked the Council of State to offer legal solutions that would allow for a ban that would be "as extensive and effective as possible."[275] Fillon hoped to receive the Council of State's recommendations by the end of March, so that the government could move forward with legislating right after the regional elections that were to take place on March 14 and 21. Indeed, directly succeeding (and perhaps prompted by) the political right-wing's defeat in the elections, President Sarkozy came out for the first time arguing clearly in favor of a general ban on the burqa.[276]

The Council of State submitted its report to Prime Minister Fillon on March 30, 2010. The Highest Administrative Court stated that a general ban on face-covering in public space would be "very fragile" from a legal point of view. According to the Council of State, "there is no indisputable legal basis that can be invoked in support of a prohibition of the wearing of the full veil as such."[277] On the contrary, the Council of State saw that such a ban would call into question a variety of basic rights and liberties, such as individual liberty, the right to the respect of private life, the freedom to manifest one's convictions, and the right to non-discrimination (Conseil d'État 2010, 17). More specifically, the Council of State noted that "*laïcité* cannot be the basis of a general restriction on expressing religious convictions in public space."[278] Similarly, the Council of State stated that a ban could not be founded on the notion of human dignity, which implied respect for individual freedom and autonomy, noting that, "in a majority of cases," the wearing of the full veil was voluntary (Conseil d'État 2010, 19-20). The report also examined the issue of gender equality, arriving at the conclusion that the principle of the equality of

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[274] "*Cette pratique heurte en effet notre conception républicaine de la vie sociale. […] Le Gouvernement a la conviction que le port du voile intégral n'est pas acceptable dans notre République, parce que, signe d'un repli communautariste, il est contraire au principe d'égalité entre les hommes et les femmes ainsi qu'à notre conception de la dignité humaine*," Lettre de M. François Fillon, Premier ministre, adressée à M. Jean-Marc Sauvé, vice-président du Conseil d'Etat, demandant d'étudier les solutions juridiques permettant de parvenir à une large interdiction du port du voile intégral, Paris le 29 janvier 2010:
< http://discours.vie-publique.fr/notices/103000278.html >.

[275] "*Vous étudierez donc les solutions juridiques permettant de parvenir à une interdiction du port du voile intégral, que je souhaite la plus large et la plus effective possible*."

[276] *Le Figaro*, "Burqa : le message de Sarkozy," March 27, 2010.

[277] "*[…] aucun fondement juridique incontestable ne peut être invoqué à l'appui d'une prohibition du port du voile intégral en tant que tel*" (Conseil d'État 2010, 17).

[278] "*[…] la laïcité ne saurait fonder une restriction générale à l'expression des convictions religieuses dans l'espace public*" (Conseil d'État 2010, 18).

the sexes aimed to fight discrimination and to combat unequal treatment; it could not be used to limit individual freedom (Conseil d'État 2010, 20). In other words, the Council of State rejected the meanings that the members of the MIP had attempted to fix to the core republican values of liberty and equality, thereby bringing the issue of religious freedom back in play.

What about a general ban on face-covering in the name of public order, as the MIP had envisioned? The Council of State admitted that the legal notion of public order had an immaterial dimension which could be extended to include "a minimal foundation of mutual requirements and essential guarantees of life in society,"[279] making it a substantive value rather than a simple protection against the boundless exercise of individual freedoms (Conseil d'État 2010, 27). However, the Council of State stressed that this was a wholly novel understanding of the concept of public order and a "risky" solution that could easily be censored by the Constitutional Council (Conseil d'État 2010, 28). According to the Council of State, the ban on face-covering could only be justified in certain places that were linked to specific public services or the requirements of identification, such as courts, polling stations, the city hall, etc. (Conseil d'État 2010, 38). In other words, the Council of State confirmed what pro-ban actors had been fearing all along: a general restriction on face veils would be contrary to the individual rights and liberties guaranteed by the French Constitution.

However, it is striking how quickly French politicians discarded the Council of State's conclusions. On the very day that that report was made public, UMP's Jean Leonetti declared that a prohibition on the full veil would be either "total or incomprehensible,"[280] stating that UMP deputies were "completely determined" to vote in favor of a total ban on the burqa.[281] Jean-François Copé took note of the Council's position while maintaining that it was "up to political representatives to assume their responsibilities."[282] Minister of the Interior, Brice Hortefeux, disregarded the Council of State's reservations in stating that "we must go as far as possible, for we no longer want that tomorrow women who

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[279] "*[…] un socle minimal d'exigences réciproques et de garanties essentielles de la vie en société*" (Conseil d'État 2010, 26).

[280] "*L'interdiction, elle est totale ou elle est incompréhensible*," quoted in *Le Figaro*, " France : vers une interdiction rapide de la burqa, débat sur l'ampleur," March 30, 2010.

[281] *Bulletin Quotidien*, "Tandis que le Conseil d'Etat écarte toute interdiction générale et absolue du voile intégral, les députés UMP, 'confortés par l'exécutif', se disent déterminés à passer outre les réserves des Sages," March 31, 2010.

[282] "*[I]l appartient aux responsables politiques de prendre leurs responsabilités*," quoted in *Le Progrès*, "Voile intégral : il est interdit d'interdire," March 31, 2010.

are completely veiled go pick up their children in schools, appear at the counters of public services, or take public transportation."[283] Blandine Kriegel, former president of the High Council for Integration, reacted in a letter published in *Le Figaro*, criticizing the Council of State for being "an institution more concerned about the history of our state than the republican regime."[284]

A few weeks later, the government officially announced its intention to ban full veils from "all of public space," including from the streets – a measure that the Council of State had considered highly risky from a legal point of view.[285] In other words, the government dismissed the Council of State's position and moved forward as if the unconstitutionality of a general ban were not an issue at all. Government spokesperson Luc Chatel (UMP) explained President Sarkozy's desire to proceed to legislating against the full veil which Sarkozy saw not as a religious problem but rather as "a breach of women's dignity."[286] Broadly put, in calling for a new law, President Sarkozy indirectly admitted that Copé's group of UMP deputies were right: legislative action needed to be taken, and a general ban was the best solution. However, instead of simply accepting the bill that Copé had submitted in February, the government wanted to take control of the legislative process and to draft its own proposal.[287] The text was to be discussed in the Council of Ministers in May 2010, and sent for a discussion in the National Assembly in July 2010. Deputy André Gerin (PCF) was thrilled: "I have always been convinced that it is possible to prohibit face-covering in the street, in public space in general."[288] The Socialists remained hesitant, stating that they were "open to dialogue," but would not vote in favor of a law that did not

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[283] "*[…] nous devons aller le plus loin possible, car nous ne voulons plus que demain des femmes entièrement voilées aillent chercher leurs enfants à l'école, se présentent aux guichets des services publics ou prennent les transports en commun*," quoted in *Bulletin Quotidien*, "Tandis que le Conseil d'Etat écarte toute interdiction générale et absolue du voile intégral, les députés UMP, 'confortés par l'exécutif', se disent déterminés à passer outre les réserves des Sages," March 31, 2010.

[284] "*[…] une institution plus ancrée dans l'histoire de notre État que liée au régime républicain,*" quoted in *Le Figaro*, "Burqa : le Conseil d'État a-t-il raison ?," May 25, 2010.

[285] "*Tout l'espace public*," quoted in *AP French Worldstream*, "Voile intégral : Sarkozy veut une interdiction dans tout l'espace public via un projet de loi," April 21, 2010.

[286] "*[…] ne posait pas un problème d'ordre religieux, mais portait atteinte à la dignité de la femme,*" quoted in *AP French Worldstream*, "Voile intégral : Sarkozy veut une interdiction dans tout l'espace public via un projet de loi," April 21, 2010.

[287] *AP French Worldstream*, "Voile intégral : Sarkozy veut une interdiction dans tout l'espace public via un projet de loi," April 21, 2010.

[288] "*[J]'ai toujours été convaincu que l'on peut interdire dans la rue, dans l'espace public en général, le fait d'avoir le visage couvert*," quoted in *AP French Worldstream*, "Voile intégral : Sarkozy veut une interdiction dans tout l'espace public via un projet de loi," April 21, 2010.

take into account the legal restrictions specified by the Council of State.[289] Only a few Socialists, such as Manuel Valls, were openly in favor of a law.[290]

While French MPs were waiting for the Council of Ministers to convene and for the parliamentary discussions to start, in April 2010, a new niqab-related incident stole the limelight. The Council of State's warnings were all but forgotten as the media learnt that a niqab-wearing driver had received a fine in Nantes. The police had stopped a driver who wore the niqab, at which point she had removed her veil so that the police officers could verify her identity.[291] However, the policemen fined her on the grounds that her vision was hindered by the veil which covered her face with the exception of the eyes. The Nantes woman's lawyer appealed to the office of the public prosecutor (*ministère public*) and stated that, since no law existed forbidding the niqab, a fine based on the driver's clothing was a breach of individual freedom. The lawyer argued that the vision of a woman wearing a face-veil such as the niqab was no more limited than that of a motorcyclist wearing a helmet, as were the two police officers in question.[292] According to the police, however, the highway code allowed policemen some latitude in examining, case by case, what constituted potentially dangerous behavior while driving.[293]

The Nantes case took an unexpected turn when Minister of the Interior, Brice Hortefeux (UMP), contacted Minister of Immigration, Éric Besson (UMP), asking his colleague to look into the possibility of revoking the woman's spouse's French nationality.[294] According to Hortefeux's information, the man of Algerian origin was a polygamist who was living with four wives, all of whom wore the full veil. Moreover, Hortefeux suspected the man of a defrauding social services, as the women were receiving allowances meant for single parents.[295] During the days that followed, the controversy surrounding the wearing of the "veil" merged with the question of polygamy, as several politicians congratulated Hortefeux on having taken action to strip the man of his nationality. According to UMP spokesperson Frédéric

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[289] *AFP*, "Voile : le PS votera contre une loi d'interdiction générale (Hamon)," April 27, 2010; *AFP*, " Voile intégral : Aubry pour une loi si elle respecte l'avis du Conseil d'État," April 27, 2010; *AFP*, "Voile intégral : les socialistes pour une loi si elle respecte la Constitution," April 27, 2010.

[290] *AFP*, "Le projet de loi sur l'interdiction du voile intégral début juillet à l'Assemblée," April 27, 2010.

[291] *AFP*, "Niqab au volant : 22 euros d'amende pour conduite 'dans des conditions non aisées'," April 22, 2010.

[292] *AFP*, "Amende pour niqab au volant : 'Une atteinte aux droits de l'homme' (avocat)," April 23, 2010.

[293] *AFP*, "Amende pour port du niqab au volant, le code de la route s'applique bien," April 23, 2010.

[294] *AFP*, "Niqab au volant : Hortefeux envisage que le conjoint soit déchu de sa nationalité," April 23, 2010.

[295] *AFP*, "Niqab au volant : Hortefeux vise le mari de la femme verbalisée," April 23, 2010.

Lefebvre, "the forfeiture of nationality is an essential step before the expulsion of this individual, extremist, who tramples women's rights on our soil and swindles our social system."[296] Xavier Bertrand stated: "What Brice Hortefeux said bears the stamp of common sense and reminds [us] that in France, there are rights and responsibilities."[297] According to Jean-François Copé, too, Hortefeux had been right to take up the issue.[298] The commentators conveniently disregarded the fact that neither polygamy nor defrauding were recognized as legally acceptable motives for the forfeiture of nationality, a measure used very rarely and usually only in cases where a person has been granted nationality on fraudulent grounds.[299]

The Nantes case is one indication that full veils – though not yet illegal – were viewed as illegitimate.[300] For pro-ban actors, a woman who wore a niqab while driving was only further proof of the necessity of a law which was under way. Yet the case also served to illustrate pro-ban actors' argument according to which the wearing of the "veil" was only the "tip of the iceberg," only one part of a larger range of inacceptable social behavior, women's oppression, and criminality. The link between the issues of veiling and polygamy, which pro-ban actors had constructed in 2003, was revitalized as the media took up the issue of polygamy at a time when the full veil was a daily topic of political news.[301] Besides

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[296] "*La déchéance de la nationalité est une étape essentielle avant l'expulsion de cet individu, extrémiste, qui bafoue les droits des femmes sur notre sol et arnaque notre système social*," quoted in *AFP*, "Niqab : 'la démarche de Hortefeux exprime la nécessaire fermeté', (UMP)" April 24, 2010.

[297] "*Ce qu'a dit Brice Hortefeux est frappé au coin du bon sens et rappelle qu'en France, il y a des droits et des devoirs,*" quoted in *AFP*, "L'affaire du niqab au volant attise la polémique sur l'interdiction du voile," April 25, 2010.

[298] "*[…] a eu raison de mettre les pieds dans le plat*," quoted in *AFP*, " Niqab/polygamie : Hortefeux a 'eu raison de mettre les pieds dans le plat' (Copé)," April 25, 2010.

[299] Later, following the terrorist attacks of November 13, 2015, President Hollande created widespread controversy in announcing his willingness to extend the legitimate grounds for the forfeiture of nationality. Since no agreement was found between the National Assembly and the Senate, Hollande had to abandon the project in 2016.

[300] However, in December 2010, a Nantes court decided in favor of the driver, stating that it was not dangerous to wear the niqab while driving (see, *Le Figaro*, "La justice donne un permis de conduite en niqab," December 14, 2010). Moreover, even after the law became effective, drivers have been allowed to cover the face, for private vehicles are not considered as "public space."

[301] According to the Factiva database, in April 2010 alone more than 400 articles were published in the French press on the issue of polygamy, and for the whole year, the number rises to over 1400, almost triple that of any previous or subsequent year.

the discussion about polygamy, the French discussion about face-covering was fueled by the Belgian government's April 29 decision to proceed to banning full veils from public space.[302]

5.8 Liberty Eclipsed by Fraternity: The Parliament Bans the Burqa (2010)

On May 11, 2010, the French National Assembly discussed the resolution that the UMP had suggested which stated that the full veil was "contrary to republican values." According to the text, "no one shall demand the exercise of freedom of expression, of opinion, or of religion for the purpose of flouting common rules without regard to the values, rights, and responsibilities that are the basis of society."[303] Once the UMP had presented its resolution to the Assembly, Keeper of the Seals and Minister of Justice Michèle Alliot-Marie (UMP) stressed that the initiative had the government's backing:

> **Michèle Alliot-Marie (UMP):** […] France is true to its history, its image and its destiny only when it is gathered around the values of the Republic: equality, liberty, and tolerance.[304]
>
> **Jean Glavany (PS)**: Do not forget fraternity![305]
>
> **Michèle Alliot-Marie (UMP)**: Yes, these are the values that form national cohesion, collective life [*vivre ensemble*] of all the French, whatever their differences of age, sex, origin, or religion may be. The wearing of the full veil calls into question all of these values and the very principles of *vivre ensemble*.[306]

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[302] *Les Échos*, "La Belgique prend les devants en Europe," April 23, 2010; *Le Figaro*, "La Belgique, premier État européen à voter l'interdiction totale," April 30, 2010.

[303] "*L'exercice de la liberté d'expression, d'opinion ou de croyance ne saurait être revendiqué par quiconque afin de s'affranchir des règles communes au mépris des valeurs, des droits et des devoirs qui fondent la société,*" "Résolution sur l'attachement au respect des valeurs républicaines face au développement de pratiques radicales qui y portent atteinte," < http://www.assemblee-nationale.fr/13/ta/ta0459.asp >.

[304] "*[…] la France n'est fidèle à son histoire, à son image et à son destin que lorsqu'elle est rassemblée autour des valeurs de la République : l'égalité, la liberté et la tolérance*," compte rendu, deuxième séance du mardi 11 mai 2010: < http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

[305] "*N'oubliez pas la fraternité !*," compte rendu, deuxième séance du mardi 11 mai 2010:
< http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

[306] "*Oui, ce sont ces valeurs qui forment la cohésion nationale, le vivre ensemble de tous les Français, quelles que soient leurs différences d'âge, de sexe, d'origine ou de religion. Le port du voile intégral remet en cause l'ensemble de ces valeurs et les principes mêmes du vivre ensemble*," compte rendu, deuxième séance du mardi 11 mai 2010: < http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

The discussion in the lower chamber of the French parliament was almost unanimous. Jean-François Copé presented the resolution to the National Assembly by referring to the full veil as a "disgrace," a "threat to society," and as a "negation of the republican pact."[307] "Without a smile and a face, what meaning can we give to the word 'fraternity'?",[308] Copé wondered. He was joined by Michèle Alliot-Marie, who emphasized the unity of the Republic:

> The unity of the nation is our most precious possession […]. The unity of the Republic means shared rules for each citizen, because without rules, there is no society; without an understanding of rules, there are no organized and orderly social relations; without respect of rules, there is no enduring construction of the future, be it individual or collective.[309] […]
>
> The face is the part of the body which has a direct relation to the Other, whereas the full veil is the rendering of communalism into clothing. It dissolves the identity of a person into that of a community. It challenges the French model of integration, founded on the acceptance of the values of our society. It expresses the refusal to live within a national community.[310] […]
>
> Where is "living together" when individuals hide away from society by concealing the face? Where are the values of democracy when people are forced to give up their fundamental liberties: freedom of communication, freedom of expression? Where is individual flourishing when women, hidden under a full veil, are denied real, visual, contact with others?[311]

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[307] "*Le voile intégral, […] c'est une indignité […]. Le voile intégral empêche toute identification dans l'espace public et constitue donc une menace pour notre société. C'est une négation de soi, une négation de l'autre, une négation de notre pacte républicain*," compte rendu, deuxième séance du mardi 11 mai 2010: < http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

[308] "*Sans sourire ni visage, quel sens pouvons-nous encore donner au mot de fraternité ?*," compte rendu, deuxième séance du mardi 11 mai 2010:
< http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

[309] "*L'unité de la nation est notre bien le plus précieux […]. L'unité de la République, ce sont des règles communes à chaque citoyen parce que, sans règles, il n'y a pas de société ; sans compréhension des règles, il n'y a pas de relation sociale organisée et apaisée ; sans respect des règles, il n'y a pas de construction solide de l'avenir, qu'il soit individuel ou collectif*," compte rendu, deuxième séance du mardi 11 mai 2010: < http://www.assemblee-nationale.fr/13/cri/2009-2010/20100187.asp#ANCR201000000200-00185 >.

[310] "*Le visage, c'est la partie du corps qui porte la relation directe avec l'autre alors que le voile intégral est la traduction vestimentaire du communautarisme. Il dissout l'identité d'une personne dans celle d'une communauté. Il remet en cause le modèle d'intégration à la française, fondé sur l'acceptation des valeurs de notre société. Il exprime le refus de vivre au sein de la communauté nationale*," compte rendu, deuxième séance du mardi 11 mai 2010.

[311] "*Où est le 'vivre ensemble' lorsque des individus se retranchent du corps social en dissimulant leur visage ? Où sont les valeurs de la démocratie lorsque des personnes sont contraintes de renoncer à leurs libertés fondamentales : liberté de communication, liberté d'expression ? Où est l'épanouissement individuel lorsque des femmes,*

Although some Socialists expressed their concern about the future law, almost all of the interventions that took place on May 11 were in favor of the resolution. The only dissenting voices came from the Greens' Noël Mamère and Communist Alain Bocquet. Mamère argued that veiled women had become scapegoats, and renounced Islamophobia, while Bocquet announced that his party would not take part in the "farce" of the vote.[312] Besides the UMP and the NC, all PS and PRG deputies voted in favor of the resolution.[313] Only the PCF (with the notable of exception of André Gerin) and the Greens were against the resolution, but as they left the room before the vote, the final ballot was unanimous (434 votes in favor).[314] Although the resolution was neither a law nor a decree, it was viewed by the media and politicians alike as the first step towards legislating on the burqa.[315] Jean-François Copé went as far as stating that the resolution and the future law as "inseparable."[316] The President of the National Assembly, Bernard Accoyer, hoped that the coming bill would be voted in a similar atmosphere of unanimity.[317]

On the following day, the Council of State issued an *avis* against a new law.[318] In it, the Council of State repeated what it had already stated in its March 2010 report: a general ban on face-covering lacked a solid legal basis ("*aucun fondement juridique incontestable*"). Yet, for a second time in two months, French politicians either dismissed or criticized the position of the highest administrative court. For instance, UMP's Françoise Hostalier was "shocked by the Council of State's peremptory tone." Hostalier's comments echo the criticisms that the members of the MIP had directed at legal practitioners: "The members of the Council of State should come down from their ivory tower and face reality. How

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dissimulées sous un voile intégral, sont privées de contact réel, visuel, avec autrui ?," compte rendu, deuxième séance du mardi 11 mai 2010.

[312] "*Nous ne participerons pas à ce vote mascarade*," compte rendu, deuxième séance du mardi 11 mai 2010.

[313] < http://www.assemblee-nationale.fr/13/scrutins/jo0565.asp >.

[314] *Bulletin quotidien*, "Les députés examinent aujourd'hui à l'Assemblée la proposition de résolution UMP," May 11, 2010.

[315] *AFP*, "Premier acte à l'Assemblée du processus d'interdiction du voile intégral," *AFP*, May 10, 2010; *Le Figaro*, "Burqa : première étape consensuelle à l'Assemblée," May 11, 2010; *AFP*, "Premier acte à l'Assemblée du processus d'interdiction du voile intégral," May 10, 2010; *Ouest France*, "Voile intégral interdit : premier acte," May 11, 2010.

[316] *AFP*, "Voile intégral : résolution et loi sont indissociables, souligne Copé," May 11, 2010.

[317] *AFP*, "Accoyer espère le même consensus pour la loi que pour la résolution," May 11, 2010.

[318] *Le Figaro*, "Loi sur la burqa : avis défavorable du Conseil d'État," May 13, 2010.

can these jurists, meant to enlighten the government and the national representatives encourage those who are only trying to undermine the fundamental values of our society?"[319]

Yet the scope of a new law was still up for discussion. The *Parti socialiste* had previously noted that they would only vote in favor of a law that conformed to the Council of State's recommendations. On the day that the resolution was voted, Socialist leaders Martine Aubry and Jean-Marc Ayrault reiterated this position, and the PS group decided to aim for banning full veils from public services and stores.[320] However, as the parliamentary discussions on the bill approached in July 2010 it became clear that the Socialists would not attempt to block the bill put forward by the government.[321] Although they still had doubts about the constitutionality of a general ban, the Socialists decided that they would simply abstain from voting.[322]

The discussions that took place in the National Assembly on July 6 and 7 confirmed what the MPs had voted in the form of a resolution in May: that the wearing of the full veil was contrary to republican values. On July 6, Michèle Alliot-Marie presented the bill to the National Assembly. The MPs also heard from Jean-Paul Garraud, representative of the Law Committee (*Commission des lois*), who ignored the Council of State's *avis* by stating that the full ban had a "solid legal basis" – the notion of an "immaterial or societal public order."[323] The MPs also heard from Bérengère Poletti who spoke in the name of the National Assembly's women's delegation (*Délégation aux droits des femmes et à l'égalité entre les hommes et les femmes*), quoting Simone de Beauvoir in arguing that women's consent to the wearing of the veil did not matter, for it was the "wicked result of brain-washing."[324] On July 6, the only dissenting vote came, again, from the Greens' Noël Mamère. On the following day, a further

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[319] "*Choquée par le ton péremptoire de l'avis du Conseil d'Etat […] Il serait bon que les Conseillers d'Etat sortent de leur tour d'ivoire et qu'ils se frottent aux réalités du terrain […] Comment ces juristes censés éclairer le gouvernement et la représentation nationale peuvent-ils ainsi encourager ceux qui ne cherchent qu'à saper les valeurs fondamentales de notre société ?*" quoted in *Le Parisien*, "Loi sur la burqa : le Conseil d'Etat émet un nouvel avis défavorable," May 14, 2010; see also *Le Monde*, "Voile intégral : les députés UMP contre le Conseil d'État," May 14, 2010.

[320] *AFP*, "Le groupe PS vote, à l'unanimité, l'interdiction du voile intégral dans les commerces et services publics," May 11, 2010; see also *AFP*, "Voile intégral : Aubry répète son opposition à une interdiction générale," May 11, 2010.

[321] *Le Point*, "Le PS ne fera 'pas obstacle' à la loi sur la burqa, dit Ayrault," July 1, 2010.

[322] *AFP*, "L'Assemblée débat de l'interdiction du port du voile intégral," July 6, 2010.

[323] "*Pour moi, il existe un fondement juridique solide pour une interdiction générale, à savoir la notion d'ordre public immatériel ou sociétal*," compte rendu, troisième séance du mardi 6 juillet 2010:
< http://www.assemblee-nationale.fr/13/cri/2009-2010-extra/20101010.asp#INTER_1 >.

[324] "*[…] il est le fruit pervers d'un lavage de cerveau*," compte rendu, troisième séance du mardi 6 juillet 2010.

criticism of the law was presented by Daniel Garrigue (NI, formerly UMP). Garrigue, who was against the burqa, pointed to the dangers involved in passing from an understanding of public order which was founded on the "principles of universalism" to a "societal public order" based on a substantive value system.[325] However, as an independent deputy, Garrigue was only allowed to speak for a limited time, which further contributed to marginalizing his discourse.

Surprisingly, on July 7, Jean-François Copé announced that the matter of a full prohibition should be referred to the Constitutional Council in order to confirm its constitutionality.[326] At this point, the National Assembly had declared the full veil as "contrary to republican values," and the lower chamber's discussions show that the pro-ban group had gained a comfortable majority in favor of a complete ban on full veils in public space. In other words, the issue of constitutionality – stressed by the Council of State in March and again in May – had receded into the background. In this situation, Copé himself put the question back on the table, announcing that he wanted to ensure the constitutionality of the law. More specifically, Copé announced: "I hope that the law as voted will be submitted to the Constitutional Council before its publication, so that its application cannot be contested."[327]

Despite pleas from Amnesty International and the European Parliament,[328] on July 13, 2010, the French National Assembly voted almost unanimously in favor of the law banning face-covering in public space. With 335 votes in favor, only Daniel Garrigue (NI) voted against the law. While the Socialists and the Greens abstained, Manuel Valls (PS) and Jean-Michel Boucheron (PS) went against the decision adopted by their group, and voted in favor of the law. The bill was then transferred to the Law Committee of the Senate, and the chamber discussed it on September 14, 2010. In the Senate, Keeper of the Seals and Minister of Justice Michèle Alliot-Marie (UMP) presented the bill by referring to the importance of visual contact and to "social public order." The social dimension of the legal notion of public order, which Carcassonne had formulated in November 2009, had, by September 2010, become

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[325] "*Alors que la conception que nous avons de l'ordre public est fondée sur les principes d'universalisme, celle que vous voulez défendre est une conception sociétale […]*," compte rendu, première séance du mercredi 7 juillet 2010, < http://www.assemblee-nationale.fr/13/cri/2009-2010-extra/20101011.asp >.

[326] *AFP*, "Voile intégral : Copé crée la surprise en annonçant la saisine des Sages," July 7, 2010.

[327] "*[J]e souhaite que la loi votée, soit, avant sa promulgation, soumise au Conseil constitutionnel afin que son application ne puisse être contestée*," quoted in *AFP*, "Interdiction de la burqa : Copé (UMP) souhaite la validation par le Conseil constitutionnel," July 7, 2010.

[328] *AFP*, "Amnesty demande aux parlementaires de rejeter l'interdiction du voile intégral," May 19, 2010; *AFP*, "Amnesty International demande aux députés le rejet du projet de loi sur le voile," July 5, 2010; *Le Point*, "Strasbourg contre l'interdiction totale du voile intégral," June 23, 2010.

the central legal argument in favor of a law. The centrality of this notion is evident in the case that Alliot-Marie made in favor of a law:

> Living together means accepting the other's gaze. […] Living in the Republic the face uncovered is a question of dignity, as well as a question of equality before the Republic, and a question of respect for our republican principles.[329] […]
>
> No one may, in public space, wear any kind of clothing designed to conceal the face. The rule is clear, simple, and logical. This regulation rests upon a constitutional basis: social public order. The notion of public order, as you all know, traditionally includes three material elements: security, tranquility, and hygiene. It also contains a social or "immaterial" component, which is no less important.[330]
>
> If material public order entails a proportionality between the sought-out aim and the imposed limitation, social public order, which expresses the fundamental values of the social pact, authorizes measures of general prohibition.[331]

Setting the Council of State's recent *avis* aside, the Minister argued that the notion of an immaterial public order was well documented in the jurisprudence of the Council of State and the Constitutional Council. Yet it seems that the Minister did not need to convince the Senators of the necessity and constitutionality of the law. With 246 votes in favor and only one against, the Senate approved the bill in much the same way as the National Assembly had, thereby confirming the creation of a new understanding of republican social order. The UMP, UC, PRG, and RDSE voted in favor of the law, as did some of the Socialists (46 out of 116). The majority of PS, PCF, and the Greens abstained from voting. Only the Centrist Anne-Marie Payet, representative of La Réunion, voted against the law. The law was to become effective the following spring, after a six-month transition period. Following the Senate's

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[329] "*Vivre ensemble suppose l'acceptation du regard de l'autre. […] Vivre la République à visage découvert, c'est une question de dignité, une question d'égalité devant la République, aussi, et une question de respect de nos principes républicains*," séance du 14 septembre 2010: < http://www.senat.fr/seances/s201009/s20100914-/s20100914006.html#Niv1_PRESIDENCE_DE_M__GErard_Larcher >.

[330] "*Nul ne peut, dans l'espace public, porter une tenue, quelle qu'elle soit, destinée à dissimuler son visage. La règle est claire, simple, logique. […] Cette règle repose sur un fondement constitutionnel : l'ordre public social. La notion d'ordre public, vous le savez tous, inclut traditionnellement trois composantes matérielles : la sécurité, la tranquillité et la salubrité. Elle comprend aussi une composante sociale, ou 'immatérielle', qui n'est pas moins importante*," séance du 14 septembre 2010.

[331] "*Si l'ordre public matériel implique une proportionnalité entre le but visé et la contrainte imposée, l'ordre public social, exprimant les valeurs fondamentales du pacte social, permet, lui, de prendre des mesures d'interdiction générales*," séance du 14 septembre 2010.

vote, the French Council for the Muslim Faith (CFCM), which had been against the law from the beginning, urged French Muslims to respect the new law.[332]

On the very same day that the Senate approved the bill, the presidents of the National Assembly and of the Senate, Bernard Accoyer and Gérard Larcher, referred the law to the Constitutional Council "so that there no doubt can be placed on its conformity with the constitution."[333] In other words, although parliament had ratified the law, it would not publish it before getting the green light from the Constitutional Council. The Constitutional Council published its decision on October 7, 2010. In this decision, the Council accepted the government's reasoning, stating, among other things, that the practice of full-veiling showed "ignorance of the minimal requirements of life in society,"[334] thereby validating the view that the preferences of the majority could be prioritized over individual rights. Moreover, the Constitutional Council adhered to the dominant discourse by stating that "women who cover their face, voluntarily or not, are in a situation of exclusion and inferiority which is obviously incompatible with the constitutional principles of liberty and equality."[335] Through this formulation, the Council agreed with the MIP's view that, whatever the veiled women's intentions may be, full veils were contrary to the core republican principles of liberty and equality. The Constitutional Council concluded that a general ban was not disproportionate, in particular given that the fine was relatively low (150 euros). However, even though the Constitutional Council judged the law to conform, for the most part, to the Constitution, it stated that banning face-covering in "places of worship open to the public" would be a violation of individual religious freedom as defined in the French Constitution.

The Constitutional Council's decision offered a final seal of validation for the law that the parliament had already approved. According to Prime Minister François Fillon, "the Constitutional Council recognized that the lawmaker could […] solemnly remind [people] of the minimal requirements of life

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[332] *Les Échos*, "L'Islam de France appelle au respect de la loi anti-burqua," September 24, 2010.

[333] "*Afin que sa conformité à la Constitution ne puisse être affectée d'aucune incertitude*," quoted in *Bulletin Quotidien*, "Le projet de loi interdisant la dissimulation du visage dans l'espace public a été définitivement adopté," September 15, 2010.

[334] "*[…] méconnaissent les exigences minimales de la vie en société*," Décision n° 2010-613 DC du 07 octobre 2010: < http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2010/2010-613-dc/decision-n-2010-613-dc-du-7-octobre-2010.49711.html >.

[335] "*[…] les femmes dissimulant leur visage, volontairement ou non, se trouvent placées dans une situation d'exclusion et d'infériorité manifestement incompatible avec les principes constitutionnels de liberté et d'égalité*," Décision n° 2010-613 DC du 07 octobre 2010.

in society and of the principle of equality between men and women."[336] For Jean-François Copé, the Council's position "sent a strong signal to all women who fight for their dignity."[337]

On October 12, the "law prohibiting the concealment of the face in public space" was published in the *Journal officiel*.[338] Starting in April 11, 2011, covering the face in public space was made into a criminal offense. In March 2011, a month before the law became effective, the French government started a publicity campaign, distributing hundreds of thousands of posters and leaflets under the title "*La République se vit à visage découvert* " ("The Republic Is Lived the Face Uncovered").[339] The aim of the campaign was to publicize the law and to make its details known to the public. It was illustrated by the bust of Marianne as sculpted by Georges Saupique in 1946 (Figure 5.2 below). In a similar vein to the "*Mariannes d'aujourd'hui*" exhibition of 2003, the female incarnation of the Republic was chosen to illustrate the acceptable limits of religious attire and the "minimal requirements of life in society." Saupique's statue shows Marianne with her hair down and her face uncovered, wearing a Phrygian cap. Following the lead of *AFP*,[340] many French newspapers noted that the chosen Marianne's neckline was much more modest than that of other Marianne statues, notably the one sculpted by Alain Aslan who had had Brigitte Bardot as his model.[341]

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[336] "*Le Conseil constitutionnel a reconnu que le législateur pouvait, dans le strict respect de la Constitution, rappeler solennellement les exigences minimales de la vie en société ainsi que le principe de l'égalité entre les hommes et les femmes,*" quoted in *AFP*, "Le Conseil constitutionnel valide la loi sur le voile intégral, émet une 'réserve'," October 7, 2010.

[337] "*Un signal fort envoyé à toutes les femmes qui se battent pour leur dignité*," quoted in *AFP*, "Le Conseil constitutionnel valide la loi sur le voile intégral, émet une 'réserve'," October 7, 2010.

[338] *Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*: < https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022911670&dateTexte=&categorieLien=id >.

[339] *AFP*, "Campagne d'information avant l'entrée en application de la loi sur le voile intégral," March 2, 2011.

[340] *AFP*, "Campagne d'information avant l'entrée en application de la loi sur le voile intégral," March 2, 2011.

[341] *L'Est Républicain*, "Une campagne d'information avant la loi 'interdisant la dissimulation du visage dans l'espace public'," March 4, 2011; *La Nouvelle République*, "La campagne contre le voile intégral lancée aujourd'hui," March 4, 2011; *Presse Océan*, "La République à visage découvert," March 4, 2011; *Le Parisien*, "Le voile intégral banni dans les rues dès lundi," April 10, 2011; *Midi Libre*, "Le voile intégral désormais interdit dans les lieux publics," April 11, 2011.

Figure 5.2 – Poster* "La République se vit à visage découvert" *(2011). *The cover of a leaflet that the French government used in the spring of 2011 to promote the law banning face covering in public space. Available at* < http://archives.gouvernement.fr/ayrault/sites/default/files/fichiers_joints/affiche-a3-bd.pdf >.

The law became effective on April 11, 2011, with the media reporting only a small demonstration in Paris.[342] However, those targeted by the measures announced their wish to appeal to the European Court of Human Rights (ECHR) to overturn the law.[343] Finally, the case that reached the Strasbourg court was that of a young French woman, known by the initials S.A.S., described by her supporters as a

[342] *AFP*, "Burqa : la loi s'applique sans incidents notables," April 12, 2011; *Le Figaro*, "Coup d'éclat de femmes en niqab au premier jour de la loi contre le voile intégral," April 11, 2011.

[343] *AFP*, "Coup d'éclat de femmes en niqab au premier jour de la loi contre le voile intégral," April 11, 2011.

"perfect French citizen with higher education" as well as a "patriot."[344] With the help of a British law firm and the support of Amnesty International,[345] S.A.S. appealed to the ECHR in hopes of preserving her right to wear the niqab and the burqa. She stated to the Court that she did not always cover her face in public, but wanted to be able to do so, depending on her particular spiritual feelings. Moreover, S.A.S. emphasized that when she wore a face-veil, she did so out of her own free will. The applicant argued that the law was a violation of her rights under the European Convention of Human Rights. More specifically, she appealed to articles 3 (cruel and degrading treatment), 8 (private life), 9 (freedom of religion), 10 (freedom of expression) and 11 (freedom of assembly and association), "separately and in conjunction with" article 14 (freedom from discrimination) (ECHR 2014, para. 3).

The ECHR's Grand Chamber delivered its verdict on July 1, 2014.[346] The Court primarily focused on the compatibility of the law of October 2010 with the protection of private life (article 8) and freedom of religion (article 9) established by the European Convention of Human Rights. With regard to these articles, the ECHR found that French law presented "an 'interference' with or a 'limitation' of the exercise of the rights protected by Articles 8 and 9 of the Convention" (ECHR 2014, para. 110). However, the Court considered this "interference" to be justified because it pursued a "legitimate aim" and was "necessary in a democratic society." Most importantly for this analysis, while the ECHR rejected the reasoning that the law aimed to promote gender equality and human dignity, it accepted the argument that the law had a legitimate aim insofar as it was necessary for the "respect of the minimal requirements of life in society" and for "living together" (ECHR 2014, para 121). In other words, the ECHR gave the French government a wide margin in determining the extent to which the limitation of religious freedom was necessary (ECHR 2014, para 129). Although the Court stated that it was "very concerned" about "certain Islamophobic remarks" leading up to the adoption of the law (ECHR 2014, para. 149), it accepted the idea that face veils were contrary to the republican social norm of keeping the face uncovered in order to engage in interaction with others:

> It indeed falls within the powers of the State to secure the conditions whereby individuals can live together in their diversity. Moreover, the Court is able to accept that a

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[344] "*Parfaite citoyenne française d'un niveau d'éducation universitaire […]. C'est une patriote*," quoted in *AFP*, "La CEDH appelée à trancher sur l'interdiction du voile islamique intégral en France," June 28, 2014.

[345] *AFP*, "La CEDH tranche sur l'interdiction du voile intégral en France," July 1, 2014; *Le journal du dimanche*, "La Cour européenne, arbitre de nos libertés," June 28, 2014.

[346] European Court of Human Rights, S.A.S. vs. France [GC], no. 43835/11, Judgment of 1 July 2014: < http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145466 >.

> State may find it essential to give particular weight in this connection to the interaction between individuals and may consider this to be adversely affected by the fact that some conceal their faces in public places […] (ECHR 2014, para. 141).
>
> [T]he respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society […]. It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society (ECHR 2014, para. 153).

Faced with this majority opinion, two judges of the ECHR, Angelika Nußberger and Helena Jäderblom, issued a dissenting opinion. According to Nußberger and Jäderblom, the court's decision sacrificed "concrete individual rights guaranteed by the Convention to abstract principles" (ECHR 2014, joint partly dissenting opinion, para. 2). The dissenting judges called into question the aim of the law (the principles of "living together" and "minimum requirements of life in society") as well as the proportionality of the law, referring to the consequences that the law had on the women concerned and to the fact that the government gave no explanation as to why less restrictive measures could not have been put in place. Nußberger and Jäderblom did not think that the promotion of particular traditions or substantive values – such as republicanism – gave the state a right to limit the rights of minorities:

> While it is perfectly legitimate to take into account the specific situation in France, especially the strong and unifying tradition of the "values of the French Revolution" as well as the overwhelming political consensus which led to the adoption of the Law, it still remains the task of the Court to protect small minorities against disproportionate interferences (ECHR 2014, joint partly dissenting opinion, para. 20).

The ECHR's majority decision did not solicit strong reactions from the French political elite. Indeed, as we will see in the following chapters, by 2014, French politicians' attention had shifted to other issues, such as the wearing of the Islamic headscarf in private employment. The ECHR's ruling was simply the epilogue to an "affair" that had come to its conclusion with the ratification of the October 2010 law.

5.9 Republican Social Mores: The Emergence of a Civil Religion

According to French historian Claude Nicolet, proper republican citizenship implies "adherence to a consensus, a declaration of faith incompatible with certain commitments or certain doctrines" (Nicolet 1994, 371). In Chapters 4 and 5, I have empirically demonstrated how French political elites

presented the wearing of the Islamic veil as a practice which was incompatible with republican values. In 2003–2004, they excluded headscarved girls from the republican school system. In 2009, they turned to the wearing of full veils in public space. Although one might have expected a discourse of sexularism to achieve another success, Chapter 5 shows that this was not the case; the politicians and numerous feminists who attempted to evoke *laïcité* and women's rights in order to ban the burqa met with resistance. Indeed, the concept of human dignity that they wanted to employ was not a useful legal tool for establishing a general prohibition on face veils. Instead, the French parliament passed the 2010 burqa ban on the grounds that the wearing of such a garment was a violation of public order. According to the MIP's logic, leaving the face uncovered was a minimal requirement for social life, and neglecting to do so a violation of republican civility. This emphasis on the social aspects of life in society was not new. In fact, at least since Bayrou's 1994 circular, a major part of the French political elite had constructed *laïcité* as a value which was important for its social effects. This idea had been reinforced with the passage of the 2004 law, and it was also central during the MIP's auditions. What was new, however, was the explicit linking of the issues of social harmony and public order. In arguing that the wearing of a full veil was a violation of the "rights of others," the members of the MIP carried out two maneuvers. First, they transformed the legal notion of public order, transforming it into a social order which limited acceptable forms of expression and guaranteed a certain level of social cohesion. Second, they shifted attention from individual rights to the rights of the *corps républicain* as a whole. In this process, individual rights, such as freedom of religion, which were originally meant to protect individuals against the majority and to guarantee that republican citizenship transcends particularist identities, were instead used to protect the cultural, social, and esthetic preferences of the majority. What do these discursive developments tell us about the development of dominant republican ideology? Several theoretical conclusions can be drawn from this empirical analysis.

To begin with, my examination of the "burqa affair" illustrates how some of the morphological shifts that had taken place in 2003–2004 were consolidated. My analysis of the burqa debates shows that French political elites, who had constructed gender equality and *laïcité* as adjacent during the first stage of morphological change described in Chapter 4, continued to reinforce this conceptual proximity in 2009–2010. Indeed, whereas in 2003 feminist organizations were clearly divided on the issue of a headscarf ban, in 2009 those who were heard in public debate were predominantly in favor of banning face veils and reinforcing the new *laïcité* which imposed religious neutrality on private individuals. The burqa controversy thus illustrates how the adjacency of gender equality and *laïcité* became fixed to the

extent that it was no longer significantly questioned. Although neither *laïcité* nor women's rights were used as a legal basis for the ban on full veils, the discourse of sexularism was one of the major arguments that pro-ban actors presented in favor of a new law. Time and again, they appealed to the republican values of *laïcité* and gender equality and argued that full veils were a breach of these principles. In so doing, they argued that the Islamic veil was a threat to liberty and equality, thereby infusing these core values with specific significations and pushing the concept of freedom of religion further towards the margins of republican preoccupations. Through these discursive processes, the morphological shifts that had taken place in 2003–2004 became more firmly established.

Moreover, from a morphological point of view, my analysis shows how the concept of public order, which was already a part of the republican-ideological structure, moved closer to the republican core. As this happened, and as pro-ban actors emphasized the importance of republican sociability, the concept of public order was made into a new social order. Most importantly, I argue that through this transformation of the notion of public order, French political elites promoted a version of republicanism which gave fraternity – rather than liberty or equality – center stage. In other words, the new republican social order provoked a major shift within the republican core concepts of liberty, equality, and fraternity. Out of this core triad, it is the concept of fraternity which is the carrier of the social dimension of republican virtue. Hence, I argue that in promoting social cohesion and shared values, French politicians were privileging fraternity at the expense of liberty and equality. In emphasizing the importance of shared social mores in this way, they pushed the issue of individual rights even further from the core.

Finally, I suggest that this new social order has contributed to republican ideology emerging as a civil religion. Drawing on Rousseau's notion, Robert Bellah has defined a civil religion as "a collection of beliefs, symbols, and rituals with respect to sacred things and institutionalized in a collectivity" (Bellah 1967, 8). While I agree with those who have argued that it is *laïcité* which defines French civil religion (Chelini-Pont 2009; Baubérot 2007; Barras 2013), I suggest that this set of beliefs has a much broader base. Indeed, the morphological changes that took place in 2009–2010 went well beyond the principle of *laïcité*; they concerned a complex web of political concepts and touched the very core of the republican-ideological construct, transforming it in the process. As a result, the passage of the 2010 law not only inscribed social mores in law; it also set an explicit moral code for republican interactions. Henceforth, it was each individual's moral obligation to respect republican standards of civility and to

maintain religious neutrality in public space. In the following chapters, I will shed light on the consequences of the transformed republican core. I will show how individuals started policing others in the name of the collectivity, thereby contributing to the consolidation of the new republican social order and to its extension to new spaces and groups.

Chapter 6

Baby-Loup and Private Employment: From Discrimination to Social Cohesion

The principle of freedom of religion and the principle of non-discrimination are both firmly established by international human rights law,[1] covered by EU directives and the European Convention of Human Rights,[2] and entrenched in French domestic law.[3] In the field of private employment, French workers seem to be well protected against religious discrimination. For example, the law of May 27, 2008[4] modified the French Labor Code by establishing clear provisions against indirect as well as direct discrimination.[5] In fact, judging by the number of overlapping legal norms, the French private-sector employment context has never been as attentive to the issue of freedom of religion as it is today. Yet on June, 25, 2014, the Plenary Chamber of the French Court of Cassation (*Cour de cassation*) confirmed the dismissal of an employee for refusing to remove her Islamic headscarf in the workplace, a private nursery named Baby-Loup. In this 2014 decision, the highest Court considered that the childcare center's ban on conspicuous religious symbols was "justified and proportionate" and, consequently, that

[1] See, for example, Article 18 and Article 28 of the International Covenant on Civil and Political Rights (ICCPR), < https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf >.

[2] Council Directive 2000/78/EC of November 27, 2000, known as the Employment Equality Framework Directive, and Article 9 of the European Convention of Human Rights, which guarantees the right to hold and to manifest religious beliefs.

[3] Both EU directives and the European Convention of Human Rights are incorporated into French law. The Council Directive is integrated into the French Labor Code, and according to Article 55 of the French Constitution, the European Convention of Human Rights is given precedence over conflicting national law.

[4] *LOI n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*, < https://www.legifrance.gouv.fr/afichTexte.do?cidTexte=JORFTEXT000018877783 >.

[5] *Code du travail*, Article L1321-3.

the firing was legal (Cour de cassation 2014). The decision went against a 2013 ruling by the Social Chamber of the Court of Cassation which had, on the contrary, held that the requirement of religious neutrality could not be imposed by a private employer.[6] How did the so-called Baby-Loup case end up with a verdict favoring the nursery, and what happened, in the process, to the employee's right to display her religious beliefs?

I will answer this question by examining the "Baby-Loup affair," a series of legal and political events spanning a period of six years (2008–2014). More specifically, I will reconstruct the discursive processes through which the firing of a private-sector employee was publicly justified. The banning of the Islamic headscarf in the context of private employment was no easy task. Although a major part of the French political elite voiced its support for the nursery's decision, the courts had a more difficult time making sense of the case. Before the Court of Cassation's 2014 ruling, four other legal instances had each applied different reasoning in order to arrive at their respective verdicts (Appendix 2 provides a summary of these rulings). While many French politicians and political commentators from all points on the spectrum tended to interpret the firing of the employee of Baby-Loup as a welcome extension of *laïcité*, as a legal principle, *laïcité* did not turn out to be an effective tool for legitimizing the requirement of neutrality in the context of private employment. This resulted in lengthy litigation and forced legal experts and political actors to seek other arguments in support of the nursery's decision.

In their recent book*, L'affaire Baby Loup ou la nouvelle laïcité* (2014), Stéphanie Hennette Vauchez and Vincent Valentin examine the legal complexities of the Baby-Loup case, interpreting it as an illustration of the "new *laïcité*" which imposes religious neutrality on private individuals. While I agree with their conclusions, my interest, in this chapter, goes beyond *laïcité*; I seek to show the manifold ways in which political and legal actors mobilized republican values and thereby contributed to the development of republicanism as a political ideology. In other words, my aim is to uncover the conceptual morphology which underlay the arguments in favor of the headscarved child-care worker's dismissal, and which led to the exclusion of some women from this field of employment. Does the Baby-Loup affair reveal further shifts within the internal structure of republican ideology? What were the central processes of decontestation?

[6] *Arrêt n° 536 du 19 mars 2013 (11-28.845)*: < https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/536_19_25762.html >.

From a theoretical point of view, the analysis that I present in this chapter shows that political and legal actors continued to employ the republican morphology which they had constructed during the burqa debates, thereby consolidating this existing ideological structure. In contrast to the "affairs" examined in Chapters 4 and 5, in the Baby-Loup case, these processes primarily took place in the judicial sphere, forming a discursive interplay between political actors and the courts which ruled on the issue. My analysis sheds light on three ideological dynamics.

Firstly, my examination of the "Baby-Loup affair" shows that the concept of *laïcité* remained central in dominant republican reasoning. The public discourses surrounding the Baby-Loup case revolved around the transformed notion of *laïcité* – a form of religious neutrality that could be imposed on private individuals (Hennette Vauchez and Valentin 2014). As shown above, gender equality had been constructed as adjacent to *laïcité* in 2003–2004, and the 2009–2010 debates had solidified this conceptual proximity to the point where it was generally accepted as a given. As a result, in the discussions surrounding Baby-Loup, the concept of women's rights, which was infused with the requirement of religious neutrality, was no longer the object of major decontestation processes. Since the republican attachment to women's rights was not questioned, the concept of gender equality remained where it was: close to the republican core.

Secondly, and more importantly, this chapter reveals the consequences of the transformed republican core which prioritizes fraternity over liberty and equality. Indeed, my analysis shows that once fraternity started to trump liberty and equality within the republican core, this morphological shift had repercussions. For example, we will see how those wishing to ban the headscarf from private childcare services emphasized the "common good" (*intérêt public*) at the expense of individual rights and freedoms. In applying this new republican discourse to the Baby-Loup case, they succeeded in eliminating the issue of employment discrimination. In other words, what started as a public debate concerning the limits of individual religious freedom in the workplace was transformed into an issue focused on public benefit and the needs of society at large. Faced with the shortcomings of *laïcité* as a legal justification for the ban on conspicuous religious symbols in the employment context, French political and judicial actors again turned to the promotion of "shared values" and social interaction. In so doing, they reinforced the primacy of fraternity over liberty and equality within dominant republican morphology.

The "Baby-Loup affair" is hence part of a much broader ideological development: the gradual emergence of a new discourse on social cohesion – one permeated by the requirement of religious neutrality and dependent on the exclusion of headscarf-wearing Muslim women from a variety of public spaces.

Thirdly, the controversy surrounding the Baby-Loup nursery illustrates how the new republican social order, created in 2010, was extended to a new sphere: private employment. Chapter 5 showed how the "burqa ban" established the absence of face veils as a republican social norm distinguishing deserving citizens from those who were seen as a threat to the community and its social harmony. In this chapter, my analysis illustrates how the absence of headscarves was constructed as a responsibility of the individual employee in the context of private childcare services. In other words, this chapter demonstrates how the republican virtue of individual religious neutrality became more firmly established.

Figure 6.1 below illustrates the evolution of the debate. Prepared with the help of the Factiva database, it shows the number of articles published on the Baby-Loup case in the French written press. Although the firing in question took place in December 2008, wide-spread public discussion of the topic started only in March 2010 when the French Anti-Discrimination and Equal Opportunities Authority (the HALDE) condemned the dismissal as discriminatory. Since then, four judicial rulings provided different arguments for or against the dismissal of a headscarved employee. Proceeding in a chronological order, my analysis will show how French political and legal elites succeeded in circumventing the issue of discrimination and constructing the dismissal as a respectable measure.

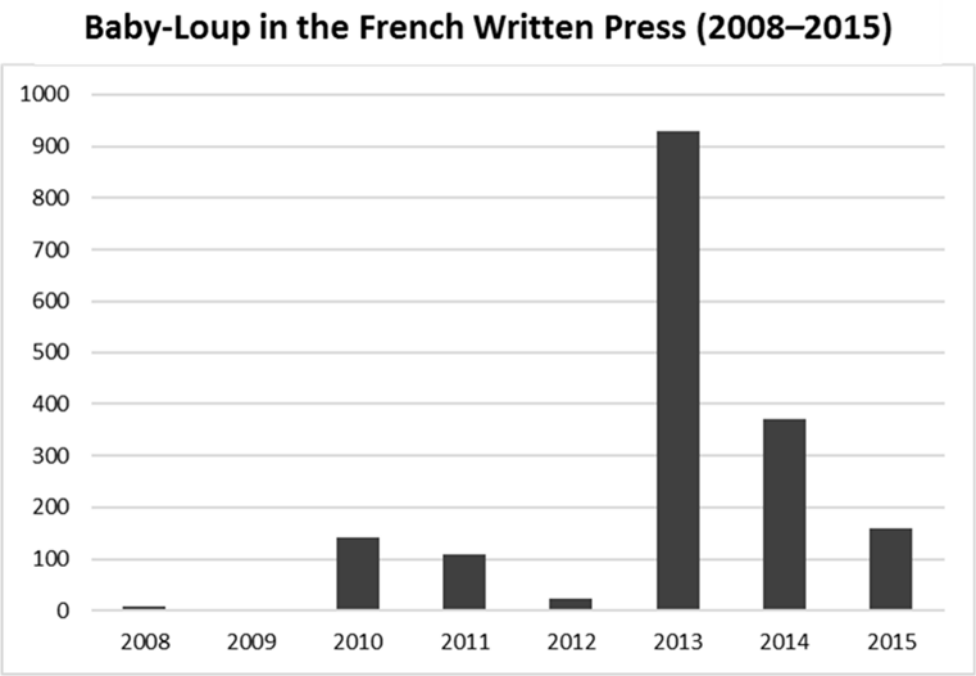

Figure 6.1 – Baby-Loup in the French Written Press (2008–2015). *This figure indicates how the Baby-Loup case emerged and developed as a topic of French public discourse. Based on Factiva, it shows the number of articles published in the written press that include the words "Baby-Loup." This figure confirms that public discussion surrounding the case started in 2010 when the HALDE rendered its decision.*

6.1 Baby-Loup: *Laïcité* Infiltrates Private Employment (2008–2010)

On December 19, 2008, Fatima Afif,[7] an employee of a private nursery named Baby-Loup, was dismissed for gross misconduct for returning to work after her parental leave wearing the Islamic head-scarf. Mrs. Afif had first been employed by Baby-Loup, a childcare center located in the municipality of Chanteloup-les-Vignes[8] (Yvelines), in 1991 on a state-subsidized work contract which had later been renewed. In 1994, she had started wearing the headscarf on an intermittent basis, especially when working outside of the day-care center. In 1996, the Baby-Loup nursery helped her obtain a professional

[7] A Moroccan immigrant, Fatima Afif had moved to Chanteloup-les-Vignes at the age of three and had lived there for the whole rest of her life.

[8] Chanteloup-les-Vignes is a problem-ridden, multiethnic city some 30 kilometers north-west from Paris. Because of the various pressures brought on by the affair, Baby-Loup temporarily closed its doors in December 2013 before moving to the neighboring municipality of Conflans-Sainte-Honorine in March 2014.

degree as a childcare worker, and in 1997, it employed her on a permanent contract and made her assistant director of the center. At what point did things start going awry?

All sources agree that the first years of Mrs. Afif's employment had been exemplary, and that the problems in the workplace started gradually in the 2000s.[9] However, as noted in the decision of the Labor Court in 2010, Mrs. Afif had worn the headscarf from time to time since 1994, apparently unbeknownst to the director of the center. In 2001, she had received a warning because of her garment, but had continued to wear it occasionally. She had gone on maternity leave in 2003, but had continued to participate in certain work-related activities. The problems broke out when she returned to work in 2008 and refused to remove the scarf that was covering her hair, neck, and chest.

At the heart of the Baby-Loup controversy are the private nursery's rules and regulations. Established in 1990, the Baby-Loup association's explicitly stated goal was to work in the sphere of early childhood in the disadvantaged neighborhood of La Noé[10] and to "aim for the social and professional integration of women in the neighborhood."[11] The childcare center's rules further noted that its personnel should play a role in "child development" and "respect and maintain political and religious neutrality with regard to its clients."[12] Yet these were not the only clauses that the nursery referred to in justifying Mrs. Afif's dismissal. On July 15, 2003, when Mrs. Afif was on maternity leave, the nursery had in fact amended its rules to include an explicit mention about clothing as well as a specific clause concerning the application of the principle of *laïcité*. The new rules stated the following:

> In general, the employees must, in fulfilling their duties, adopt clothing, behaviors and attitudes which respect the freedom of conscience and the dignity of everyone. […] The freedom of conscience and the freedom of religion of each employee cannot stand in the way of the respect of the principles of *laïcité* and neutrality which apply to the activities developed by the association […].[13]

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[9] Even authors who have fervently defended the nursery have admitted this fact. See, for example, Dupraz's *Baby-Loup, histoire d'un combat* (2012) and Caroline Eliacheff's *Comment le voile est tombé sur la crèche* (2013).

[10] La Noé is where 80% of Chanteloup's residents live: it consists of big housing projects in the "lower" side of the city. The neighborhood of La Noé served as backdrop for Mathieu Kassovitz's 1995 film *La Haine*, depicting the lives of immigrant youth in a context of rioting, policy scrutiny, and growing xenophobia.

[11] "*[O]euvrer pour l'insertion sociale et professionnelle des femmes du quartier*," quoted in HALDE (2010).

[12] "*Le personnel doit avoir un rôle complémentaire à celui des parents pour ce qui est de l'éveil des enfants. Dans l'exercice de son travail, celui-ci doit respecter et garder la neutralité d'opinion politique et confessionnelle en regard du public accueilli […]*" quoted in HALDE (2010).

[13] "*De manière générale, les membres du personnel doivent adopter, dans l'exercice de leurs fonctions, une tenue, un comportement et des attitudes qui respectent la liberté de conscience et la dignité de chacun. […] Le principe*

It was in reference to this company code of conduct that the director of Baby-Loup, Natalia Baleato, repeatedly asked the employee, Fatima Afif, to remove her headscarf upon returning to work after her parental leave. Mrs. Afif refused but was willing to resolve the dispute by terminating her work contract with full unemployment benefits,[14] a solution which did not suit the nursery. Baby-Loup's director considered that Mrs. Afif's refusal to remove her headscarf constituted "gross misconduct" (*faute grave*) insofar as the employee had disregarded the establishment's amended rules. Although the company rules did not mention the wearing of the Islamic headscarf specifically, the childcare center's director deduced the ban on the Islamic headscarf from the general requirement of neutrality. In other words, Baby-Loup justified its decision to dismiss Mrs. Afif by arguing that the Islamic headscarf was at odds with the establishment's rules of *laïcité* and neutrality. The employee herself thought that the dismissal was discriminatory since it had been based solely on the expression of her religious beliefs. In January 2009 Mrs. Afif appealed to the French Anti-Discrimination and Equal Opportunities Authority (the HALDE), and in February 2009 she filed a complaint with the Labor Court of Mantes-la-Jolie (*Conseil de prud'hommes de Mantes-la-Jolie*) for religious discrimination and the breach of her basic liberties, asking for 80,000 euros in damages. So began a six-year legal process that would come to attract national attention and spur French political elites into action.

The HALDE – presided over by Louis Schweitzer[15] – rendered its decision on the Baby-Loup case on March 1, 2010. The Anti-Discrimination Authority's deliberation stated that as a private association, the Baby-Loup nursery unequivocally fell under private law, and was therefore bound by the French Labor Code. The HALDE considered three articles of the Labor Code to be particularly relevant for the Baby-Loup case. First, the HALDE referred to Article L. 1132-1 which states that employees cannot be sanctioned, fired, or discriminated against either directly or indirectly because of their religious beliefs. Second, Article L-1121 asserts that "no one may impose on individual and collective rights and liberties

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de la liberté de conscience et de religion de chacun des membres du personnel ne peut faire obstacle au respect des principes de laïcité et de neutralité qui s'appliquent dans l'exercice de l'ensemble des activités développées par l'association […]" quoted in HALDE (2010).

[14] Interview of Aziz Bentag, "*Elle souhaitait partir mais avec des indemnités*," quoted in *L'Est Républicain*, " Voilée et licenciée," November 7, 2010.

[15] The HALDE is comprised of members appointed by the President of the Republic, the President of the Senate, the President of the National Assembly, the Prime Minister, the Council of State, the Court of Cassation and the Economic, Social and Environmental Council. At the time, its members included, among others, Amar Dib (sociologist), Jean-Yves Monfort (member of the Court of Cassation), and Olivier Rousselle (member of the Council of State).

restrictions that are not justified by the nature of the tasks to be carried out or proportionate to a legitimate aim."[16] The aim of this article is to protect the employee's freedom of religion by prohibiting the employer from restricting this freedom unless it is necessary to do so for reasons related to security, health, or hygiene. Third, the HALDE invoked Article L-1321-3 which specifies that the rules and regulations of a private employer cannot include clauses that would encroach on the employee's rights and liberties without justified and proportionate cause.[17] Besides invoking the Labor Code, the Anti-Discrimination Authority also stated that a general restriction on the right to manifest one's religion – such as inscribed in Baby-Loup's rules – was against the French Constitution, the European Convention of Human Rights, and the EU Employment Equality Framework Directive. Since the nursery's rules were unlawful, the decision, signed by Louis Schweitzer, concluded that Mrs. Afif's dismissal constituted religious discrimination. The HALDE also confirmed its intention to appear in the Baby-Loup trial in order to present its observations and conclusions directly to the Mantes-la-Jolie Labor Court. Although the HALDE does not provide binding legal verdicts, its recommendations are usually followed by French courts.

Despite the support that the HALDE offered to Mrs. Afif – and the number of legal norms that it invoked – the controversy surrounding the Baby-Loup case was only just starting. A few weeks after the HALDE's March 2010 decision was made public, the President of the Republic, Nicolas Sarkozy, appointed Jeannette Bougrab as the new president of the HALDE.[18] Bougrab, a member of the UMP and the descendent of Algerian loyalists (Harkis),[19] had become known under Alain Juppé's leadership as the author of a public report on the issue of discrimination in the field of employment,[20] leading her to obtain a seat in the High Council for Integration (HCI) in 2002.[21] At the time of her nomination to the

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[16] "*Nul ne peut apporter aux droits des personnes et aux libertés individuelles et collectives des restrictions qui ne seraient pas justifiées par la nature de la tâche à accomplir ni proportionnées au but recherché*."

[17] "*Le règlement intérieur ne peut contenir […] des dispositions apportant aux droits des personnes et aux libertés individuelles et collectives des restrictions qui ne seraient pas justifiées par la nature de la tâche à accomplir ni proportionnées au but recherché*."

[18] Louis Schweitzer had arrived at the end of his five-year term.

[19] Bougrab herself referred to her immigrant background on several occasions in relation to the Baby-Loup case. See, for example, *La Croix*, "Jeannette Bougrab, au service de l'État," September 25, 2010.

[20] Bougrab et al., "*Lutter contre les discriminations dans l'accès au marché de l'emploi et à la vie professionnelle quotidienne*" (2003). Jeannette Bougrab is also author of *Les discriminations positives coup de pouce à l'égalité ?* (2007) and co-author of *Qu'est-ce qu'être Français ?* (2009).

[21] *Haut conseil à l'intégration*.

HALDE, Bougrab was working as councilor (*maître des requêtes*) for the French Council of State. According to *Le Figaro*, Bougrab was the very opposite of former president Louis Schweitzer: not only was she a young woman, but she also announced that she was not willing to "point her finger blindly at private businesses."[22]

In an unprecedented move, in July 2010, the newly-appointed president of the HALDE distanced herself from the institution's official stance. In an interview given to *Le Point* on July 15, two days after the National Assembly had voted in favor of a law banning the burqa, Bougrab voiced her opinion about the Baby-Loup case: "In general terms, the HALDE favored freedom of religion over *laïcité*. I do not share this understanding."[23] Bougrab's statement echoes the formulation of Baby-Loup's company rules according to which "the freedom of religion of the employee cannot stand in the way of the respect of the principles of *laïcité* and neutrality." Not only did Bougrab apply *laïcité* to the private employment context without explaining how this could be done, but she also followed Baby-Loup's reasoning in giving religious "neutrality" priority over the principle of freedom of religion. Bougrab's position is illustrative of what Hennette Vauchez and Valentin (2014) have called the "new *laïcité*": the willingness to extend the principle of public secularism to the private sphere – where it, according to the 1905 law, does not apply – and to use it to restrict individual religious freedom.[24]

On October 8, 2010, the date for the Baby-Loup trial was fixed for the coming November.[25] The following day, Bougrab announced that "it would be a failure for the HALDE" if it did not reopen its investigation into the Baby-Loup case.[26] This time, her argument was more developed. According to the president of the HALDE, the issue of Mrs. Afif's dismissal should not be examined through the lens of private employment law because a childcare service such as Baby-Loup offers a "public service." Moreover, Bougrab created a parallel between childcare and public schooling:

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[22] "*[J]e ne vais pas […] pointer du doigt à l'aveugle les entreprises*," quoted in *Le Figaro*, "Jeannette Bougrab, l'anti-Schweitzer," April 10, 2010.

[23] "*D'une façon générale, la HALDE a fait prévaloir la liberté religieuse sur la laïcité. Ce n'est pas ma conception*," quoted in *Le Point*, "La crèche qui relance l'affaire du voile," July 15, 2010.

[24] On this topic, see also Baubérot (2012).

[25] *AFP*, "Licenciée, une salariée voilée d'une crèche saisit les prud'hommes," October 8, 2010.

[26] "*[C]e serait un échec pour elle [la Halde]*," quoted in *Libération*, "Crèches : tous voiles dehors ?," October 9, 2010.

> How can a nursery which receives public funds and fits within the public policy framework be purely private? Baby-Loup provides a public service. The debate is the same as with schools, but for children under the age of three, there is a legal loophole.[27]

Bougrab's statement mixed two types of arguments that would become prevalent in the public discussion that followed. On the one hand, she compared the position of the employee of a private nursery to that of a public servant who is prohibited, according to the principle of *laïcité*, from expressing religious beliefs. On the other hand, she referred to the debate that had led to the ratification of the March 2004 law which had prohibited students from displaying conspicuous religious symbols in the public school system.[28] In the public discourses surrounding the question of the veil in the republican classroom, pro-ban actors had often voiced the argument that students needed to be protected from the proselytism and sexism of "radical Islam." The French parliament had validated this interpretation by ratifying the 2004 law. By analogy, Bougrab argued that younger children were in need of the same protection. Her above-quoted statement did not take into account the differences in the (legal as well as practical) positions of a "veiled" employee and that of a headscarved schoolgirl.

Baby-Loup's approaching trial date sparked public interest in the case, especially after Jeannette Bougrab had announced her willingness to overturn the HALDE's decision on the issue (see Figure 6.1, p. 255). Bougrab's disagreement with the position adopted by the HALDE under her predecessor opened the floodgates for public criticism of the decision. Baby-Loup's lawyer, Richard Malka, jumped at the chance to condemn the HALDE's March 2010 conclusions by denouncing them as "particularly biased," "indecent," and "irresponsible," criticizing the Anti-Discrimination Authority not only for its earlier "absence of judicial rigor," but also for "a lack of intellectual honesty."[29] In an interview pub-

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[27] "*Comment une crèche qui bénéficie des fonds publics et s'insère dans une politique publique peut-elle être purement privée ? Baby-Loup assure une mission de service public. C'est le même débat que pour l'école, mais sur les enfants de 0 à 3 ans il y a un vide juridique*," quoted in *Libération*, "Crèches : tous voiles dehors ?" October 9, 2010.

[28] *Loi n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*.

[29] "*Je suis atterré, abasourdi, scandalisé par cette délibération indécente, irresponsable et malhonnête*," quoted in *Le Point*, "'La Halde s'est discréditée'," July 15, 2010 ; "*Malka […] dénonce 'le caractère extraordinairement partisan, l'absence de rigueur juridique et, malheureusement, le manque d'honnêteté intellectuelle' de la Halde*," quoted in *Libération*, "Crèches : tous voiles dehors ?," October 9, 2010.

lished in *Libération* on October 9, Malka also referred to the challenges of the multiethnic neighborhood of La Noé and to the danger of communalism, a theme often used in French public discourse to underline the importance of social cohesion:

> How does an institution which is supposed to combat discrimination dare sanction those who […] strive for integration and cohabitation amongst 70 different nationalities? The HALDE has discredited itself by acting as a grave-digger for *laïcité* and as a Trojan horse for communalism. […] I am very angry with Louis Schweitzer for having signed the [March 1] decision and I applaud Jeannette Bougrab for having courageously criticized it.[30]

When asked by the interviewer whether the role of the HALDE was not precisely to protect freedom of religion, Richard Malka referred to the important role that *laïcité* plays not only in the French legal system, but also in society at large:

> The law must look for a balance between principles that can be in contradiction with each other, such as freedom of religion and *laïcité*, and that have to be reconciled while bearing in mind the culture of the country and the will of the society. *Laïcité* is part of our DNA, it protects all religions. […] The decisions taken under Louis Schweitzer's presidency […] amount to favoring communalism over the common values that form the basis of our society.[31]

Malka's depiction of *laïcité* is reminiscent of the discourses surrounding the 2010 "burqa ban." Indeed, as seen in Chapter 5, these discourses concerning face veils had extended the requirement of religious neutrality to a new sphere: "public space." Malka's above-quoted description of the principle of public secularism should be understood as part of this broader discourse that interprets *laïcité* as a "shared value" of the French society rather than simply as the legal principle that is inscribed in the

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[30] "*Comment une institution censée lutter contre les discriminations ose-t-elle sanctionner ceux qui […] œuvrent à l'intégration et au vivre-ensemble au milieu de 70 nationalités ? […] C'est la Halde qui s'est discréditée en se comportant comme le fossoyeur de la laïcité et le cheval de Troie du communautarisme. […] J'en veux terriblement à Louis Schweitzer d'avoir signé cette décision et je rends grâce à Jeannette Bougrab de l'avoir courageusement critiquée*," *Libération*, October 9, 2010.

[31] "*Le droit doit rechercher un équilibre entre des principes qui peuvent s'opposer, en l'occurrence la liberté religieuse et la laïcité, qu'il faut concilier en tenant compte de la culture du pays et de la volonté de la société. La laïcité fait partie de notre ADN, elle protège toutes les religions. L'abandonner serait faire le jeu des extrémistes. […] les décisions prises sous la présidence de Louis Schweitzer dessinent une espèce d'abstraction juridique et sociétale consistant à défendre inconditionnellement les droits des minorités, considérées comme ontologiquement victimes. Au final, cela revient à faire prévaloir le communautarisme sur les valeurs communes qui inspirent notre modèle de société*," *Libération*, October 9, 2010.

1905 law. By arguing that *laïcité* was part of the "French DNA," Malka removed this concept from contest by describing it as a self-evident basis of republican social life.

While Malka's comments were unsurprising given his role in Baby-Loup's legal defense team, Bougrab's dissatisfaction with the HALDE's decision also sparked a number of other public figures to voice their support for the nursery. Many of them referred to the law of 2004, to the principle of *laïcité*, and to the danger of communalism. Élisabeth Badinter, who had an existing relationship with the nursery,[32] was from the very beginning one of the fiercest defenders of Baby-Loup's decision to dismiss Mrs. Afif:

> Why should religion have anything to do with nurseries! The prohibition on the wearing of ostentatious [*ostentatoire*] religious symbols [that is enforced] in schools should apply here as well. [The HALDE has] turned its back on the shared idea of *laïcité* and the spirit of the 2004 law. […] This is the triumph of communalism *à l'anglo-saxonne*.[33]

On October 13, the HALDE officially reopened its investigation into the Baby-Loup case. Bougrab justified the decision by stating that the issue concerned public service and *laïcité* – she made no mention of private employment.[34] The distinction that Bougrab made between Baby-Loup and other private businesses stands out in light of an editorial piece that appeared in *La Tribune* on October 14. Published under the title "The firm – an important issue in the fight against discrimination,"[35] Bougrab's text stressed the HALDE's willingness to support private businesses in the promotion of equality:

> Since 2003, October 14 is celebrated as the "I-Like-My-Company" Day. This delightful initiative reminds us that companies must aim to be a place of personal growth and exchange as well as a context that accepts diversity. [This is also] an opportune time to remind everyone that private firms, which employ 20 million people, are an important context for and a major actor in the fight against discrimination and the promotion of equality. Because businesses are a fundamental concern, the HALDE will

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[32] In the summer of 2010, Badinter had agreed to become the nursery's "godmother" (*Le Point*, "La crèche qui relance l'affaire du voile," July 15, 2010).

[33] "*Je me demande ce que la religion a à faire dans une crèche ! L'interdiction des signes religieux ostentatoires à l'école devrait s'appliquer ici aussi. […] tourne le dos à la conception commune de la laïcité et à l'esprit de la loi de 2004, et ouvre le boulevard à toutes les revendications qui se servent de la religion. C'est le triomphe du communautarisme à l'anglo-saxonne*," quoted in *Le Point*, "L'intégrisme teste notre capacité de résistance," July 15, 2010.

[34] *Le Parisien*, "Employée de crèche voilée licenciée : la Halde rouvre le dossier," October 21, 2010.

[35] *La Tribune*, "L'entreprise, enjeu majeur de lutte contre les discriminations," October 14, 2010.

continue, as is prescribed in its mandate, to contribute to the respect of equality in companies.[36]

In this opinion piece, Bougrab also put particular emphasis on the issue of gender equality, stating that her aim was to support antidiscrimination in the private employment context in a society that conveys the "principle of everyone's equal dignity in a concrete way."[37] Despite her engagement in the fight against discrimination, Bougrab's public statements throughout 2010 clearly show that the HALDE's president did not think that Mrs. Afif should benefit from the protection of the principles of non-discrimination and freedom of religion in the same way as other private-sector employees. Indeed, it seems that, for her, the issue of Mrs. Afif's firing was not an issue of employment discrimination; it was rather a case concerning the requirements of *laïcité*.

The Baby-Loup case was tried in the Labor Court of Mantes-la-Jolie on the afternoon of November 8, 2010, with French riot-control forces circling the city and a strong police presence at the courthouse. The president of the feminist organization *Ni putes ni soumises*, Sihem Habchi, was present while the Yvelines Freethinkers' Association[38] was distributing tracts in the forecourt. The hearing turned into a media event when Élisabeth Badinter and Jeannette Bougrab arrived on the scene. While Badinter did not give a statement, Bougrab repeated her support for the nursery to the journalists who were present.[39] A few minutes later, MP (and future Prime Minister) Manuel Valls (PS) also made his entrance, stating that "children must be protected."[40] In a similar vein to Bougrab, Valls confirmed that his presence in court was a sign of his "clear support" for Baby-Loup.[41] He further stated his willingness

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[36] "*Depuis 2003, le 14 octobre est célébrée comme la journée 'J'aime ma boîte'. Cette sympathique initiative rappelle que l'entreprise doit tendre à être un lieu d'épanouissement personnel et d'échange dans une diversité assumée. Moment opportun pour rappeler que les entreprises privées, qui emploient 20 millions de personnes, sont un lieu et un acteur majeur dans la lutte contre les discriminations et pour l'égalité. Parce que les entreprises sont un enjeu fondamental, la Halde continuera, comme le veut son mandat, à contribuer au respect de l'égalité dans l'entreprise*," quoted in *La Tribune*, "L'entreprise, enjeu majeur de lutte contre les discriminations," October 14, 2010.

[37] "*Alors qu'une étude du Forum économique mondial fait passer la France du 18e au 46e rang pour l'égalité hommes-femmes, c'est le sens de mon engagement : celui d'une société à la fois humaine et performante, qui traduise de manière concrète le principe d'égale dignité de tous*," quoted in *La Tribune*, "L'entreprise, enjeu majeur de lutte contre les discriminations," October 14, 2010.

[38] *Association des Libres Penseurs des Yvelines*.

[39] See, for example, *Le Parisien*, "Nounou voilée : Elisabeth Badinter et Jeannette Bougrab au tribunal des prud'hommes," November 8, 2010; *AFP*, "Salariée voilée et licenciée : la crèche soutenue par Jeannette Bougrab," November 8, 2010; *Le Parisien*, "La nounou voilée de Baby Loup perd le soutien de la Halde," November 8, 2010.

[40] "*Les enfants doivent être protégés*," quoted in *Midi Libre*, "Des soutiens pour la crèche," November 9, 2010.

[41] *L'Express*, November 9, 2010.

to put forward a bill that would "prohibit conspicuous religious symbols in places where there are children," referring to the 2004 law and to the "legal loophole" that existed concerning childcare centers.[42] Valls called for the political left to take up the issue in order to stand up to the "fundamentalist pressures that refuse to recognize woman's situation and endanger a childcare center that is indispensable for the women, families and children of low-income neighborhoods."[43] For Valls – as for many other supporters of Baby-Loup – the issue at hand was not one of private employment but of childcare and especially of nurseries located in the disadvantaged neighborhoods. Although Valls's support for Baby-Loup – and his related dismissal of the HALDE's March 1 deliberation – could not have been clearer, the Socialist deputy did not elaborate on how it would be possible to prohibit religious garments from "places with children."

The presence of public figures such as Badinter, Bougrab, and Valls in the Labor Court proceedings is far from insignificant. To begin with, by her very appearance, Badinter – as a well-known advocate for "women's rights" – gave a feminist stamp of approval for the firing of Mrs. Afif, a woman working in an almost exclusively female employment sector. As for Bougrab, her high-ranking public mandate was to promote equality and to offer support for victims of discrimination. Bougrab's vocal defense of Baby-Loup's actions contributed to shifting attention from the potential discrimination experienced by the *employee* towards the *clients* of what she described as a "public service." Finally, the actions of Manuel Valls illustrate that the judicial branch is not separate from the legislative one. In the role of lawmaker, Valls appeared in court in person to urge the Labor Court to take action to fill a "legal loophole" until it could be addressed by legislative means. Indeed, through these comments, Valls recognized that Mrs. Afif's dismissal was not based on an existing law, yet essentially asked the court to rule in favor of the nursery anyway. Neither Valls, Badinter nor Bougrab mentioned that the issue at hand concerned the employee's right to display her religious beliefs in the private employment sector. Instead, in their various public appearances, they emphasized the collective responsibility of the French

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[42] "*Il semblerait qu'il y ait un vide juridique et je vais réfléchir à l'idée d'une proposition de loi pour qu'on interdise, comme c'est le cas à l'école, le port de signes religieux distinctifs là où il y a des enfants*," quoted in *L'Est Républicain*, "L'affaire du voile à la crèche de Chanteloup-les-Vignes devant les Prud'hommes," November 8, 2010.

[43] "*Je pense que la gauche doit se saisir de ce problème, elle ne doit pas être frileuse […] On ne peut pas être soumis à cette pression conservatrice, intégriste qui nie la condition de la femme et qui met en danger une crèche indispensable aux femmes, aux familles, aux enfants des quartiers populaires*," quoted in *AFP*, "Baby Loup : interdire les signes religieux 'là où il y a des enfants' (Valls)," November 8, 2010.

society to protect its most vulnerable members: women, children, and low-income families. In doing so, they effectively excluded Mrs. Afif from the category of citizens whose rights should be preserved.

The six-hour court hearing proceeded with Mrs. Afif's lawyer referring to "a very simple case" and to the position adopted by the HALDE on March 1, and the defendant arguing that the employee had been wearing the Islamic headscarf in a specific attempt to breach her work contract.[44] Baby-Loup's lawyer, Richard Malka, went as far as to imply that the principle of religious freedom was not an actual legal requirement, but rather a new demand formulated by minorities:

> In France, people tell us that there ought to be a principle of religious freedom. That in every company and every daycare center, we must, in other words, accept it. We would have the headscarf, the skullcap, Buddhist clothing, organic food, halal food.[45] It would become unmanageable.[46]

In painting a picture of a multicultural work environment where there would be no end to religious and cultural demands, Malka effectively flipped the issue on its head. Instead of justifying the employer's right to restrict the employee's freedom of religion (as is required by the Labor Code), Malka shifted the burden on the employee. How could she justify her request to wear the headscarf, when such exemptions could lead to chaos and to never-ending demands? Malka's rhetoric serves to hide the fact that freedom of religion is a well-established legal principle that applies to the private employment sector. While French employees do not have the legal right to religious accommodations (Kutoroff 2015, 274-275), all restrictions on their right to display their religious beliefs have to be justified by the nature of the task and proportionate to a legitimate aim.[47] In contrast to the legal norms aiming to protect individuals from religious discrimination, Malka's argument implied that it was the *demands of the employees* – and not the restrictive measures of the employer – that should be "justified and proportionate." This discursive manoeuver resembles the republican reasoning employed by the members of the MIP during the burqa discussions when they had shifted the burden of maintaining republican

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[44] "*Fatima savait qu'elle ne pouvait pas porter le voile. Elle l'a fait pour obtenir une rupture de contrat*," quoted in *Le Parisien*, "La nounou voilée de Baby Loup perd le soutien de la Halde," November 9, 2010.

[45] In fact, the Baby-Loup nursery (which was located in a mainly Muslim neighborhood) *was* serving halal food to children.

[46] "*En France, on nous dit qu'il y aurait un principe de liberté religieuse. Autrement dit, dans chaque entreprise, dans chaque crèche, on ne peut plus s'opposer à cela. On aurait alors le foulard, la kippa, des habits de bouddhistes, le bio, le halal. Cela deviendrait ingérable*," quoted in *Le Parisien*, "La nounou voilée de Baby Loup perd le soutien de la Halde," November 9, 2010.

[47] Article L-1121 of the French Labor Code.

civility on private individuals who were henceforth obliged to refrain from ostentatious expressions of religious belief.

The Baby-Loup trial concluded with Jeannette Bougrab's hearing in the Mantes-la-Jolie Labor Court. In her testimony, Bougrab again denounced the decision taken under Louis Schweitzer's presidency, and defended the day-care center's right to choose "*laïcité* as a philosophical option."[48] Much like Valls, she referred to the disadvantaged neighborhood where Baby-Loup was located – this time, by referring to equality in the application of the principle of public secularism:

> There is no reason why *laïcité* should be protected less than religious freedom, these are two constitutional principles. There is not one *laïcité* which is applied in Saint-Germain-des-Prés [central Paris] and another one in troubled areas. I think this is unacceptable.[49]

In a similar vein to Valls, Bougrab put the emphasis on the specific demands of a multiethnic neighborhood such as La Noé. Instead of recognizing that respect for individual religious freedom was particularly put to the test in neighborhoods with large Muslim minorities, Bougrab spoke as though the absence of visible religiosity in upper-class Parisian neighborhoods was proof of a stringent application of the principle of *laïcité* (and not the logical consequence of the homogenous population that inhabits those neighborhoods). From this viewpoint, Bougrab implied that imposing *laïcité* in poorer neighborhoods was a way of bringing them up to standard and letting them enjoy the same attention as high-end districts. She failed to mention that the issue of visible religiosity emerged in diverse neighborhoods precisely because of their diversity and because the norm for expressing one's religious beliefs in an acceptable manner was set by mainstream Christian-heritage culture. Indeed, although the new republican social order which had been constructed in 2009–2010 was camouflaged as neutrality, it was infused with the values of the majority. In the above-quoted passage, Bougrab was essentially arguing that the republican social norm – the absence of headscarves – should prevail in all neighborhoods irrespective of their characteristics.

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[48] See, for example, *La Croix*, "La crèche Baby Loup a reçu le soutien de la présidente de la Halde," November 10, 2010.

[49] "*Il n'y a pas de raison que la laïcité soit moins bien protégée que la liberté religieuse, ce sont deux principes de valeur constitutionnelle. Il n'y a pas une laïcité qui s'applique à Saint-Germain-des-Prés et une autre dans les quartiers sensibles. Je trouve cela inacceptable*," quoted in *Le Parisien*, "La nounou voilée de Baby Loup perd le soutien de la Halde," November 9, 2010.

Bougrab's decision to go against the HALDE's March 2010 deliberation and former president Louis Schweitzer's position created turmoil within the organization. The internal split of the institution became strikingly clear when, directly following Bougrab's appearance in Labor Court, the legal department of the HALDE publicly stated that it was against the President's stance. In a text made public in *Le Monde* on November 10, the legal department reiterated the position taken during Louis Schweitzer's term. The legal department stressed that the requirement of religious neutrality was not something that could be imposed by a private organization on its employees. As a private association, Baby-Loup fell under the requirements of French private law even if it was partly financed by public funds. According to the HALDE's legal department, overturning the original decision would signify that the principle of public secularism would be extended from the state to other organizations, "outside of any legal framework." The text further emphasized that the French parliament, as legislator, was the only institution authorized to formulate new rules on the issue. If Jeannette Bougrab and the other supporters of Baby-Loup wanted to make the firing of a headscarved employee legitimate, the law would have to be changed.

The deep division between the HALDE and its president ended when François Fillon (UMP) appointed Jeannette Bougrab as Secretary of State[50] in his third government. Bougrab took up office on November 14, 2010, thereby leaving her post in the HALDE. Under the direction of Bougrab's successor, Éric Molinié, the HALDE decided, on December 6, 2010, not to reopen the Baby-Loup case, thus leaving the March 1 decision in force.

Although the HALDE (temporarily) retreated from reexamining the issue, another public institution followed in Bougrab's footsteps when Patrick Gaubert, the president of the High Council for Integration[51] (HCI), expressed his support for Baby-Loup in its struggle to "enforce religious neutrality." According to Gaubert's November 10 statement, the HCI's goal was "that in all of the educational institutions of our country, the republican principle of *laïcité* is clearly affirmed and resolutely enforced."[52] Although the requirement of *laïcité* only limited, since 2004, the religious freedom of students in public

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[50] *Secrétaire d'État chargée de la Jeunesse et de la Vie associative*.

[51] *Haut Conseil à l'Intégration*.

[52] "*[…] entend œuvrer pour que, dans toutes les institutions éducatives de notre pays, le principe républicain de laïcité soit clairement affirmé et fermement appliqué*," quoted in *AFP*, "Le HCI soutient la crèche Baby Loup qui a licencié la salariée voilée," November 10, 2010.

schools, Gaubert's discourse extended this requirement to *all* educational spaces. The attempt to extend the prohibition on religious symbols beyond the sphere of public primary and secondary education was nothing new. For example, the issue of banning conspicuous religious symbols from universities had come up regularly throughout the years.[53] What was new, however, was the way in which Gaubert aimed to extend this prohibition to the field of private employment by framing it as a space of early education. For in the case of Baby-Loup, the issue at hand concerned the religious freedom of an employee, not that of students nor of public employees.

The Labor Court of Mantes-la-Jolie rendered its verdict on December 13, 2010. In its *arrêt*, the court broadly accepted the argument – presented, among others, by Jeannette Bougrab – that the Baby-Loup nursery offered a public service (Conseil de prud'hommes de Mantes-la-Jolie 2010). However, its judgment was somewhat ambivalent. On the one hand, the decision invoked the principle of *laïcité* (applied in the public sector), and on the other hand, it argued that Baby-Loup's company rules were in accordance with the Labor Code (which regulates private employment). The Labor Court further stated that "Baby-Loup was a private institution, but that its childcare activity constituted a public service and was financed to up to 80% by public funds."[54] This evaluation set aside the legal criteria that are usually applied in examining whether the activity of a private person can constitute a public service (Hennette Vauchez and Valentin 2014, 10-11). As Hennette Vauchez and Valentin note, had the judges applied the usual criteria,[55] they would have arrived at the conclusion that Baby-Loup did *not* offer a public service. For example, since its public funds came from a multiplicity of sources, it was impossible to say to *which* public service the nursery would actually be attached (municipal, departmental, or national) (Hennette Vauchez and Valentin 2014, 11). Moreover, if Baby-Loup offered a public service, then was that not the case of all private nurseries, most of which received public funding?

Despite these ambiguities, the Mantes-la-Jolie Labor Court found Baby-Loup's company rules lawful and stated that Mrs. Afif had displayed "repeated insubordination" in refusing to remove her

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[53] Since the 1996 decision in which the Council of State nullified such a ban imposed by the University of Lyon II (Conseil d'État, 4/1 SSR, du 26 juillet 1996, 170106), pro-ban activists had regularly referred to the need to prohibit religious symbols from higher education (see, for example, Vigerie and Zelensky's May 2003 petition "*Laïcardes, puisque feminists*," published in *Le Monde* on May 30, 2003).

[54] "*L'association Baby-Loup est un établissement privé mais a une activité de service public par l'activité d'une crèche et est financée à plus de 80% par des fonds publics*" (Conseil de prud'hommes de Mantes-la-Jolie 2010)

[55] These include the nature of the service provided, the organizational structure put in place, and the sources as well as the modes of finance (Hennette Vauchez and Valentin 2014, 10-11).

headscarf. The court therefore dismissed the employee's claim of discrimination. The court's decision was followed by a public surge of gratitude. According to Bougrab – now Secretary of State – the decision sent a firm message to "extremists."[56] Sihem Habchi, president of *Ni putes ni soumises*, was also happy with the court's ruling, paradoxically stating that now "women would be able to work"[57] – referring, without a doubt, to the clients of the nursery, though they were themselves predominantly Muslim and had not complained about Fatima Afif's headscarf. The HCI's president, Patrick Gaubert, welcomed the court's verdict as well. Yet he was also in favor of modifying the Labor Code so that cases such as Baby-Loup could be prevented in the future. Gaubert suggested that the Parliament:

> […] insert in the Labor Code an article so that businesses can add to their rules and regulations dispositions regarding clothing and the wearing of religious symbols because of imperatives stemming from security, contact with clients, or internal social peace.[58]

Gaubert's suggestion is illustrative of several general tendencies in the development of French public discourse during the fall and winter of 2010–2011. To begin with, his statement is one of many which recognized the lack of a clear legal basis for Mrs. Afif's dismissal. As we will see, the problem of a "legal loophole" concerning nurseries would soon become even more pressing. More importantly, though, Gaubert's above-quoted proposal illustrates the wish to extend the acceptable bases for restricting individual religious freedom in private employment. While the French Labor Code accepts justified and proportionate restrictions for reasons of security, health, and hygiene, Gaubert was among those wishing to add to these criteria the issues of social interaction ("contact with clients") and social harmony ("social peace").

Morphologically, I argue that this focus on the social dynamics of the workplace and of the surrounding neighborhood contributed to consolidating the transformed republican core which prioritized fraternity over liberty and equality. It shifted attention from the original issue – the legitimate

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[56] "*[…] une belle décision qui renvoie les extrémistes dos à dos*," *RTL France*, "Licenciée parce qu'elle travaillait voilée dans une crèche, elle fait appel," December 14, 2010.

[57] "*Les femmes vont pouvoir travailler*," quoted in *Le Parisien*, " Travailler voilée, c'est interdit," December 14, 2010.

[58] "*[I]nsérer dans le code du travail un article pour que les entreprises puissent intégrer dans leur règlement intérieur des dispositions relatives aux tenues vestimentaires et au port de signes religieux pour des impératifs tenant à la sécurité, au contact avec la clientèle ou à la paix sociale interne*," quoted in *La Correspondance Économique*, "Haut Conseil à l'intégration : Les entreprises doivent pouvoir 'intégrer dans leur règlement intérieur' des règles vestimentaires," December 14, 2010.

basis for restricting the individual employee's *right* to express her religious beliefs – to everyone's shared *responsibility* in guaranteeing the uniformity of the French social fabric. Little by little – though not without effort – these social "imperatives" would come to eclipse the issue of individual rights and freedoms even further and to legitimate the exclusion of headscarved employees from the field of private childcare.

6.2 *Laïcité* in Childcare: A Legal Loophole? (2011)

Directly following the Labor Court's 2010 decision, Fatima Afif appealed the verdict in the Versailles Court of Appeal. Although the Court of Appeal's ruling was not expected before the end of 2011 (the Court was to examine the case in September), public discussion of the issue did not cease. Indeed, by early 2011, the Baby-Loup case had become a significant issue of public attention (see Figure 6.1, p. 255).[59] Not only was it a talking point in all major newspapers, but the "Baby-Loup affair" (*l'affaire Baby-Loup*) had also been taken up by popular periodicals (such as *Paris Match*[60]) as well as by traditional women's magazines such as *Elle*[61] or *Marie-Claire*[62] whose online versions offered convenient fora for lively discussions on the topic. In other words, the case had quickly transformed from a legal proceeding into a public "affair" soliciting the attention of high-ranking politicians and ordinary citizens alike.

Although the HALDE's new president, Éric Molinié, had initially refused to comment on the verdict of the Labor Court,[63] he soon came out stating that the Baby-Loup case had indeed revealed a "legal loophole" (*vide juridique*). When asked whether a new law on the issue was needed, Molinié stated the following:

> Only the National Assembly can decide about that. But we will examine public service delegation contracts to see if the law has to be extended to all services that take care of children, be they associations such as Baby-Loup or private nurseries. If this is the case, then the personnel would have an obligation of neutrality.[64]

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[59] A search in the Factiva database generates 162 articles published on the issue in 2010, the majority of which were published in December following the Labor Court's ruling.

[60] *Paris Match*, "Crèche Baby Loup : la nounou voilée fait appel," December 28, 2010.

[61] *Elle*, "Baby Loup : désaccord entre la Halde et sa présidente Jeannette Bougrab," November 10, 2010.

[62] *Marie-Claire*, "Affaire Baby Loup : La laïcité doit-elle s'appliquer dans les crèches ?," November 8, 2010.

[63] *AFP*, "Licenciement d'une employée de crèche voilée : la Halde refuse de commenter," December 13, 2010.

[64] "*Seule l'Assemblée peut le décider. Mais nous allons examiner la délégation de service public pour voir s'il faut étendre la loi à tous les services qui s'occupent d'enfants, qu'il s'agisse d'associations, comme Baby Loup, ou de*

In this statement, Molinié reiterated Manuel Valls's concern about spaces where employees were in charge of children. He also followed the Labor Court's reasoning according to which private nurseries provided a "public service," whereby their employees should respect religious neutrality. As I have shown, Baby-Loup's supporters tended to argue, on the one hand, that the restrictions on Mrs. Afif's religious freedom were "justified" as is required by the Labor Code, and on the other hand, that the nursery was not completely private, and that the Labor Code was hence not the relevant tool for evaluating the legality of the employee's dismissal. The Labor Court's 2010 decision illustrated this in-between position. It was commonly argued that childcare services which were neither completely private nor completely public fell somewhere in the "gray zone" of the application of *laïcité*. Consider, for example, Éric Molinié's interview from January 2011:

> Between private life and public services, there is a gray zone, a whole field of activities where general interest is being served. To make progress on the question of the wearing of the veil, we must of course take into account legal elements, but also its mission for the general interest and the affected publics. My personal opinion is that, today, we have to give more attention to the vulnerability of certain publics, be they children or people living in spaces that they have not chosen.[65]

As Molinié's statement illustrates, the issues of "gray zones," public benefit, and vulnerable children tended to coalesce into arguments defending Baby-Loup and calling public authorities into action to resolve the tension between religious freedom and *laïcité*. Indeed, it was on these bases that the HALDE convened on February 7, 2011, to refine its approach to the question of religion in private companies. At Molinié's request, the HALDE created a series of debates about the "veiling issue."[66]

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crèches d'entreprise. Dans ce cas, le personnel aurait une obligation de neutralité," quoted in *Le Figaro*, "Éric Molinié : 'La Halde est un garde-fou'," December 14, 2010.

[65] "*Entre la vie privée et les services publics, il existe une zone grise, tout un secteur d'activités où l'on sert l'intérêt général. Pour avancer sur la question du port du voile, il faut certes prendre en compte les éléments juridiques, mais aussi la mission d'intérêt général et les publics concernés. Ma position personnelle est que, aujourd'hui, il faut privilégier attention à la fragilité de certains publics, que ce soient les enfants ou les personnes qui vivent dans des lieux qu'elles n'ont pas choisis*," quoted in *La Croix*, "Éric Molinié, président de la Halde : 'La laïcité doit davantage protéger les personnes vulnérables'," January 26, 2011.

[66] *AFP*, "La Halde lance une série de débats sur le port du voile," February 7, 2011.

According to the president of the HALDE, it was time to distinguish between "reasonable accommodations and those that will dent the French model and degrade national cohesion."[67] The HALDE's explicitly stated goal was to protect "vulnerable publics": children, the sick, and the elderly.[68] The Anti-Discrimination Authority held a number of auditions, and the publication of its much awaited deliberation was postponed twice. Finally, the text was published in late March. In the main conclusions of the document, the HALDE asked for legal clarifications of the issue of the wearing of religious symbols by child-care workers and by those who were employed by private retirement homes.[69]

In parallel, the French government had also been multiplying its consultations to arrive at propositions that would solve the tension between religious freedom and the perceived requirements of "neutrality" in specific employment sectors. PM François Fillon had put Claude Guéant (UMP), Minister of the Interior, in charge of preparing a Code of *Laïcité* and Religious Freedoms (*Code de la laïcité et des libertés religieuses*").[70] The document was to include all the texts, laws, decrees, and administrative notices that already existed on the issue, and it was to be used as a pedagogical tool for public administrations, private businesses, and individuals. According to the Ministry of Interior, such a document was necessary not because there was a legal loophole *per se*, but because the legal framework was not well known: "Current law is usually sufficient to resolve most cases of law breaking, but the law is not known and therefore not well enforced."[71]

It should be noted that the government was, at the same time, also considering extending the ban on the wearing of conspicuous (*ostensible*) religious symbols to parents accompanying their children's school outings. The issue of "veiled mothers" in school outings had emerged in early 2011 when

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[67] "*Maintenant, nous devons donner une lisibilité à nos décisions : tracer la ligne rouge entre les accommodements raisonnables et ceux qui vont entamer le modèle français, dégrader la cohésion nationale*," quoted in *Le Figaro*, "Voile islamique : malaise dans les entreprises," February 7, 2011.

[68] *Le Figaro*, "Voile islamique : malaise dans les entreprises," February 7, 2011.

[69] "*La Halde recommande au législateur d'examiner l'opportunité d'étendre les obligations de neutralité qui s'imposent dans les structures publiques aux structures privées des secteurs social, médico-social ou de la petite enfance chargées d'une mission de service public ou d'intérêt général*" (HALDE 2011).

[70] It was later published under the title "Laïcité et liberté religieuse : Recueil de textes et de jurisprudence" (Direction des libertés publiques et des affaires juridiques 2011).

[71] "*Le droit actuel suffit souvent pour régler la plupart des débordements, mais il est méconnu, donc mal appliqué*," quoted in *Le Figaro*, "Des moyens pour garantir la neutralité du service public," April 1, 2011.

it had become known that a school in the Parisian suburb of Pantin (Seine-Saint-Denis) had systematically refused the participation of headscarved mothers in school trips.[72] In March 2011, the Minister of Education, Luc Chatel (UMP), had come out in support of the school, announcing that the parents of students "must respect the principle of *laïcité.*"[73] The arguments that Chatel presented were much the same as those voiced by pro-ban actors in the Baby-Loup case: Chatel argued that parents, while supervising students, were "temporary providers of a public service."[74] As such, they, too, fell in the "gray zone" of the application of *laïcité* – a zone where the principle of religious neutrality should be reinforced. However, in the controversy surrounding school outings, the issue was extending the ban on conspicuous symbols from students to parents within a newly broadened sphere of public education,[75] whereas the Baby-Loup case reveals how this obligation infiltrated a completely new domain: private employment. As the issue of school outings will be examined in detail in Chapter 7, for the purposes of this chapter, suffice it to note that the debate on "veiled mothers" would develop in parallel to the Baby-Loup case, with each of the two "affairs" feeding off each other and contributing to the consolidation of a specific republican morphology.

Besides these actions that the Fillon government took concerning the application of *laïcité*, the ruling UMP party was also aiming to prohibit the employees of nurseries from displaying conspicuous religious symbols. In a convention held on April 5, 2011, the UMP announced 26 specific measures aiming to guarantee the respect of *laïcité* in private childcare services. The party wanted, among other things, to pass a law that would extend the prohibition on the wearing of religious symbols (that was applied in public schools) to "private structures in the social, socio-medical, and childcare sectors that are in charge of a mission of public service or general interest."[76] The UMP's formulation follows the model set forth by the HALDE the previous month. In short, central actors within the government, the UMP, and the HALDE adopted positions in favor of a legislative solution to the perceived problem of

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[72] See, for example, *Le Parisien*, "Une maman voilée interdite de sortie scolaire," February 5, 2011.

[73] "*[L]es personnes accompagnant les élèves lors de sorties scolaires doivent respecter le 'principe de laïcité',*" *Le Figaro*, "Chatel : pas de signes ostentatoires pour les accompagnants de sorties scolaires," March 3, 2011.

[74] "*[F]aire respecter le principe de laïcité à tous les collaborateurs occasionnels du service public y compris aux accompagnateurs de sorties scolaires,*" quoted in *AFP*, "Chatel opposé aux signes religieux lors des sorties scolaires," March 3, 2011.

[75] For a detailed discussion, see Chapter 7.

[76] "*Extension de l'obligation de neutralité des structures publiques aux structures privées des secteurs social, médico-social ou de la petite enfance chargées d'une mission de service public ou d'intérêt général*," *AFP*, "Laïcité : les 26 propositions de l'UMP," April 4, 2011.

the "gray zones" of *laïcité*. In spite of these stances, no bills were – for the time being – put forward; the issue was left in the hands of the judicial branch.

The hearing of the Baby-Loup case took place in the Versailles Court of Appeal (*Cour d'appel de Versailles*) on September 12, 2011. The arguments voiced in and around the court proceedings were not only in line with those presented in the original 2010 trial, but also strikingly similar to the viewpoints that had become prevalent in public discourse. For example, Baby-Loup's lawyer argued that "[t]here is not one law for Muslims, another one for Jews, and another one still for Catholics… The only law is neutrality. It applies everywhere on French soil, in the private sector as well as in the public one."[77] Richard Malka spoke as if the application of "neutrality" in the private sector – and indeed "everywhere on French soil" – were a given and no longer in contention, thereby reinforcing the new republican social order. Moreover, in failing to distinguish clearly between *laïcité* and "neutrality," he followed the reasoning of Baby-Loup's company rules which transposed the parallel obligations of *laïcité* and "neutrality" onto the childcare center's personnel. Finally, the defense's discursive strategy relied on the argument that Baby-Loup had not singled out one specific religion: since the rules were allegedly "the same for everyone," it did not make sense to talk about discrimination.

As for the plaintiff, Mrs. Afif's lawyer Michel Henry pointed to the fact that no one had complained about her client's headscarf, and that the idea that children living in a multi-ethnic neighborhood such as La Noé would be affected by such a garment was "ridiculous."[78] The fact that the requirement of religious "neutrality" could not, according to the law, be applied to the private employment sector was already clearly receding into the background. Since the Labor Court had ruled in favor of the nursery, Mrs. Afif's lawyer took up the specific issue of the alleged influence of the headscarf on children in an attempt to defend his client against one of the main arguments voiced against her. In doing so, he indirectly contributed to shifting attention away from the issue of employment discrimination. Indeed, although it was the Baby-Loup nursery that was on trial, Mrs. Afif was the one who was increasingly accused of wrongdoing, of having breached the republican social norm. In the eyes of the Mantes-

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[77] "*Il n'y a pas une loi pour les musulmans, une autre pour les juifs, une autre pour les catholiques… La seule loi, c'est la neutralité. Elle s'applique partout sur le sol français, aussi bien dans le secteur public que privé*," quoted in *Le Parisien*, "La nounou voilée de Baby Loup fixée sur son sort," October 27, 2011.

[78] "*Personne ne s'est plaint qu'une puéricultrice porte un voile. Il n'y a donc pas de trouble caractérisé. Comment voulez-vous que des enfants à Chanteloup-les-Vignes soient marqués par des femmes qui portent un boubou ou un voile. C'est un argument ridicule*," quoted in *Le Parisien*, "La nounou voilée de Baby Loup fixée sur son sort," October 27, 2011.

La-Jolie Labor Court as well as in the court of public opinion, she was guilty of having disrupted the important service provided by the nursery and for having potentially influenced the children with her supposedly controversial religious beliefs.

The Versailles Court of Appeal did not disagree with this assessment. In an *arrêt* rendered on October 27, 2011, the appellate court found Mrs. Afif's dismissal legal (Cour d'appel de Versailles 2011).[79] However, it did not accept the Labor Court's interpretation according to which a private nursery could be a "public service provider." On the contrary, the Court of Appeal[80] steered clear of any mention of a "public service mission." Instead, it based its decision on the nursery's specific goal of taking care of young children. The October 27 *arrêt* took into account the specific objectives of the nursery, which included the goal of "developing early childhood programmes in a disadvantaged neighborhood."[81] The court took into consideration the fact that, in accordance with its objectives, the nursery aimed to "ensure the neutrality of the personnel." It also stated that – given their young age – the children should not be "confronted with ostentatious [*ostentatoire*] displays of religious belief."[82] Implicitly, then, the Court of Appeal confirmed the nursery's right to include the principles of *laïcité* and religious neutrality into its company rules and regulations. In its conclusions, the Versailles court consequently stated that Mrs. Afif's firing had been lawful.

While the ruling of the Versailles Court of Appeal was somewhat vague,[83] the same cannot be said about the public reactions that it prompted. Although the appellate court – in contrast to the Man-

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[79] Incidentally, the Court of Appeal's verdict came only two days after the Administrative Court of Montreuil (Seine-Saint-Denis) had decided in favor of a local school which had prohibited "veiled" mothers from participating in school outings.

[80] In this case, the court was composed of Marie-Noëlle Robert (president), Sylvie Bourgogne (counsel), and Marie-Andrée Baumann (counsel).

[81] "*[…] développer une action orientée vers la petite enfance en milieu défavorisée […]*" (Cour d'appel de Versailles 2011).

[82] "*Considérant que conformément à ces dispositions la crèche doit assurer une neutralité du personnel dès lors qu'elle a pour vocation d'accueillir tous les enfants du quartier quelle que soit leur appartenance culturelle ou religieuse ; que ces enfants, compte tenu de leur jeune âge, n'ont pas à être confrontés à des manifestation ostentatoires d'appartenance religieuse […]*" (Cour d'appel de Versailles 2011).

[83] The Court of Appeal did not specify where the obligation to protect children's freedom of conscience existed in the law. Moreover, it is unclear why children should be protected from religious beliefs and not from *other* controversial beliefs such as political and secular ones (Kutoroff 2015).

tes-la-Jolie Labor Court – had not based its decision on the principle of *laïcité*, pro-ban actors nonetheless tended to interpret the verdict as a triumph of the extension of that very principle. As Richard Malka put it outside the courtroom:

> For the first time in such a clear manner, the field of *laïcité* is extended to the private sector and it is not discriminatory to ask employees to leave their religious beliefs at the door of the company. […] The fact that this concerns a nursery has played a role, but the Court of Appeal sets down a much broader principle about the restriction of religious expression in companies when the basis for it is legitimate.[84]

As Malka's statement illustrates, many of those who were particularly pleased with the Court of Appeal's ruling tended to read into it elements that confirmed their own views on the issue. For example, Jeannette Bougrab interpreted the *arrêt* as a confirmation of her opinion that *laïcité* should not be interpreted differently from one neighborhood to the next.[85] The HCI congratulated itself by stating that the verdict corresponded to the position that the High Council had formulated in the report it had submitted to Prime Minister Fillon earlier the same month.[86] In a letter published in *Le Point* on November 3, 2011,[87] Élisabeth Badinter and Richard Malka, two defenders of the pro-ban stance, reacted to the Court of Appeal's verdict by sending a strong message to their allies and adversaries alike:

> Baby-Loup has won. The children of Chanteloup-les-Vignes have won. The Republic has won. The French justice system has decided: a private company can legitimately, through its rules and regulations, demand that its personnel respect "political and religious neutrality with regard to its clients."[88]

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[84] "*Pour la première fois de manière aussi claire, on étend le champ de la laïcité au secteur privé et il n'est pas discriminatoire de demander aux salariés de laisser leurs convictions religieuses devant la porte de l'entreprise. […] Le fait que c'est une crèche a joué mais la cour d'appel pose un principe plus large sur la restriction de l'expression du fait religieux en entreprise quand le motif est légitime*," quoted in *AFP*, "Interdire le voile à une salariée d'une crèche privée est 'justifié'," October 27, 2011.

[85] "*J'ai été très attaquée, alors que j'étais présidente de la Halde, pour avoir accepté d'apporter mon soutien à Baby Loup, en témoignant au conseil des Prud'hommes de Mantes-La-Jolie l'année dernière. […] J'étais convaincue que la laïcité n'est pas un principe à géométrie variable. La laïcité a vocation à s'appliquer y compris dans les quartiers dits sensibles et peut-être davantage dans ces quartiers-là*," quoted in *AFP*, "Baby Loup : Jeannette Bougrab 'très heureuse' de la décision de la cour d'appel de Versailles," October 27, 2013.

[86] Titled "*Expression religieuse et laïcité dans l'entreprise*", the report summarized the HCI's position on the issue of religion and private employment (*AFP*, "Le Haut Conseil à l'Intégration se 'félicite' de la décision sur Baby Loup," October 28, 2011).

[87] *Le Point*, "Baby-Loup, l'espérance d'une reconquête," November 3, 2011.

[88] "*Baby-Loup a gagné. Les enfants de Chanteloup-les-Vignes ont gagné. La République a gagné. La Justice française a tranché : une entreprise privée peut légitimement, par la voie de son règlement intérieur, exiger de son personnel qu'il respecte 'la neutralité d'opinion politique et confessionnelle en regard du public accueilli*'," *Le Point*, "Baby-Loup, l'espérance d'une reconquête," November 3, 2011.

> The first lesson of this *arrêt* is that courage is rewarded. For courage was needed when Natalia Baleato, the creator and director of this exemplary nursery, fought alone, without resources, while she was being harassed by fundamentalists, abandoned by the institutions of the Republic and even accused by one of them – the HALDE, which, until the arrival of Jeannette Bougrab at its head, pretended that prohibiting the veil would mean being liable for religious discrimination. Yes: courage and determination are needed to confront the accusations of Islamophobia, even of racism, simply because one wants the Republic to remain *laïque*.[89]
>
> But – with apologies to Claude Guéant [in charge of compiling the "Code on *Laïcité*"] – *laïcité* is not a simple collection of texts or a campaign argument, it is a way of living together in community, a shared grammar to which the French […] are viscerally tied.[90]

In this public letter, Badinter and Malka interpreted the decision of the appellate court as a clear ruling that would give *all* private companies the right to impose religious "neutrality" on their employees. Through the heroic figure of Natalia Baleato (herself a Chilean refugee), the authors presented *Baby-Loup as* the real victim of harassment and exclusion, naming Jeannette Bougrab as the person who had stood up in its defense against the extremist pressures that were prevalent in the *banlieues*. Finally, Badinter and Malka put a particular emphasis on the social aspects of *laïcité*. Indeed, for these fierce supporters of Baby-Loup, *laïcité* was not a vote-winner nor a simple legal principle; it was an inextricable part of republican cohabitation and of the French social bond. Through these formulations, Badinter and Malka contributed to privileging the social dimension of republican collective life – the value of fraternity. From this viewpoint, Mrs. Afif was taken to represent the guilty party – religious fundamentalists aiming to disrupt social order.

Despite Baby-Loup's temporary victory, the issue of a "legal loophole" was still not resolved. By the end of November 2011, the left-wing majority of the French Senate had come to the conclusion that the issue of *laïcité* in private nurseries should finally be clarified with a new law. It was Senator

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[89] "*La première leçon de cet arrêt, c'est que le courage paie. Car, il lui en a fallu, du courage, à Natalia Baleato, la fondatrice et directrice de cette crèche exemplaire, pour se battre, seule, sans moyens, alors qu'elle était harcelée par des intégristes, abandonnée par les institutions de la République et même montrée du doigt par l'une d'entre elles - la Halde, qui, jusqu'à l'arrivée de Jeannette Bougrab à sa tête, prétendait qu'interdire le voile, c'était se rendre coupable de discrimination religieuse. Oui, il faut du courage et de la détermination pour affronter les accusations d'islamophobie, voire de racisme, simplement parce qu'on veut que la République reste laïque,*" *Le Point*, "Baby-Loup, l'espérance d'une reconquête," November 3, 2011.

[90] "*Mais, n'en déplaise à Claude Guéant, la laïcité n'est pas un empilement de textes ni un argument électoral, elle est une façon de vivre en collectivité, une grammaire commune à laquelle les Français […] sont viscéralement attachés,*" *Le Point*, "Baby-Loup, l'espérance d'une reconquête," November 3, 2011.

Françoise Laborde (RDSE)[91] from Haute-Garonne, a member of the radical left-wing, who proposed the bill that was submitted on November 25, 2011, and discussed in the Senate's legal committee (*commission des lois du Sénat*) four days later.[92] While RDSE senators[93] had submitted a rather straightforward text that would "extend the obligation of neutrality to private organizations in charge of early childhood and ensure respect of the principle of *laïcité*,"[94] the bill was transformed by the numerous amendments[95] suggested by the rapporteur Alain Richard, Socialist Senator from Val-d'Oise. The final version that the committee approved distinguished between different types of nurseries. Childcare centers which received public funding would be "submitted to an obligation of neutrality with regard to religious matters,"[96] which meant that their employees would be prohibited from displaying religious beliefs through clothing, symbols, speech, etc. Yet private nurseries which did *not* receive public funds would also be authorized to "impose, if they so wish, certain restrictions on the expression of religious beliefs of employees when they are in contact with children."[97] The bill further noted that denominational nurseries, while not obliged to remain neutral, would have to welcome clients of all religions and to "ensure the freedom of conscience of children."[98] Finally, unless otherwise stated by their contract, childminders (*assistantes maternelles*) working from their homes would also be bound by the obligation

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[91] *Rassemblement démocratique et social européen.*

[92] *AFP*, "Le Sénat adopte en commission un texte sur la laïcité dans les crèches," November 29, 2011.

[93] This group included Nicolas Alfonsi, Gilbert Barbier, Jean-Michel Baylet, Alain Bertrand, Christian Bourquin, Jean-Pierre Chevènement, Yvon Collin, Pierre-Yves Collombat, Anne-Marie Escoffier, François Fortassin, Françoise Laborde, Jacques Mézard, Jean-Pierre Plancade, Robert Tropeano, Jean-Claude Requier, Raymond Vall and François Vendasi.

[94] *Proposition de loi visant à étendre l'obligation de neutralité aux structures privées en charge de la petite enfance et à assurer le respect du principe de laïcité*, < http://www.senat.fr/leg/ppl11-056.html >.

[95] Rapport n° 144 (2011-2012) de M. Alain Richard, fait au nom de la commission des lois, déposé le 30 novembre 2011, < http://www.senat.fr/rap/l11-144/l11-144.html >.

[96] Article L. 227-1-1: "*Lorsqu'elles bénéficient d'une aide financière publique, les personnes morales de droit privé qui accueillent des mineurs protégés au titre du présent chapitre sont soumises à une obligation de neutralité en matière religieuse.*"

[97] Article L. 227-1-1: "*Les personnes morales ne bénéficiant pas d'une aide financière publique peuvent apporter certaines restrictions à la liberté d'expression religieuse de leurs salariés au contact des mineurs*."

[98] Article L. 227-1-1: "*Les deux alinéas précédents ne sont pas applicables aux personnes morales de droit privé se prévalant d'un caractère propre porté à la connaissance du public intéressé. Toutefois, lorsqu'elles bénéficient d'une aide financière publique, ces personnes morales accueillent tous les mineurs, sans distinction d'origine, d'opinion ou de croyances. Leurs activités assurent le respect de la liberté de conscience des mineurs*."

of neutrality.[99] According to Alain Richard, this meant that childminders wishing to wear religious clothing or to keep religious symbols *in their own homes* would have to include a clause about religious practice in the work contract signed by the parents.[100] This clause that the legal committee included in the bill is remarkable. By suggesting that the obligation of religious neutrality be extended to the field of private employment – and more specifically, to childcare – the senators were also able to argue that the private homes of childminders be included in these "structures in charge of early childhood." While the proposal that the principle of religious neutrality should be extended to the private employment sector was in itself a major transformation, a bill that expanded it to the most private of private spheres – the home – was completely unprecedented.[101]

Although no one contested the bill within the Senate's legal committee, UMP senators abstained from taking a stance on the specific issue of childminders. As soon as the bill was made public, though, it sparked a wave of criticism. AFP quoted an anonymous member of the government describing the bill as "grotesque" and stating that "the peak of secular radicalism" had now been reached.[102] According to the *Collectif contre l'islamophobie en France* (CCIF), such a law would be interpreted as "the Socialist party's clearly displayed willingness to pursue the Islamophobic policies started by Mr. Sarkozy and his government."[103] Professor Jean Baubérot, a well-known critic of the intransigent interpretation of *laïcité*, was equally scandalized:

> Here we have a liberticidal text. We will be witness to a hunt of religious objects, the policing of the private sphere. Having a Playboy calendar hanging on the wall, or making children watch extremely violent TV programs, would that be less harmful than wearing the headscarf?[104]

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[99] Article L. 423-23 A: "*À défaut de stipulation contraire inscrite dans le contrat qui le lie au particulier employeur, l'assistant maternel est soumis à une obligation de neutralité en matière religieuse dans le cours de son activité d'accueil d'enfants*."

[100] *La Croix*, "Un sénateur propose d'aménager le principe de laïcité pour les crèches," November 29, 2011.

[101] Even the 2010 law banning full veils was limited to public space.

[102] "*Dire que des enfants en crèche, qui ont généralement entre 0 et 3 ans, vont être perturbés parce qu'une femme porte le foulard et ferait ainsi du prosélytisme est grotesque […] On atteint là un sommet de radicalisme laïc*," quoted in *AFP*, December 6, 2011.

[103] "*[L]a volonté affichée de la part du parti socialiste de poursuivre la politique islamophobe initiée par M. Sarkozy et son gouvernement*," quoted in *AFP*, "Le texte du Sénat sur la laïcité soulève une vague de critiques," December 6, 2011.

[104] "*Voilà un texte liberticide. On va assister à une chasse aux objets religieux, au flicage de la sphère privée. Avoir un calendrier de Playboy accroché au mur, ou faire regarder aux enfants des émissions télévisées ultra violentes,*

Textbox 5 – *Collectif contre l'islamophobie en France* (CCIF)

The *Collectif contre l'islamophobie en France* (CCIF, "Collective against Islamophobia in France") is a non-governmental organization established in 2003 to counter the rise of Islamophobia and anti-Muslim discrimination in France. The organization consists of a group of 20–30 activists and one permanent lawyer. Most of these members are second or third generation French Muslims.

The CCIF is the first group which seeks legal routs to redress issues related to religious freedom and the public presence of Islam in France. Its activities fall into three groups. First, CCIF has an "observatory of Islamophobic acts" (*Observatoire de l'islamophobie*) which lists Islamophobic written and oral statements and acts occurring in France. This list is published in a yearly report. Second, CCIF has a legal clinic where lawyers provide support for victims of discrimination. The aim is to help them contact legal authorities and, if need be, provide legal support for court cases. Third, the CCIF works towards raising awareness about Islamophobia: it engages in sensitization activities with citizens, civil society organizations, and politicians. The organization has been particularly active in documenting the spill-over effects of the 2004 law and the 2010 burqa ban, providing assistance to headscarved women and denouncing discriminatory measures which target them.

(Source: Barras 2009.)

Despite these criticisms, Senator Laborde – who had drafted the original bill – defended the idea that parents might want to have "a nanny who is neutral religion-wise."[105] According to Laborde: "The childminder has to declare himself [*sic*] if he wishes to practice a religion as part of his activity. If a person starts wearing the veil, becoming religious, the family has to be notified."[106] Although Laborde had herself mentioned the wearing of the Islamic headscarf, she further specified that the law did not target the Muslim population, for Jewish nurseries and childminders would be equally affected.[107]

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serait-il moins nocif que de porter le foulard ?" quoted in *AFP*, "Le texte du Sénat sur la laïcité soulève une vague de critiques," December 6, 2011.

[105] "*Les parents peuvent vouloir une nounou qui soit neutre sur le plan religieux*," quoted in *AFP*, "Le texte du Sénat sur la laïcité soulève une vague de critiques," December 6, 2011.

[106] "*C'est à l'assistant maternel de se déclarer s'il entend pratiquer son culte dans le cadre de son activité, poursuit la sénatrice. Si la personne se met à porter le voile, à devenir religieuse, il faut que la famille en soit prévenue*," quoted in *AFP*, "Le texte du Sénat sur la laïcité soulève une vague de critiques," December 6, 2011.

[107] Soon afterwards, the Paris city council allocated 2,3 million euros to religious nurseries, most of which were managed by Orthodox Jews (*loubavitch*). *Le Monde*, "Les subventions aux loubavitch font débat," December 21, 2011.

When the bill was discussed in the Senate on December 7, 2011, the majority of senators were divided on its contents.[108] While the radical RDSE supported the bill, the Socialists (PS) were split, and the Communists (CRC)[109] as well as the Greens (*Écologistes*) were against it.[110] However, the Senate did not vote on the issue, leading *Agence France-Presse* to prematurely declare that the bill had been "buried."[111] For when the senators returned to work in January 2012, they accepted the bill while a small group was protesting outside the Palais du Luxembourg. In the vote that took place on January 17, RDSE and PS voted in favor, the Greens against, CRC abstained, and UMP was divided. In other words, as the year 2011 had turned into 2012, the power balance inside the Senate had shifted in favor of Laborde's bill.

Esther Benbassa (EELV)[112] was alarmed by the result of the vote, stating that "extending the obligation of religious neutrality to childminders is a violation of the right to privacy established by Article 8 of the European Convention of Human Rights."[113] Isabelle Pasquet (CRC) agreed: "This article implies a high level of intrusion into the private life of childminders, which cannot be justified."[114] The association *Mamans toutes égales* (MTE)[115] denounced the bill as an "intolerable law of exclusion, for it bans a category of citizens from certain professions on account of their religious affiliation."[116] The French Council for the Muslim Faith (CFCM)[117] expressed its dismay in a press release:

> The limitation advocated by this bill constitutes a violation of the right to privacy […] and seems indisputably disproportionate. […] The CFCM wishes to note that this prop-

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[108] The full debate can be found at < http://www.senat.fr/interventions/crisom_ppl11-056_1.html >.

[109] *Groupe communiste, républicain et citoyen*.

[110] *Première lecture - 7 décembre 2011 et 17 janvier 2012*, < http://www.senat.fr/interventions/crisom_ppl11-056_1.html >.

[111] *AFP*, "Le Sénat enterre une proposition de loi controversée sur la laïcité," December 7, 2011.

[112] *Europe Écologie Les Verts*.

[113] "*Étendre aux assistantes maternelles l'obligation de neutralité constitue une violation du droit à la vie privée consacré par l'article 8 de la Convention européenne des droits de l'homme*," quoted in *AFP*, "Le Sénat adopte une proposition de loi controversée sur la laïcité," January 18, 2012.

[114] "*Cet article implique un fort degré d'ingérence dans la vie privée des assistants maternels, qui ne se justifie pas*," quoted in *AFP*, "Le Sénat adopte une proposition de loi controversée sur la laïcité," January 18, 2012.

[115] *Mamans toutes égales* ("Mothers All Equal") is an organization that had been founded in 2011 to defend the rights of Muslim mothers excluded from school outings.

[116] "*[…] une loi d'exclusion insupportable car il interdit certaines professions à une catégorie de citoyennes, en raison de leur appartenance religieuse*," quoted in *AFP*, "Laïcité/Sénat: un collectif dénonce 'une loi d'exclusion insupportable'," January 18, 2012.

[117] *Le Conseil Français du Culte Musulman.*

> osition extends a measure which, until now, weighed only on public servants […]. Consequently, this proposal introduces a major modification in *laïcité*, one of the bases of the Republic, and it is in clear contradiction with the objectives pursued by the great national and international texts dealing with basic rights […].[118]

The CFCM was supported by the *Union juive française pour la paix* (UJFP) which recognized that the bill was targeting Muslim women. In a communiqué titled "No to the exclusion of Muslim women from society,"[119] UJFP compared the bill with the "most somber times in our history," when Jews were excluded from certain professions and the colonized peoples were refused their rights. UJFP interpreted the most recent bill as one in a series of measures that had, in previous years, undermined Muslim women's rights: "Under the cover of *laïcité* and the defense of women's rights, these measures amount to barring headscarf-wearing women from the possibility of expressing themselves in society, relegating them to the private sphere, out of community life [*la vie commune*]. Each time, it is really Islam that is targeted."[120]

Those who had voted in favor of the bill rebuffed these allegations: "If a childminder is veiled, the parents will be immediately informed of her beliefs. This text institutes a rule for information, it does not create any type of limitation," stated Alain Richard (PS).[121] According to Françoise Laborde (RDSE): "We have everything to win in cultivating the field of *laïcité*, it should not be left to lie fallow."[122] The above-quoted passages show that while MTE, CFCM, and UJFP attempted to stress that the bill signified a major restriction of individual rights, a transformation of *laïcité* which would lead to the

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[118] "*La limitation préconisée par cette proposition de loi constitue une violation du droit à la vie privée consacré par la Convention européenne des droits de l'homme et apparaît incontestablement comme disproportionnée. […] Le CFCM tient à noter que cette proposition étend une mesure qui jusque-là pesait uniquement sur les fonctionnaires […]. Cette proposition introduit, de ce fait, une modification majeure dans l'un des fondements de la République qu'est le principe de laïcité et se met clairement en contradiction avec les objectifs poursuivis par les grands textes nationaux et internationaux traitant des droits fondamentaux […],*" *AFP*, "Le Conseil du culte musulman dénonce 'une violation du droit à la vie privée'," January 19, 2012, see also: < http://www.lecfcm.fr/?p=2850 >.

[119] "*Non à l'exclusion des femmes musulmanes de la société,*" January 20, 2012, < http://www.ujfp.org/spip.php?article2110 >.

[120] "*Sous couvert de laïcité et de défense des droits des femmes, ces mesures reviennent de fait à barrer aux femmes portant un foulard la possibilité de toute expression dans la société, à les reléguer dans la sphère privée, hors de la vie commune. A chaque fois, c'est bien l'Islam qui est visé*," quoted in *AFP*, "L'Union juive pour la paix dénonce le projet de loi du sénat sur le foulard," January 20, 2012.

[121] "*Si l'assistante maternelle est voilée, les parents seront tout de suite informés de ses croyances. Ce texte institue une règle d'information, il ne créé aucune sorte de limitation*," quoted in *AFP*, "Le Sénat adopte une proposition de loi controversée sur la laïcité," January 18, 2012.

[122] "*Nous avons tout à gagner à réinvestir le champ de la laïcité, il ne doit pas être laissé en jachère*," quoted in *AFP*, "Le Sénat adopte une proposition de loi controversée sur la laïcité," January 18, 2012.

exclusion of a specific group – headscarved women – from public life, pro-ban proponents were instead downplaying the issue of religious freedom and arguing that *laïcité* was a central value that should be reinforced.

The bill in itself – and the fact that it was accepted by the majority of the French Senate – is proof of a major transformation concerning the areas in which *laïcité* could be argued to apply. It demonstrates that pro-ban actors were able to argue that *laïcité* – the principle of secularism that traditionally only applied to public servants – should penetrate the private sphere. Interestingly, as anti-ban actors focused their criticism on the most striking part of the bill – the invasion of the privacy of childminders' homes – the issue of extending religious "neutrality" to private nurseries receded into the background. Indeed, in comparison to *laïcité* infiltrating private residences, its application in the "gray zone" of private childcare could start to appear as a relatively moderate measure. Yet it should be stressed that both of these proposals, if accepted by the two Houses of the French Parliament, would completely transform the meanings attached to the right to privacy, the right to work, the right to non-discrimination, and the right to freedom of religion.

While pro-ban actors were emphasizing the importance of *laïcité*, they were no longer concentrating on women's rights. Although those who opposed the bill pointed to the fact that it would lead to the exclusion of headscarved women, the pro-ban group largely ignored the issue of women's employment discrimination. This is perhaps surprising considering that in France state feminism had developed around the issue of women's employment (Lévy 1988) and that the focus on the "working woman" had been central to public policy during the 1980s (Jenson and Sineau 1995; Thébaud 2001). In the Baby-Loup discussions, however, the issue of women's employment was overshadowed by the pro-ban group's insistence that the requirement of religious neutrality be extended to child-care workers. While pro-ban actors did not specifically focus on the issue of women, as seen above in Chapters 4 and 5, the adjacency of *laïcité* and gender equality had already infused *laïcité* with a specific, narrow understanding of women's rights – and vice versa. Therefore, the fact that the promotion of *laïcité* could lead to the exclusion of minority women was no longer an issue; such measures of exclusion had already been publicly defined as "feminist." In other words, the promotion of an intransigent interpretation of *laïcité* had already received a "feminist" seal of approval. The pro-ban group's discourse thus illustrates the consolidation of the existing republican morphology and the ongoing sidelining of Muslim women's rights.

Although the bill proposed by Senator Laborde was transferred to the National Assembly in January 2012, it was put on hold because of the upcoming elections. In May 2012, Socialist François Hollande defeated standing president Nicolas Sarkozy in the second round of the presidential election. Only a little over a month later, the political left won the legislative elections and the Socialist Party obtained a majority of seats in the *Assemblée nationale*. Hollande appointed Jean-Marc Ayrault as Prime Minister, and Manuel Valls became Minister of the Interior. Laborde's bill on *laïcité* in childcare – which had been sent to the National Assembly's legal committee[123] – did not, for the time being, move forward. However, hardline secularists' appreciation of Laborde's initiative is illustrated by the fact that the Senator received the National Prize for *Laïcité* in October 2013.[124]

6.3 Status Quo Broken? (2013)

Although public discussion about Baby-Loup had waned in 2012 (see Figure 6.1, p. 255), the affair was not yet over. When the Versailles Court of Appeal had rendered its 2011 verdict in favor of the nursery, Mrs. Afif's lawyer had advised his client to refer the issue to the Court of Cassation.[125] Judging by the voices heard in the French media since 2010, however, a major part of the French political elite seemed to accept Fatima Afif's firing as a logical consequence of the application of the valued principle of *laïcité*. Supported by two favorable judicial decisions and a bill that had been validated by the Senate, pro-ban actors had a comfortable upper hand.

The Baby-Loup case reappeared in the headlines with force[126] when the Social Chamber of the Court of Cassation stated on March 19, 2013 that a private employer cannot impose religious neutrality on its personnel. According to the Highest Court, "the principle of *laïcité* established by Article 1 of the Constitution is not applicable to private employers who do not manage a public service; it consequently cannot be invoked to deprive them of the protection guaranteed by the clauses of the Labor Code

[123] *Commission des lois constitutionnelles, de la législation et de l'administration générale de la République.*
[124] "*Prix de la laïcité*," handed out annually by the *Comité Laïcité République*.
[125] *Le Progrès*, "Le licenciement de la salariée de crèche voilée confirmé," October 28, 2011.
[126] Between March 19 and April 19, 2013, more than 300 articles were published in the French press concerning the Baby-Loup affair.

[…]."[127] The Court essentially arrived at the very same conclusion that the HALDE had expressed in March 2010: *laïcité* cannot be applied in the private sphere, and all restrictions on employees' freedom of religion must be justified and proportionate. In the case of Baby-Loup, the Court of Cassation held that the restriction imposed by the nursery's rules and regulations was "general and imprecise" and therefore in contradiction with the requirements of the Labor Code.[128] In other words, the court decided in favor of the right of the employee to express her religious convictions and deemed the dismissal discriminatory. It did not accept the use of *laïcité* in a way that would circumvent the principle of non-discrimination. The Highest Court therefore nullified the verdict of the Versailles Court of Appeal on the grounds that it had not been based on a correct reading of the law,[129] condemned Baby-Loup to damages in the amount of 2,500 euros, and ordered that the case be tried again.

With this decision, the Court of Cassation broke the status quo established by the Labor Court and the Court of Appeal. Although these two rulings had relied on different legal arguments, both of them had validated the pro-ban group's idea that the Islamic headscarf simply did not belong in childcare services whether they were private or not. The Court of Cassation's nullification cracked this new consensus and put the issue of employment discrimination – at least theoretically – back in play.

As could be expected, Baby-Loup's supporters reacted without delay. Manuel Valls (PS) – now Minister of the Interior and officially in charge of religious communities – appeared on the very same day in the National Assembly lamenting the court's decision. Valls expressed his wish to "step outside of his duties [as Minister]" in order to tell everyone how much he regretted the ruling which "undermined the principle of *laïcité*."[130] According to Jeannette Bougrab – who had been present during the reading of the verdict – the highest court had "forced open the dike of *laïcité.*"[131] The decision of the

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[127] "*[…] le principe de laïcité instauré par l'article 1er de la Constitution n'est pas applicable aux salariés des employeurs de droit privé qui ne gèrent pas un service public ; qu'il ne peut dès lors être invoqué pour les priver de la protection que leur assurent les dispositions du code du travail […]*" (Cour de cassation 2013).

[128] "*[…] la clause du règlement intérieur, instaurant une restriction générale et imprécise, ne répondait pas aux exigences de l'article L. 1321-3 du code du travail*" (Cour de cassation 2013).

[129] "*[…] la cour d'appel, qui n'a pas tiré les conséquences légales de ses constatations, a violé les textes susvisés*" (Cour de cassation 2013).

[130] "*En sortant quelques secondes de mes fonctions, je veux vous dire combien je regrette la décision de la Cour de cassation aujourd'hui sur la crèche Baby-Loup et sur cette mise en cause de la laïcité,*" quoted in *AFP*, "Crèche Baby Loup : la Cour de cassation annule le licenciement d'une employée voilée," March 19, 2013.

[131] "*La Cour de cassation vient de forcer la digue de la laïcité*," quoted in *AFP*, "Crèche Baby Loup : la Cour de cassation annule le licenciement d'une employée voilée," March 19, 2013.

Court of Cassation also quickly put the issue of a legislative solution back on the table, as can be seen from these statements made by MPs in the National Assembly on the day of the verdict:

> **Jérôme Guedj (PS):** I am like Manuel Valls: each time that we give the impression of compromising on the principles of *laïcité*, it is not good for social life [*le vivre ensemble*]. A court ruling has to be respected, but it means that we should perhaps think about adapting our legislation in order to preserve and protect *laïcité* everywhere and at all times […]. Neutrality must be protected in everything that resembles public service missions. Maybe the legislative dossier should be reopened in order to avoid this type of jurisprudence.[132]
>
> **Éric Ciotti (UMP)**: We must legislate to take into account the meaning of this *arrêt* and to ensure that the principle of *laïcité* in this framework is specified by the law.[133]
>
> **Jacques Myard (UMP)**: The decision of the Court of Cassation is perhaps justified under the law, but it is politically and legally useless as well as untimely. For it gives a dangerous signal which is the approval of communalism. If the legislation must be modified, if the body of law really needs to be modified in order for the Court of Cassation to respect *laïcité*, it will be done, and personally I am in favor of it.[134]

As these statements illustrate, MPs were walking a fine line between trying to respect the Court of Cassation's decision while, at the same time, pushing for a new law. On the following day, Najat Vallaud-Belkacem (PS), the spokesperson for the government, announced that while the government would not comment on the ruling of the Court of Cassation, it was "very attached to the principle of *laïcité*" – a principle which should not stop "at the nursery-school door." Vallaud-Belkacem further stated that the government did not exclude the possibility of a new law on the issue.[135]

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[132] "*Je suis comme Manuel Valls : à chaque fois qu'on donne l'impression de transiger sur les principes de laïcité, ce n'est pas bon pour le vivre ensemble. Il faut respecter une décision de justice, mais cela veut dire qu'on a peut-être à se poser la question de l'adaptation de notre corpus législatif, pour partout et tout le temps préserver et sanctuariser la laïcité [...]. La neutralité doit être protégée dans tout ce qui s'apparente à des missions de service public. Peut-être il faudra rouvrir le dossier législatif pour éviter ce type de jurisprudence*," quoted in *AFP*, "Cassation sur Baby Loup : réactions politiques," March 19, 2013.

[133] "*Il faudra légiférer pour prendre en compte le sens de cet arrêt et pour faire en sorte que le principe de laïcité dans ce cadre soit précisé par la loi*," quoted in *AFP*, "Cassation sur Baby Loup : réactions politiques," March 19, 2013.

[134] "*La décision de la Cour de cassation est peut-être fondée légalement, elle est politiquement et juridiquement inutile et inopportune. Car elle donne un signal dangereux qui est l'aval au communautarisme. S'il faut modifier la loi, s'il faut effectivement modifier toute la législation pour que la Cour de cassation respecte la laïcité, on le fera et personnellement j'y suis favorable*," quoted in *AFP*, "Cassation sur Baby Loup : réactions politiques," March 19, 2013.

[135] *AFP*, "Baby Loup : 'Le principe de laïcité ne doit pas s'arrêter à la porte des crèches' (gouvernement)," March 20, 2013.

Indeed, although Senator Laborde's bill had not moved forward, a group of MPs[136] had submitted an identical proposal in the National Assembly in January 2013.[137] There seemed to be wide-ranging support for such a law. For example, in a petition published by *Marianne* on March 23, 2013, a large group of well-known public figures (including radical leftist leader Jean-Michel Baylet, former minister Jacques Toubon, as well as the philosophers Élisabeth Badinter, Alain Finkielkraut, Catherine Kintzler, Élisabeth de Fontenay, and Henri Peña Ruiz)[138] appealed to the legislator to "fill the legal loophole," stating that "the law must absolutely be modified."[139] On the same day, many newspapers reported that, according to a survey done by the French Institute of Public Opinion (IFOP), 84% of the French were "opposed to women wearing the veil in private places which are open to the public." The results were interpreted as showing that "the legal distinction between public space and a private place that receives the public […] has no real effect or is not relevant for the overwhelming majority of the population,"[140] thereby offering a useful argument in favor of setting the Court of Cassation's ruling aside.

The Defender of Rights,[141] Dominic Baudis, also appealed to lawmakers to "clarify the law."[142] Baudis addressed a letter to Prime Minister Ayrault as well as to the presidents of both houses of parliament,[143] asking for a large-scale consultation that would take the same form as the so-called Stasi Commission. Baudis' reasoning was the following:

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[136] This group included Roger-Gérard Schwartzenberg, Gérard Charasse, Jeanine Dubié, Olivier Falorni, Paul Giacobbi, Joël Giraud, Gilda Hobert, Jacques Krabal, Jérôme Lambert, Jacques Moignard, Dominique Orliac, Stéphane Saint-André, and Alain Tourret.

[137] *Proposition de loi visant à étendre l'obligation de neutralité à certaines personnes ou structures privées accueillant des mineurs et à assurer le respect du principe de laïcité*, < http://www.assemblee-nationale.fr/14/propositions/pion0593.asp >.

[138] In 1989, during the very first French headscarf controversy, Badinter, Finkielkraut, Kintzler, and Fontenay had joined Régis Debray in signing a pro-ban petition titled "Teachers, let's not give in! (*Profs, ne capitulons pas !*)."

[139] "*Notre loi doit impérativement être modifiée*," *Marianne*, "Laïcité : aux élus de nous sortir de la confusion !," March 22, 2013.

[140] "*[L]a distinction juridique entre espace public et lieu privé accueillant du public […] n'était pas opérante ou pertinente pour une écrasante majorité de la population*," *AFP*, "Les Français à 84% contre le foulard dans les lieux privés accueillant du public," March 23, 2013.

[141] The Defender of Rights (*Défenseur des droits*) is an independent administrative authority. Established in 2011, it took up, among other things, the functions of the HALDE.

[142] "*Une clarification de la situation conduite par le législateur me paraît hautement nécessaire*," quoted in *AFP*, "Baby Loup : le Défenseur des droits recommande de 'clarifier' la loi sur la laïcité," March 22, 2013.

[143] *Bulletin quotidien*, "Le Défenseur des Droits Dominique Baudis recommande une 'large consultation' pour clarifier les textes sur l'application du principe de laïcité," March 25, 2013.

> It can be difficult for employees to distinguish whether their activity falls within a public service mission or a mission of general interest. These doubts feed misunderstandings and conflicts that are detrimental to republican cohesion. They fuel legal disputes which will not fail to multiply after the latest developments in the Baby-Loup affair.[144]

Baudis' statement is striking insofar as it presented two options: either childcare was a "public service," or it provided a service that was important for the "general interest." The topic of private employment – which the Court of Cassation had emphasized less than a week earlier – had completely evaporated from these comments, and the issue of the employee's rights was consequently also absent. In clear contrast with the Highest Court's ruling, Baudis stressed the employees' responsibility in determining the nature of their tasks with regard to society at large. The above-quoted passage exemplifies the ongoing shift from employment discrimination to social cohesion: were the employees to question the restriction of their individual rights and liberties, the republican social fabric would be threatened. Indeed, the issue was no longer one requiring private employers to justify restrictions on religious freedom; it rather concerned the responsibilities of individual employees towards the cohesion of French society. As this was the case, Baudis' statement illustrates how fraternity – the responsibility to maintain the republican social bond – was overshadowing the individual rights associated with liberty and equality.

The Court of Cassation's March 2013 ruling – and the discussions that followed – led to a number of bills being put forward. Although most of the initiatives came from the UMP,[145] several high-ranking Socialists supported them.[146] On March 28, Christian Jacob (UMP) announced that a new bill was to be submitted by the UMP group.[147] On the same day, President Hollande expressed his support for a law that would apply in the specific sphere of early childhood:

> From the moment that there is contact with children, in what we call a public service for early childhood [organized by] a nursery association receiving public funding, there

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[144] "*Il peut être difficile pour les salariés de discerner si leur activité relève d'une mission de service public ou bien d'une mission d'intérêt général. Ces incertitudes nourrissent des malentendus et des conflits préjudiciables à la cohésion républicaine. Elles alimentent des contentieux qui ne manqueront pas de se multiplier après les derniers développements de l'affaire Baby Loup,*" quoted in *Bulletin quotidien*, "Le Défenseur des Droits Dominique Baudis recommande une 'large consultation' pour clarifier les textes sur l'application du principe de laïcité," March 25, 2013.

[145] Éric Ciotti (UMP) and Philippe Houillon (UMP) both submitted bills before signing the one prepared by Christian Jacob (leader of the UMP group).

[146] Socialist Secretary Harlem Désir was among the first to declare his support.

[147] *Proposition de loi relative au respect de la neutralité religieuse dans les entreprises et les associations*, < http://www.assemblee-nationale.fr/14/propositions/pion0998.asp >.

> has to be a certain similarity with respect to what exists in schools. […] I think that the law must intervene. […] It's a question of looking at this problem in particular, early childhood, the care for children in nurseries […]. It is there that we must set down rules.[148]

Jacob's bill was submitted to the National Assembly on April 24. It had been signed by 187 deputies, including Jean-François Copé, François Fillon, Éric Ciotti, and Philippe Houillon.[149] Contrary to President Hollande's preference, the bill was not limited to the field of early childhood. Instead, it suggested that the Labor Code be amended to include a clause that would give private companies the right to restrict "the wearing of religious symbols and practices that display religious affiliation."[150] These measures would be allowed insofar as they would be justified by "contact with the public" and the "proper functioning of the company."

Almost as a postlude to UMP's bill, a few weeks later Manuel Valls, Minister of the Interior, handed out a medal of civil merit (*médaille du mérite*) to Natalia Baleato, the director of Baby-Loup. Baleato's official decoration illustrates that the pro-ban group was continuing to take action in support of the nursery and to sideline the principle of non-discrimination in private employment.[151] Although the Court of Cassation had broken the legal status quo with its March 2013 verdict, this only appears to have strengthened the French political elite's resolve. However, although the UMP and parts of the left-wing seemed eager to legislate, Jacob's bill was rejected by the National Assembly on June 6. The majority of the Socialist group wanted to wait for the conclusions of the Observatory of *Laïcité*,[152] set

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[148] "*Dès lors qu'il y a contact avec les enfants, dans ce qu'on appelle le service public de la petite enfance, une crèche associative avec des financements publics, il doit y avoir une certaine similitude par rapport à ce qui existe dans l'école. […] Je pense que la loi doit intervenir. […] Il s'agit de regarder ce problème en particulier, la petite enfance, l'accueil des enfants dans les crèches […]. Là, il faut que nous posions des règles*," quoted in *AFP*, "Crèche et laïcité : Hollande veut une loi," March 28, 2013.

[149] For the full list of signatories, see < https://www.nosdeputes.fr/14/document/998 >. Out of the 187 signatories, a hundred were from UMP.

[150] "*Sont légitimes, dès lors qu'elles sont justifiées par la neutralité requise dans le cadre des relations avec le public ou par le bon fonctionnement de l'entreprise et proportionnées au but recherché, des restrictions visant à réglementer le port de signes et les pratiques manifestant une appartenance religieuse*," Proposition de loi relative au respect de la neutralité religieuse dans les entreprises et les associations, < http://www.assemblee-nationale.fr/14/pdf/propositions/pion0998.pdf >.

[151] Later, in February 2014, *Le Grand Orient de France* (GODF) – the largest Masonic organization in France – awarded the Baby-Loup nursery with its annual prize in support of its work (*Le Parisien*, "La crèche Baby Loup primée," February 14, 2014).

[152] *Observatoire de la laïcité*.

up by President Hollande in April to report on the issue of religious symbols in private companies, before amending the law. Éric Ciotti expressed his disappointment with this outcome in a telling statement: "There can be no national cohesion without *laïcité*."[153]

6.4 Promoting Social Cohesion (2013–2014)

On June 25, 2013, the Observatory of *Laïcité* published its report. This document concluded that the issue of *laïcité* did not cause significant problems in private companies.[154] The members of the Observatory had arrived at this conclusion through a vote (17 in favor, 3 against).[155] In an interview given to *Le Monde*, the president of the Observatory, Jean-Louis Bianco, called for a "*laïcité* of appeasement" (*laïcité d'apaisement*) and stated that "France does not have a problem with its *laïcité*."[156]

In September, the National Consultative Commission on Human Rights (CNCDH)[157] released a public notice which adopted a similar position.[158] According to the CNCDH, there was no need for a new law on *laïcité*. The Commission stated that when problems arose, they were usually related not to the principle of public secularism, but rather to a lack of knowledge concerning the limits of what constituted public service.[159] CNCDH concluded its *avis* with the following warning:

> We must in any event continue to pay close attention to any reform that might have negative consequences, for example by depriving certain categories of the population of access to a number of rights (right to education, access to employment…). It is necessary that we forestall any construction of a more restrictive "new *laïcité*" that would run the risk of confining all displays of religious freedom to the strictly private sphere,

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[153] "*Il ne peut y avoir de cohésion nationale sans laïcité*," quoted in *AFP*, "Crèche Baby Loup : l'Assemblée repousse une proposition UMP sur la laïcité," June 6, 2013.

[154] *AFP*, "Laïcité : 'situation plus rassurante' que prévue selon l'Observatoire de la laïcité," June 25, 2013.

[155] Senator Françoise Laborde (RDSE), MP Jean Glavany (PS), and Patrick Kessel (former leader of GODF) were opposed to the report's conclusions.

[156] *Le Monde*, "'La France n'a pas de problème avec sa laïcité'," June 25, 2003.

[157] *Commission nationale consultative des droits de l'homme*.

[158] CNCDH, *Avis sur la laïcité*, 26 septembre 2013: < http://www.cncdh.fr/sites/default/files/avis_laicite-ap-26_09_2013.pdf >.

[159] "*Si des difficultés peuvent apparaître, elles proviennent moins du principe de laïcité lui-même, que de l'identification du service public. Les prises de positions des uns et des autres témoignent souvent d'une méconnaissance des éléments qui définissent le service public*," CNCDH, *Avis sur la laïcité*, 26 septembre 2013.

which would be contrary to the 1905 law and detrimental to fundamental rights as well as to the principle of equality.[160]

Although the CNCDH's position did not go completely without notice in the French media,[161] those who took a stance in favor of protecting religious freedom were outnumbered by the vocal pro-ban group. By the fall of 2013, political commentators were impatiently awaiting the hearing which was to take place in the Paris Court of Appeal on October 17 concerning the Baby-Loup case. As *Le Point* pointed out, a dispute about labor law had, by then, turned into a "national symbol."[162]

The Paris District Attorney (*procureur général*), François Falletti, submitted his case to the Court of Appeal on Monday, October 14. According to this document, the public prosecutor was to argue that although the freedom of religion was a fundamental principle, Baby-Loup's internal rules and regulations were justified in light of the employee's contact with children in a multicultural neighborhood.[163] In other words, the prosecutor in this civil case was to ask the judges of the Court of Appeal to oppose the position adopted by the Court of Cassation in nullifying Mrs. Afif's firing. Contrary to the highest court, Falletti wanted private employers to have the right to restrict their employees' freedom of religion. In an extremely rare event, the Baby-Loup proceedings were not only marked by the presence of the District Attorney himself, but also chaired by the First President[164] of the Paris Court of Appeal, Jacques Degrandi.[165]

The hearing started on October 17 with Mrs. Afif's lawyer, Michel Henry, questioning the impartiality of the court. Henry referred to "rumors" that Jacques Degrandi, who was presiding over the

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[160] "*Il faut en tout état de cause rester attentif à toute réforme qui risquerait davoir des conséquences négatives, par exemple en privant certaines catégories de la population de l'accès à de nombreux droits (droit à l'éducation, accès à l'emploi…). Il faut se prévenir de toute construction d'une 'nouvelle laïcité' plus restrictive et qui risquerait d'enfermer toute expression de la liberté religieuse dans la stricte sphère intime, ce qui serait contraire à la loi de 1905, attentatoire aux libertés fondamentales et au principe d'égalité*," CNCDH, *Avis sur la laïcité*, 26 septembre 2013.

[161] It was quoted by *AFP* on September 26 and by *Le Figaro* on September 27, 2013.

[162] "*Ce qui n'était au départ qu'un litige du droit du travail s'est transformé en 'symbole national'*," *Le Point*, "La crèche Baby-Loup, 'un symbole national'," October 17, 2013.

[163] "*Le règlement intérieur de la crèche peut poser des restrictions au regard des missions de ses salariés, qui travaillent au contact des enfants et d'un public multiculturel*," quoted in *Le Monde*, "Baby Loup : le parquet s'oppose à l'arrêt de la Cour de cassation sur le licenciement de la salariée voilée," October 15, 2013.

[164] Each French appellate court (as well as the Court of Cassation) has a "First President" (*premier président*). The other judges working in these courts are simply called "presidents" or "*Présidents de Chambre*."

[165] *Bulletin quotidien*, "Baby Loup / Cour d'appel de Paris : L'affaire Baby Loup est réexaminée sur le fond à partir de demain," October 16, 2013.

court, had expressed his wish to overturn the Court of Cassation's ruling. Degrandi refuted the allegation by stating that the verdict would be rendered by five independent legal minds.[166] As for Richard Malka, Baby-Loup's lawyer appealed to the judges to settle a "crucial public debate," and reminded them that the decision made by the Court of Appeal would be an important step in determining the future of *laïcité*.[167]

While the Paris Court of Appeal was deliberating on its verdict, psychoanalyst and child psychiatrist Caroline Eliacheff[168] published a book titled *Comment le voile est tombé sur la crèche : Les vrais enjeux de l'affaire Baby-Loup* ("How the Veil Fell over Nursery-School: The Real Stakes in the Baby-Loup Affair") (2013). This book, published by Albin Michel on October 30, described the important work done by Baby-Loup in the district of Chanteloup while also explaining the "insidious influence of fundamentalism inside the nursery and its effects of children."[169] On the one hand, Eliacheff adopted a political position in favor of Mrs. Afif's firing, and on the other hand, she used her professional qualifications to allude to the potentially detrimental effects of the Islamic headscarf on the psychological development of children. According to Eliacheff, it was the children who were "the silent heroes and the forgotten victims of the 'Baby-Loup affair'."[170] On November 14, Élisabeth Lévy (a well-known journalist and essayist) reviewed Eliacheff's book in the pages of *Le Point*, concluding her text with the statement that "in this battle, the chances for a better future have perhaps slipped away from the children of Chanteloup."[171]

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[166] Jacques Degrandi (first president), Charlotte Dintilhac (president), Christine Rostand (president), Anne-Marie Dekinder (counsel), and Benoît Holleaux (counsel).

[167] "*Un débat de société crucial à juger […] Votre décision marquera une étape dans la construction ou la déconstruction de la laïcité dans ce pays*," quoted in *Le Parisien*, "Crèche Baby-Loup : la cour d'appel rendra sa décision le 27 novembre," October 17, 2013.

[168] Although Eliacheff was not well known to the general public, she had previously expressed her conservative stance: in 1999, she had publicly opposed the PACS (*pacte civil de solidarité*, the French law on gender-neutral civil unions) (*Le Monde*, "Ne laissons pas la critique du Pacs à la droite !," January 27, 1999).

[169] "*Caroline Eliacheff raconte l'emprise insidieuse du fondamentalisme au sein de la crèche et ses conséquences sur les enfants*," see the presentation of the book by the editor, < http://www.albin-michel.fr/Comment-le-voile-est-tombe-sur-la-creche-EAN=9782226251688 >.

[170] "*[…] héros silencieux et les victimes oubliées de 'l'affaire Baby-Loup'*," see the presentation of the book by the editor, < http://www.albin-michel.fr/Comment-le-voile-est-tombe-sur-la-creche-EAN=9782226251688 >.

[171] "*[…] les enfants de Chanteloup ont peut-être vu s'éloigner, dans cette bataille, leurs chances d'avoir un avenir meilleur*," *Le Point*, "'Avec Baby-Loup, c'est l'avenir de la laïcité en France qui se joue'," November 14, 2013.

On November 21, Fatima Afif expressed her own views in public for the very first time. In an exclusive interview granted to *Le Nouvel Observateur*,[172] Mrs. Afif discussed her former work in Baby-Loup, the firing that had taken place in 2008, as well as on her religious beliefs and family life. The former employee of Baby-Loup replied to the accusations according to which she would have abruptly changed her clothing:

> I have always worn the headscarf in Baby-Loup as I pleased, and it had never caused any problems. If I refused to take it off the day when I returned from my leave, it was because I found that demand extremely unjust and disturbing. […] That day, I wore a small white veil and a checkered tunic because of my extra weight. I had removed my *jilbab* at the door.[173]
>
> I have worn the *hijab* since I was 24. I was among the first who wore it in Chanteloup. In Baby-Loup, I wore it a bit when I wanted to, during some periods I did not wear it and during others I did. I have by the way a documentary film about the nursery […] where you can see me working with my headscarf. As we were among women and children, I did not wear the headscarf 90% of the time. And I also agreed to take it off when Natalia asked me to, for example to go see sponsors. My faith was shaky, inconsistent, and I felt guilty. I did the *hajj* [pilgrimage to Mecca] in 2004. And I indeed adopted new clothing for the outdoors, the *jilbab*, which is sort of like a coat. But I am the same Fatima, the one who likes to laugh, to liven things up, who goes to the swimming pool and who can return at 2 am from visiting her girlfriends. I am independent and I know more than one woman who does not veil and would be jealous of the system I have with my husband.[174]

In this interview, Fatima Afif also expressed her gratitude for Natalia Baleato, a mentor to whom she "almost owed her life." Mrs. Afif described having been on Baleato's "beck and call" until

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[172] *Le Nouvel Observateur*, "Baby-Loup : La vérité de Fatima," November 21, 2013.

[173] "*J'ai toujours porté le foulard à Baby-Loup comme bon me semblait, et cela n'avait jamais posé de problèmes. Si j'ai refusé de le retirer, le jour où je suis revenue après mon congé, c'est parce que j'ai trouvé cette demande extrêmement injuste et vexatoire. […] Ce jour-là, j'avais un petit voile blanc et une tunique à carreaux, à cause de mes kilos en trop. Mon jilbab, je l'avais enlevé à l'entrée*," quoted in *Le Nouvel Observateur*, "Baby-Loup : La vérité de Fatima," November 21, 2013.

[174] "*Je mets le hidjab depuis l'âge de 24 ans. J'ai été une des premières de Chanteloup à le porter. A Baby-Loup, je le mettais un peu quand je voulais, avec des périodes sans, des périodes avec. Je détiens d'ailleurs un film documentaire sur la crèche […] où l'on me voit travailler avec mon foulard. Comme nous étions entre femmes avec des enfants, je ne le portais pas 90% du temps. Et j'acceptais aussi de le retirer quand Natalia me le demandait pour aller voir des financeurs par exemple. Ma foi était bancale, fluctuante et je culpabilisais beaucoup. J'ai fait le hadj [pèlerinage à La Mecque, NDLR] fin 2004. Et effectivement j'ai pris une nouvelle tenue pour l'extérieur, le jilbab, qui est un peu comme un manteau. Mais je suis la même Fatima, celle qui aime rire, mettre l'ambiance, qui va à la piscine et qui peut revenir à 2 heures du matin de chez ses copines. Je suis indépendante et je connais plus d'une femme non voilée qui serait jalouse du fonctionnement que nous avons avec mon mari*," quoted in *Le Nouvel Observateur*, "Baby-Loup : La vérité de Fatima," November 21, 2013.

gradually becoming more independent and critical, stating that the wearing of the veil had "liberated her."[175] According to Mrs. Afif, the director of Baby-Loup had always been an atheist and a feminist, but she had not always been opposed to the veil. The former employee described Baby-Loup as having been a "small paradise" before Natalia Baleato had informed her that she could no longer return to work with her headscarf. When asked about her seeming indifference during the court proceedings, Mrs. Afif replied:

> I have never been at war with Baby-Loup, it was a great project by the women of the neighborhood. And I am not the standard-bearer of any cause, I only ask for justice. Who has thought about the damage done to my life? Imagine, when I arrive in court, I am treated as a pariah. I am called the "veiled nanny," although I was the assistant director and I did not take care of children! Do you think I am unmoved by this? So much has been said about me – it is enough to break someone. I have been caricaturized: after the process of appeal in Versailles, an image was published of a woman in a *niqab* [face veil] that was not me, it is a disgrace! I decided that nothing would be read on my face and that I would not give them the satisfaction of seeing me cry.[176]

The Paris Court of Appeal rendered its verdict on November 27, 2013, incidentally on the same day that the European Court of Human Rights examined the issue of the French "burqa ban." Although the decisions of the Court of Cassation are usually followed by lower courts (Hunter-Henin 2015, 718), in the Baby-Loup case, the appellate court did not apply the highest court's ruling. Instead, it confirmed the firing that the Court of Cassation had nullified in March 2013. Once again, however, the justifications for the ruling differed from those that had previously been put forward. The Paris Court of Appeal referred to the idea that the Baby-Loup nursery was an "*entreprise de conviction*"[177]– an association that defended a specific philosophical perspective, namely *laïcité*. Additionally, the court also argued that the principle of religious "neutrality" could be applied since the nursery-school provided a "mission

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[175] "*[J]e lui devais presque la vie […], elle était mon gourou, j'obéissais au doigt et à l'œil. […] J'ai plutôt l'impression de m'être émancipée avec le voile*," quoted in *Le Nouvel Observateur*, "Baby-Loup : La vérité de Fatima," November 21, 2013.

[176] "*Je n'ai jamais été en guerre contre Baby-Loup, c'était un projet génial des femmes du quartier. Et je ne suis le porte-étendard d'aucune cause, je demande seulement la justice. Qui a pensé aux dégâts faits sur ma vie ? Imaginez que, quand j'arrive dans un tribunal, je suis considérée comme la pestiférée. On m'appelle 'la nounou voilée', alors que j'étais directrice adjointe, je ne faisais pas de la garde d'enfants ! Vous croyez que j'y suis insensible ? Avec tout ce qui a été dit sur mon compte, il y a de quoi briser une personne. On m'a caricaturée ; après le procès en appel à Versailles, on a publié l'image d'une femme en niqab qui n'était pas moi, c'est une honte ! J'ai décidé qu'on ne lirait rien sur mon visage et de ne pas faire le cadeau de mes larmes*," quoted in *Le Nouvel Observateur*, "Baby-Loup : La vérité de Fatima," November 21, 2013.

[177] The term usually employed is "*entreprise de tendance*" (Hennette Vauchez and Valentin 2014, 42).

of general interest."[178] In short, the Paris Court of Appeal considered that the restriction on Mrs. Afif's religious freedom was justified by Baby-Loup's secular ethos and the service that it provided for the whole community. The court also referred to the UN Convention on the Rights of the Child (1989) and to the necessity of protecting the freedom of conscience of children.[179] Finally – and in contrast to the Court of Cassation – the appellate court considered that a general restriction on religious freedom was not too "imprecise," given that it was limited to personnel who were involved with child development.[180]

Mrs. Afif's lawyer, Michel Henry, criticized the verdict, stating that the Paris Court of Appeal had "invented" a requirement that did not exist as such in the law, which was protecting the freedom of conscience of young children.[181] Moreover, Henry pointed to the fact that the legal category of "*entreprise de conviction*" was a recent invention. Indeed, the notion of "*entreprise de conviction*" – or, what is more regularly referred to as "*entreprise de tendance*" – had been imported to France from German and Italian law (Gaudu 2011, 1186). This legal concept refers to a company that has a clearly expressed ideological, philosophical or political goal (Benaissa et al. 2016, 141; see also Waquet 1996), and it is nowadays fully recognized in European law[182] and also – though less unequivocally – taken into account in French jurisprudence (Gomes, Orgerit, and Ufarte 2013). For instance, political parties and trade unions fall within this category (Benaissa et al. 2016, 141).[183] However, the activities of political

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[178] "*Considérant qu'une personne morale de droit privé, qui assure une mission d'intérêt général, peut dans certaines circonstances constituer une entreprise de conviction au sens de la jurisprudence de la Cour européenne des droits de l'homme et se doter de statuts et d'un règlement intérieur prévoyant une obligation de neutralité du personnel dans l'exercice de ses tâches*" (Cour d'appel de Paris 2013).

[179] "*Considérant qu'au regard tant de la nécessité, imposée par l'article 14 de la Convention relative aux droits de l'enfant du 20 novembre 1989, de protéger la liberté de pensée, de conscience et de religion à construire pour chaque enfant*" (Cour d'appel de Paris 2013).

[180] "*Considérant que la formulation de cette obligation de neutralité dans le règlement intérieur, en particulier celle qui résulte de la modification de 2003, est suffisamment précise pour qu'elle soit entendue comme étant d'application limitée aux activités d'éveil et d'accompagnement des enfants à l'intérieur et à l'extérieur des locaux professionnels*" (Cour d'appel de Paris 2013).

[181] "*On invente une exigence que la loi ne prévoit pas, protéger la liberté de conscience des petits enfants. On invente une catégorie juridique d'entreprise, qui n'existe pas, l'entreprise de conviction,*" quoted in *AFP*, "Baby-Loup : pourvoi en cassation 'très probable' de la salariée voilée licenciée," November 27, 2013.

[182] The EU Equal Employment Directive Directive (2000) includes a provision concerning such companies, giving them more leeway concerning the principle of non-discrimination, and these exemptions have also been clearly established by the jurisprudence of the European Court of Human Rights (Gomes, Orgerit, and Ufarte 2013).

[183] Cyril Wolmark refers to a case where a CGT campaigner had been excluded from the organization because of his political convictions – his commitment to *Front national* (Benaissa et al. 2016, 141)

parties and trade unions consist primarily of advocating their specific ideological positions. This is not the case for Baby-Loup whose main function is to provide childcare, not to promote *laïcité*. Legitimating Baby-Loup's claim according to which it was an "*entreprise de tendance*" – as the appellate court did – was therefore highly controversial (Benaissa et al. 2016, 141; see also Hennette Vauchez and Valentin 2014, 48-52). Besides, if *laïcité* had become a specific ideological conviction – in a similar vein to a political or religious belief – then how could it be a fundamental and "neutral" principle of social organization, which is what Baby-Loup's defenders usually claimed?

The public reactions to the ruling of the Paris Court of Appeal varied. In an interview of *Le Nouvel Observateur*, Caroline Eliacheff – who as a psychiatrist was not a legal expert – was asked whether she thought that appealing to the notion of "*entreprise de conviction*" was a good option. Eliacheff answered: "If it is possible for a private association to have a restrictive regulation about religious symbols, from the moment that it receives children, it seems to me to be an extremely pacifying resolution."[184] Professor of public law, Jean-Michel Ducompte, pointed to the important effect that the ruling would have on French jurisprudence given that the court had relied on an argument of "*entreprise de conviction,*" and noted that *laïcité* should not become "liberticidal."[185] According to Jean Baubérot, the court's ruling illustrated the forging of a "new *laïcité* which is tougher on Islam than on other religions."[186] The radical left-wing (PRG)[187] rejoiced, stating that "a nursery must be a place that is neutral religion-wise,"[188] while the National Front (FN) thought that it was the disagreements between the courts that were "disturbing public order,"[189] and therefore called for a new law on the issue.

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[184] "*S'il est possible pour une association de droit privé d'avoir un règlement restrictif sur les signes religieux, à partir du moment où ils accueillent de enfants, […] cela me semble être une décision extrêmement pacifiante*," quoted in *Le Nouvel Observateur*, "Baby-Loup : 'Un point d'arrêt aux prétentions des fondamentalistes'," November 27, 2013.

[185] "*[…] le principe de laïcité est un principe cardinal […] mais celui-ci ne doit pas devenir liberticide*," quoted in *Le Nouvel Observateur*, "Baby-Loup : 'La laïcité ne doit pas devenir liberticide'," November 27, 2013.

[186] "*[O]n est en train de faire une nouvelle laïcité qui est plus dure pour l'islam que pour les autres religions*," quoted in *AFP*, "Baby-Loup : la crainte d'une laïcité plus dure pour l'islam (experts)," November 28, 2013.

[187] *Parti radical de gauche*.

[188] "*[U]ne crèche doit être un endroit neutre religieusement*," quoted in *AFP*, "Réactions politiques à l'arrêt Baby-Loup," November 27, 2013.

[189] "*Ces désaccords entre magistrats dans le dossier Baby-Loup créent nos seulement une incertitude dommageable pour les individus concernés, mais plus largement un trouble à l'ordre public, plus personne ne sachant quelle est la règle*," quoted in *AFP*, "Réactions politiques à l'arrêt Baby-Loup," November 27, 2013.

In what had come to seem like a never-ending legal saga, Mrs. Afif appealed to the Court of Cassation. This time, the Baby-Loup case was to be examined by the High Court's Plenary Chamber on June 16, 2014. In his written statement submitted to the court, the public prosecutor (*procureur général*) Jean-Claude Marin considered that the Paris Court of Appeal had made a mistake in basing its decision on the notion of "*entreprise de conviction*," but nonetheless argued that Baby-Loup's rules and regulations were legitimate.[190]

On June 25, 2014, the Plenary Chamber of the Court of Cassation put an end to the national legal proceedings by confirming Mrs. Afif's dismissal (Cour de cassation 2014). However, the Court of Cassation agreed with Jean-Claude Marin's assessment that the Paris Court of Appeal had erred in its legal basis. To begin with, the highest court stated that a nursery such as Baby-Loup could not be considered an "*entreprise de conviction*."[191] It also specified that it did not follow from the Convention of the Rights of the Child that a private employer in the field of early childhood would have to impose religious neutrality on its personnel. Contrary to the Paris Court of Appeal, the Court of Cassation also stated that – since the Baby-Loup case fell under private law – the principle of *laïcité* did not apply. The ruling thereby invalidated the positions adopted by the Labor Court (2010) and the Paris Court of Appeal (2013): The Court of Cassation unequivocally stated that *laïcité* only applied to the state.[192] Yet despite all of these issues, the Highest Court still found that Mrs. Afif's firing had been lawful. How did the court justify this decision?

The answer is to be found in the particular characteristics of the service provided by the Baby-Loup nursery. Indeed, the Court of Cassation stated that "a differential measure or treatment based on religion could be non-discriminatory" if it was based on "essential professional requirements."[193] According to the Highest Court's verdict, the Paris Court of Appeal had failed to examine in sufficient detail Mrs. Afif's tasks and the specific functioning of the nursery. The Court of Cassation based its decision on articles L-1121-1 and L-1321-3 of the Labor Code, arguing that the restrictions on Mrs. Afif's religious freedom *were* "justified and proportionate." This view clearly differs from the one adopted by the Social

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[190] < https://www.courdecassation.fr/IMG///Avis_PG_pleniere_140625ano.pdf >.

[191] Paragraphs 1 and 2 of the Court of Cassation's verdict (Cour de cassation 2014).

[192] Paragraphs 5 and 6 (Cour de cassation 2014).

[193] "*[U]ne mesure ou une différence de traitement fondée notamment sur les convictions religieuses peut ne pas être discriminatoire si elle répond à une exigence professionnelle essentielle et déterminante et pour autant que l'objectif soit légitime et l'exigence proportionnée*" (Cour de cassation 2014, paragraph 8).

Chamber of the Court of Cassation in March 2013 (see Appendix 2 for a summary). In contrast to the Social Chamber, the Plenary Chamber held that the rules and regulations of the Baby-Loup association were reasonable in light of the nursery's small size and the fact that all of its 18 employees were or could be in contact with children and their parents.[194] Given these particularities, the ban on religious symbols was not "general" – as the Social Chamber had held – but "sufficiently precise." Moreover, the Plenary Chamber took into account the Baby-Loup nursery's explicitly stated goal, which was to "work in the sphere of early childhood in a disadvantaged neighborhood and to aim for the social and professional integration of women […] without distinguishing between political and religious opinions."[195] According to the Court of Cassation, it was the nature of Baby-Loup's mission – childcare and women's social and professional integration – that rendered the restriction on religious freedom "proportionate to its goals" and, consequently, non-discriminatory.

In short, the Plenary Chamber of the Court of Cassation (2014) held that the specific function and location of the Baby-Loup nursery needed to be taken into account in examining the restrictions that it imposed on its personnel. It was these specificities – the issue of contact with children and the social function of childcare in a disadvantaged neighborhood – which, according to the court, gave sufficient reason for the employer to limit Mrs. Afif's religious freedom. However, it is unclear why the Court of Cassation considered that the wearing of a headscarf in contact with children or their parents would potentially be prejudicial. Could the simple fact of seeing an Islamic headscarf be detrimental to child development? How could the wearing of the headscarf – especially in a multicultural neighborhood such as La Noé – be so disruptive to social order that it required limiting the fundamental and well established right to manifest one's religious beliefs?

Although the court did not provide answers to these questions, I argue that the answers lie in the profound transformation that has taken place in French public discourse during recent years. The series of measures that have limited the wearing of the Islamic headscarf in various spaces illustrate that central political actors have abandoned the precarious balance that traditionally existed between

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[194] "*[…] appréciant de manière concrète les conditions de fonctionnement d'une association de dimension réduite, employant seulement dix-huit salariés, qui étaient ou pouvaient être en relation directe avec les enfants et leurs parents, que la restriction à la liberté de manifester sa religion édictée par le règlement intérieur ne présentait pas un caractère général, mais était suffisamment précise, justifiée par la nature des tâches accomplies par les salariés de l'association et proportionnée au but recherché*" (Cour de cassation 2014).

[195] "*[…] développer une action orientée vers la petite enfance en milieu défavorisé et d'œuvrer pour l'insertion sociale et professionnelle des femmes […] sans distinction d'opinion politique et confessionnelle*."

the protection of individual liberties and the preservation of social unity. Instead, they have clearly given preference to social cohesion over individual rights. The Baby-Loup case illustrates this transformation. After a six-year legal saga, the Court of Cassation (2014) – in refusing to take a firmer position – essentially gave private employers the right to decide for themselves which displays of religious belief they deemed acceptable in light of their specific tasks and constraints. As this was the case, the court sided with those who thought that Mrs. Afif's headscarf was potentially disruptive to social harmony, thereby consolidating the republican social order. Although the Court formally rejected the infiltration of *laïcité* into the private employment sector, its reasoning remained tainted by this very principle (Hunter-Henin 2015, 721). Moreover, in refusing the argument about Baby-Loup as an "*entreprise de conviction*," the Highest Court contributed to advancing the view that *laïcité* was indeed a "shared" value of the French society – a principle of social organization and cohesion.

In August 2016, more than two years after the Court of Cassation's ruling, the French Parliament modified the Labor Code. The Parliament passed a law[196] – known as the "*loi travail*" or as the "El Khomri law," after the name of the Minister of Labor – whose publicized aim was to make the country's labor market more flexible. Although the law provoked a number of large-scale demonstrations and strikes, one of its aspects went almost unnoticed in the media: the law inserted in the Labor Code an article which gave private companies the right to include the requirement of neutrality in their rules and regulations, if such a restriction was justified by the protection of other fundamental rights and liberties or by the proper functioning of the establishment.[197] Through the passage of this law, the Parliament validated the Court of Cassation's 2014 reasoning and legalized the exclusion of headscarf-wearing women from the field of private employment, thereby consolidating the new republican social order.

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[196] *Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels*:
< https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032983213&categorieLien=id >.

[197] Article L1321-2-1: "*Le règlement intérieur peut contenir des dispositions inscrivant le principe de neutralité et restreignant la manifestation des convictions des salariés si ces restrictions sont justifiées par l'exercice d'autres libertés et droits fondamentaux ou par les nécessités du bon fonctionnement de l'entreprise et si elles sont proportionnées au but recherché*."

6.5 "Neutrality" Gains Ground

In this chapter, I have empirically examined the discursive processes through which the firing of a private-sector employee was publicly justified. My detailed analysis of French public discourse has illustrated how political and legal actors succeeded in circumventing the provisions offered by the French Labor Code as well as the European and international legal norms which are supposed to protect the employee against discrimination. Indeed, except for a few dissenting voices, the majority of the French political elite did not engage in a discussion about the issue of religious discrimination in private employment sector. In spite of the HALDE's initial 2010 ruling and the Court of Cassation's unambiguous 2013 verdict – both of which had condemned Mrs. Afif's dismissal as discriminatory – the major actors who participated in the public discussion about Baby-Loup did not follow up on the idea that the firing was a breach of the individual employee's fundamental rights. Instead, they tried to justify the nursery's decision by appealing to a wide range of arguments: the requirements of *laïcité*, the existence of "gray zones," the danger of communalism, the protection of children, and the importance of social cohesion in a multicultural neighborhood. Although the Court of Cassation's final ruling (2014) rejected the argument that *laïcité* could be applied in the private sector, the Court nonetheless found that the social function of the "neutral" childcare center was sufficient reason for firing a headscarved employee. Through years of public discussion, court rulings, and legislative propositions, Baby-Loup's supporters had finally reached their goal. What do these events tell us about the development of dominant republican ideology?

From a morphological point of view, several conclusions can be drawn from this analysis. To begin with, the Baby-Loup affair confirms the mutation of the notion of *laïcité*: what used to be a principle of public secularism has become a requirement of religious neutrality that can be imposed on private individuals. In the public discourses surrounding Baby-Loup, this new concept of *laïcité* remained close to the republican core, infusing it with a specific understanding of republican rights and responsibilities. Interestingly, my analysis shows that the issue of gender equality, which had been constructed as adjacent to *laïcité*, received less attention. In contrast to the discussions concerning the student's headscarf and the burqa, in the "Baby-Loup affair," pro-ban actors did not attempt to argue that headscarved women should be excluded in order to protect or to promote women's rights. However, it had already been established that *laïcité* protected women's emancipation, and that being "feminist" signified supporting a staunchly secular approach. The Baby-Loup discussions show that this

adjacency was not questioned. On the contrary, according to the Court of Cassation's final ruling, the firing of Mrs. Afif was beneficial for "the social and professional integration of women," and according to Richard Malka, this decision was "good news for the children of Baby-Loup, for women, for the employees, for Muslims and non-Muslims alike […] [as well as] for the Republic and its *vivre ensemble*."[198] In sum, my analysis reveals that the concept of *laïcité* stayed close to the republican core, and that the issue of gender equality remained in its proximity.

Most importantly, the Baby-Loup case illustrates the consolidation of the republican core which had been constructed in 2009–2010. This sedimentation is visible in the ways in which French political and legal actors downplayed individual rights and freedoms and stressed the importance of social interactions and social cohesion. Throughout this chapter, I have shown how pro-ban actors fell back on the idea that banning the headscarf was necessary for the "general interest" of the republican community. They argued that it protected children, the future generation of republican citizens, and, somewhat paradoxically, that it ensured women's social and professional integration in a multicultural neighborhood. Above all, they insisted that the ban on headscarves was necessary in order to guarantee social harmony within the interactions of the Baby-Loup nursery. Through such formulations, they privileged fraternity over liberty and equality, thereby solidifying the new republican core which had been constructed during the burqa debates.

Besides consolidating the new core and the dominant republican morphology, the Baby-Loup discussions also reveal how the requirement of religious neutrality was extended to a new sphere: private employment. This extension of the republican social norm helped sediment the dominant understanding of republican values and to validate Mrs. Afif's dismissal. Although Fatima Afif now shares her time between Chanteloup and Casablanca,[199] the Court of Cassations 2014 ruling and the recent modification of the French Labor Code have legitimized a form of employment discrimination which can

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[198] "*Cette décision est une bonne nouvelle pour les enfants de Baby-Loup, les femmes, le personnel, les musulmans et pour ceux qui ne le sont pas […] c'est une bonne nouvelle pour la République et son vivre-ensemble*," quoted in *L'Humanité*, "Baby-Loup : la Cour de cassation confirme le licenciement de Fatima Afif," June 25, 2004.

[199] In 2010, Fatima Afif was refused French nationality, and although she had not been back to Morocco since her childhood, she found a "refuge" there during the peak of the media frenzy (*Le Nouvel Observateur*, "La verité de Fatima," November 21, 2013).

have profound implications for the many women working in child-care and, more generally, in the private sector. In the following chapter, I will move on to examining another type of discrimination: the exclusion of headscarf-wearing mothers from their children's school outings.

Chapter 7

"Veiled" Mothers and School Outings: Extending the Republican Social Norm

Far from being purely theoretical, the transformation of French republican ideology is readily observable in ongoing political practices. The construction of the republican social order can be described as a process of double extension: successive French governments have not only applied the modified republican value system to *new spaces*, but they have also extended the requirement of religious "neutrality" to *new groups of people*. The latter dimension of this extension stands out particularly clearly in a single setting: the public school system.

The law of March 15, 2004 prohibited, in the name of *laïcité*, students of public schools from displaying conspicuous religious symbols. In May 2004, François Fillon (UMP), then Minister of Education, published a circular[1] which offered clear guidelines for the application of this law. The ministerial notice explained that the new law imposed the "respect of *laïcité*" on all students when they were in public schools or participating in educational activities that the school organized outside of the school building.[2] The circular further noted that the law did not "modify the rules pertaining to public servants and the parents of students."[3] Yet, eight years later, the French government changed this regulation.

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[1] "Respect de la laïcité : Port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics," circular no 2004-084, May 18, 2004, *Journal officiel* of May 22, 2004.

[2] "*La loi s'applique à l'intérieur des écoles et des établissements et plus généralement à toutes les activités placées sous la responsabilité des établissements ou des enseignants y compris celles qui se déroulent en dehors de l'enceinte de l'établissement (sortie scolaire, cours d'éducation physique et sportive...)*," circular no 2004-084, May 18, 2004, section 2.2.

[3] "*La loi ne modifie pas les règles applicables aux agents du service public et aux parents d'élèves*," circular no 2004-084, May 18, 2004, section 2.3.

In another circular published on March 27, 2012, Minister of Education Luc Chatel (UMP) gave school principals the right to "prevent parents of students or any other participant from displaying, through their clothing or comments, their religious, political or philosophical beliefs when accompanying students on school outings or trips."[4] With this 2012 circular, the exclusion of headscarved mothers, a practice that the Ministry of Education had prohibited in 2004, became publicly legitimized. How did the requirement of religious "neutrality" come to apply to yet another group of people: mothers who were tied to the school only through their kinship with the students and their interest in their children's educational activities?

I will answer this question by arguing that the publication and ongoing application of the so-called Chatel circular since 2012 is the outcome of a complex process of ideological construction. To begin with, far from being the result of a simple change of government or the preferences of individual ministers, I will demonstrate that the shift in the official stance of the Ministry of Education came about through a process which involved not only politicians but also school administrators, courts, and a number of other public institutions, such as the High Council for Integration (HCI) and the French Council of State. Moreover, I argue that the exclusion of headscarved mothers from school outings should not be seen as isolated from the 2004 law, the 2010 burqa ban, or the Baby-Loup case. On the contrary, the affair concerning "veiled" mothers and school outings offers a prime example of the extent to which the different headscarf controversies are intertwined.

In this chapter, we will see how, despite the spill-over effects of the 2004 law, in the years that followed, the HALDE as well as the French government initially blocked school principals' attempts to exclude headscarved mothers from school outings. Indeed, from the creation of the HALDE in 2004 to the first news about its dissolution in 2010,[5] French public actors were, to a certain extent, attentive to the issue of discrimination. For example, as seen in Chapter 6, in October 2007, Yvette "Fanny" Truchelut was convicted for religious discrimination, and in March 2010, the HALDE condemned the Baby-Loup nursery's firing of Mrs. Afif as discriminatory. In this wider perspective, the fall of 2010 can be

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[4] "*Ces principes permettent notamment d'empêcher que les parents d'élèves ou tout autre intervenant manifestent, par leur tenue ou leurs propos, leurs convictions religieuses, politiques ou philosophiques lorsqu'ils accompagnent les élèves lors des sorties et voyages scolaires*," circular no 2012-056, appendix 10, paragraph 4.

[5] *Le Figaro*, "Halde : un bilan mitigé après cinq ans d'action," March 6, 2010; *L'Humanité*, "La Halde victime de son succès," March 6, 2010; *La Tribune*, "La Halde va changer de tête à quelques semaines de sa probable dissolution," December 6, 2010.

identified as a turning point. The passing of the burqa ban in October 2010 and the confirming of Mrs. Afif's firing in December 2010 were followed in March 2011 by Minister of Education Luc Chatel's announcement in favor of "veiled" mothers' exclusion from school outings, and in November 2011 by a Montreuil court's ruling according to which such a practice did not constitute discrimination. In parallel, Mrs. Afif's firing was confirmed for a second time in October 2011, and, as seen in Chapter 6, a number of high-ranking politicians engaged in publicly legitimizing this decision. What is more, the arguments in favor of headscarved women's exclusion, whether from the workplace or from school trips, show significant overlap. In order to understand the discourses concerning the topic of "veiled" mothers and school outings, it is therefore necessary to take into account the synergy of the various affairs. (A combined chronology of the different veil affairs is available in Appendix 1.)

The public debate about headscarved mothers' participation in school outings is part of the ongoing negotiation about the restructuring of republican values. Although this discussion concerning school outings is not yet over, it illustrates the ways in which French political actors have sought to consolidate the republican social norm – understood as implying the absence of headscarves – and to extend the requirement of "neutrality" to new groups of people. From a morphological point of view, the development of the public discussion concerning school outings mirrors the transformation of the republican-ideological core. Whereas French officials rebuffed the various attempts to exclude "veiled" mothers from 2004 through to 2009, in 2011, following the passage of the October 2010 law which prioritized fraternity over liberty and equality, the debate about school outings reemerged and the exclusions gained legitimacy. Just as *laïcité* had not been a sufficient tool for banning the burqa in public space or for excluding headscarved women from childcare services, in the case of school outings, although *laïcité* was central, it was not enough for limiting mothers' religious displays. But nor did it need to be. Supported by the transformed republican core, the new republican social order, as well as by the strong link between public secularism and public schooling, French political actors were able to mobilize *laïcité* to legitimate exclusions that had, only some years previously, been generally viewed as discriminatory. As this was the case, I will argue that the exclusion of headscarved mothers should be interpreted as the consolidation and extension of the new republican social norm. Proceeding in a chronological order, I will examine how the exclusion of headscarved Muslims, which started with the students in public schools in 2004, came full circle, leading mothers to be cast out of their children's school activities on the grounds that their headscarves were disruptive of the republican social order.

7.1 Back to the School: Attempts to Exclude Mothers Are Blocked (2004–2008)

When the law of March 15, 2004 entered into effect at the beginning of the 2004–2005 school year, protests from the anti-ban group were scarce. This can be explained, in large part, by international events. On August 20, 2004 members of the "Islamic Army in Iraq"[6] took two French journalists as hostages in Iraq. Some days later, the captors published an ultimatum: if France did not go back on the law on *laïcité* within a 48-hour time window, the hostages would be killed.[7] The French looked on in horror as the journalists pleaded, in a video broadcast by *Al-Jazeera*, the French government to overturn the headscarf law in exchange for their life.[8]

In this situation, French Muslims and their supporters had a hard time protesting against the law, as all critique of it could have been taken as a sign of support for terrorism.[9] As this was the case, the demonstrations and protests were minimal,[10] although the collective *Une école pour tout-e-s* did organize a small event in Strasbourg in support of headscarved girls.[11] As one member of the group put it: "We absolutely condemn the taking of journalists as hostages in Iraq, but the law on *laïcité* remains discriminatory against Muslims. The current situation is likely to encourage Islamophobia […]."[12] Demonstrations against headscarved girls' exclusion were also organized abroad, and several European politicians expressed their opposition to the French law.[13]

Although the application of the new law did not cause significant upheaval during the 2004 *rentrée*, it soon became apparent that for some pro-ban actors, obliging schoolgirls to take off their

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[6] *Al-Jaish Al-Islami fil-Iraq*, a military organization that was combatting the presence of US and their allies' troops on Iraqi territory.

[7] *AFP*, "Deux Français pris en otage en Irak (Al-Jazira)," August 29, 2004.

[8] *Le Progrès*, "Les deux journalistes français pris en otage," August 29, 2004.

[9] For an analysis of the discourses surrounding the hostage drama and the 2004 *rentrée*, see Vuoristo (2010, 111-121).

[10] *Le Figaro*, "Les musulmans de France affichent leur solidarité," August 31, 2004; *Ouest France*, "Une nation rassemblée," August 31, 2004; *Le Progrès*, "La France rassemblée autour de ses valeurs," September 1, 2004; *Le Progrès*, "Une rentrée des classes sereine," September 1, 2004; *AFP*, "Fillon veut placer la rentrée scolaire 'sous le signe de la fraternité'," September 1, 2004.

[11] *AFP*, "Rassemblement contre la loi sur la laïcité à Strasbourg," September 2, 2004.

[12] "*Nous condamnons tout à fait la prise d'otages des journalistes en Irak mais la loi sur la laïcité est toujours discriminatoire vis-à-vis des musulmanes. La situation actuelle risque d'encourager l'islamophobie […]*," quoted in *AFP*, "Rassemblement contre la loi sur la laïcité à Strasbourg," September 2, 2004.

[13] *AFP*, "Voile à l'école : campagne contre la loi française au Parlement européen," September 23, 2004; *Le Figaro*, "Les partisans du voile à l'école lancent leur lobbying européen," September 23, 2004.

headscarves was not enough. For example, on September 17, 2004, AFP reported that the mayor of the Parisian suburb of Montreuil-sous-Bois (Seine-Saint-Denis), Jean-Pierre Brard (PCF), had sent a letter to all of the school principals of his city to "remind them" that the parents of students who were accompanying school outings were not allowed to "broadcast their beliefs."[14] Although Brard referred to these parents with the gender-neutral terms "*accompagnateurs*" and "*personnes concernées*," we know that the problem was the Islamic headscarf, and that it was hence mothers who were targeted. Brard had participated actively in the 2003 Debré Mission which had, in parallel with the Stasi Commission, examined the issue of religious symbols in public schools, and he was also a member of a government agency[15] whose aim was to monitor religious groups that could constitute a threat to public order or to basic liberties. The Communist MP had become known as a fierce defender of an intransigent interpretation of *laïcité*. Although the law of March 15, 2004 only concerned students, according to Brard's interpretation, mothers taking part in school activities were also not allowed to wear the Islamic headscarf:

> It seems quite obvious to me that the people concerned [mothers] must refrain from displaying, by whatever symbols it may be, their belief insofar as […] doing so would introduce, in the sphere of the school or its activities, an element that does not need to be present. […] Even when people are volunteers, they have the status of volunteer officers of National Education. The rules concerning the absolute neutrality of individuals is a requirement that has been reaffirmed by law.[16]

It is noteworthy that Brard published his instructions only a few weeks after the law of March 2004 had become effective. As this was the case, Brard formulated his initiative at the intersection of two existing legal rules. On the one hand, public servants such as teachers were bound by the obligation of religious neutrality,[17] and, on the other hand, the new law also prohibited students from displaying

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[14] *AFP*, "Sorties scolaires : les accompagnateurs ne doivent pas afficher leur croyance (Brard)," September 17, 2004.

[15] *Mission interministérielle de vigilance et de lutte contre les dérives sectaires* (MiVILUDES), created in 2002.

[16] "*Il me semble assez évident que les personnes concernées doivent s'abstenir d'afficher par quelque signe que ce soit leur croyance dans la mesure où cela revient à […] introduire, dans la sphère de l'école ou de ses activités, un élément qui n'a pas à y être présent. […] [M]ême quand des personnes sont bénévoles, elles ont un statut d'agent bénévole de l'Education nationale. […] Les règles concernant l'absolue neutralité des personnes est une exigence qui a été réaffirmée par la loi*," quoted in *AFP*, "Sorties scolaires : les accompagnateurs ne doivent pas afficher leur croyance (Brard)," September 17, 2004.

[17] This obligation derives from the 1905 law and was validated, for example, by a ruling from the Council of State (*Avis rendus par le Conseil d'Etat sur des questions de droit posées par un tribunal administratif ou une cour administrative d'appel*, JORF n°144 du 23 juin 2000). In 2016, it was inscribed in a new law (*Loi n° 2016-483 du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires*).

conspicuous religious symbols. Brard interpreted the existing laws loosely enough to be able to argue that these restrictions should also be applied to mothers. Yet no law existed that would allow for such a restriction of mothers' religious freedom. On the contrary, the ministerial circular concerning the application of the March 2004 law clearly stated that the law did not modify the rules concerning either public servants or parents of students: "The law does not concern the parents of students."[18] Yet Brard seemed to have taken the March 2004 law as confirmation of his belief that the republican school should be altogether free from religious symbols. In other words, the letter that he sent to Montreuil schools can be interpreted as the first of the spill-over effects of the 2004 law.

Although the group *Une école pour tout-e-s*, which was campaigning to overturn the 2004 law, announced its disdain for Brard's attempt to exclude headscarved mothers from school activities,[19] on the whole, Brard's administrative notice and the issue of school outings did not receive much attention. The following month, however, Brard's name reappeared in the press when the Communist mayor published an administrative decree prohibiting a Muslim women's fashion show from taking place in his city. The "women only" fashion event, featuring ready-to-wear for Muslims, had been brought to the attention of the mayor by concerned members of *Union des familles laïques* (UFAL).[20] Brard agreed with UFAL's opinion according to which such a fashion show was contrary to republican values,[21] even if it was organized by a small business owner and held in a private location.

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[18] Section 2.3, "La loi ne modifie pas les règles applicables aux agents du service public et aux parents d'élèves" states that "*La loi ne concerne pas les parents d'élèves*," ministerial circular N°2004-084 from 18-5-2004, Journal officiel du 22-5-2004, < http://www.education.gouv.fr/bo/2004/21/MENG0401138C.htm >.

[19] *AFP*, "Sorties scolaires : les accompagnateurs ne doivent pas afficher leur croyance (Brard)," September 17, 2004.

[20] *AFP*, "*À Montreuil, un arrêté interdit un défilé de mode de femmes voilées*," October 5, 2004.

[21] The mayor's administrative decree was not short of reasons why such an event should not take place: "Considering that the fashion show in question aims to demonstrate the relevance of clothing trends such as the hijab or the burqa, making the wearing of the veil banal in all circumstances; considering that the planned fashion show is forbidden to men; considering that the only condition set by the organizers is enough to show a link to illegal discriminatory practices, particularly in view of the fundamental principle of equality between men and women; considering that the holding of such an event, even in a private place, is likely to create strong emotions in our citizens who are deeply attached to the values of laïcité and tolerance; considering that this can lead to a serious disturbance to public order; considering all of our efforts and initiatives aiming to confirm our attachment to the principles of the Republic in fighting against all forms of proselytism; […] the fashion show "Muslim women's ready-to-wear" […] is prohibited" ("*Considérant que le défilé de mode cité en objet vise à démontrer la pertinence d'effets vestimentaires du type hijab ou burka, en banalisant le port du voile en toutes circonstances ; considérant que le spectacle du défilé prévu est interdit aux hommes ; considérant que cette seule condition posée par les organisateurs suffit à démontrer la référence à des pratiques discriminatoires illégales, eu égard notamment, au principe fondamental de l'égalité entre hommes et femmes ; considérant que la tenue d'une telle manifestation,*

In the end, Brard's wish was realized: the fashion show in question did not take place. In fact, the owner of the planned location decided to close the venue, later claiming that she had been manipulated by Muslim women who had told her that they wanted to organize a dance event.[22] Mayor Brard's exceptional measure was taken up by several newspapers which treated it as a quirky story rather than as a case concerning the freedom of assembly and the freedom to conduct business.[23] Although the organizer specified that the fashion show had been meant to display colored, streetwear-style clothing for "working women,"[24] *Union des familles laïques* (UFAL) and *Ni putes ni soumises* (NPNS) were happy with the mayor's decision: "The veil must not be treated as commonplace by asking questions such as: 'Do you prefer pink or blue?'"[25] Brard's municipal decree was annulled on July 21, 2005 by an administrative court of Cergy-Pontoise (Val-d'Oise) which ordered the mayor to pay damages in the amount of 750 euros to the organizers of the event.[26] The *Collectif contre l'islamophobie en France* (CCIF) urged everyone to take heed of the court's decision, and for victims of discrimination to take up legal action in order to protect their rights.[27]

Although a mother who wore the Islamic headscarf had been banned from a school outing already in 2003 in Roissy-en-Brie (Seine-et-Marne) in the aftermath of the Lévy sisters' affair described in Chapter 4,[28] the issue of school trips became heated up in 2004 when the law of March 15 was passed. The ratification of the law on *laïcité*, which had settled the alleged problem of headscarved schoolgirls, led the pro-ban group to look for new challenges to the restructured republican value sys-

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même en un lieu privé, est de nature à créer une vive émotion parmi nos administrés profondément attachés aux valeurs de laïcité et de tolérance ; considérant qu'il peut en résulter un trouble sérieux à l'ordre public ; considérant l'ensemble de nos efforts et initiatives visant à affirmer notre attachement aux principes de la République en luttant contre toute forme de prosélytisme à Montreuil. […] le défilé de mode 'prêt à porter des femmes musulmanes' […] est interdit."), arrêté from September 29, 2004:< http://atheisme.org/-jasmeen.html >.

[22] *Le Parisien*, "Le maire condamné pour avoir interdit le défilé de mode musulmane," October 25, 2005.

[23] *20 minutes*, "Montreuil interdit le défilé de mode des femmes voilées," October 2, 2004; *Le Figaro*, "Un défilé de mode de femmes voilées interdit," October 5, 2004; *Le Nouvel Observateur*, "Mode unisexe,", October 7, 2004.

[24] "*On fait du prêt-à-porter pour femmes voilées qui travaillent, qui vont en cours. Des vêtements larges et couvrants, mais plutôt du genre streetwear et colorés, rien à voir avec l'Afghanistan !*" quoted in *Le Point*, "Voile sur le défilé de mode," October 7, 2004.

[25] *"[I]l ne faut pas banaliser le voile en posant des questions du genre : 'Le préférez-vous rose ou bleu ?',*" quoted in *Le Point*, "Voile sur le défilé de mode," October 7, 2004.

[26] *Le Parisien*, "Le maire condamné pour avoir interdit le défilé de mode musulmane," October 25, 2005.

[27] *Le Nouvel Observateur*, "Annulation d'un arrêté anti-défilé islamique," October 26, 2005.

[28] *AFP*, "La crispation du monde enseignant face à la question du voile islamique," October 16, 2003.

tem. For example, in July 2004, *Le Figaro* stated that the situation of Islamization and religious segregation was "alarming" in the sphere of public education, claiming that primary schools had problems with mothers who came to pick their children up "completely veiled."[29] In September 2004, *Le Nouvel Observateur* argued that although the issue of students' headscarves might be settled, the debate about religious symbols would not cease, identifying the issue of school outings and "veiled" mothers as one topic of controversy. The newsmagazine mentioned the example of Nadjia, who had previously accompanied her children's school trips, but had been prohibited from doing so by order of a Montreuil school principal, and reported that similar cases had taken place in Saint-Denis and Nanterre.[30]

In October 2004, the *Une école pour tout-e-s* reported several incidents of mothers of students being harassed and banned from entering schools or from participating in outings.[31] Members of the national parents' federation FCPE (*Fédération des conseils de parents d'élèves*) had also observed pressures on "veiled" mothers not to stand as delegates.[32] According to *Libération*, as far as mothers and school outings were concerned, school principals and local boards of education seemed to be doing as they pleased.[33] In December 2004, a group of mothers organized a demonstration outside of a Nanterre school, claiming that six schools in the city were prohibiting mothers from participating in school outings when they wore headscarves.[34] The FCPE's position on the issue of mothers' participation in school activities was clear: "No written ministerial notices have been given, contrary to what some school inspectors and principals state. Pending legal clarifications, we must support these mothers who are arbitrarily excluded."[35]

Throughout the year 2004–2005, anti-ban actors attempted to counter the spill-over effects of the 2004 law and to raise awareness about anti-Muslim discrimination. The collective *Une école pour tout-e-s* organized viewings of Jérôme Host's documentary, *Un racisme à peine voilé* (2004). The film examined the frenzy following the Lévy sisters' 2003 expulsion and the events leading up to the 2004

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[29] *Le Figaro*, "L'école gagnée par le communautarisme," July 9, 2004.

[30] *Le Nouvel Observateur*, "À l'heure du bricolage," September 9, 2004.

[31] *AFP*, "Le collectif 'Une école pour toutes' et la loi laïcité : 'sexiste et raciste'," October 4, 2004.

[32] *AFP*, "Le collectif 'Une école pour toutes' et la loi laïcité : 'sexiste et raciste'," October 4, 2004.

[33] *Libération*, "L'école fait la tête aux mères voilées," October 12, 2004.

[34] *L'Ouest France*, "Des mères voilées interdites de sortie scolaire," December 8, 2004.

[35] "*Aucune consigne écrite ministérielle n'a été donnée, contrairement à ce qu'affirment certains inspecteurs ou certains directeurs d'école. Dans l'attente d'une clarification juridique, nous devons soutenir ces mères que l'on exclut arbitrairement*," quoted in *Libération*, "L'école fait la tête aux mères voilées," October 12, 2004.

law. Besides interviewing a number of anti-ban actors, Host's documentary also gave voice to a number of girls who had been expelled from their schools. The film was highly critical of mainstream media and of French politicians, qualifying the March 2004 law as both racist and sexist. Although the law had already been passed, and although it was unrealistic to think that it would be overturned, the viewings of Host's film were censored in several French cities. For example, in Bagnolet (Seine-Saint-Denis), the city's Communist mayor prohibited a viewing of Host's documentary, triggering a demonstration which took place on April 7, 2005.[36] In Rennes, the viewing of the film, organized by a Muslim women's organization, was not included in the brochure about events related to the 2005 International Women's Day, and the Muslim women's group was also excluded from participating in other Women's Day activities.[37] According to the deputy mayor in charge of women's affairs, the event that the Muslim women organized created unwanted tension about the Islamic "veil."[38] In Saint-Denis, the president of Université Paris-VIII prohibited the viewing of Host's film on campus.[39] In La Rochelle, the person who organized a viewing as well as a public discussion about the documentary received death threats.[40]

During the years following the passage of the 2004 law, the issue of "veiled" mothers' participation in school outings appeared, from time to time, in the media, as individual school principals interpreted existing legislation to their own liking. For example, in June 2005, the principal of a primary school of Échirolles (Isère) banned the participation of headscarved mothers in school outings.[41] The principal in question equated mothers of students with public servants in much the same way as Brard had done the previous fall:

> When they supervise a group, they become contributors to National Education, they benefit from a legal protection in case of an accident and they are bound by an obligation of neutrality. They are asked to sign a commitment to respect the rules of the functioning of public education, and, hence, *laïcité*.[42]

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[36] *AFP*, "Manifestation après l'interdiction d'un débat sur la laïcité par la mairie," April 8, 2005.

[37] *Ouest France*, "Un voile sur la Journée des femmes," March 4, 2005.

[38] *Ouest France*, "Un voile sur la Journée des femmes," March 4, 2005.

[39] *Le Figaro*, "Paris VIII ferme provisoirement ses portes," April 19, 2005.

[40] *Sud Ouest*, "Une loi mal vécue," November 1, 2004.

[41] *AFP*, "Mères voilées interdites de sorties scolaires : protestation dans l'Isère," June 3, 2005.

[42] "*Lorsqu'elles encadrent un groupe, elles deviennent intervenantes pour l'Education nationale, elles bénéficient d'une protection légale en cas d'accident et elles sont tenues à un devoir de neutralité. On leur fait signer un engagement à respecter les règles de fonctionnement de l'éducation nationale, donc la laïcité*," quoted in *AFP*, "Mères voilées interdites de sorties scolaires : protestation dans l'Isère," June 3, 2005.

This argument in favor of headscarved mothers' exclusion did not, however, convince state administrators. As the Isère region's school inspector was quick to point out, only people who were actually employed and paid by the Ministry of National Education were bound by the obligation of neutrality: "Volunteers are only asked to have proper attire and to respect their obligation of neutrality in speech, which means that women have the right to come with their veils."[43] The school principal refused to accept the inspector's clear ruling on the matter and referred – to no avail – to a circular which stated that the direction of the school was responsible for ensuring the "moral and secular qualities" of all participants.[44]

Despite the existing guidelines, headscarved mothers continued to be excluded from school outings. For example, in October 2006, a woman from Dourdan (Essonne) appealed to the *Mouvement contre le racisme et pour l'amitié entre les peuples* (MRAP) for support in trying to overturn a school principal's decision to exclude her from her daughter's school outings. The principal had prohibited the mother from participating on the grounds of the 2004 law, supposedly stating that: "This is a secular school, it is the law."[45] Once again, though, the school principal's decision did not hold up to public scrutiny. Dourdan's school inspector stated that the principal had not been "careful," stressed that the law of 2004 did not apply to the parents of students, and announced that he would set the issue straight in order to allow the mother to participate in the same way as all other parents.[46]

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[43] "*On demande seulement aux bénévoles d'avoir une tenue correcte et de respecter en parole leur devoir de neutralité, ce qui signifie que ces femmes ont le droit de venir avec leur voile*," quoted in *AFP*, "Mères voilées interdites de sorties scolaires : protestation dans l'Isère," June 3, 2005.

[44] "[*L*]*e devoir de s'assurer des qualités morales et laïques des intervenants*," quoted in *Le Figaro*, "Des mères voilées protestent," June 4, 2005.

[45] "*C'est une école laïque, c'est la loi*," quoted in *Le Parisien*, "Dourdan - Une mère voilée privée de sortie de classe," October 5, 2006.

[46] "*La loi sur la laïcité de 2004 ne s'applique qu'aux élèves et aux enseignants, pas aux familles […]. La directrice n'a pas été prudente. Je vais recevoir la maman et lui expliquer qu'il y a eu une décision un peu rapide, qu'elle peut accompagner les sorties scolaires. Je vais aussi l'expliquer à la directrice*," quoted in *Le Parisien*, "Dourdan - Une mère voilée privée de sortie de classe," October 5, 2006.

Although school principals' attempts to refuse headscarved mothers' participation were blocked, the exclusions did not cease. In March 2007, MRAP protested against this "illegal, discriminatory, and humiliating" practice,[47] and the ongoing exclusions led several mothers as well as an organization fighting against Islamophobia to call upon the HALDE. The group asked the HALDE to condemn the exclusionary practices that many schools had established.

On May 14, 2007 the HALDE published a decision stating that the exclusion of "veiled" mothers was, indeed, "contrary to the dispositions which prohibit discrimination on the basis of religion."[48] In its decision, the HALDE stressed that the law of March 2004 did not concern parents, and reminded everyone of the ministerial circular which also clearly stated this fact. According to the HALDE, the parents of students, as volunteers, occupied a "functional" role and could therefore not be interpreted as being public servants who would be bound by the obligation of neutrality.[49] Moreover, the HALDE justified its decision by referring to a ruling of the Council of State which stated that members of religious congregations could intervene in prisons in order to accomplish supportive tasks.[50] The HALDE considered mothers of students to be in a similar situation, which meant that only outright proselytism could merit a ban from participation:

> […] parents who participate in school outings seem to be in a similar position [as members of religious congregations in prisons] insofar as they provide support for schools with regard to tasks which do not involve teaching, in the strict sense, but only occasional outings and/or related activities.[51] […]

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[47] "*[P]ratiques illégales, discriminatoires et humiliantes,*" quoted in *La Croix*, "Des mères d'élèves voilées interdites de sorties scolaires," March 23, 2007.

[48] "*[C]ontraire aux dispositions interdisant les discriminations fondées sur la religion*," (HALDE 2007, 4).

[49] "*[L]a notion de collaborateur bénévole est de nature 'fonctionnelle' : sa seule vocation consiste à couvrir les dommages subis par une personne qui, sans être un agent public, participe à une mission de service public. Il ne peut donc être soutenu que la qualité de collaborateur bénévole emporterait reconnaissance du statut d'agent public, avec l'ensemble des droits et des devoirs qui y sont attachés.*" (HALDE 2007, 2.)

[50] Council of State rulings from June 27, 2001, and from May 29, 2002.

[51] "*[…] les parents participant aux sorties scolaires semblent être dans une situation similaire dans la mesure où ils apportent leur concours aux établissements scolaires pour des tâches qui ne relèvent pas des missions d'enseignement, au sens strict, mais uniquement à l'occasion de sorties et/ou d'activités annexes*" (HALDE 2007, 2).

> Consequently, neither the principle of *laïcité* nor the principle of neutrality of public service are in principle opposed to headscarf-wearing mothers of students collaborating in public education within the above-mentioned provision.[52]
>
> Moreover, if resorting to parents of students as external participants is voluntary, the choice that the school principal makes cannot be contrary to the principle of non-discrimination. The respect for the principle of equality, by definition, rules out that school administrators wield their power to give authorization in an arbitrary manner.[53]

The Minister of Education, Xavier Darcos (UMP), took note of the HALDE's May 2007 decision. The minister stated that he would make sure that school guidelines would not prohibit particular groups of people from volunteering in school activities:[54] "The choice of parents for accompanying school outings must be done without discrimination."[55] Although the *Fédération des conseils de parents d'élèves* (FCPE) was happy with the HALDE's decision, stating that it "gave mothers their dignity back,"[56] not everyone agreed. For example, the principal union of school teachers (*Union nationale des syndicats autonomes*, UNSA-Éducation) appealed to the Minister of Education to take a more official stance and to reconsider his position. UNSA argued that since all activities that took place on school time were "integrated into teaching activities," the principles of *laïcité* and of neutrality should apply and also be imposed on mothers.[57]

Because of the emerging controversy, the legal department of the Ministry of Education intervened on the issue by confirming what Minister Darcos had said: the law of March 2004 did not concern the parents of students.[58] According to the rules which were in place, parents were only prohibited

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[52] "*En conséquence, ni le principe de laïcité, ni celui de neutralité du service public ne s'opposent a priori à ce que des mères d'élèves portant le foulard collaborent au service public de l'enseignement dans le cadre des dispositions précitées*" (HALDE 2007, 3).

[53] "*Par ailleurs, si le recours à des parents d'élèves en qualité d'intervenants extérieurs est facultatif, le choix du directeur de l'établissement scolaire ne peut être contraire au principe de non-discrimination. Le respect du principe d'égalité exclut, par définition, que la direction de l'établissement scolaire puisse exercer son pouvoir d'autorisation de manière arbitraire.*" (HALDE 2007, 3.)

[54] *AFP*, "Mères voilées : la FCPE se félicite de la délibération de la Halde," June 9, 2007.

[55] "*[L]e choix des parents, auxquels il est proposé d'accompagner les sorties scolaires, doit se faire sans aucune discrimination*," quoted in *Ouest France*, "Les mères voilées acceptées en sorties scolaires," June 12, 2007.

[56] "*La Halde rend leur dignité aux mères de familles*," quoted in *AFP*, "Mères voilées : la FCPE se félicite de la délibération de la Halde," June 9, 2007.

[57] "*Ces activités, proposées pendant le temps scolaire, sont intégrées à des activités d'enseignement et, dans ce cas, […] les principes de laïcité et de neutralité de l'École doivent s'appliquer à ces collaborateurs occasionnels du service public,*" quoted in *AFP*, "L'UNSA-Education écrit au ministre au sujet des mères voilées," July 19, 2007.

[58] *Le Point*, "Pas de sanction pour les parents d'élèves," June 23, 2005.

from engaging in proselytism. Although the ministry spoke of "parents," we know that they were reacting to the controversy surrounding headscarves and that the issue, in fact, concerned mothers. The legal department referred to the Council of State's 1989 *avis*, which had stated that the wearing of the Islamic headscarf did not, by itself, constitute an act of proselytism.[59] Although it was the "insufficiency" of this ruling which had lead the government to legislate on the issue with respect to schoolgirls, the ministry now – somewhat paradoxically – used the very same *avis* to state that mothers' headscarves should not be banned.

Despite the HALDE's ruling and the position of the Minister of Education, "veiled" mothers continued to be excluded from school outings in several places in France, and individual cases reached the news. In a school in Cergy (Val-d'Oise), mothers who had previously been able to participate without problem were prohibited from doing so in the beginning of 2008 on the grounds that they were "collaborators" with public service.[60] According to *Le Parisien*, headscarved mothers had also been prohibited from accessing the school building in May 2008 and asked to drop their children off at the door.[61] The school inspector stated that the ministerial guidelines had been misunderstood and that nothing prohibited veiled mothers from participating. However, the following month, a similar case took place in Chelles (Seine-et-Marne) where a school principal told a mother that she would not be allowed to wear her headscarf on school trips. Finally, he agreed to a compromise, stating that he had "tolerated the mother by asking her to only look after her own son."[62] Another mother was shocked by the principal's actions: "It is outrageous to insinuate that, because one is veiled, one does not have the right to touch other people's children."[63] In this case, again, the regional school inspector presented his excuses to the mother in question, stating that the Chelles school had "failed in its duties."[64]

Although the ministerial circular from 2004 clearly stated that the law did not concern parents, the above-described cases show that a number of individual school principals thought that the law gave

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[59] *Le Point*, "Pas de sanction pour les parents d'élèves," June 23, 2005.

[60] *Le Parisien*, "Sorties scolaires - Les mères voilées exclues," May 25, 2008.

[61] *Le Parisien*, "Sorties scolaires - Les mères voilées exclues," May 25, 2008.

[62] "*Dominique Sir avoue 'avoir toléré la mère en lui demandant de ne s'occuper que de son fils'*," quoted in *Le Parisien,* "Discrimination - Une mère voilée interdite de sortie scolaire," June 28, 2008.

[63] "*C'est scandaleux d'insinuer que, parce qu'on est voilée, on n'a pas le droit de toucher les enfants des autres*," quoted in *Le Parisien,* "Discrimination - Une mère voilée interdite de sortie scolaire," June 28, 2008.

[64] "*L'institution a manqué à ses devoirs*," quoted in *Le Parisien*, "Discrimination - Une mère voilée interdite de sortie scolaire," June 28, 2008.

them permission to impose the requirement of "neutrality" on "veiled" mothers. The spill-over effects of the 2004 law were felt throughout the country, as headscarved mothers became collateral damage to a measure originally meant to concern their daughters. However, as I have shown, from 2004 to 2008, the attempts of school principals to exclude headscarf-wearing women met with opposition from local administrators. The cases of exclusion which reached the news were denounced as school inspectors presented their excuses on the behalf of principals who were overly zealous in their application of *laïcité*. With the HALDE's 2007 decision and Minister Darcos' public stance against discrimination, it was more or less clear that the exclusions of headscarved mothers did not have public support. While the European Court of Human Rights (ECHR) validated in December 2008 the exclusion of two headscarved students in the name of *laïcité*,[65] mothers who chose to cover their hair were – at least in theory – protected by the official stance in favor of equality and non-discrimination. When the public discussion on the burqa erupted in France in 2009, the issue of headscarf-wearing mothers and school outings continued as a low-grade issue.

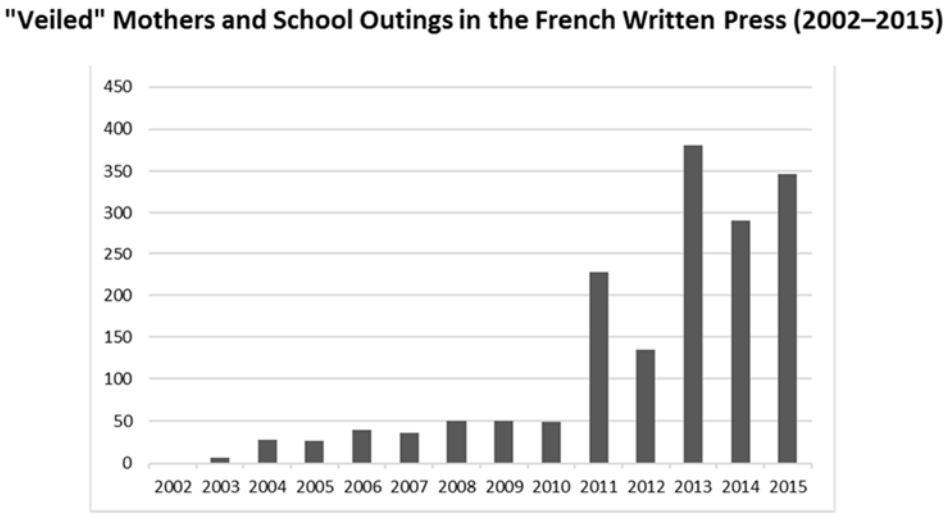

Figure 7.1 – "Veiled" Mothers and School Outings in the French Written Press (2002–2015). *This chart shows the number of articles published in the French written press on the issue of "veiled" mothers and school outings according to the Factiva database. It shows the number of articles corresponding to the Boolean search criteria "'sortie* scolaire*' and mère* or maman* or voile* or foulard* or laïcité."*

[65] Two girls, Belgin Dogru, 11 and Esma-Nur Kervanci, 12, had been excluded from their school in 1999 in Flers, Normandy. They appealed to the ECHR, which dismissed the plaintiffs' claim that the exclusion was a violation of their right to education as well as to the freedom of religion: < http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-2569371-2781114&filename=003-256-9371-2781114.pdf >.

7.2 Members of the HCI and the UMP Mobilize in Favor of Exclusion (2011)

While the public discussion concerning the possibility of banning the burqa was still going on, in March 2010, the High Council for Integration (HCI) published a report which offered suggestions for "reinforcing *laïcité*." The report, which Patrick Gaubert, president of the HCI, submitted to Prime Minister François Fillon, suggested that a distinction be made not only between public and private space, but between public, private, and *civil* space.[66] The report recommended that *laïcité* be reinforced in all spaces where public authority is exercised. Although the HCI's propositions offered, first and foremost, tools for arriving at a ban on face-covering, they can also be linked to the issue of school outings. Indeed, the distinction that the HCI made between private, public, and civil space meant that the requirement of religious "neutrality" could be extended to "all temporary collaborators with public service." One of HCI's recommendations explicitly stated that parents who participated in their children's school outings should be included in this category of people bound by *laïcité*.[67] In other words, the HCI's report went against the position that the HALDE had adopted in 2007. At the time, however, public discussion was focused on the issue of full veils, and the question of school outings did not attract much attention. It was not until the following year, after the passing of the October 2010 burqa ban, that the situation changed.

The public debate on the issue of Islamic headscarves and school outings emerged with force in March 2011. The discussion was triggered by a case from the Parisian suburb of Pantin (Seine-Saint-Denis). On November 2010, a month after the passing of the burqa ban, a mother whose son attended a Pantin school expressed her willingness to accompany a school outing. The principal of the school refused the request on the grounds that the mother's headscarf was "against the law," and also against her personal convictions.[68] Later she explained:

> It is the image of the school of the Republic which is at stake. If parents participate in school projects, they have to be neutral. Otherwise, they [will] obviously come to

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[66] HCI, "Avis relatif à l'expression des religions dans les espaces publics," < http://archives.hci.gouv.fr/Avis-relatif-a-l-expression-des.html >.

[67] "*Réaffirmer la laïcité dans les services publics par l'adoption de mesures législatives afin de faire respecter le principe de laïcité à tous les collaborateurs occasionnels du service public (ce qui est déjà le cas des jurés d'assises, et les membres de jury de concours des fonctions publiques, mais pas, par exemple, des accompagnateurs scolaires des écoles, collèges et lycées publics),*" HCI, "Avis relatif à l'expression des religions dans les espaces publics."

[68] "*[L]a mère porte un foulard, la loi l'interdit*," quoted in *Le Parisien*, "Pas de mamans voilées durant les sorties scolaires," March 3, 2011.

> school meetings [*conseil de classe*] with their veil, their turban, their skullcap. […] I impose neutrality on all participants. I made a lunch lady remove her big cross. She totally understood.[69]

The excluded mother later told the press that she was "French, not a fanatic and would simply like to live her religion without being ostracized."[70] In January 2011 the school's parents' association[71] contacted the Minister of Education, Luc Chatel (UMP), and asked him to intervene, as the school principal's decision contradicted the existing ministerial guidelines, and as the treatment inflicted on the mother was "detrimental to her dignity."[72] Indeed, according to former Minister of Education François Fillon's (UMP) 2004 circular, the HALDE's 2007 ruling as well as former minister Xavier Darcos's instructions, the law of 2004 should not be applied to parents of students. Yet, according to the parents, the principal of the Pantin school refused, "as a matter of principle, all women who wore a headscarf from participating [in school outings]."[73] If the parents' association was hoping to receive the same support from the Ministry of Education as it had before the 2009–2010 burqa discussions, it was disappointed.

The new Minister of Education, Luc Chatel (UMP), responded to the parents' letter on March 3, 2011, on the very same day that the 2010 law criminalizing face-covering was published in the *Journal officiel*. During a visit in Marseille, Chatel expressed his opinion on the Pantin case:

> I have decided to support the principal of this school. […] *Laïcité* is at the heart of the republican pact, we must not infringe on its principles. This is a pedagogical issue. The parents of students must respect the principles of neutrality and *laïcité*. […] The school of the Republic is regularly tested; we owe it to ourselves to be smart in order to respond to this.[74]

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[69] "*C'est l'image de l'école de la République qui est en jeu. […] L'école est laïque. S'ils interviennent dans une mission scolaire, les parents doivent être neutres. Autrement, ils viennent au conseil de classe, avec leur voile, leur turban, leur kippa, évidemment. […] J'impose la neutralité à tous les intervenants. J'ai fait enlever une grande croix d'une dame de cantine. Elle l'a très bien compris*," quoted in *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

[70] "*Française, pas fanatique et souhaiterait pouvoir vivre sa religion sans être ostracisée*," quoted in *Le Parisien*, "Pas de mamans voilées durant les sorties scolaires," March 3, 2011.

[71] *Fédération des conseils de parents d'élèves* (FCPE).

[72] "*Attentatoire à sa dignité*," quoted in *Le Parisien*, "Pas de mamans voilées durant les sorties scolaires," March 3, 2011.

[73] "*[Elle refuse] par principe toutes les femmes qui portent un foulard comme accompagnatrices*," quoted in *Presse Océan*, "Pas de voile en sorties scolaires," March 4, 2011.

[74] "*Je décide de soutenir cette directrice d'école. […] La laïcité est au cœur du Pacte républicain, nous n'avons pas à déroger à ses principes. Il s'agit d'un sujet pédagogique. Les parents d'élèves doivent respecter les principes de neutralité et de laïcité. […] L'école de la République est testée régulièrement, nous nous devons d'être intelligents*

Furthermore, in his March 2011 comments, Chatel went against his predecessors' interpretation by stating that parents who voluntarily participated in school outings could and should be treated as "occasional collaborators with National Education," which meant that they, too, would be bound by the same rules as public servants.[75] This was a totally new interpretation of the law. Although school principals had started to exclude "veiled" mothers since the fall of 2004, the official position of the French government and the Ministry of Education had been that neither the 2004 law nor the rules regulating the attire of public servants could be applied to the parents of students. Chatel's support for the Pantin school principal opened the door for this status quo to be, for the first time, seriously questioned.

The expansion that took place in the application of the principle of *laïcité* in 2010–2011 was two-dimensional. On the one hand, the October 2010 burqa ban implied that the new republican logic was, for the first time, enforced in "public space." During this time, two court decisions also confirmed that *laïcité* could be applied in private employment (see Appendix 2), which further illustrated the tendency to apply *laïcité* to *new spaces*. On the other hand, the 2010–2011 discourses – for example, Chatel's March 2011 statements – illustrate French political actors' desire to impose the requirement of "neutrality" to *new groups of people*, whether they were employees or parents allegedly engaged in public service.

Yet there was also a third, additional dimension to this expansion. While the anti-ban group had, since 1989, been specifically focused on the Islamic headscarf as well as its alleged replacements, such as small bandana scarves or even headbands,[76] from the 2011 onwards, there were also attempts to expand the category of "religious" garments further. Only a few weeks after Chatel's publicly expressed support for the Pantin school principal, several French newspapers reported that a small group of girls were threatened with expulsion from a high-school in another Parisian suburb, Saint-Ouen

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pour répondre à cela," quoted in *Reuters actualités en français*, "France - Pas de voile lors des sorties scolaires, dit Chatel," March 3, 2011.

[75] "*Lorsqu'on est parent et qu'on participe à une sortie scolaire, on est volontaire, on est assimilé à des personnels occasionnels de l'Education nationale et donc on se fie aux droits et aux devoirs des personnels de l'Education Nationale*," quoted in *Presse Océan*, "Pas de voile en sorties scolaires," March 4, 2011.

[76] Although some girls were able to return to school in the fall of 2004 by wearing wigs, even narrow headbands were interpreted as a "replacement" of the "veil" which led to exclusion. *AFP*, "Alsace : deux lycéennes musulmanes font leur rentrée coiffées d'une perruque," September 2, 2004; *AFP*, "A Bischheim : la perruque pour remplacer le foulard islamique," September 2, 2004.

(Seine-Saint-Denis).[77] This time, however, the problem was not related to the headscarf which the students removed when entering the school. The school threatened to exclude the girls because they were wearing "long and large black dresses."[78] According to the students, the school had claimed that their dresses should in and of themselves be interpreted as conspicuous religious symbols, and that the girls could not attend school if they continued to wear them.[79] The school denied having threatened the girls with expulsion. According to one teacher: "We are not in a logic of exclusion, but it might have been perceived as a threat of expulsion."[80] The school only admitted to having reminded, in the beginning of March, the girls about the principle of *laïcité*. The teachers' association (*Syndicat national des enseignements de second degré*, SNES) denied having talked about expulsion: "They were told that they should start thinking about the future in order to position themselves with regard to this rule [of *laïcité*] and to decide whether they want to stay in this school next year."[81] The students that AFP interviewed had a different interpretation: "They told me: 'If you come back with it [the dress], you have to leave the school." "Do not come with your dress anymore; otherwise, we will no longer accept you."[82] The students considered that they had the right to dress as they wished: "When I told them that it was a normal dress and that we wear what we want, they replied that the law does not only concern the veil."[83]

In order to solve the dispute concerning students' dresses, Alain Seksig, inspector of National Education and member of the HCI, contacted the school principal. Seksig stressed that the issue should not be "shrugged off": "These students put pressure on others so that they would adopt similar attire,

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[77] *La Croix*, "Des lycéennes menacées d'exclusion pour le port de longues robes noires," March 23, 2011; *AFP*, "Le principe de laïcité rappelé à des lycéennes musulmanes en robe longue," March 23, 2011; *Ouest France*, "Les robes de lycéennes musulmanes créent l'émoi," March 24, 2011; *L'Humanité*, "Laïcité : des lycéennes en robe longue rappelées à l'ordre," March 24, 2011.

[78] "*Longues et larges robes noires*," quoted in *La Croix*, "Des lycéennes menacées d'exclusion pour le port de longues robes noires," March 23, 2011.

[79] *Ouest France*, "Les robes de lycéennes musulmanes créent l'émoi," March 24, 2011.

[80] "*On n'est pas dans une logique d'exclusion, mais cela a pu être perçu comme une menace d'exclusion*," quoted in *Ouest France*, "Les robes de lycéennes musulmanes créent l'émoi," March 24, 2011.

[81] "*Il leur a été dit qu'elles devaient entamer une réflexion à l'avenir pour se positionner par rapport à cette règle et pour savoir si elles voulaient rester dans l'établissement l'année prochaine*," quoted in *La Croix*, "Un lycée s'oppose aux 'robes longues'," March 24, 2011.

[82] "*On m'a dit : 'Si tu reviens avec, tu vas devoir quitter l'établissement'*," "*Tu ne viens plus avec ta robe, sinon, on ne t'accepte plus*," quoted in *AFP*, "Laïcité : des lycéennes en longues robes se disent menacées d'exclusion," March 22, 2011.

[83] "*Quand je leur ai dit que c'était une robe normale et qu'on s'habille comme on veut, on m'a répondu que la loi ne concernait pas que le voile*," quoted in *La Croix*, "Un lycée s'oppose aux 'robes longues'," March 24, 2011.

which is a problem. […] If we were dealing with an outfit like any other, these young girls would be capable of wearing other types of clothing, yet they dress in the same way every day."[84] The following day, Minister of Education Luc Chatel also commented on the issue: "The law prohibiting religious signs in schools was a considerable improvement. But we are constantly tested. […] We are currently talking with them [the girls] to see if it is a question of provocation."[85] At the same time, Chatel announced that he was looking into the possibility of adding the obligation of "neutrality" of mothers of students into a ministerial circular.[86]

Not everyone agreed with Seksig and Chatel's position, however. According to Socialist Claude Bartolone, the president of the Seine-Saint-Denis departmental council, the case of long dresses was nothing short of "hysteria around Islam"[87]: "Can you imagine all this because of a long dress; it is no longer even about the veil, so we must be very careful."[88] Although nothing came of the Saint-Ouen affair,[89] the issue of long skirts would reemerge years later in April 2015.[90]

In the spring of 2011, as Minister Chatel (UMP) announced his position in favor of excluding "veiled" mothers from school outings, the ruling UMP party was preparing to launch a public discussion on *laïcité*. With only a little over a year left before the next presidential elections, President Nicolas Sarkozy had taken the initiative to launch a debate on Islam[91] and Prime Minister François Fillon had charged Claude Guéant with the writing of the Code of *Laïcité* and Religious Freedoms (*Code de la laïcité*

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[84] "*Il met en garde contre la tentation de 'hausser les épaules'. 'Ces élèves exerceraient une pression sur d'autres pour qu'elles adoptent les mêmes tenues, ce qui pose problème […] S'il s'agissait d'une tenue comme une autre, ces jeunes filles seraient capables d'en porter d'autres, or elles s'habillent de la même façon tous les jours'*," quoted in *La Croix*, "Un lycée s'oppose aux 'robes longues'," March 24, 2011.

[85] "*La loi interdisant les signes religieux à l'école a été un progrès considérable. Mais on nous teste en permanence. […] Nous discutons actuellement avec elles, pour savoir s'il s'agit d'une provocation*," quoted in *Le Figaro,* "L'interdiction de signes religieux à l'école est toujours 'testée'," March 25, 2011.

[86] *Le Figaro,* "L'interdiction de signes religieux à l'école est toujours 'testée'," March 25, 2011.

[87] *AFP*, "Lycéennes/longue robe : 'hystérisation autour de l'islam' (Bartolone, PS)," March 24, 2011.

[88] "*Vous vous rendez compte que tout cela, c'est sur une robe longue, c'est même plus un voile, donc il va falloir faire très attention*," quoted in *AFP*, "Lycéennes/longue robe : 'hystérisation autour de l'islam' (Bartolone, PS)," March 24, 2011.

[89] An article from November 2012 stated that the girls were still attending the high-school in the same clothes as before (*Le Point*, "Cet islam sans gêne," November 1, 2012).

[90] See, for example, *AFP*, "Une collégienne privée de cours pour une jupe jugée non laïque," April 29, 2015; *L'Est Républicain*, "La tenue de la collégienne jugée représentative d'un signe religieux ostentatoire," April 29, 2015; *AFP*, "France: une jupe longue relance la polémique sur la laïcité à l'école," April 30, 2015; *La Croix*, "Polémique sur la tenue vestimentaire d'une collégienne musulmane," April 30, 2015.

[91] *Reuters actualités en français*, "France - Le CFCM s'inquiète du débat sur la laïcité," March 5, 2011.

et des libertés religieuses) described in Chapter 6. It was in this context that the UMP organized a meeting with two roundtable discussions: one on *laïcité*, and the other one on Islam.[92] The participants included many UMP ministers: Claude Guéant (Minister of the Interior), Valérie Pécresse (Minister of Higher Education), Luc Chatel (Minister of Education), François Baroin (Minister of Finance), Bruno Le Maire (Minister of Agriculture), Nadine Morano (Deputy Minister of Labor), Benoist Apparu (Secretary of State for Housing and Urbanism), and Jeannette Boughrab (Secretary of State for Education). Jean-François Copé, the secretary-general of the UMP, opened and closed the discussions. However, a few high-ranking members of the UMP also refused to participate. This was the case, for instance, of PM François Fillon and Rocelyne Bachelot, Minister of Solidarity and National Cohesion, who was close to the Prime Minister.[93] The comments surrounding Fillon's and Bachelot's absence illustrate the internal division of the UMP. While Copé accused the Prime Minister of not presenting a "united front," Bachelot announced that she "preferred to concentrate on the concrete problems of the French."[94] In a situation where the *Front national* (FN) had just gained an important victory in the cantonal elections, both Sarkozy and Copé were accused of stigmatizing Islam in order to gain votes from the FN with an eye to the 2012 presidential elections.[95] Moreover, the UMP's meeting took place on the same day that the *Parti socialiste*, whose candidate was favored in the presidential race, launched its campaign.[96]

The UMP's meeting, which took place on April 5, 2011, illustrates the several fronts on which the party and its ministers were attempting to reinforce "neutrality." The discussions touched on several themes: street prayers, the language of Muslim sermons, women-only time slots in municipal swimming pools, the serving of halal meals in school canteens, demands for religious accommodations in hospitals, and the question of "veiled" mothers and school outings. Moreover, the debate on the Baby-Loup affair was taking place at the same time. All in all, faced with several issues which concerned Muslim citizens and what pro-ban actors defined as the "gray zones" in the application of *laïcité*, the UMP was attempting to extend the definition of "public service." Such a maneuver would extend the obligation of religious "neutrality" to new spaces and new categories of people: to private childcare,

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[92] *Reuters actualités en français*, "France - L'UMP veut renforcer le socle juridique de la laïcité," April 1, 2011.

[93] *Paris-Match*, "L'UMP conclut son débat sur la laïcité," April 6, 2011.

[94] "*Jouer collectif,*" "*préférait se concentrer sur les problèmes concrets des Français*," quoted in *Paris-Match*, "L'UMP conclut son débat sur la laïcité," April 6, 2011.

[95] *Paris-Match*, "L'UMP conclut son débat sur la laïcité," April 6, 2011; also Eva Joly's comments below.

[96] *Paris-Match*, "L'UMP conclut son débat sur la laïcité," April 6, 2011

private hospitals, and parents participating in school outings.[97] The arguments in favor of banning childcare workers and parents of students from wearing headscarves were the same: these two roles were interpreted as a public service even when they were provided by private individuals. According to Claude Guéant, Minister of the interior: "We must clarify certain fundamental issues such as the wearing of the veil by occasional collaborators with public service, the parents participating in school outings or the personnel in childcare."[98] Luc Chatel announced his plan to add "a paragraph in the circular about school outings so that the mothers who participate, considered as occasional collaborators with public service, will no longer be veiled."[99]

Indeed, one of the 26 recommendations formulated at the UMP's meeting was to extend the obligations of neutrality and *laïcité* from public servants to their temporary collaborators, such as mothers participating in school outings and the personnel of private structures offering a public service, such as nursery schools.[100] Jean-François Copé also put emphasis on the writing of the new "Code on *Laïcité* and Freedom of Religion," stating that "*laïcité* will be one of the themes of the 2012 presidential election."[101] Indeed, the following day, Eva Joly, the presidential candidate for the Greens, positioned herself as an alternative to Sarkozy:

> We have more than a hundred years of experience with *laïcité* and this idea remains, as much as ever, a pillar of our Republic. The problem is therefore not *laïcité* but the UMP pillaging votes from the FN.[102] […]
>
> In my view, *laïcité* must not lead to banning veiled women […] from public space. I call, on the contrary, for a tolerance of all religious expressions that do not in any way

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[97] *Le Figaro*, "Des moyens pour garantir la neutralité du service public," April 1, 2011.

[98] "*Il faut clarifier certains fondamentaux comme le port du voile par les collaborateurs occasionnels du service public, les parents accompagnateurs de sorties scolaires ou les personnels de crèche*," quoted in *La Croix*, "Comprendre : Les questions en débat sur l'islam de France," April 2, 2011.

[99] "[…] *un paragraphe à la circulaire sur les sorties scolaires afin que les mères-accompagnatrices, considérées comme des collaborateurs occasionnels du service public, ne soient plus voilées,*" quoted in *AFP,* "Les proviseurs pourront recruter des remplaçants avec Pôle emploi (Chatel)," April 4, 2011.

[100] *La Croix*, L'UMP veut donner une 'vision positive de la laïcité'," April 5, 2011.

[101] "*La laïcité sera un des thèmes de la campagne présidentielle de 2012*," quoted in *La Croix*, "L'UMP veut donner une 'vision positive de la laïcité'," April 5, 2011.

[102] "*Nous avons plus de cent ans d'expérience de la laïcité et cette idée reste plus que jamais un pilier de notre République. Le problème n'est donc pas la laïcité mais la chasse ouverte par l'UMP sur les terres du FN*," quoted in *La Croix,* "Eva Joly, députée européenne Europe Écologie-Les Verts : 'J'appelle à une tolérance pour les expressions religieuses qui ne menacent pas notre vivre ensemble'," April 6, 2011.

> threaten our social life [*vivre ensemble*]. Nicolas Sarkozy disguises an Islamophobic campaign behind the language of positive *laïcité*.[103] […]
>
> I think that prohibiting mothers who wear the headscarf from getting on a bus in order to participate in a school outing is not justified. How is that disturbing? Rather than stigmatizing, why not focus on all the school principals who do great things to involve these mothers in school life and to make them participate in the success of their children? Why deny oneself the tools of integration because of a crude political calculation?[104]

While Copé had had a hard time finding religious representatives to participate in the UMP's meeting,[105] on April 15, Claude Guéant received religious leaders at the Ministry of the Interior. Despite the UMP's 26 propositions, which had aimed at reinforcing an intransigent interpretation of *laïcité*, the Minister of the Interior appeared to succeed in reassuring religious leaders that no drastic measures would be taken straight away. According to Mohammed Moussaoui, President of the French Council for the Muslim Faith (CFCM), "the propositions retained by the public authorities are far from the fears that we had in the beginning. […] We feel that there is a willingness to cool things off and for a dialogue between public authorities and the denominations."[106] The representatives of the Jewish faith left the ministry content with Guéant's assurance that the entrance exams for higher education would not be

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[103] "*À mes yeux, la laïcité ne doit pas conduire à bannir de l'espace public les femmes voilées […]. J'appelle au contraire à une tolérance pour toutes les expressions religieuses qui ne menacent nullement notre vivre ensemble. Nicolas Sarkozy, lui, cache derrière le vocable de laïcité positive une campagne islamophobe*," quoted in *La Croix,* "Eva Joly, députée européenne Europe Écologie-Les Verts : 'J'appelle à une tolérance pour les expressions religieuses qui ne menacent pas notre vivre ensemble'," April 6, 2011.

[104] "*Je trouve que le fait d'interdire aux mères portant un foulard de monter dans un bus pour accompagner une sortie scolaire n'est pas justifié. En quoi cela est-il gênant ? Plutôt que de stigmatiser, pourquoi ne pas plutôt mettre en avant tous ces directeurs d'école qui font des choses formidables pour impliquer ces mères dans la vie scolaire et les faire participer à la réussite de leurs enfants ? Pourquoi se priver d'outils d'intégration en raison d'un calcul politique grossier ?*," quoted in La Croix, "Eva Joly, députée européenne Europe Écologie-Les Verts : 'J'appelle à une tolérance pour les expressions religieuses qui ne menacent pas notre vivre ensemble'," April 6, 2011.

[105] The CFCM and the UOIF had refused to participate, but the convention did receive the imam of Drancy, Hassan Chalgoumi, Father Matthieu Rougé (the director of *Service pastoral d'études politiques* and a delegate for the Bishop's Conference of France), and Chief Rabbi Gilles Bernheim. *Le Figaro*, "Les propositions de l'UMP pour défendre la laïcité," April 5, 2011.

[106] "*Les propositions retenues par les pouvoirs publics sont loin des craintes que nous avions au départ. […] On sent qu'il y avait une volonté d'apaisement, de dialogue entre les pouvoirs publics et les cultes […]",* " quoted in *AFP*, "Laïcité : Guéant rencontre les représentants religieux sous le signe de l'apaisement," April 15, 2011.

organized during Jewish holidays,[107] and CFCM's Moussaoui had agreed to collaborate with the authorities so that a solution could be found to the street prayers taking place in Paris.[108] On the topic of private childcare services, Moussaoui agreed that clarification was needed, while stressing that "a balance must be found. We wait for a strong measure in order to remove the risks of limitation to religious freedom.[109] On the issue of school outings, Moussaoui stated that reflection was needed, and that "no immediate measures had yet been taken."[110]

Although Guéant seemed to have been trying to find a solution that would satisfy both the government and the country's religious communities, Jean-François Copé was still pushing for stronger measures. He wanted the National Assembly to put the issue of "*laïcité* and freedom of religion" on its agenda, and for the government to take up the UMP's 26 propositions as quickly as possible.[111] In other words, like Chatel, Copé wanted to arrive at a rule that would ban headscarved mothers from participating in school outings.

During this time, mothers continued to be excluded from their children's school trips. A demonstration was held in Montreuil on May 2, 2011 against ongoing exclusions and Luc Chatel's support for the Pantin school principal. According to one participant, "this demonstration has nothing to do with religion; we are above all else mothers hoping to stay close to their children."[112] Another one wondered: "Do people think that we are bad mothers because we wear the veil? […] When we decide to watch over our children's education, we are not allowed to do so. And when we go to work, we are accused of abandoning them."[113]

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[107] *Le Point*, "Laïcité : Claude Guéant privilégie la concertation," April 15, 2011.

[108] *Bulletin quotidien*, "Le ministre de l'Intérieur, M. Claude Guéant, a rencontré les représentants religieux dans une volonté d'apaisement après les controverses sur la laïcité et la place de l'Islam," April 18, 2011.

[109] "*[I]l faut trouver un équilibre. Nous attendons une grande précaution pour écarter les risques de limitation de la liberté religieuse*," quoted in *Le Figaro*, "Des responsables religieux rassurés et vigilants," April 16, 2011.

[110] "*La question des mères voilées accompagnant les sorties scolaires 'mérite une réflexion approfondie, il n'a pas encore été pris de mesures immédiates'*," quoted in *AFP*, "Laïcité : Guéant rencontre les représentants religieux sous le signe de l'apaisement," April 15, 2011.

[111] *Bulletin quotidien*, "Le ministre de l'Intérieur, M. Claude Guéant, a rencontré les représentants religieux dans une volonté d'apaisement après les controverses sur la laïcité et la place de l'islam," April 18, 2011.

[112] "*Ce rassemblement n'a rien de religieux, nous sommes avant tout des mamans souhaitant rester auprès de leurs enfants*," quoted in *L'Humanité*, "'Mamans exclues, enfants humiliés'," May 4, 2011.

[113] "*Considère-t-on que nous sommes de mauvaises mères parce que l'on porte le voile ? Quand on décide de veiller sur l'éducation de nos enfants, on nous l'interdit. Et quand on va travailler, on nous accuse de les livrer à eux-mêmes,*" quoted in *L'Humanité*, "'Mamans exclues, enfants humiliés'," May 4, 2011.

7.3 While the Government Hesitates, a Court Delivers a Ruling (2011)

On June 20, 2011 Prime Minister Fillon announced that he did not share his colleagues' enthusiasm for banning "veiled" mothers from school outings.[114] Indeed, Fillon had been appointed Minister of Education on April 1, 2004, directly preceding the ratification of the law on *laïcité*. As this was the case, he had been the person in charge of drafting the original ministerial circular which clearly stated that the requirement of religious neutrality did not apply to the parents of students. In 2011, according to *Le Figaro*, he was still hesitant with regard to extending the headscarf ban to mothers: "The law with respect to schools only concerns students. And it is not certain that the parents who participate have the status of temporary collaborators with public service."[115] The newspaper further quoted Matignon's position that "it would be very painful for children to see their mothers excluded from outings."[116] According to AFP, the Prime Minister wanted to "find a solution that would not stigmatize children."[117] In other words, the UMP and the government were divided on the issue: while Fillon was hesitant with regard to new measures, at least Chatel and Copé appeared to be in favor of a new ministerial circular that would offer stricter guidelines for the application of *laïcité*. The Prime Minister's office announced that they would set up an inter-ministerial task force to reflect on the issue of *laïcité* and religion.[118]

The discursive strategy of those who wished to ban headscarved mothers from school outings was strikingly similar to the one that pro-ban actors employed in the Baby-Loup affair. The central question consisted of determining whether mothers could be considered "temporary collaborators with public service." If so, it could be argued that they should be treated as public employees who were, as representatives of the state, bound by the requirement of neutrality. In other words, in their attempts to legitimate the exclusion of headscarved women from school outings, pro-ban actors engaged in a process of decontestation which blurred the boundaries between public service and private life. Moreover, those who were in favor of the headscarf ban argued that a lack of clear guidelines meant

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[114] *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

[115] "*La loi sur l'école ne concerne que les élèves. Et il n'est pas sûr que les parents accompagnateurs aient le statut de collaborateurs occasionnels du service public*," quoted in *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

[116] "*Ce serait très douloureux pour les enfants de voir leurs mères écartées des sorties*," quoted in *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

[117] "*Une solution qui ne soit pas stigmatisante pour l'enfant*," quoted in *AFP*, "Mères voilées/écoles : Fillon réticent sur une interdiction," June 20, 2011.

[118] *AFP*, "Mères voilées/écoles : Fillon réticent sur une interdiction," June 20, 2011.

abandoning school principals to their own devices. According to Alain Seksig, Inspector of National Education and member of the HCI:

> We are in the same situation as with the headscarf in the 1980s. Those who did not want to legislate played the issue down, alluded to a few cases, and the school principals needed to handle things on their own. […] Today, every school creates its own rules. In some schools, this opens the door for communalist pressures.[119]

Seksig's argument does not hold up to closer scrutiny. Just as it was clear, in the 1980s, that the requirement of neutrality could not, according to the legislation of the time, be applied to students, the official guidelines which were in force in 2011 did not leave room for interpretation: the ministerial circular stated that *laïcité* did not apply to the parents of students. Although many school principals had taken the issue into their own hands and excluded "veiled" mothers, they did so against existing guidelines. Nor did Minister Chatel's willingness to change the circular suggest that schools could get ahead of themselves and exclude mothers, as no official notice to that effect had yet been issued. However, as many school administrators nonetheless decided to exclude headscarved mothers, and as several of these cases were made public, Seksig was able to argue that the rules were not clear and that the issue of parents' clothing was a significant problem that deserved the government's attention. Patrick Gonthier, director of the teachers' union (*Union nationale des syndicats autonomes*, UNSA) seemed to agree: "This is a difficult topic. Should the small traditional headscarf be distinguished from certain groups of radical veiled mothers that we see sometimes? The rules must be clarified, for otherwise everyone will do as they please."[120]

It goes without saying that those who were pressing for the "neutrality" of "temporary collaborators" to become the official rule were mostly worried about one thing: the Islamic headscarf. The differential treatment reserved to Muslims versus other religions become clear in light of an event from the summer of 2011. On June 22, *Ouest France* reported that a teacher from a private Catholic high-school had attended a meeting with other teachers in a Parisian public school. She had spent the day with other teachers, correcting copies of final exams wearing a Catholic nun's garb, including a crucifix.

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[119] "*On se retrouve dans la même situation que pour le foulard dans les années 1980. Ceux qui ne voulaient pas légiférer minimisaient, évoquaient quelques cas et les chefs d'établissement devaient se débrouiller seuls. […] Aujourd'hui, chaque école fait sa politique. Dans certaines écoles, c'est la porte ouverte aux pressions communautaires*," quoted in *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

[120] "*C'est un sujet difficile. Faut-il distinguer le petit foulard traditionnel de certaines femmes des groupes de mamans voilées militantes que l'on voit parfois ? Il faut clarifier la règle, car, sinon, chacun va faire à sa manière*," quoted in *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2011.

When the other teachers had later wondered about it, the principal stated: "Working in a private school, she is not a civil servant. I could not have prohibited her from entering."[121]

As we have seen above, in the Pantin case, it had been the parents of students who had mobilized to support the excluded mother. In the summer of 2011, *Le Figaro* reported that parents' organizations were, on the whole, divided on the issue.[122] The *Fédération des parents d'élèves de l'enseignement public* (PEEP) wanted participating parents to be neutral, while the *Fédération des conseils de parents d'élèves* (FCPE) had taken a stance to support excluded mothers. New organizations were also born as headscarf-wearing mothers and those wishing to protect their rights were mobilizing against exclusion. The group *Mamans toutes égales* ("Mothers All Equal," hereafter MTE), which had been formed in the Parisian suburb of Montreuil (Seine-Saint-Denis), organized a public discussion on the topic on June 26, 2011 at the *Ligue des droits de l'homme* (LDH) in Paris. According to Ndella Paye, one of the founders of MTE, the organization was looking to "alert parents to the rules and regulations that will be voted upon in the beginning of the school year in each establishment. […] We ask them to remain very vigilant so that veiled mothers will not be excluded from school outings and other activities."[123] Paye also referred to the issue as one of children's rights: "When a veiled mother is excluded, it is first and foremost a parent of a student that is excluded, it is a real injustice for the students who suffer a shock."[124] Anissa Fathi from Montreuil argued: "We would like to be treated as normal mothers, not as mothers who wear the veil."[125] Another mother agreed: "Our children suffer enormously from this. They do not understand."[126] In the summer of 2011, MTE also launched a petition against mothers'

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[121] "*Étant dans le privé, elle n'est pas fonctionnaire. Je n'aurais pas pu lui interdire l'entrée*," quoted in *Ouest France*, "La religieuse en habit au lycée public," June 22, 2011.

[122] *Le Figaro*, "Pas d'interdiction pour les mères voilées," June 20, 2016.

[123] "*Nous souhaitons alerter les parents sur les règlements intérieurs qui vont être votés à la rentrée dans chaque établissement. […] Nous leur demandons d'être très vigilants à ce que les mères voilées ne soient pas exclues des sorties scolaires et des animations dans les écoles*," quoted in *AFP*, "Les mères voilées inquiètes des prochains règlements intérieurs d'écoles," June 25, 2011.

[124] "*[L]orsqu'on exclut une mère voilée, on exclut avant tout un parent d'élèves, c'est une réelle injustice pour les élèves qui subissent un réel traumatisme*," quoted in *AFP*, "Les mères voilées inquiètes des prochains règlements intérieurs d'écoles," June 25, 2011.

[125] "*On voudrait être traitées comme des mamans normales, pas comme des mamans qui portent le voile*," quoted in *AFP*, "Sorties scolaires : les mères voilées veulent 'être traitées comme les autres'," June 27, 2011.

[126] "*Nos enfants en souffrent énormément. Ils ne comprennent pas*," quoted in *AFP*, "Sorties scolaires : les mères voilées veulent 'être traitées comme les autres'," June 27, 2011.

exclusion.[127] The new-born organization received support, among others, from Olivier Besancenot (NPA), Cécile Duflot (NPA), Christiane Taubira (PRG), and Jean Baubérot, all of whom signed MTE's petition.[128]

Despite Minister Chatel's willingness to put out a circular banning headscarved mothers from school outings, no such measures were taken for the September 2011 *rentrée*. In a press conference held on September 1, 2011, Chatel stated that he was following the directives of the Prime Minister and the President of the Republic: "For the time being, no decision has been made on this issue. […] I have supported local administrators in a republican spirit, but this is a topic that goes beyond the Ministry of National Education."[129]

Textbox 6 – *Mamans toutes égales* (MTE)

The movement *Mamans toutes égales* (MTE) was formed in 2011 in the Parisian suburb of Montreuil (Seine-Saint-Denis). It consists of Muslim mothers aiming to protest against headscarved mothers' ongoing exclusions from their children's school outings and trips. The main activists are mothers in their mid-thirties who are either born in France or who have arrived there during their childhood, adolescence, or early twenties from Maghreb countries. All of MTE's active members have lived in Montreuil for at least the past ten years.

Although the self-funded collective is small – it consists of no more than twelve core members – it has succeeded in gaining visibility for its cause in the media, and it has even obtained a few advocates from the French political elites. MTE has organized protests and debates, and raised awareness by publishing petitions and writing open letters to the Ministry of Education. In so doing, the group has brought to light the differential effects of seemingly neutral republican policies. The members of MTE have formulated their demands not simply or primarily as Muslims, but rather as French citizens. In fact, these women who have mobilized against mothers' exclusions (and, later, against the Chatel circular) have done so in the name of the principle of *laïcité*: they are not hoping for new rights, but campaigning for the respect of their existing rights. Yet their actions have not succeeded in annulling the Chatel circular; in highlighting the shortcomings of the republican system, MTE's discourse has remained marginalized. (Source: Kassir and Reitz 2016.)

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[127] "Mamans toutes égales ! Non à l'exclusion des mères portant le foulard," < http://www.actvism.com/fr_FR/petition/mamans-toutes-egales-non-a-lexclusion-des-meres-portant-le-foulard/14517 >.

[128] *AFP*, "Sorties scolaires : les mères voilées veulent 'être traitées comme les autres'," June 27, 2011.

[129] "*[P]our l'instant, aucune décision n'a été prise sur ce sujet. […] j'ai soutenu les équipes locales dans un esprit républicain mais c'est un sujet qui dépasse le ministère de l'Education nationale*", quoted in *AFP*, "Chatel : Mères voilées/sorties scolaires, 'aucune décision pour l'instant'," September 1, 2011.

Less than a week later, the HCI submitted a new report to the Prime Minister. This report argued in favor of prohibiting religious symbols from all institutions of early childhood. As seen in Chapter 6, the report argued that the principle of *laïcité* should be extended so that it would apply in all sectors of public service, such as the field of early childhood. Yet, at a moment when the school year was just starting, its reasoning could also be interpreted as applying to the question of school outings. Indeed, the report stated that "All services offered within the framework of public service *or near it* imply that the personnel has an obligation of neutrality" (emphasis added).[130]

In October, Claude Guéant, Minister of the Interior, presented his "Code on *Laïcité*," published under the title *Laïcité et liberté religieuse : recueil de textes et de jurisprudence* (2011). The drafting of such a document had been one of the propositions formulated by Jean-François Copé and other UMP members in favor of reinforcing *laïcité*. Guéant introduced the document by stating that "the political signification [of this collection] is to close the debate by putting forth all the elements that allow us to understand what *laïcité* in France is."[131] In other words, the Code was meant to solve two public controversies: the wearing of the headscarf in private companies and the issue of mothers' religious symbols during school outings. In both cases, Guéant's aim was to extend the application of the principle of religious neutrality beyond public servants. Yet the minister did not wish to legislate; his goal was to achieve mothers' neutrality during school outings by allowing schools to insert such an obligation in their internal rules and regulations:

> During school outings, can the mothers who participate be veiled, or is that a problem? Some insist upon the fact that, in their capacity as mothers, they have the right to be veiled. Others insist that, in their capacity of supervisors benefitting from the school's insurance, they participate in a public service. Now here we have a problem. We cannot legislate. We are preparing instructions on [school] regulations. The spirit of those instructions will be to avoid the veil being worn.[132]

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[130] "*Tout service rendu dans le cadre d'une mission de service public auprès de celui-ci implique un devoir de neutralité de la part des personnels*," quoted in *Les Échos*, "Le Haut Conseil à l'intégration veut freiner les dérives communautaires en entreprise," September 6, 2011.

[131] "*La signification politique (de cet ouvrage) est de clore le débat, en apportant tous les éléments qui permettent de bien prendre conscience de ce qu'est la laïcité en France*," quoted in *Bulletin quotidien*, "Le ministre de l'Intérieur, M. Claude Guéant, présente un 'Code de la laïcité' en faveur d'une neutralité renforcée," October 24, 2011.

[132] "*Lors des sorties scolaires, les mamans qui accompagnent peuvent-elles être voilées ou bien est-ce un problème ? Certains insistent sur le fait qu'en qualité de mamans, elles ont le droit d'être voilées. D'autres insistent sur leur qualité d'accompagnantes, bénéficiant d'une assurance scolaire, et participant donc au service public. Là,*

The solution that the Minister proposed for solving the problem of school outings is similar to the position adopted by pro-ban actors in the Baby-Loup case. In both cases, high-ranking politicians wanted to ban the veil without new legislation on the issue. In practice, what this meant was that schools – just as private nurseries – would simply be given the right to decide which displays of religious belief they deemed acceptable. Moreover, in both cases, some members of the government had come to consider that a staunchly secular approach was the best way to go, and to make their views known to the public. On October 27, 2011, the Versailles Court of Appeal implicitly confirmed the view that private nurseries had the right to include in their rules and regulations restrictions on their personnel's religious symbols. In a way, then, the coast was clear for such measures to be applied to school outings as well. It did not take long for another court to confirm this interpretation.

On November 22, 2011, a Montreuil administrative court (*Tribunal administratif de Montreuil*) rendered a ruling which stated that the principle of *laïcité* could apply to parents who volunteered to participate in school outings.[133] The case concerned a school which had changed its internal rules and regulations, adding to these dispositions the statement that "parents who volunteer to supervise school outings must respect in their clothing and comments the neutrality of the secular school."[134] Five head-scarved mothers whose children attended the school in question had joined *Mamans toutes égales* (MTE) and were claiming their rights and asking for the school rules to be nullified.[135] One of them had filed a complaint against the school, arguing that the modified rules were not only a breach of her religious freedom but also without legal base, as the law of 2004 only concerned students.[136] The mother also reminded the court that the HALDE had in 2007 clearly stated that parents were exempt on any restrictions imposed on the display of religious beliefs.

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cela pose un problème. On ne peut pas légiférer. Nous sommes en train de préparer des instructions sur des règlements. L'esprit des instructions sera d'éviter le port du voile," quoted in *Bulletin quotidien*, "Le ministre de l'Intérieur, M. Claude Guéant, présente un 'Code de la laïcité' en faveur d'une neutralité renforcée," October 24, 2011.

[133] Tribunal administratif de Montreuil, ruling no 1012015: < http://montreuil.tribunal-administratif.fr/content/download/7043/21259/version/1/file/tam-22-novembre-2011-n-101205-mme-o.pdf >.

[134] "*Les parents volontaires pour accompagner les sorties scolaires doivent respecter dans leur tenue et leurs propos la neutralité de l'école laïque*," quoted in *AFP*, "Sorties scolaires/Voile islamique : la neutralité de l'école prévaut, selon un jugement," November 24, 2011; see also *Rue89*, "Sorties scolaires : la justice valide l'interdiction des mères voilées", 23 November 2011.

[135] *Rue89*, "Sorties scolaires : la justice valide l'interdiction des mères voilées", 23 November 2011.

[136] *La Croix*, "Un tribunal confirme le refus de sortie scolaire opposé à une mère voilée," November 25, 2011.

While the former mayor of Montreuil, Jean-Pierre Brard (PCF), had been one of the first to attempt to ban headscarved mothers from school trips, his successor held a more tolerant view. In 2008, Brard had been beat by Dominique Voynet, an independent candidate supported by the Greens and a part of the Socialists. In the ongoing controversy surrounding school outings, Voynet denounced school regulations which would impose restrictions on mothers.[137] During the court process, however, the school inspector for Créteil defended the school, arguing that "the ECHR has recognized that the wearing of a headscarf has a proselytizing effect," and that "as participants, the parents of students are, with regard to children, in a similar position to public servants."[138] As MTE's May 2, 2011 demonstration had not yielded results, the issue was decided by an administrative court. But the Montreuil court sided with the school:

> Considering that […] the principle of *laïcité* in public education, which is one of the elements of public secularism [*laïcité de l'État*] and of the neutrality of all public service, requires that teaching is offered in respect, on the one hand, of this neutrality of programs, teachers, and the personnel that engage with students, and, on the other hand, the freedom of conscience of students; if the parents of students who participate in the public service of education benefit from the freedom of conscience which prohibits all discrimination on the basis of their religion or their opinions, the principle of the neutrality of the secular [*laïque*] school prevents them from displaying, while they participate in a school outing, by their clothing or by their comments, their religious, political, or philosophical convictions.[139]

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[137] *Rue89*, "Sorties scolaires : la justice valide l'interdiction des mères voilées", 23 November 2011.

[138] "*[L]a Cour européenne des droits de l'homme a reconnu que le port d'un foulard a un effet de prosélytisme*," "*accompagnateurs, les parents d'élèves se placent vis-à-vis des enfants dans une situation comparable à celle des agents publics,*" *La Croix,* "Un tribunal confirme le refus de sortie scolaire opposé à une mère voilée," November 25, 2011.

[139] "*Considérant que […] que le principe de la laïcité de l'enseignement public, qui est l'un des éléments de la laïcité de l'État et de la neutralité de l'ensemble des services publics, impose que l'enseignement soit dispensé, dans le respect, d'une part, de cette neutralité par les programmes, les enseignants et les personnels qui interviennent auprès des élèves et, d'autre part, de la liberté de conscience des élèves ; que si les parents d'élèves participant au service public d'éducation bénéficient de la liberté de conscience qui interdit toute discrimination fondée sur leur religion ou sur leurs opinions, le principe de neutralité de l'école laïque fait obstacle à ce qu'ils manifestent, dans le cadre de l'accompagnement d'une sortie scolaire, par leur tenue ou par leurs propos, leurs convictions religieuses, politiques ou philosophiques; si les parents d'élèves participant au service public d'éducation bénéficient de la liberté de conscience qui interdit toute discrimination fondée sur leur religion ou sur leurs opinions, le principe de neutralité de l'école laïque fait obstacle à ce qu'ils manifestent, dans le cadre de l'accompagnement d'une sortie scolaire, par leur tenue ou par leurs propos, leurs convictions religieuses, politiques ou philosophiques,*" Tribunal administratif de Montreuil, ruling no 1012015.

In this ruling, we can see the status of *laïcité* in republican ideology. To begin with, the court's decision shows how *laïcité* had, by 2011, become a value that limited private persons' freedom to display their religious beliefs in public space. This idea which pro-ban actors had formulated during the early headscarf controversies and which the French parliament had ratified in 2004, had, since then, become established enough for courts to argue, in the fall of 2011, for its extension to new groups of people: private employees and parents of students. In addition, the court's decision illustrates the extent to which the substantive value system that this new interpretation of *laïcité* relied upon was disguised as "neutrality." The civil religion that French political elites had constructed during the 2009–2010 burqa discussions was not seen as such. The fact that secular beliefs were protected more than religious ones – and, indeed, that one category of beliefs was restricted in the name of another – was not presented as a political choice that stemmed from a specific, ideological value system. Instead, the Montreuil court joined a major part of the French political elite in differentiating between *laïcité*, on the one hand, and "religious, political, and philosophical convictions," on the other. This distinction was reinforced by the way in which *laïcité* and neutrality came to be used almost as synonyms. While the historical *laïcité* of 1905 had signified neutrality of the state and protection of freedom of conscience, the new *laïcité* which had gained support especially from 2004 onwards implied "religious neutrality" imposed on private individuals and thus a restriction of their freedom of religion. In other words, the neutrality that the historical *laïcité* had promoted – the idea that no religious beliefs were favored over others – had been replaced by an understanding of neutrality which clearly urged people to act as though the absence of religious beliefs – or at least the absence of visible ones, and especially the absence of the headscarf – was better than having them. The court's ruling mirrors the transformed republican core which privileged fraternity over liberty and equality: if women did not adhere to the allegedly neutral civil religion by removing their headscarves, their individual rights could be overridden by the "common good" of French society and the protection of its central republican values.

The Montreuil administrative court's 2011 ruling also referred to children's rights. As seen in Chapter 6, the issue of protecting children's freedom of conscience had been a recurrent theme in the Baby-Loup case. Here again we can see how the two "affairs" were interconnected. Although anti-ban actors such as MTE had argued that the exclusion of mothers was "traumatizing" for their children, the Montreuil court argued quite the opposite, noting that the ban on conspicuous religious insignia was

"aimed to protect the freedom of conscience of children."[140] It is unclear how the occasional presence of a headscarved mother during school outings could threaten children's freedom of thought in a multiethnic neighborhood where religious garments and other symbols were a day-to-day occurrence. Yet, during the timeframe of less than a month, in the Baby-Loup case the Versailles Court of Appeal had confirmed Mrs. Afif's firing, and now a Montreuil court had ruled that a similar restriction could be imposed on parents during school outings. Finally, according to the Montreuil court, the school's rules and regulations did not constitute a "significant breach" of freedom of religion (guaranteed by the European Convention of Human Rights), because participation in children's school outings was not a right.[141]

There are numerous similarities between the Baby-Loup affair and the controversy surrounding school outings. To begin with, in both cases, the requirement of religious neutrality was extended to a completely new category of individuals. Consequently, these persons' previously well-established right to display their religious beliefs was significantly reduced. Moreover, in both cases, this restriction was accomplished without legislative action. In these cases, it was individual establishments – the Baby-Loup nursery and the Montreuil school – that took action to ban religious symbols, and the courts which validated their internal rules and regulations. Finally, in both court decisions from 2011, this extension was justified on the grounds that it was necessary for *laïcité* and children's rights. The two court rulings also considered that both the employees of private nurseries and the parents of students attending public schools fell somewhere in the "grey zone" of *laïcité*, as they were supposedly temporary collaborators with public service. While Mrs. Afif continued her legal battle against Baby-Loup, in the case of school outings, *Mamans toutes égales* issued a communiqué which condemned the Montreuil court's ruling as unjust:

> It constitutes a shocking discrimination of a mother because she is Muslim. This ruling is in contradiction with the principles of *laïcité* enacted in the law of 1905 which establishes the freedom of religion and of conscience for everyone, whatever the religion or

[140] "Cette interdiction 'tend à protéger la liberté de conscience des élèves'," quoted in *Ouest France*, "Sorties scolaires : sans les mères voilées," November 24, 2011.

[141] "*Considérant […] que l'accompagnement des sorties scolaires par les parents d'élèves ne constitue pas un droit*," Tribunal administratif de Montreuil, ruling no 1012015.

> absence thereof may be, and institutes the principle of neutrality only for civil servants.[142]
>
> By treating this mother as if she were a state employee – when school outings take place under the responsibility of teachers who are civil servants – this ruling legalizes religious discrimination and constitutes, in fact, racist discrimination, for never would such a decision have been taken against a mother wearing a cross or a father wearing a skullcap. […] This ruling legalizes exclusion.[143]

In this communiqué, MTE emphasized that it was the transformed *laïcité* – and not the historical *laïcité* – which was used to legitimate headscarved mother's exclusion from school outings. Although the Montreuil court's ruling was unfavorable to MTE, it also stirred up support for the organization's cause. MTE's petition to end exclusions was signed by a number of intellectuals: philosophers Jacques Rancière, Étienne Balibar, and Joël Roman; historian Esther Benbassa, political scientist Françoise Vergès, and sociologists Éric Fassin, Jean Baubérot, and Christine Delphy.[144]

Unsurprisingly, Luc Chatel was happy with the Montreuil court's decision to confirm headscarved mothers' exclusion. The HCI also welcomed the decision which "set a precedent"[145] and sided with Chatel on this issue: "In line with the opinions expressed by the Minister of Education last March, the HCI recommends setting out on this topic [of school outings] rules that are consistent with the constitutional principle of *laïcité*."[146] The International League against Racism and Anti-Semitism (LICRA) also "applauded" the ruling:[147] "In this instance, it is not about stigmatizing such and such religion or community, but about reaffirming with force that *laïcité* must be respected by all: it is not for

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[142] "*Il constitue une discrimination scandaleuse à l'égard d'une mère parce qu'elle est musulmane. Ce jugement contrevient aux principes de laïcité édictés dans la loi de 1905, qui institue la liberté de croyance et de conscience pour tous, quelle que soit la religion ou l'absence de religion, et n'instaure le principe de neutralité que pour les agents de l'État*," MTE, communiqué of November 26, 2011, < http://lmsi.net/Un-jugement-inique >.

[143] "*En assimilant cette mère à un membre du personnel de l'État – alors que les sorties scolaires s'effectuent sous la responsabilité des enseignants, eux, agents de l'État – ce jugement légalise une discrimination religieuse et constitue, de fait, une discrimination raciste, car jamais un telle décision n'a été prononcée à l'encontre d'une mère portant une croix ou d'un père portant une kippa. […] Ce jugement légalise l'exclusion*," MTE, communiqué of November 26, 2011, < http://lmsi.net/Un-jugement-inique >.

[144] "Mamans toutes égales ! Non à l'exclusion des mères portant le foulard," < http://www.activism.com/fr_FR/petition/mamans-toutes-egales-non-a-lexclusion-des-meres-portant-le-foulard/14517 >.

[145] *La Croix*, "Un tribunal confirme le refus de sortie scolaire opposé à une mère voilée," November 25, 2011.

[146] "*Dans la logique des propos tenus en mars dernier par le ministre de l'Education nationale, le HCI recommande d'édicter sur ce point des règles de fonctionnement conformes au principe constitutionnel de laïcité*," quoted in *AFP*, "La justice conforte la laïcité dans les établissements scolaires," November 25, 2011.

[147] *La Croix*, "Un tribunal confirme le refus de sortie scolaire opposé à une mère voilée," November 25, 2011.

laïcité to put up with the beliefs of each person."[148] In a similar vein to MTE's communiqué, LICRA's statement illustrates the major transformation in the meanings assigned to the principle of *laïcité*. A value which, historically, was meant to guarantee freedom of religion, had become its opposite: an argument in favor of erasing visible religious difference. The fact that such measures concerned women was not highlighted. As the enforcement of *laïcité* had already been constructed as a feminist project and a central republican value, the participants in these discussions no longer relied on arguments related to gender equality. Instead, as LICRA's statement illustrates, pro-ban actors consolidated the new republican core which limited individual religious freedom and emphasized shared republican social norms.

The Montreuil court's ruling came only two weeks before the celebrations of the first "National Day of *Laïcité*" (*Journée nationale de la laïcité*) on December 9, 2011 – exactly a 106 years after the passing of the 1905 law on the separation of the church and the state. The French Senate had voted on the establishment of such a day the previous June with the aim of assigning "a day for republican *vivre-ensemble* and to share it with those who do not have the same culture and the same religion."[149] This initiative is yet another illustration of how French political elites, through their insistence on the new *laïcité* and social cohesion, constructed republicanism as a civil religion. Indeed, the celebratory events organized on December 9 throughout France resembled religious festivities. For example, in the small town of Belley (Ain), the municipality organized a public reading of Aristide Briad's 1905 speech, a photo exhibition presenting "secular associations," and a "republican buffet."[150] In Plouha (Côtes-d'Armors), school children were taken on an excursion to discover "past and contemporary places of public service," and the "seculars [*les laïques*] of Côtes-d'Armors" were urged to join a "republican banquet" where speakers would "confirm their attachment to public services."[151] In Brive (Corrèze), in a republican ritual that was also taking place in several French cities, school children planted a "tree of *laïcité,*"

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[148] "*Il ne s'agit pas en l'espèce de stigmatiser telle ou telle religion ou communauté mais de réaffirmer avec force que la laïcité doit être respectée par tous : ce n'est en aucun cas à elle de s'accommoder des croyances de chacun*," quoted in *AFP*, "La justice conforte la laïcité dans les établissements scolaires," November 25, 2011.

[149] "[*U]ne journée républicaine du "vivre ensemble", et de la partager avec ceux qui n'ont pas la même culture et la même religion*," quoted in *AFP*, " La première journée nationale de la laïcité se tiendra vendredi, December 9, 2011.

[150] *Le Progrès*, "Demain, on célèbre la séparation de l'Église et de l'État," December 8, 2011.

[151] "*[L]es élèves des écoles publiques partiront à la recherche des lieux représentatifs des services publics actuels ou passée*," "*banquet républicain […] les intervenants affirmeront leur attachement aux services publics*," *Ouest France*, "Une troisième fête de la laïcité tournée vers les jeunes," December 8, 2011.

a symbolic act meant to confirm "the importance of this universal principle which guarantees liberty, combats inequality, and encourages *fraternité*."[152] In Esperaza (Aude), the habitants celebrated the inauguration of a "Square of *Laïcité*," and the mayor gave a speech on the importance of *laïcité* for republican emancipation, gender equality, and social harmony.[153] These statements and activities illustrate that republican advocates continued to prioritize *laïcité*, shared values, and social cohesion, thereby consolidating the morphology which had been constructed in 2009–2010.

From kindergartens trips[154] to municipal administrations to student photo competitions, many of the events of the National Day of *Laïcité* were aimed at children's "secular" civic education,[155] leading *La Montagne* to describe the school as "the temple of republican and secular values."[156] In Peyriac-Minervois (Aude), the December 9 celebrations took place in one of the city's schools. The ceremony combined nationalistic and secular symbols: the students arrived waving French flags, and the opening speech was given by Denis Pelletier, president of the National Freethinkers' Association (*Association des libres penseurs de France*, ADLPF), who addressed the children: "The secular school does not differentiate between its children. You are all different and similar at the same time. You are future citizens, free and equal, educated by the school of the Republic."[157] The city's mayor, wearing his tricolor scarf, congratulated the teachers who "try to fulfill their task in spite of a path fraught with pitfalls"[158] and cited the republican idol Jean Jaurès, before the children sung *La Marseillaise*.

Despite these nationalistic, republican expressions of faith, the *laïcardes* refused any allusion to a "secular religion." Patrick Kessel, honorary president of *Comité Laïcité République*, explained the difference: "*Laïcité* is not the religion of non-believers, but the rules of working together. One is not born a citizen; one becomes a citizen. And this happens in the school. In the name of what 'custom'

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[152] "*Planter un arbre de la laïcité aujourd'hui, mais aussi pour demain, en présence des générations futures, c'est affirmer toute l'importance de ce principe universel qui garantit la liberté, combat l'inégalité et pousse à la fraternité*," quoted in *La République du Centre*, "La laïcité pour encourager la fraternité," December 16, 2011.

[153] *L'indépendant*, "Le square de la Laïcité a été inauguré," December 22, 2011.

[154] *Ouest France*, "La maternelle découvre les services publics," December 12, 2011.

[155] *Midi Libre*, "Regard sur la laïcité : les écoliers décrochent le premier prix," December 15, 2011.

[156] *La Montagne*, "L'école, temple des valeurs républicaines et laïques," December 9, 2011.

[157] "*L'école laïque ne fait aucune différence entre ses enfants. Vous êtes tous différents et en même temps tous pareils. Vous êtes les futurs citoyens, libres et égaux, formés par l'école de la République*," quoted in *Midi Libre*, "L'école de la République fête la laïcité," December 17, 2011.

[158] "*[T]entent de mener leur tâche à bien en dépit d'un parcours semé d'embûches*," quoted in *Midi Libre*, "L'école de la République fête la laïcité," December 17, 2011.

would it be acceptable for young girls to not have the right to go to school?"[159] Kessel's comments illustrate the dominant republican logic: deserving citizens should pledge allegiance to the republican value system by renouncing visible symbols of religious faith. French Muslims, and Muslim women specifically, needed to respect the republican symbolic order. As seen above, if these women did not conform to the republican social norm which required the absence of headscarves, they were both symbolically and literally cast out of the republican community.

7.4 From Chatel (UMP) to Peillon (PS): *Laïcité* Reinforced in Schools (2012–2013)

In February 2012, while French public discussion was otherwise focused on the upcoming presidential elections, the Minister of Education and the HCI set up a committee charged with developing the "pedagogy of *laïcité*" in the public school system. Interestingly, they chose to appoint philosopher Abdennour Bidar at the head of the committee. As seen in Chapter 5, Bidar had, when auditioned by the MIP about the burqa, argued in favor of banning face-covering veils from public space in the name of Levinasian ethics and the republican social order. Bidar's appointment at the head of the new committee is yet another illustration of how those who supported the dominant republican ideology were decorated with medals, given prizes, or rewarded with high-ranking positions; whereas dissident thinkers were marginalized.[160]

The committee that the Ministry of Education and the HCI set up in early 2012 was meant to "provide the personnel of national education the necessary conceptual and pedagogical tools in order for them to better appropriate the principle of *laïcité*."[161] Although the committee's explicitly stated goal was to support teachers in their tasks, students and their parents were not excluded from this mission: "This raising of awareness of *laïcité*, its meaning and issues, is intended to allow students and

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[159] "[*L]a laïcité n'est pas la religion des non-croyants, mais des règles de fonctionnement ensemble. On ne naît pas citoyen, on le devient. Et on le devient à l'école. Au nom de quelle 'coutume', serait-il acceptable que les petites filles n'aient pas le droit d'aller à l'école ?*" quoted in *Ouest France*, "La conférence sur la laïcité fait le plein," December 9, 2011.

[160] This is the case, for example, of Jean Baubérot, who had acted as adviser to François Mitterrand and sat on many ministerial committees throughout the 1990s and early 2000s. Baubérot was the only member of the Stasi commission who was not in favor of the 2004 law. Since then, although he is still regularly solicited by the media, he has not received any public appointments.

[161] "*[M]ettre à la disposition des personnels de l'éducation nationale les outils conceptuels et pédagogiques nécessaires pour mieux s'approprier le principe de laïcité*," quoted in *AFP*, "Chatel et le HCI installent une mission sur la 'pédagogie de la laïcité'," February 23, 2012.

their families to understand this principle as an essential condition of republican *vivre ensemble*."[162] As we can see, the policies that were aimed at teachers and students tended to brim over and come to concern the students' "families" – meaning, of course, their mothers.

As we know, the Minister of Education, Luc Chatel (UMP), had been favorable to veiled mothers' exclusion from school outings since the spring of 2011. Following the Montreuil court's November 2011 ruling, and while the presidential campaign was under way, Chatel finally published the ministerial circular that he had been planning for more than a year. This administrative notice, signed on March 27, 2012, was addressed to school officials, and it contained a number of instructions concerning the 2012 *rentrée*, such as recommendations about how to foster students' learning abilities, to facilitate their professional integration, to encourage the equality of chances, gender equality, and so forth. However, what the circular became known for was a short section concerning the role that the school was meant to play in guaranteeing *laïcité*:

> As an agent of social cohesion, *laïcité* imposes itself on everyone in the school sphere and on school time. Everyone, in their own way, is responsible for its application and respect. It is recommended that school rules point out that the principles of *laïcité* in teaching and the neutrality of public service are fully applicable in public schools. These principles allow, in particular, [school officials] to prevent parents of students or any other participant from displaying – through their clothing or comments – their religious, political or philosophical beliefs when accompanying students on school outings or trips.[163]

This section of the so-called Chatel circular illustrates the transformation of the republican core. Instead of defining *laïcité* as the separation of church and state or as the protection of individual religious freedom, the ministerial notice states that *laïcité* is the "agent of social cohesion." Understood in this sense, *laïcité* is therefore not a principle distinguishing public from private and setting limits to state intervention, but an obligation for individuals to conform to the rules of "neutrality." Far from

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[162] "*Cette sensibilisation à la laïcité, à sa signification et à ses enjeux, entend permettre aux élèves et à leurs familles de comprendre ce principe comme la condition essentielle du vivre ensemble républicain,*" quoted in *AFP*, "Chatel et le HCI installent une mission sur la 'pédagogie de la laïcité'," February 23, 2012.

[163] "*Facteur de cohésion sociale, la laïcité s'impose à tous dans l'espace et le temps scolaires. Chacun, à sa place, est le garant de son application et de son respect. Il est recommandé de rappeler dans le règlement intérieur que les principes de laïcité de l'enseignement et de neutralité du service public sont pleinement applicables au sein des établissements scolaires publics. Ces principes permettent notamment d'empêcher que les parents d'élèves ou tout autre intervenant manifestent, par leur tenue ou leurs propos, leurs convictions religieuses, politiques ou philosophiques lorsqu'ils accompagnent les élèves lors des sorties et voyages scolaires*," Circular nº 2012-056, appendix 10, paragraph 4.

being a specific requirement concerning civil servants, "*laïcité* imposes itself on everyone," and "everyone is […] responsible for its application." Through these statements, the Minister of Education reinforced the idea that each individual was responsible for guaranteeing "neutrality" and contributing to the uniformity of the French social fabric. In other words, through these formulations, Chatel prioritized fraternity over liberty and equality, thereby bolstering the new republican core. It was the consolidation of this transformed republican core – the privileging of the republican social bond infused with the requirement of neutrality – which allowed the Minister to legitimaize the exclusion of headscarved women from school outings.

Although headscarved mothers had been barred from school-trips on many occasions since 2004, these exclusions had not been publicly validated before the Montreuil court's November 2011 decision. Chatel's March 2012 circular was the first policy document to give school authorities the right to demand religious neutrality of the mothers of students. Although Chatel had announced his willingness to publish such a notice in the spring of 2011, not everyone had agreed; the government had remained hesitant throughout the year. Therefore, Chatel's circular from March 27, 2012 was the first sign that the UMP-led Fillon government had shifted its position and was now in favor of applying "neutrality" to parents. Despite the important change that this implied, the circular went unnoticed in the media, as public attention was focused on the presidential campaign. In April 2012, Socialist François Hollande beat standing president Nicolas Sarkozy and became President of the Republic. The following month, the *Parti socialiste* also won an absolute majority of seats in the Parliament. Jean-Marc Ayrault (PS) became Prime Minister and Vincent Peillon (PS) replaced Luc Chatel (UMP) as Minister of Education.

Despite the change in the political orientation of the government, there was no change in its determination to strengthen *laïcité* in schools. In the fall of 2012, the new Socialist Minister of Education, Vincent Peillon, announced the establishment of a program on "secular morals" (*morale laïque*) that was to be put in place by 2015.[164] According to Peillon, the programs that existed on civic education in different levels of schooling had a weakness: "*Laïcité* as a legal, philosophical, and historical fact is

[164] The law that was voted in June 2013 renamed the program as "moral and civic education" (*enseignement moral et civique*).

not sufficiently studied."[165] According to Laurent Escure, secretary-general of UNSA and of *Comité national d'action laïque*, the aim of the initiative was not to offer an alternative to religions, but rather to "reconcile the students and families who hold beliefs with the Republic."[166] However, Minister Peillon gave a description of the program which resembled a substantive belief-system not unlike that of religions:

> Secular morals mean understanding what is just, distinguish good from bad, and also responsibilities as much as rights, virtues, and, above all, values. […] We must also carry and defend the equality of boys and girls. […] We must accept that the school exercises a spiritual power in society.[167]

Peillon's description of the new program reveals that the republican civil religion had a strong ethical dimension. The issue was not only public order, but also virtue. The republican symbolic order which implied the absence of the Islamic "veil" as a minimal condition of social life was also a way of distinguishing deserving citizens from undeserving ones, the virtuous from the weak. The public school had become the republican temple in the widest sense of the word: it was not only the place were citizens learned to distinguish good from bad, but it also held spiritual sway over the surrounding society. As this was the case, it was perhaps not surprising that the teaching of "secular morals" would spill over onto the parents of students.

The Chatel circular, which had gone unnoticed at the time of its publication in March 2012, appeared in the media briefly the following fall. In September 2012, *Agence France-Presse, La Croix*, and *Le Monde* reported that *Mamans toutes égales* (MTE) had appealed to Minister Peillon to protect parents against ongoing exclusions.[168] MTE hoped that the Socialist minister might be persuaded to revise his predecessor's stance, and to withdraw the ministerial circular before the exclusion of head-scarved mothers from school outings would become an established practice. In their letter, published

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[165] "*[L]a laïcité comme fait juridique, philosophique et historique, n'est pas suffisamment étudiée*," quoted in *La Croix*, "La 'morale laïque' à l'école, une question controversée," September 3, 2012.

[166] "*[P]ermettre de réconcilier avec la République des élèves ou des familles qui sont dans une position de croyance*," quoted in *La Croix*, "La 'morale laïque' à l'école, une question controversée," September 3, 2012.

[167] "*La morale laïque, c'est comprendre ce qui est juste, distinguer le bien du mal, c'est aussi des devoirs autant que des droits, des vertus, et surtout des* valeurs. […] Nous devons *également porter et défendre l'égalité des garçons et des filles. […] Il faut assumer que l'école exerce un pouvoir spirituel dans la société*," quoted in *La Croix*, "La 'morale laïque' à l'école, une question controversée," September 3, 2012.

[168] *AFP*, "Un collectif demande à Peillon d'autoriser le voile pour les sorties scolaires," September 6, 2012; *La Croix*, "Doit-on permettre aux mères voilées de participer aux sorties scolaires ?," September 7, 2012; *Le Monde*, "Vincent Peillon interpellé sur le cas des mères voilées à l'école," September 13, 2012.

on September 6, 2012, MTE pleaded Peillon to offer new ministerial guidelines that would protect freedom of religion and guarantee a united Republic:

> Your predecessor, Luc Chatel, stigmatized us and allowed certain teachers to label us as the pariahs of the school […]. Minister, the law of 1905 as much as the international conventions that France has ratified – such as the Universal Declaration of Human Rights and the European Convention on Human Rights – guarantee the freedom to express all beliefs, including religious ones, in public as well as in private. We are convinced that the respect of the freedom of conscience and of expression is one of the pillars of the *vivre ensemble* of the French society, starting with the public school.[169]
>
> Your predecessors have divided French society, they have excluded; you no doubt agree with us that a united civil society and laws of inclusion are preferable to a divided society and to laws of exclusion. […] More than the abrogation of the Chatel circular, we ask you for clear instructions in order to stop the exclusion of mothers from the school outings of their children.[170]

MTE's petition did not bear fruit. Contrary to what MTE had hoped, Peillon's views were similar to those of his predecessor, Luc Chatel, who had described *laïcité* as an "agent of social cohesion." In the preface of Abdennour Bidar's report on the "pedagogy of *laïcité*," published in 2012, Peillon described *laïcité* as "the best cement of a society which rises above its differences in order to build a common future"[171] (Peillon 2012, 5). In emphasizing *laïcité* in this way, Chatel and Peillon infused the republican core with the requirement of religious neutrality. They linked the absence of headscarves with the idea of fraternity, making it into a precondition for maintaining the republican social bond, and downplayed the concepts of liberty and equality.

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[169] "*Votre prédécesseur, Luc Chatel, nous a stigmatisées et a permis à certains enseignants de nous désigner comme les parias de l'école […]. Monsieur le ministre, tant la loi de 1905 que les conventions internationales ratifiées par la France – comme la Déclaration universelle des droits humains et la Convention européenne de sauvegarde des droits humains – garantissent la liberté d'expression de toutes les convictions, y compris religieuses ; et ceci en public comme en privé. Nous sommes convaincues que le respect de la liberté de conscience et d'expression est l'un des piliers du vivre ensemble dans la société française, en commençant par l'école publique*," MTE, "Lettre ouverte à Vincent Peillon," September 6, 2012, < https://blogs.mediapart.fr/edition/les-batailles-de-legalite/article/0609-12/des-sorties-scolaires-ouvertes-toutes-les-mere >.

[170] "*Vos prédécesseurs ont divisé la société française, ils ont exclu ; vous serez sans aucun doute d'accord avec nous sur le fait qu'une société civile rassemblée et des lois qui intègrent sont préférables à une société divisée et à des lois qui excluent. […] Monsieur le ministre, plus qu'une abrogation de la circulaire Chatel, nous vous demandons des directives claires pour arrêter l'exclusion de mamans des sorties scolaires de leurs enfants*," MTE, "Lettre ouverte à Vincent Peillon," September 6, 2012.

[171] "*[…] le meilleur ciment d'une société qui dépasse ses différences pour construire son avenir ensemble*" (Peillon 2012, 5).

As Peillon embraced the idea that *laïcité* was important because of its social effects, Chatel's circular stayed in force. In other words, Peillon and the Ayrault government maintained the status quo established by the Montreuil court as well as by their predecessors in the last stages of the UMP-led government. Despite MTE's and CCIF's pleas, "veiled" mothers therefore continued to be excluded from school trips. For instance, on September 13, 2012, *Le Monde* interviewed a headscarved Muslim woman who felt that she had been "chased away from school."[172] Although she had herself been educated in the public school system, the woman had decided to transfer her children to a private Catholic school where she was able to take part in their school outings. As no further measures were taken, and despite the efforts of MTE,[173] the discussion about school outings died down.

In August 2013, the public discussion about the application of *laïcité* in schools reemerged due to two events. To begin with, it was in August that *Le Monde* published a series of recommendations that the HCI had made on the issue of religious symbols. These included the suggestion that the wearing of the Islamic headscarf should be prohibited in higher education. It was also in August that Minister of Education, Vincent Peillon (PS), published a draft version of a new "Charter of *Laïcité*" (*Charte de la laïcité*) whose aim was to remind everyone of the application of the principle of *laïcité* in public schools.[174] The Charter mentioned that the role of the school was to protect students from "all forms of proselytism and pressure," and for all members of the staff to "transmit to students the meaning of the value of *laïcité*."[175] This document, prepared under the supervision of the Minister of Education, was to be hung on the walls of all public schools at the beginning of the 2013 autumn term. "I want this *rentrée* of 2013 to also be the return of the values of the Republic in schools," Peillon declared.[176] According to Dominique Borne, honorary dean of national education, Peillon's initiative was most welcome: "The Charter of *Laïcité* must encourage students to rationalize their belief or non-belief, without ever denying the global membership, which is citizenship. Reaffirming this is essential, for if religious

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[172] "*Je me suis sentie chassée de l'école*," quoted in *Le Monde*, "Vincent Peillon interpellé sur le cas des mères voilées à l'école," September 13, 2012.

[173] The group organized, for instance, a demonstration in Paris on May 18, 2013. *AFP*, "Manifestation contre l'exclusion des mères voilées des sorties scolaires," May 18, 2013.

[174] *Le Figaro* "Laïcité à l'école : une charte à l'épreuve du terrain,", August 27, 2013.

[175] "*[P]rotège de tout prosélytisme et de toute pression*," "*transmettre aux élèves le sens de la valeur de la laïcité*," quoted in *Le Nouvel Observateur*, "Ce que dit la charte de la laïcité de Vincent Peillon," August 27, 2013.

[176] "*Je veux que cette rentrée 2013 soit aussi la rentrée des valeurs de la République à l'école*," quoted in *La Croix*, "Vincent Peillon affiche sa 'charte de la laïcité' dans les écoles," August 27, 2013.

practices are waning, fundamentalism asserts itself."[177] The *Fédération des parents d'élèves de l'enseignement public* (PEEP) which had, since 2011, argued that the parents of students should remain "neutral," took up the opportunity of Peillon's Charter to reaffirm its position: "We cannot ask children to respect rules that their parents often do not know or do not understand."[178] Because of this, the president of the PEEP suggested that the Charter of Laïcité be transmitted to the parents of students through the parent-teacher contact book (*carnet de correspondence*).

Peillon's Charter received a lot of public attention in the beginning of the 2013 school year. Marine Le Pen (FN) criticized it for not going far enough; according to her, it was a gesture which would have no real consequences on the problem of rising communalism.[179] Those who were focused on protecting Muslims' rights saw that the Charter was one more action in a series of measures which had limited the right of the French to display their Islamic faith. Jean Baubérot defined it as a "fig leaf [*cache-sexe*] for dissimulating Islamophobia,"[180] and the CFCM noted that it contained a number of "allusions" to Islam, thereby contributing to French Muslims' feeling that they were designated as scapegoats.[181] According to these critics, the Charter was a flimsy attempt to restrict Muslims' rights without actually naming them as the targets. As Dalil Boubakeur, president of the CFCM, noted:

> Why this reminder that the law of 2004 forbids ostentatious [*ostensible*] religious symbols in schools? There is also this reminder about equality between girls and boys… You see what I mean? […] Mr. Peillon has assured me that this is not at all about targeting the Muslim population. But the road to hell is paved with good intentions.[182]

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[177] "*La charte de la laïcité doit inciter les élèves à raisonner leurs croyances ou leurs incroyances, sans jamais nier l'appartenance globale, qui est citoyenne. Le réaffirmer est essentiel, car si les pratiques religieuses continuent à décroître, des extrémismes s'affirment*," quoted in *La Croix*, "Vincent Peillon affiche sa 'charte de la laïcité' dans les écoles," August 27, 2013.

[178] "*On ne peut pas demander aux enfants de respecter des règles que leurs parents, souvent, ne connaissent ou ne comprennent pas*," quoted in *La Croix*, "Vincent Peillon affiche sa 'charte de la laïcité' dans les écoles," August 27, 2013.

[179] *AFP*, "Charte de la laïcité : 'une gesticulation médiatique' loin de la réalité (Marine Le Pen)," September 9, 2013.

[180] "*[C]ache-sexe pour dissimuler l'islamophobie*," quoted in *Le Journal de Dimache*, "Peillon refait l'école," September 9, 2013.

[181] *Le Nouvel Observateur*, "Charte de la laïcité : le CFCM déplore trop d''allusions' à l'islam," September 9, 2013.

[182] "*Pourquoi faire un rappel à la loi de 2004 qui interdit les signes religieux ostentatoires à l'école ? […] Il y a aussi ce rappel à l'égalité fille-garçon... suivez mon regard... […] M. Peillon m'a juré qu'il n'est nullement question de viser la communauté musulmane. Mais l'enfer est pavé de bonnes intentions,*" quoted in *Le Nouvel Observateur*, "Charte de la laïcité : le CFCM déplore trop d''allusions' à l'islam," September 9, 2013.

In contrast to these critics, sociologist Jacqueline Costa-Lascoux, former member of the HCI, thought that the Charter was a good solution in a situation where religious demands were allegedly multiplying: "It is not a binding legal norm, but it is a commitment, a call for common values. This approach seems very positive. The fact that it [the Charter] will be displayed reinforces the idea of an educational community which must imply all teachers, but also all other personnel of the school, as well as parents.[183] Costa-Lascoux's comments illustrate the discourse that was dominant throughout 2011–2013. In fact, very few people focused specifically on the mothers of students. Instead, they concentrated on the importance of reinforcing *laïcité* and other "shared" values, emphasizing every citizen's responsibility for nourishing the republican social bond, that is fraternity. As Peillon and his supporters presented the Charter on *Laïcité* as a simple "reminder" of republican values, the relative novelty of its contents went unnoticed. For instance, the Charter's statement according to which "*laïcité* guarantees […] equality between girls and boys"[184] was, in 2013, presented as a self-evident fact, which is another example of how political actors contributed to consolidated the republican morphology which had been gradually constructed in 2003–2004 and 2009–2010.

Vincent Peillon revealed the final version of the Charter on September 9, 2013, in a high-school in La Ferté-sous-Jouarre (Seine-et-Marne),[185] in the presence, among others, of Najat Vallaud-Belkacem, Minister of Women's Rights, Robert Badinter,[186] former president of the Constitutional Council, and Jean-Louis Bianco, President of the *Observatoire de la laïcité*. The Charter, published as a ministerial circular[187] as well as in the form of a poster, was to be displayed, by order of the Minister, in all public schools together with the French flag, the motto of the Republic, and the Declaration of the Rights of Man and of the Citizen.[188] In his speech, the Minister of Education presented the Charter in the following words:

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[183] "*Ce n'est pas une norme juridique contraignante, mais c'est un engagement, un appel à des valeurs communes. La démarche me semble très positive. Le fait qu'elle soit affichée renforce l'idée d'une communauté éducative qui doit impliquer les professeurs, mais aussi tous les personnels de l'école, ainsi que les parents*," quoted in *La Croix*, "Jacqueline Costa-Lascoux, sociologue, ancien membre du Haut Conseil à l'intégration : 'La charte de la laïcité, une démarche très positive'," September 9, 2013.

[184] "*La laïcité […] garantit l'égalité entre les filles et les garçons*," circular no 2013-144 of September 6, 2013.

[185] *AFP*, "Vincent Peillon lance sa 'charte de la laïcité' à l'école," September 9, 2013.

[186] Robert Badinter is also the husband of Élisabeth Badinter.

[187] Circular no 2013-144 of September 6, 2013.

[188] *AFP*, "Vincent Peillon lance sa 'charte de la laïcité' à l'école," September 9, 2013.

> The vocation of the Charter displayed in our schools, junior high-schools and high-schools is not only to remind [everyone] of the rules which allow us to live together [*vivre ensemble*] in the school space, but primarily to help *each person* understand the meaning of these rules, to appropriate them, and to respect them.[189] (Emphasis added.)

Peillon's wording illustrates the Charter's contents well. Indeed, the fifteen paragraphs included in the poster contain almost no mention of the mothers of students. However, it states that "*laïcité* protects students against all forms of proselytism and pressure."[190] Since the 1990s, as I have shown, pro-ban actors had argued that the Islamic headscarf, in and of itself, constituted proselytism. According to the Charter, *laïcité* also "insures students' access to a common, shared culture,"[191] "the personnel has a strict obligation to neutrality,"[192] and "instruction is secular."[193] While it was unclear whether the mothers of students were considered, here, as part of the personnel, many of the paragraphs also had vague wordings that implied that *everyone* was concerned by the obligation of neutrality: "No one can invoke his religious affiliation to refuse to conform to the rules applicable in the School of the Republic."[194] Or: "In public schools, the ways [*les règles de vie*] of different spaces, specified in the rules and regulations, respect *laïcité*."[195] The only paragraph of the Charter which mentions parents is the following:

> It is up to all personnel to transmit to students the meaning and value of *laïcité*, as well as of other fundamental principles of the Republic. They ensure their application in the

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[189] "*La vocation de la charte affichée dans nos écoles, nos collèges, nos lycées, est non seulement de rappeler les règles qui nous permettent de vivre ensemble dans l'espace scolaire, mais surtout d'aider chacun à comprendre le sens de ces règles, à se les approprier et à les respecter*," < http://www.education.gouv.fr/cid73666/charte-de-la-laicite-a-l-ecole.html >.

[190] "*Elle [la laïcité] les protège de tout prosélytisme et de toute pression*," circular no 2013-144 of September 6, 2013.

[191] "*La laïcité assure aux élèves l'accès à une culture commune et partagée*," circular no 2013-144 of September 6, 2013.

[192] "*Les personnels ont un devoir de stricte neutralité*," circular no 2013-144 of September 6, 2013.

[193] "*Les enseignements sont laïques*," circular no 2013-144 of September 6, 2013.

[194] "*Nul ne peut se prévaloir de son appartenance religieuse pour refuser de se conformer aux règles applicables dans l'École de la République*," circular no 2013-144 of September 6, 2013.

[195] "*Dans les établissements scolaires publics, les règles de vie des différents espaces, précisées dans le règlement intérieur, sont respectueuses de la laïcité*," circular no 2013-144 of September 6, 2013.

> school setting. It is their responsibility to bring this charter to the attention of the parents of students.[196]

The principal teachers' unions, SNALC and UNSA, welcomed the Charter, and even the union of teachers working in private schools (FEP-CFDT) asked for it to be displayed in their establishments.[197] The FCPE joined the PEEP in warmly greeting the initiative which it considered important when "faced with the resurgence of communalist withdrawal."[198] Despite this enthusiasm of the unions, individual teachers expressed their puzzlement as to why such a Charter was necessary in the first place. One teacher voiced her opinion in *Le Nouvel Observateur*, stating that not a single one of her high-school students had read the Charter that they passed by every day.[199] Another one argued that she had never had any problems with regard to the respect for *laïcité*:

> Guess what, during my eight years in high schools in so-called troubled areas, with a melting-pot of Christians, Jews, Sikhs, Muslims, and Atheists, I have never had any problems with respect for *laïcité*. Never. If, as the Prime Minister says, "*laïcité* is not ignorance about others, it is the guarantee for living together," then I can add that, paradoxically, the places that are implicitly pointed at, such as the *banlieue*, are those where the mix and diversity are the biggest. In a class of ZEP,[200] there are not "only Blacks and Arabs," there is a sample of almost all countries of the world and all of them are French and dream in French.[201]

The above-quoted teacher was right in at least one respect: the issue of conspicuous religious symbols had been settled long ago with the 2004 law, and, in general, students applied the rule of religious neutrality, or at least no incidents of disobedience had reached the headlines. Why, then, was

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[196] "*Il appartient à tous les personnels de transmettre aux élèves le sens et la valeur de la laïcité, ainsi que des autres principes fondamentaux de la République. Ils veillent à leur application dans le cadre scolaire. Il leur revient de porter la présente charte à la connaissance des parents d'élèves*," circular no 2013-144 of September 6, 2013.

[197] *AFP*, "La charte de la laïcité à l'école saluée par les profs, moins par les religieux," September 10, 2013.

[198] "*[F]ace à la recrudescence des replis communautaires*," quoted in *AFP*, "La charte de la laïcité à l'école saluée par les profs, moins par les religieux," September 10, 2013.

[199] *Le Nouvel Observateur*, "Charte de la laïcité : sur mes trois classes de Terminale, pas un seul élève ne l'a lue," September 11, 2013.

[200] *Zone d'éducation prioritaire*.

[201] "*Figurez-vous qu'en huit ans de collèges en zones dites sensibles, avec un melting-pot de chrétiens, de juifs, de sikhs, de musulmans et d'athées, je n'ai jamais eu de problèmes avec le respect de la Laïcité. Jamais. Si comme le dit le Premier ministre : 'La laïcité ce n'est pas l'ignorance des autres, c'est la garantie du vivre-ensemble', alors je peux même rajouter que, paradoxalement, les lieux qui sont, implicitement, montrés du doigt, notamment la banlieue, sont ceux où le mélange et la diversité sont les plus grands. Dans une classe de ZEP, il n'y a pas 'que des noirs et des arabes', il y a un échantillon de presque tous les pays du monde et tous sont français et rêvent en français*," *Le Nouvel Observateur*, "Charte de Peillon : je suis prof en ZEP, la laïcité n'est pas LE problème," September 10, 2013.

such a Charter necessary? It was clearly not aimed at the region of Alsace-Moselle where the law of 1905 was not applied and where, for historical reasons, religion was still taught in schools,[202] although, paradoxically, by Peillon's order, the poster had to be hung on the walls of Alsace-Moselle's schools as well. It seems that the problem was the Islamic headscarf: no longer that of the students, but rather the one worn by their mothers. Although Peillon did not specifically mention the issue of headscarved mothers and school outings, he introduced the Charter at a time when the debate about "temporary collaborators with public service" was still going strong. Indeed, in March 2013, the Court of Cassation had annulled Mrs. Afif's firing in the Baby-Loup case, stating that a private employee could not be bound by the requirement of religious neutrality. The issue of whether the parents of students could be assimilated to this group, and banned from wearing headscarves, was therefore not completely resolved. Although Chatel's 2012 circular remained in vigor, Peillon was perhaps prudently leaving explicit mention of parents out from the Charter, preferring vaguer allusions to the responsibility of "everyone" to respect the principle of *laïcité*.

[202] See, for instance, Basdevant-Gaudemet (1998, 354).

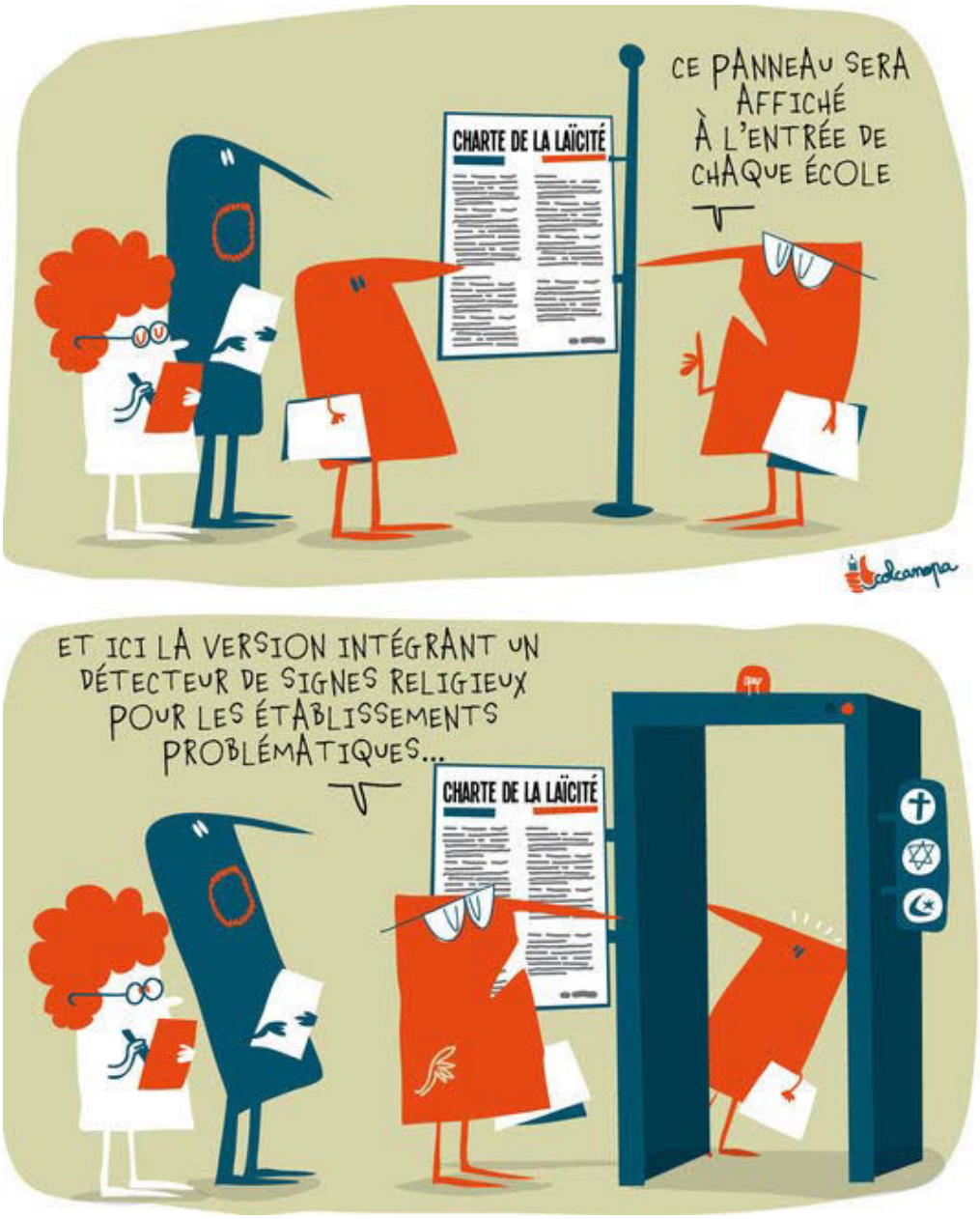

Figure 7.2 – A Caricature of the Charter of* Laïcité *(2013). *Published in* Le Monde *on September 7, 2013, this caricature illustrates the introduction of Peillon's Charter to public schools, suggesting that it would be accompanied by a detector of religious symbols installed in the entryway. (Available at < http://www.lemonde.fr/societe/article/2013/09/07/face-aux-communautarismes-m-peillon-presente-sa-charte-de-la-laicite_3472853_3224.html >.)*

7.5 The Council of State Maintains the Status Quo (2013–2014)

From the moment when Vincent Peillon published a draft of the Charter of *Laïcité* in August 2013 to the time of its publication on September 9, 2013, and despite the fact that the issue of *laïcité* dominated public discussion, the French government provided no actual clarifications of who should be bound by the requirement of religious "neutrality." Although Chatel's March 2012 circular remained in effect, the new Minister of Education had yet to publicly state that he agreed with the instructions that his predecessor had given to school officials. In this situation, and while the Baby-Loup debate was still going strong, on September 1, 2013, the Defender of Rights (*Défenseur des droits*),[203] Dominique Baudis, appealed to the French government in an interview given to *Le Journal de Dimanche*. Baudis asked the government to offer clarification of the application of the March 2004 law, stating that he had, since the beginning of the year, received hundreds of questions about the wearing of religious symbols: "I therefore ask that the government eliminate doubts in order to avoid the emergence of new problems."[204] Baudis had had enough of the confusion surrounding the principle of public secularism as well as of its instrumentalization: "*Laïcité* is a fundamental rule of the Republic. Groups may be motivated to take advantage of these legislative ambiguities to stir up hatred. Confronted with the topic, the French are simply lost."[205] Baudis submitted his yearly report to President Hollande on September 2, and declared his intention to discuss the issue with the presidents of the National Assembly and the Senate, as well as with Jean-Louis Bianco, President of the *Observatoire de la laïcité*.

On the same day that Peillon's Charter was published, the Defender of Rights further announced that he would appeal to the Council of State for clarification of the application of *laïcité*. How was *laïcité* to be interpreted, and who should be bound by religious neutrality in public schools? Were Muslim women wearing the headscarf right to appeal to administrative courts in their efforts to overturn the Chatel circular, or were the ministerial guidelines in line with French legislation? How strictly

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[203] In 2011, this institution of ombudsman had merged with three other institutions: the *Médiateur de la République*, The HALDE, and the *Défenseur des enfants*.

[204] "*Je demande donc au gouvernement de lever les incertitudes pour éviter l'émergence de difficultés nouvelles*," quoted in *Le Journal de Dimanche*, " Baudis : 'Je demande au gouvernement de lever les ambiguïtés sur le voile'," September 1, 2013.

[205] "*La laïcité est une règle fondamentale de la République. Des groupes peuvent avoir intérêt à utiliser ces ambiguïtés législatives à leur profit pour attiser les haines. Confrontés au sujet, les Français sont tout simplement perdus*," quoted in *Le Journal de Dimanche*, " Baudis : 'Je demande au gouvernement de lever les ambiguïtés sur le voile'," September 1, 2013.

– or loosely – should public service be defined? According to Baudis, it was "urgent to clarify the rules of the game," especially with regard to "temporary or volunteer collaborators with public service," such as parents of students, as well as with regard to "private employees who work in relation to public authorities," such as the employees of private nurseries.[206] While Baudis welcomed the new Charter on *Laïcité*, he noted that confusion remained:

> The institution [of Defender of Rights] observes, through the complaints that it has received, that a lot of uncertainties remain concerning the field of application of the principle of *laïcité*. This fuzziness multiplies the risk of misunderstandings and, potentially, of instrumentalization and conflict.[207]

Indeed, although the Charter on *Laïcité* was meant to clarify the issue of religious neutrality to everyone once and for all, it did not mention the issue of school outings. Was the Montreuil administrative court's November 2011 decision enough to consider that the mothers of students participating in such activities were "collaborators" with public service, especially since the HALDE had previously ruled that banning headscarved mothers constituted religious discrimination? According to Bernard Toulemonde, honorary school inspector: "Legally, it can be defended. Humanely, less so. […] It amounts to excluding Muslim women.[208] Moreover, the practices concerning parents still seemed to vary from one school to the other. As a teacher from Seine-Saint-Denis explained: "Last year, in preparation for an outing, our direction suggested that we only ask mothers who were not veiled whether they wanted to participate."[209]

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[206] "*Il est urgent de préciser la règle du jeu*," "*collaborateurs bénévoles ou occasionnels du service public [et pour] les salariés du privé agissant en lien avec les pouvoirs publics*," quoted in *AFP*, "La charte de la laïcité à l'école saluée par les profs, moins par les religieux," September 10, 2013.

[207] "*Cependant, l'Institution constate, à travers les réclamations reçues, que beaucoup d'incertitudes demeurent quant au champ d'application de ce principe de laïcité. Ce flou multiplie les risques de malentendus et, éventuellement, d'instrumentalisation et de conflit*," quoted in *Bulletin Quotidien*, "Le Défenseur des droits, M. Dominique Baudis, demande des éclaircissements," September 10, 2013.

[208] "*Juridiquement, c'est défendable. Humainement, un peu moins. […] Cela revient à exclure les femmes musulmanes*," quoted in *La Croix*, " Laïcité à l'école, les questions laissées en suspens par la charte," September 10, 2013.

[209] "*L'an dernier, en vue d'une sortie, notre direction nous a suggéré de demander uniquement à des mamans non voilées si elles voulaient nous accompagner*," quoted in *La Croix*, " Laïcité à l'école, les questions laissées en suspens par la charte," September 10, 2013.

The Council of State submitted its reply to the Defender of Rights on December 19, 2013. In this report,[210] the Council of State rebuffed the Montreuil administrative court's reasoning according to which parents accompanying school outings were "occasional collaborators" (*collaborateurs occasionnels*) with public service. In other words, as parents could not, according to the Council of State, be equated with public servants, they were, in principle, not bound by religious neutrality. The highest court stated that "between agent and user, neither the law nor the jurisprudence has recognized the existence of a third category of 'collaborators' or 'participants,' which would, as such, be bound by the requirement of religious neutrality."[211] As parents were not public servants, or "attached" to public service, they were, thereby, users of public services.

Following a reasoning similar to the one that the Court of Cassation would come to adopt in the Baby-Loup case on June 25, 2014, the Council stated that mothers wearing headscarves could not be treated as public servants who would be obliged to respect religious neutrality. The Council of State's report stated that as users of public services, "veiled mothers in school outings are not subjected to religious neutrality." This formulation would, by itself, render the Chatel circular's guidelines concerning the application of *laïcité* illegal. However, to complicate the matter further, the Council of State considered that school authorities might be led to "recommend [to parents] to abstain from expressing their religious affiliations or beliefs." The restrictions on parents' right to display their religious beliefs could be justified by "considerations linked to public order or the proper functioning of [public] service":[212]

> For the users of public services and third parties, who are not bound by the requirement of religious neutrality, restrictions on the freedom to manifest religious beliefs can follow either from particular texts or from considerations linked to public order and the proper functioning of the service.[213]

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[210] The report that the Council of State submitted to the Defender of Rights was neither an *arrêt* (a judicial ruling) nor an *avis* (a recommendation for the government); it was rather a descriptive document which offered an outline on existing legislation.

[211] "*[E]ntre l'agent et l'usager, la loi et la jurisprudence n'ont pas identifié de troisième catégorie de 'collaborateurs' ou 'participants', qui serait soumise en tant que telle à l'exigence de neutralité religieuse*."

[212] "*[D]es restrictions à la liberté de manifester des opinions religieuses peuvent résulter soit des textes particuliers, soit de considérations liées à l'ordre public ou au bon fonctionnement du service*."

[213] "*Pour les usagers du service public et les tiers à ce service, qui ne sont pas soumis à l'exigence de neutralité religieuse, des restrictions à la liberté de manifester des opinions religieuses peuvent résulter soit de textes particuliers, soit de considérations liées à l'ordre public ou au bon fonctionnement du service.*"

> These limitations are intended to take into consideration the organizational conditions and the functioning of certain public services, or of the particularity, in certain public services, of the situation of the people who are its agents.[214] […]
>
> […] the requirements linked to the proper functioning of the public service of education can lead the competent authority, in what concerns the parents who participate in trips or other school activities, to recommend that [they] abstain from displaying their religious affiliation or beliefs.[215]

Two issues deserve our attention here. Firstly, the Council of State's reasoning brings to light the importance of the new republican social order. Indeed, by referring to "public order" as a justification for the limitation of religious freedom, the Council of State relied on the newly transformed republican-ideological core – one in which social harmony (fraternity) comes before individual rights (liberty and equality). In other words, the Council of State admitted that restrictions on the freedom to manifest one's religious beliefs could be justified by social circumstances, such as "considerations linked to public order and the proper functioning of the service." In the case of headscarved mothers participating in school outings, it is difficult to see how such problems could be linked to anything other than the reactions of the teachers and other parents who were bothered by such garments. As this is the case, the Council of State's report can be read as a continuation of the logic which underpinned the burqa ban: the prioritization of the preferences of the majority at the expense of the rights of a minority. In both discourses, the idea that individual rights are inscribed in law precisely in order to prevent such a "tyranny of the majority" and to allow for the coexistence of popular sovereignty and individual liberty, became increasingly distant.

Secondly, it should be noted that the Council of State's position was, at best, mitigated. Although the highest administrative authority mentioned that individual religious freedom could be restricted in the context of school outings, it shied away from giving school principals outright permission to exclude headscarved mothers. Instead, it stated that schools could recommend that parents "abstain from displaying their religious affiliation." This second observation is particularly important in light of the conclusions that journalists and politicians alike drew from it. For instance, although *Agence France-*

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[214] "*Ces limitations ont entendu tenir compte des conditions d'organisation et de fonctionnement de certains services publics, ou de la particularité, dans certains services publics, de la situation de personnes qui n'en sont pas les agents*."

[215] "*[L]es exigences liées au bon fonctionnement du service public de l'éducation peuvent conduire l'autorité compétente, s'agissant des parents qui participent à des déplacements ou des activités scolaires, à recommander de s'abstenir de manifester leur appartenance ou leurs croyances religieuses*."

Presse emphasized the cautious tone of the Council of State's report,[216] some national newspapers were less circumspect in their interpretations. According to the headline of *Le Point*, the Council of State "validated" the Chatel circular,[217] while *Le Nouvel Observateur*, in contrast, titled its story "No Religious Neutrality for the Parents of Students."[218] Amidst this confusion, the Minister of Education saw that the much awaited report confirmed his own position. Indeed, despite the reservations expressed by the Council of State, Vincent Peillon reacted to the publication of the report by emphasizing that the requirement of religious neutrality was, in fact, an obligation:

> The Council of State has reminded that the users of public services and third parties in relation to that service are not subject, as such, to the obligation of neutrality. However, it has admitted that the competent authority could establish restrictions on the right [of parents] to display their affiliation or religious beliefs either based on specific texts, or because of considerations linked to public order or the good functioning of the service. This is particularly the case for the public service of education.[219]
>
> The school environment is a context that needs to be especially preserved. Thus, as far as the parents of students who participate in trips or other school activities, they must demonstrate neutrality when expressing their convictions, especially religious ones. This is what is indicated in the circular of March 27, 2012, which is being applied in the field with intelligence, always while giving priority to the path of dialogue. This circular therefore remains in effect.[220]

The mitigated tone of the Council of State's report made it possible for political actors to interpret it to their own liking. For the Minister of Education, this meant moving from a possible "recommendation" to an outright obligation of religious "neutrality." Peillon's interpretation made it possible for the Socialist government to justify leaving the 2012 circular in effect. For the political opposition,

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[216] *AFP*, "Mères voilées/sortie scolaire : pas de neutralité de principe, restrictions possibles," December 23, 2013.

[217] *Le Point*, "Mères voilées dans les sorties scolaires : le Conseil d'État valide la circulaire Chatel," December 23, 2013.

[218] *Le Nouvel Observateur*, "Pas de neutralité religieuse pour les parents d'élèves," December 23, 2013.

[219] "*Le Conseil d'État a rappelé que les usagers du service public et les tiers à ce service ne sont pas soumis en tant que tels à l'exigence de neutralité. Toutefois, il a admis que l'autorité compétente pouvait fixer des restrictions à la liberté de manifester leur appartenance ou leur croyance religieuse soit sur la base de textes particuliers, soit pour des considérations liées à l'ordre public ou au bon fonctionnement du service. Il en va tout particulièrement ainsi pour le service public de l'éducation*," communiqué of Vincent Peillon, December 23, 2013, < http://www.edu-cation.gouv.fr/cid76045/page.html >.

[220] "*Le milieu scolaire est un cadre qui doit être particulièrement préservé. Ainsi s'agissant des parents d'élèves qui participent à des déplacements ou des activités scolaires, ils doivent faire preuve de neutralité dans l'expression de leurs convictions, notamment religieuses. C'est ce qu'indique la circulaire du 27 mars 2012 dont l'application est mise en œuvre sur le terrain avec intelligence, en privilégiant toujours d'abord la voie du dialogue. Cette circulaire reste donc valable*," communiqué of Vincent Peillon, December 23, 2013.

however, the ambiguities of the Council of State's report served as further proof that a new law on the issue of school outings was needed. According to former Minister of Education, Luc Chatel (UMP), "legislation must clarify things and the law of 2004 on ostentatious religious symbols in schools must be reinforced."[221] Éric Ciotti (UMP) also called for a new law, stating that "the government must accept its responsibilities."[222] *Front National*'s Marine Le Pen saw that the ambiguities surrounding the application of *laïcité* threatened the very unity of the nation,[223] and urged the government to propose a bill that would "forbid, in a definitive way, these conspicuous religious signs of participants [in school outings]."[224] As *Le Nouvel Observateur*'s Bruno Roger-Petit noted, the UMP and the FN were "stealing" the issue of *laïcité* from the political left and aligning their respective agendas to attack the Socialist Party.[225] Roger-Petit further pointed to the ways in which right-wing politicians were transforming the notion of *laïcité* and distorting its original meaning: "Let us tell things as they are: '*Laïcité*' is the name that is given, within the UMP and the FN, to the right to persecute those who are 'suspected' of being Muslim in France."[226]

In short, the Council of State's report did not succeed in clarifying the "grey zones" of *laïcité* in the way that the Defender of Rights had hoped. On the contrary, the text, which straddled the two sides of the debate, multiplied calls for a new law. Even some members of the political left joined in UMP's and FN's suggestions that a new law was perhaps necessary.[227] In the end, though, no bills on

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[221] "*La législation doit clarifier les choses et il faudra renforcer la loi de 2004 sur les signes religieux ostentatoires à l'école*," quoted in *Le Journal de Dimanche*, "Femmes voilées en sortie scolaire : l'opposition appelle à légiférer," December 23, 2013.

[222] "*Le gouvernement doit prendre ses responsabilités*," quoted in *Le Journal de Dimanche*, "Femmes voilées en sortie scolaire : l'opposition appelle à légiférer," December 23, 2013.

[223] "*L'unité de la Nation est chaque jour un peu plus mise en danger*," quoted in *Le Parisien*, "Mères voilées en sorties scolaires : Marine Le Pen veut 'une offensive laïque'," December 23, 2013.

[224] "*Interdisant de façon définitive ces signes religieux ostensibles chez les accompagnants*," quoted in *Le Journal de Dimanche*, "Femmes voilées en sortie scolaire : l'opposition appelle à légiférer," December 23, 2013.

[225] *Le Nouvel Observateur*, "Port du voile : comment Marine Le Pen et Luc Chatel volent la laïcité à une gauche apeurée," December 24, 2013.

[226] "*Disons les choses comme elles sont : 'Laïcité', c'est le nom que l'on donne, à l'UMP et au FN, au droit que l'on entend se donner de persécuter ceux qui sont 'suspectés' d'être musulmans en France […]*," *Le Nouvel Observateur*, "Port du voile : comment Marine Le Pen et Luc Chatel volent la laïcité à une gauche apeurée," December 24, 2013.

[227] This was the case, for instance, for Roger-Gérard Schwartzenberg, president of the radical left-wing group (RRDP) of the National Assembly, who stated: "[T]he public school must remain a space of religious neutrality, as the law of March 15, 2004, prescribes. The parents who participate in outings, who are part of school time, must respect these same rules. If, according to some, there exists a doubt on this latter point, we need to complement the law of 2004 with express provisions" ("*[L]'école publique doit rester un espace de neutralité religieuse, comme le prescrit la loi du 15 mars 2004. Les parents accompagnant les sorties, qui font partie du temps scolaire, doivent*

the issue were put forward, as President François Hollande came out in opposition of such a measure.[228] Consequently, headscarved mothers continued to be excluded from school outings in certain cities,[229] while in others they were able to participate without any difficulty.[230]

Hence, when the tenth anniversary of the law of March 15, 2004, came around, headscarved mothers and their supporters, namely CCIF, took advantage of the opportunity to make their opposition to the Chatel circular known. On March 14, 2014, they organized a demonstration in Argenteuil (Val-d'Oise) in front of a school which had, according to the demonstrators, recently changed its policy and started excluding headscarved mothers from school outings and other activities.[231] The mothers appealed to the Council of State's report in order to end what they saw as a discriminatory practice. In Le Blanc-Mesnil (Seine Saint-Denis), the group "*Sorties scolaires : avec nous !*"[232] sent a letter to the Minister of Education, asking to be heard on the issue of school outings.[233] The mothers in question called for the nullification of the Chatel circular which was rigorously applied by the majority of the schools in their municipality.[234] As one mother described, the parents were puzzled by the change in school rules and regulations: "Like all other parents, we yearn to have a legitimate role in our children's schooling! For years, everything went fine; overnight, people claim that we represent a danger?"[235]

The governing *Parti socialiste* suffered a defeat in the municipal elections that took place on March 23 and March 30, 2014. President Hollande reacted to the election results by replacing Jean-Marc Ayrault and appointing Manuel Valls as Prime Minister in the new Socialist government. With the

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respecter ces mêmes règles. Si, selon certains, il existe un doute sur ce dernier point, il convient alors de compléter la loi de 2004 par des dispositions expresses"), quoted in *Le Figaro*, "Mères voilées et sorties scolaires : polémique sur une nouvelle loi," December 26, 2013.

[228] *AFP*, "Port du voile dans les sortie scolaire : nul besoin d'une loi selon Hollande," January 7, 2014; *Le Figaro*, "Voile et sorties scolaires : Hollande ne veut pas de loi," January 8, 2014.

[229] *AFP*, "Une mère voilée refusée pour une sortie scolaire à Nice : recours devant la justice administrative," January 20, 2014.

[230] *La République du Centre*, "Le foulard bien accepté lors des sorties," February 4, 2016.

[231] *Le Parisien*, "Les mères voilées privées de sorties scolaires sont en colère," March 15, 2014.

[232] "School outings with us."

[233] *Le Figaro*, "École : l'offensive des mères voilées," March 19, 2014.

[234] *Le Parisien*, "Les mamans privées de sorties scolaires en appellent au ministre," March 19, 2014.

[235] "*Nous aspirons, comme tous les autres parents, à retrouver une place légitime dans le parcours scolaire de nos enfants ! Pendant des années, ça s'est bien passé et, du jour au lendemain, on décrète qu'on représente un danger ?*," quoted in *Le Figaro*, "École : l'offensive des mères voilées," March 19, 2014.

resignation of the Ayrault government, Benoît Hamon replaced Vincent Peillon as Minister of Education. Although Hamon attempted to appease the debate on "veiled" mothers and school outings, he refused to give clear guidelines as to the situations in which headscarved parents should or should not be allowed to participate.[236] As this was the case, headscarved mothers continued their mobilization.[237] They chose the date of June 18, 2014 to launch a petition for the nullification of the Chatel circular,[238] thereby creating a parallel between their combat and the French resistance during World War II.[239] The mothers were supported by certain politicians, such as Clémentine Autain (FDG) and the Greens' Noël Mamère, the latter of whom had, as seen above, been one of the few MPs to oppose the burqa ban.[240] Although Minister of Eduation Benoît Hamon agreed to meet with a group of "veiled" mothers on the symbolic day of June 18,[241] he took no concrete action to resolve the issue one way or the other.

The most recent developments in the case of "veiled" mothers and school outings show that the controversy is not yet over. In October 2014, the new Minister of Education, Najat Vallaud-Belkacem[242] (PS) broke with the position of her predecessors by announcing that "the acceptance of [headscarved mothers'] presence in school outings should be the rule, and the refusal the exception."[243] Vallaud-Belkacem referred to the Council of State's report in arguing that the parents of students were not bound by the obligation of religious "neutrality,"[244] and in emphasizing that they were neither public servants nor collaborators with public service.[245] Vallaud-Belkacem's stance prompted MP Éric Ciotti

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[236] *La Gazette*, "Les parents accompagnateurs de sorties scolaires restent dans le flou," May 14, 2014; *Marianne*, " Benoît Hamon prend le voile," May 23, 2014; *Le Figaro*, "Le nouveau ministre démine pour faire oublier Peillon," May 29, 2014.

[237] *Le Parisien*, "La contre-attaque des mamans voilées privées de sorties scolaires," June 9, 2014; *Le Parisien*, "Privées de sorties scolaires, des mères voilées réclament justice," June 17, 2014.

[238] *Le Parisien*, "L'appel du 18 juin des mamans voilées," June 18, 2014.

[239] The original "Appeal of June 18" was made by Charles de Gaulle in 1940. In this famous speech, General de Gaulle rallied the French to resist German occupation.

[240] *Le Figaro*, "École : les mères voilées reçues chez Hamon," June 19, 2014.

[241] *Le Figaro*, "École : les mères voilées reçues chez Hamon," June 19, 2014.

[242] Vallaud-Belkacem replaced Hamon in August 2014. Born in Morocco, she is the first woman to be appointed Minister of Education.

[243] "*L'acceptation de leur présence aux sorties scolaires doit être la règle et le refus l'exception*," quoted in *Le Figaro*, "École : les mères voilées pourront accompagner les sorties," October 29, 2014.

[244] *La Gazette*, "Le chemin de croix des parents accompagnateurs de sorties scolaires," October 29, 2014.

[245] *La Croix*, "Sorties scolaires, Najat Vallaud-Belkacem veut rassurer les mères voilées," October 30, 2014.

(UMP) to announce his intention of submitting a bill which would expand the scope of the 2004 law in order to include the matter of school outings.[246]

Yet, as the Ministry of Education has not, to this day, nullified the Chatel circular, and as no new guidelines have been established, confusion about the issue of school outings continues. In June 2015 an administrative court in Nice ruled in favor of a mother who had been denied participation and ordered the school to pay damages.[247] In December 2015 a group of women obtained a similar success in Méru (Oise), where a court annulled a school regulation which imposed "neutrality" on parents.[248] Despite these rulings, the exclusions of headscarved women have not ceased[249] and the issue of school outings reemerges regularly in public discussion. In January 2016, *Le Figaro* published a survey which revealed that more than eight out of ten French people thought that *laïcité* was "in danger" and expressed their support for prohibiting headscarved mothers from participating in school outings.[250] It is hence not unlikely that a political party or faction will, at some time in the future, seek to capitalize on the issue of school outings by fixing a clear prohibition firmly on their agenda. Incidentally, in April 2016 *Les Républicains* published a list of policy measures aiming to reinforce French education and among these was the suggestion that all participants in school outings should be prohibited from wearing "religious symbols."[251] Thus the final conclusion of the affair of "veiled" mothers and school outings may very well depend, in part, on the results of France's 2017 presidential and parliamentary elections.

7.6 An Ambivalent Extension of the Republican Social Order

In this chapter, I have analyzed the emergence and development of the public debate concerning the participation of "veiled" mothers in school outings. I have shown that the law of March 15, 2004 created spill-over effects as soon as it became effective. The question of headscarved mothers, which had previously received little attention, became an issue of controversy in the fall of 2004 when individual school principals across the country started to exclude "veiled" mothers from school activities.

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[246] *Le Figaro*, "École : les mères voilées pourront accompagner les sorties," October 29, 2014.
[247] *AFP*, "Un tribunal niçois annule une interdiction de sortie scolaire notifiée à une mère voilée," June 9, 2015.
[248] *Le Parisien*, "Sorties scolaires à Méru : les mères voilées ont eu gain de cause," December 30, 2015.
[249] *AFP*, "Corse : deux femmes voilées prises à partie dans une école de Bonifacio," September 5, 2016.
[250] *Le Figaro*, "À l'Assemblée, les différentes visions de la laïcité," January 6, 2016.
[251] *Bulletin quotidien*, "Les propositions des Républicains pour l'éducation et l'enseignement supérieur," April 7, 2016.

For many years, however, these exclusions were publicly condemned not only by the HALDE, but also by a large number of politicians and school inspectors. It was not until early 2011 that the situation changed when Minister of Education Luc Chatel published, in March 2012, a circular banning parents from participating in school outings while wearing conspicuous religious symbols. In this wider perspective, the passing of the burqa ban in October 2010 can be identified as a moment which opened the door for further restrictions on visible religiosity. Any conclusions to the affair of "veiled" mothers and school outings must be tentative, for the debate is not yet over. That being said, the story of headscarved mothers, as it has developed so far, has brought to light several issues that merit our attention.

In analyzing the controversy surrounding headscarved mothers, I have shed light on a number of actors and institutions who took part in the debate. The role of the HALDE is particularly illuminating, insofar as its dissolution coincides with a more general change in public discourse. The creation of this Antidiscrimination Authority in December 2004 was not only an obligation set by European legislation, but also a way to counterbalance – at least symbolically – the effects of the March 2004 law. Indeed, as seen in this chapter, in the years following 2004, the public interest in issues of discrimination blocked attempts to exclude further groups of people: the HALDE had a significant role in condemning discriminatory practices in the affair of headscarved mothers (2007) as well as in the Baby-Loup case (2010). The dissolution of the HALDE and the transfer of its tasks to the Defender of Rights in 2011 therefore marks the end of a period where the possibility perhaps existed for a discourse of antidiscrimination to gain prominence.

The case of "veiled" mothers and school outings also sheds light on the emergence of new groups. In this chapter, I have described how movements such as such as *Mamans toutes égales* (MTE) and *Sorties scolaires : avec nous !* gradually mobilized against headscarved mothers' exclusions. Although these groups received some visibility in the French written press and even obtained a few advocates from the political elites, their discourse of non-discrimination was not, in the end, an efficient tool for protecting headscarved mothers' rights. Although *Collectif contre l'islamophobie en France* (CCIF) continues to rally against Islamophobia on all fronts and to multiply its actions – sometimes, with success (Galembert 2016, 43) – those who have mobilized in favor of Muslims' rights have, on the whole, remained marginalized on the French public scene.

From a theoretical point of view, three conclusions can be drawn from this chapter. To begin with, the analysis that I have presented offers further empirical proof of the consolidation and the extension of the new republican social order – the double process that I described in Chapter 6. We can now see how the obligation of religious "neutrality," which was, through several twists and turns, applied to the employees of private nurseries, was, during the same period, also extended to another new group: the mothers of students. In other words, during the 2010–2014 period, this republican social norm – the absence of headscarves – became more firmly established. Instead of introducing new concepts into the debate or producing shifts within existing conceptual clusters, French political actors continued to consolidate the morphology that had been created during the 2003–2004 and 2009–2010 debates. In so doing, they argued that the concept of *laïcité* was central within the republican value system. These actors did not question the adjacency of *laïcité* and gender equality, but nor did they specifically concentrate on women's rights; it was thus mainly *laïcité* which infused the republican core with the requirement of individual religious neutrality, thereby marginalizing the issue of religious freedom.

Furthermore, my empirical analysis confirms that a transformation has taken place within the republican-ideological core. In both the Baby-Loup case and in the controversy surrounding school outings, pro-ban actors succeeded in justifying the exclusion of headscarved women by appealing not only to *laïcité*, but, more importantly, to the republican social order. In the case of "veiled" mothers, they utilized the republican public order – which had been created as a justification for the 2010 law – in order to argue that mothers' headscarves were a disruption of the social harmony which was necessary for school outings to proceed smoothly. I argue that this limitation of religious freedom in the name of social conformity is a further illustration of the prioritization of fraternity over liberty and equality.

Finally, I argue that it is the transformed republican core which has contributed to the emergence of French republicanism as a civil religion. As suggested in Chapter 5, this specific discourse on republicanism binds individuals and groups together around a specific set of "shared values." In so doing, however, it excludes others and urges republican "believers" to police their surroundings, remaining vigilant of all transgressions of republican norms. The analysis that I have presented in this chapter suggests that dominant republican ideology contains a sacred dimension: an idea of unity which is celebrated through speech and collective rituals. The activities surrounding the National Day of *Laïcité* are

an illustration of the ways in which dominant republican ideology sanctifies a specific republican heritage, glorifies the role of the public school system in transmitting republican values, and idolizes historical personae who are seen as their "Founding Fathers." My analysis shows that French republicanism, through the transformation of its conceptual core, has become not only a substantive value system, but also a set of beliefs which demands piety. The controversy surrounding "veiled" mothers is yet another example of how French elites have constructed the wearing of the headscarf as a rejection of republican values – as the antinomy of republican piety. In the dominant discourse, headscarved mothers have therefore been presented as transgressors of the republican norm.

To conclude, I wish to stress the ambivalence of the dominant republican discourse. This ambivalence is visible on the level of morphology. My analysis of the articulations of pro-ban actors shows that, once again, politicians and other public figures referred to a number of values – such as *laïcité*, republican schooling, children's rights, social cohesion, etc. – in aiming to justify the exclusion of headscarved mothers from school outings. That is, in seeking a justification for a new headscarf ban, the pro-ban group proceeded by trial and error, almost as if trying out different morphologies to see which one would hold. In the end, there was no single concept that would have allowed for a clear-cut prohibition. Yet, whether we look at the Chatel circular (which stressed the importance of *laïcité* as an "agent of social cohesion") or the Montreuil court's ruling (which referred to the notion of "public order"), we can see that the social dimension of republican *vivre ensemble* was prioritized over individual rights. Ultimately, though, this victory for the pro-ban group is ambivalent in itself. As shown above, Minister of Education Najat Vallaud-Belkacem has significantly softened the government's stance, and the most recent court decisions have protected headscarved mothers against school principals' exclusionary policies. It may very well be that the final story of "veiled" mothers and school outings is still to be written.

Chapter 8

Conclusion

While it would have been difficult to imagine in 2004 a group of French mayors banning women from wearing full-body swimsuits in order to protect "public order," these events were less surprising when they took place in 2016. In a relatively short period of time, during the summer of 2016, more than thirty French municipalities prohibited the wearing of the "burkini" in the name of "republican values." As seen in Chapter 1, in August 2016 the mayor of Cannes, David Lisnard (LR), referred to *laïcité* and "moral standards," arguing that the full-body swimsuit worn by some Muslim women was a symbol of "Islamic fundamentalism." Prime Minister Manuel Valls (PS) understood the mayor's concern and agreed that the Republic should be defended. Although the *Collectif contre l'islamophobie en France* (CCIF) and the *Ligue des droits de l'homme* (LDH) protested against the exclusion of some Muslim women from public beaches, many prominent members of the French political elite considered that the municipal degrees prohibiting the wearing of burkinis constituted an acceptable measure and were based on a correct understanding of republican values.

Although the French Council of State nullified the "burkini ban" on August 26, 2016, the mayors' attempt to ban full-body swimsuits is a demonstration of how far French politicians have come in prioritizing public order and social cohesion at the expense of individual rights and liberties. Indeed, my thesis illustrates that in their attempts to protect and promote supposedly shared republican values French political actors are today able to sideline the individual rights that are protected by law. Moreover, in so doing, they can rely on recent legislation and jurisprudence which undermines the right to religious freedom in the name, for example, of "public order." It is this tension between individual rights and "public interest" which characterizes not only the recent burkini controversy but also the French headscarf controversies which came before it.

In this thesis, I have analyzed French republican ideology through the context of four "veil affairs" (2004–2014). More precisely, by examining a decade of French public discourse, I have shed light on the processes through which the public promotion of republican values came to signify the exclusion of headscarf-wearing Muslim women from public spaces. In this concluding chapter, I present the main findings of this work. I will do so in two parts. First, I focus on the empirical contributions of this study by summarizing how French political actors constructed, through the recasting of republican values, the exclusion of headscarved women as a respectable measure. I show how a discussion which originally concerned the republican classroom was extended to public space, private employment, and school outings, leading to "veiled" women's exclusion from each of these spaces. Second, I present the theoretical contributions of this work by explaining how these processes are underpinned by structural changes that have taken place within dominant republican ideology. I argue that the gradual exclusion of headscarved women form public spaces mirrors a step-by-step morphological change which has resulted in the transformation of French republican ideology.

Empirically, my thesis offers a detailed examination of the development of French public discourse. Although the debate concerning the wearing of the Islamic headscarf started in 1989, for over a decade the issue of religious freedom remained important, as the Council of State defended a liberal interpretation of *laïcité* and blocked politicians' and school principals' attempts to prohibit students from wearing headscarves in public schools. As Chapter 4 shows, it was in 2003–2004 that the pro-ban group broadened and that a major part of the French political elite began to favor an intransigent interpretation of *laïcité*. In April 2003, Nicolas Sarkozy, Minister of the Interior, gave a speech in Le Bourget which rekindled the debate concerning the wearing of religious symbols in public schools, leading President Chirac to appoint the Stasi Commission to examine the issue of *laïcité*. At around the same time, the newly formed *Ni putes ni soumises* (NPNS) brought attention to the question of sexism and gendered violence in the *banlieues*, and the Raffarin government reconfirmed women's rights as a political priority. As a result of these developments, French political actors started to employ a discourse of sexularism, that is, to confound the issues of *laïcité* and gender equality. Those who aimed to ban the headscarf from the republican classroom argued that a staunchly secular republican school system was needed to guarantee women's emancipation and to combat "Islamic fundamentalism." When the anti-ban group engaged in this debate, it too took up the issues of *laïcité* and gender equality simultaneously, thereby contributing to sexularism. While feminist organizations were divided on the issue of headscarves in public schools, the National Assembly celebrated the women supporting NPNS as the

beacons of republican integration, thereby validating NPNS's understanding that reinforcing *laïcité* was a central feminist concern. The passage of the law of March 15, 2004 validated this novel understanding of French republicanism as a feminist enterprise, bolstered an intransigent interpretation of *laïcité*, and downplayed individual religious freedom. Far from settling the debate concerning Muslim women's attire, the 2004 law opened the door for further controversies.

In Chapter 5, I showed how the issue of the wearing of full veils, which had been marginal, became a center of attention in June 2009 when President Sarkozy announced that "the burqa is not welcome on the territory of the French Republic" and when the National Assembly established the *Mission d'information parlementaire* (MIP) to examine the possibility of banning the burqa. My detailed examination of the MIP's auditions shows how French politicians argued that the wearing of face veils was a breach of both *laïcité* and women's rights, that is, they reinforced a discourse of sexularism. Although there was a widespread consensus within the political elite that the wearing of the burqa should be prohibited, the members of the MIP had a difficult time however finding a legal justification for excluding women wearing full veils from public space. Legal experts stressed that *laïcité* and human dignity could not be mobilized to justify a general ban on full veils, prompting a frustrated response from the members of the MIP who were determined to propose a law. Finally, the MPs took up professor Guy Carcassonne's suggestion that a ban on face-covering be justified by referring to the notion of public order. In order to do this, the members of the MIP reformulated the concept of public order by emphasizing its immaterial dimension. They stated that women wearing face veils were in fact in violation of the minimal requirements of life in society; they argued that these women inflicted a symbolic violence on other citizens by refusing the contact which was the very foundation of fraternity, the republican social pact.

Through these formulations and through the passage of the 2010 burqa ban, French politicians prioritized the preferences of the majority over individual rights. In so doing, they constructed the absence of "veils" as a republican social norm, thereby giving a specific content to the "shared values" to which each person was henceforth obliged to conform. As a result, French republicanism started to emerge as a civil religion – a substantive value system which emphasized each individual's responsibility to maintain social cohesion and which differentiated deserving citizens from those who were seen as a threat to the republican community. The consequences have been felt in the contexts of employment and school outings.

The Baby-Loup case analyzed in Chapter 6 shows how the republican social norm was extended to the sphere of private employment. Although the HALDE originally condemned Mrs. Afif's 2008 dismissal as religious discrimination, in July 2010 – a few days after the National Assembly voted to ban the burqa – the HALDE's new president Jeannette Bougrab sided with the employer, claiming that the Baby-Loup nursery provided a public service and that its employees could therefore be bound by the requirement of neutrality. Bougrab was joined by a number of well-known public figures who emphasized the importance of childcare workers' neutrality and ignored the issue of discrimination. The Labor Court accepted the argument that the private nursery provided a public service, dismissing Mrs. Afif's charges against Baby-Loup. The Court of Appeal also sided with the nursery, but for a different reason: it claimed that the requirement of neutrality was justified not because of the nursery's public service mission, but because its employees came into contact with children. However, in 2013, the Court of Cassation nullified these rulings, stating that *laïcité* could not be applied in the private employment sector. As a result, demands for a new law multiplied; many MPs and Senators dismissed the highest court's ruling and claimed that the nursery's decision was justified. The retrial of the Baby-Loup case provided two further rulings. First, the Court of Appeal argued that the firing was lawful because Baby-Loup was an "*entreprise de conviction*;" then, the Plenary Chamber of the Court of Cassation decided that the restrictions on religious freedom were justified and proportionate in light of the nursery's "work in the sphere of early childhood" and its goal of supporting "the social and professional integration of women." All in all, the "Baby-Loup affair" shows how French political and legal elites circumvented the issue of employment discrimination by emphasizing the social function of childcare and the protection of social cohesion.

Chapter 7 shows that while the Baby-Loup case was being debated in courts, politicians and school administrators also extended the requirement of religious neutrality to headscarved mothers participating in their children's school outings. Although school inspectors and the government had originally condemned such measures, in March 2011 Minister of Education Luc Chatel publicly announced his support for a school principal who had excluded headscarved mothers from participation. In November 2011 a Montreuil administrative court ruled that the principle of *laïcité* could apply to parents who volunteered in school outings, and in March 2012 Chatel published a ministerial circular which gave principals the right to add the requirement of parents' neutrality to their rules and regulations. As headscarved mothers continued to mobilize against these discriminatory practices, the Defender of Rights asked the Council of State for clarification. The Council rendered its decision in 2013,

stating that mothers could not be treated as public servants who were obliged to respect *laïcité*. However, the Council of State specified that school principals could "recommend [to parents] to abstain from expressing their religious affiliations or beliefs." The pro-ban group interpreted this decision as a *carte blanche* allowing school principals to intervene in headscarved mothers' choice of attire. Although the current Minister of Education has adopted a more tolerant stance, on the whole, the debate concerning mothers and school outings sheds light on how politicians and courts alike have reinforced neutrality as a social norm and downplayed the issue of religious freedom.

This is the empirical demonstration of this thesis. What does it say in more theoretical terms about the development of republican values? The main finding of my discourse analysis is that the "veil affairs" reveal the transformation of the morphology of dominant republican ideology (2004–2014). More specifically, I argue that the extension of the exclusion of headscarved women from public spaces mirrors a gradual change within this internal structure of republicanism. In other words, the transformation of republican ideology has resulted from various concepts moving, evolving, regrouping, and strengthening or diminishing. This morphological transformation has taken place in three stages.

First, the 2003–2004 debates concerning the wearing of the Islamic headscarf in public schools demonstrate how a coalition of pro-ban actors succeeded in gaining support for the intransigent interpretation of *laïcité*. They did so by constructing gender equality as a value adjacent to *laïcité*. In this process, the question of women's rights – which, historically, has been rather distant in republican thought – gradually moved closer to the concept of *laïcité* which already held a central position within the republican-ideological structure. When the two concepts became closer, they also came to occupy more space, leading political actors to confound the two issues, that is to produce a discourse of sexularism. As a result of the positioning and prominence of these adjacent concepts, the meanings assigned to the republican core concepts of liberty and equality started to evolve. To begin with, the principle of equality was increasingly interpreted as gender equality, thereby eliminating other possible meanings that could have been assigned to equality. In addition, as the concept of liberty was crowded with the pro-ban group's insistence on freedom from misogyny and Islamic fundamentalism, the issue of freedom of religion moved further from the core. Through these processes of decontestation, this first stage of morphological change is also characterized by the transformation of the notion of *laïcité*, which henceforth became a way of being that was no longer restricted to the state and its employees. In other words, the construction of the adjacency of *laïcité* and gender equality and the consequent

mutation of *laïcité* opened the door for the requirement of religious neutrality to be imposed on private individuals.

Second, the 2009–2010 burqa debates reveal both continuity and change within dominant republican morphology. To begin with, in these discussions, French political elites continued to engage with *laïcité* and gender equality simultaneously, thereby consolidating their adjacency. Yet sexularism was not an effective tool for banning face veils from public space. As this was the case, French MPs eventually focused on the notion of public order, a concept that thus moved closer to the republican core. Its meaning was also transformed in the process, as members of the MIP stressed its social dimension over the material one, thereby constructing a new definition of republican social order. Seeing and being seen – in other words the absence of face veils – was formulated as the minimal condition of republican collective life. When French political elites promoted social cohesion in this way, they pushed the issue of religious freedom even further towards the margins of republican concerns. Most importantly, when the new understanding of public order gained centrality, it provoked a major shift within the republican core concepts of liberty, equality, and fraternity. I argue that the construction of the republican social order signifies a new prioritization of fraternity, the republican social pact, at the expense of liberty and equality, which are usually linked to individual rights. In other words, the concept of fraternity – which has traditionally been something of a "poor relation" within the republican core triad – came to occupy more space and to trump liberty and equality. This shift within the republican core is a major transformation. By prioritizing the republican social bond over individual rights, it has steered French republicanism towards a tyranny of the majority and infused it with specific values, establishing it as a civil religion.

Third, my analysis of the Baby-Loup case and the affair of "veiled" mothers sheds light on the consequences of the transformed republican core. Following the 2010 burqa ban, French political and legal actors consolidated the transformed republican core by continuing to prioritize fraternity at the expense of liberty and equality. Most importantly, they solidified this specific morphology by extending the requirement of religious neutrality to new spaces and new groups. The transformed republican core allowed pro-ban actors to argue that private-sector employees and mothers participating in school outings, although not officially bound by *laïcité*, were nonetheless subject to the requirement of neutrality which was imposed by the new republican social order. In other words, as *laïcité* was not enough to

exclude headscarved women from these new contexts, pro-ban advocates relied on the social dimensions of republican *vivre ensemble*, stressing that both mothers of students and child-care workers came into contact with children, and that these women's visible religiosity was disruptive of the public order and social interactions of the respective establishments. In this third and most recent stage of morphological development, central republican concepts remained relatively stable, but pro-ban discourse reinforced fraternity's primacy over liberty and equality. These processes led to the expansion of the new republican social norm, and to the further marginalization of freedom of religion.

These empirical and theoretical findings are an important contribution to our understanding of the French headscarf controversies and the development of republican ideology. Empirically, my work offers the first systematic analysis of the "veil affairs" which combines four different controversies and covers a decade of public discourse. Treating these four affairs together is crucial for gaining a fuller understanding of the gradual exclusion of headscarf-wearing Muslim women from public spaces. By employing synchronic and diachronic analyses, I have been able to shed light on moments of discursive dislocation as well as on periods of sedimentation. This combined analysis has allowed me to highlight the gradual extension of the requirement of neutrality to new spaces. This extension has not come about without effort, but at each step, French political actors have been able to refer back to previous controversies in order to argue that further exclusions are necessary. In this way, the headscarf controversies reveal the gradual entrenchment and extension of the new social norm: individual religious neutrality as a republican virtue.

Theoretically, this thesis confirms the importance of a morphological approach to the study of political ideology. In contrast to works which examine the "veil affairs" as a by-product of the "French model of assimilation" or as the simple application of the principle of *laïcité*, my research suggests that ideologies are never stable, and that ideological shifts are not limited to a single issue or concept. Instead, ideologies are the locus of constant discursive negotiation, and the redefinition of any one concept necessarily entails shifts within the larger ideological structure that is conceptual morphology. As I have shown, the French headscarf controversies have transformed much more than the principle of *laïcité* or the notion of public order: they have infused French republicanism with a specific, narrow understanding of women's rights, and they have revived the age-old idea of fraternity which has come to eclipse liberty and equality. It is only by looking at the whole republican-ideological structure that we can fully grasp the effects of such discursive shifts. Indeed, a reformulation or redefinition that

might, at first view, seem minor, can come to have important consequences if it leads to the transformation of neighboring concepts or if it pushes them to the margins. In this work, I have shown that even an ideological core can be remodeled by such shifts.

My analysis of the development of French republicanism further suggests that morphological change comes about through the redefinition and repositioning of existing concepts rather than through the introduction of wholly novel ideas into the ideological structure. For instance, although the construction of gender equality as a value adjacent to *laïcité* was a significant shift within dominant republican morphology, this shift was bolstered by the republican core which already included the concept of equality, as well as by the *parité* debates which had prioritized sexual difference by including it in the universal. Similarly, in the burqa discussions, French politicians transformed the notion of public order which was already a part of the republican conceptual universe. When public order became more central, it affected the republican core triad insofar as it enhanced the idea of fraternity which was also already there. Against this background, the recasting of republican values can be characterized as just that: a remolding of existing ideological material, a rearrangement of republican building blocks. Through this process, French republicanism was gradually remade. In other words, without being completely different, today's republican ideology is no longer the one that political actors referred to in 1989 or 2004.

These discursive developments have led to the emergence of French republican ideology as a civil religion, a hegemonic set of beliefs that is camouflaged as neutrality. This collective belief system shapes the way that French political actors understand the relationship between individual rights and the "common good." In claiming that face-covering veils should be prohibited because they inflict a symbolic violence on the majority and disrupt the order of republican social life, the vocal pro-ban group inversed the logic of religious freedom and tolerance. Indeed, it was no longer up to the majority to tolerate – let alone accommodate – religious minorities; it was up to the minority to make sure that it did not transgress the prevalent social norms. In other words, my analysis shows how French political elites established a new republican social order which determined the boundaries for acceptable values and behaviors, separating virtuous citizens from those who were both symbolically and literally excluded from the republican community. Through the extension of this social order to new spaces, it became more firmly established, indeed hegemonic.

The republican civil religion is hegemonic insofar as it imposes a specific perspective, suppresses alternative understandings, and starts to appear as "objective." It is the hegemony of this version of republicanism that has so far guaranteed the respectability of limiting Muslim women's right to religious expression and, more generally, their right to participate in public life. Measures that were only some years ago defined as discriminatory are now hailed as the protection of republican values. Indeed, anti-Muslim discrimination has become so commonplace that it can be defined as "respectable racism." As my work has shown, this expanding anti-Muslim prejudice has been constructed hand-in-hand with a discourse of anti-sexism that purports to protect liberty and equality but in fact targets minority women and leads to their exclusion. The paradoxes of feminist action in the republican context have not been resolved.

Although discourses are fundamentally unstable, they are not necessarily easy to undo; those who oppose the dominant discourse are confronted with a republican ideology which has been fixed and objectified for over a decade. Contesting such a system of ideas requires challenging the set of "public truths" that pro-ban actors have constructed. In this thesis, I have attempted to do just that. By deconstructing the discursive processes through which the exclusion of headscarved women was constructed as a component of dominant republican morphology, I have shed light on a recasting of republican values which was neither natural nor necessary. In so doing, I have shown that the conceptual links that exist, today, in French republican discourse, are contingent – the result of years of political battle. Their restructuring will undoubtedly go on as the French continue to negotiate republican norms of social interaction.

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Appendix 1 – Chronology of the "Veil Affairs"

Year	"Veil Affairs" and Social Mobilization	Legal Rulings and Political Measures
1989	First headscarf affair: three girls expelled from their school in Creil.	**Council of State's *avis***: the headscarf is not illegal in schools unless there is provocation, proselytism, or propaganda or disturbance of order Creation of *Haut Conseil à l'Intégration*
1992	"Kherouaa affair": three girls expelled from their school in Montfermeil	Council of State's *arrêt*: school rules and regulations banning religious symbols are illegal
1993	Nantua: Teachers go on strike to protest against the headscarf, students organize demonstrations.	First Bayrou circular: the minister reiterates the Council of State's position.
1994	Grenoble: an expelled student goes on hunger strike.	**Second Bayrou circular:** the headscarf constitutes proselytism Government appoints Hanifa Chérifi as mediator in headscarf affairs
1995		**Council of State's *arrêt*:** the wearing of the headscarf is not sufficient grounds for expulsion
2002	Oriana Fallaci's *The Rage and the Pride* Sohane Benziane's death Samira Bellil's *Dans l'enfer des tournantes* *Ni putes ni soumises* (NPNS) is formed	The UMP-led government's fight against the "insecurity of the *banlieues*"
2003	NPNS's march and petition Creation of *Collectif contre l'islamophobie en France* (CCIF) *Mariannes d'aujourd'hui* exhibition Lévy sisters' expulsion in Aubervilliers	Sarkozy's speech in Le Bourget rekindles the debate on the headscarf Creation of *Conseil français du culte musulman* (CFCM) The National Assembly appoints the Debré Mission President Chirac appoints the Stasi Commission

Date	"Veil Affairs" and Social Mobilization	Legal Rulings and Political Measures
2004	Amara's *Ni Putes Ni Soumises* chosen best political book of the year French journalists taken hostage in Iraq Strasbourg: *Une école pour tou-te-s* protests against headscarved students' expulsions Montreuil: Brard forbids parents from displaying religious beliefs during school outings The exclusions of headscarved mothers multiply	**The Parliament ratifies a law forbidding conspicuous religious symbols in public schools** Creation of the HALDE
2007		The HALDE condemns headscarved mothers' expulsions as discriminatory Minister of Education: the 2004 law does not concern parents
2009	Mrs. Afif files a complaint at the Labor Court of Mantes-la-Jolie	Sarkozy's speech at Congress of Versailles: "The burqa will not be welcome on the territory of the French Republic." The National Assembly establishes a parliamentary commission (MIP) to examine the issue of full veils Council of State's *avis*: a general ban on face-covering lacks a legal basis **The Parliament ratifies a law forbidding face-covering in public space** The Constitutional Council validates the law
2010	S.A.S. appeals to the ECHR to contest the burqa ban.	French government's campaign "The Republic Is Lived with the Face Uncovered" The law banning face covering becomes effective The HALDE condemns Mrs. Afif's firing as discriminatory The Mantes-La-Jolie Labor Court finds Mrs. Afif's dismissal legal

Year	"Veil Affairs" and Social Mobilization	Legal Rulings and Political Measures
2011	Headscarved mothers excluded from participation in school trips in Pantin Creation and mobilization of *Mamans Toutes Égales* (MTE) Schoolgirls threatened with expulsion because of long skrits (Saint-Ouen) Celebrations of the first "National Day of *Laïcité*."	Publication of Guéant's Code on *Laïcité* The Versailles Court of Appeal finds Mrs. Afif's dismissal legal Montreuil Administrative Court confirms headscarved mothers' exclusion
2012	MTE appeals to the minister of education.	**The Chatel circular**: schools have the right to prevent parents of students from displaying their religious beliefs.
2013	Natalia Baleato receives a medal of civil merit.	Court of Cassation annuls Mrs. Afif's firing. The Defender of Rights asks for clarifications on the application of *laïcité*. The Paris Court of Appeal confirms Mrs. Afif's firing. Peillon's Charter of *Laïcité* published. **Council of State's report**: schools can *recommend* that parents abstain from expressing religious beliefs.
2014	Demonstration of *Sorties scolaires : avec nous !* for the nullification of the Chatel circular.	**The Court of Cassation confirms Mrs. Afif's firing**. The ECHR validates France's "burqa ban." Vallaud-Belkacem: "the exclusion of headscarved mothers should be the exception, not the rule."
2015		Nice administrative court rules against headscarved mothers' exclusion.

Appendix 2 – Judicial Rulings in the Baby-Loup Case

Labor Court of Mantes-la-Jolie (December 14, 2010): *Firing confirmed*

The tribunal of first instance held that Baby-Loup had a "public service mission": although it was I private association, its childcare activity constituted a public service. Moreover, the Labor Court referred to the fact that the nursery was mainly financed by public funds. The Court's ruling invoked the principle of *laïcité* as well as the Labor Code, concluding that Mrs. Afif had displayed "repeated insubordination."

Versailles Court of Appeal (October 27, 2011): *Firing confirmed*

The appellate court took into account the specific objectives of the nursery, which included the goal of "developing an action in the field of early childhood in a disadvantaged neighborhood." By evoking children's right not to be "confronted with ostentatious [*ostentatoire*] expressions of religious belief," the Court of Appeal implicitly confirmed the nursery's right to include the principles of *laïcité* and religious neutrality into its rules and regulations.

Court of Cassation (March 19, 2013): *Firing nullified*

The Social Chamber of the Highest Court stated that the principles of *laïcité* and neutrality could *not* apply in private companies which do not offer a public service. It considered that Baby-Loup's rules and regulations were too general and imprecise, and the restriction on religious freedom was therefore not justified. The Highest Court nullified the verdict of the Versailles Court of Appeal, condemned the dismissal as discriminatory, and ruled that the case needed to be tried again.

Paris Court of Appeal (November 23, 2014): *Firing confirmed*

When the case was retried, the Paris Court of Appeal refused to apply the highest court's ruling. The court referred to the idea that the Baby-Loup nursery was an "*entreprise de conviction,*" yet also argued that the principle of religious "neutrality" could be applied since the nursery provided a "mission of general interest." In addition, the court referred to the necessity of protecting the freedom of conscience of children.

Court of Cassation (June 25, 2014): *Firing confirmed*

The Plenary Chamber of the Highest Court stated that "a differential measure or treatment based on religion could be non-discriminatory" if it was based on "essential professional requirements." The Plenary Chamber held that the rules and regulations of the Baby-Loup association were reasonable in light of the nursery's small size and the employees' contact with clientele. Moreover, the Plenary Chamber took into account the Baby-Loup nursery's explicitly stated goal, which was to "work in the sphere of early childhood in a disadvantaged neighborhood and to aim for the social and professional integration of women […] without distinguishing between political and religious opinions." Given these particularities, the ban on religious symbols was "justified and proportionate."