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## U.S.-FRANCE ANALYSIS SERIES

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### VEILED MEANING: THE FRENCH LAW BANNING RELIGIOUS SYMBOLS IN PUBLIC SCHOOLS

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On March 3, 2004, the French Senate gave the final approval for a bill prohibiting the wearing of conspicuous religious symbols in public schools. The law, which will enter into force in September, does not ban the wearing of headscarves or any other conspicuous symbol in public places, universities, or in private schools, and does not actually change the status quo established in France by a government ruling in 1989 and a ministerial decree in 1994. Rather, the law is a narrowly defined reassertion of religious neutrality within French public schools.<sup>2</sup> This vote implements one of the recommendations of a special commission on religion in France, appointed by the government and headed by Bernard Stasi, a former member of the European Parliament and now the mediator, essentially Ombudsman, of the Republic, which heard hundreds of witnesses between July and December 2003.<sup>3</sup>

This law has been widely condemned in the United States. American public high schools accept students wearing religious symbols, such as the headscarf, a Jewish skullcap or a large Christian cross. Many Americans therefore assume that the wearing of such personal symbols in public schools can be accommodated without violating principles of religious freedom. French supporters of the headscarf ban, however, argue that in the current French social, political and cultural context, they cannot. That is why the government felt it was necessary to pass a new law.

#### Context Matters

The French organize the separation of Church and State differently than the Americans do. "In the U.S., from the beginning," Alexis de Tocqueville wrote, "politics and religion were in

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<sup>2</sup> Article 1 of the new statute reads "The wearing of symbols or articles of clothing by which students ostensibly display religious affiliations is forbidden in public schools through high school"

<sup>3</sup> See the report (in French) at <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>

accord, and they have not ceased to be so since."<sup>4</sup> This was never the situation in de Tocqueville's native land. The French have a long history of religious violence, including the Religious Wars (1562 – 1598), a bloody and devastating equivalent of the American Civil War, and are wary about any mixing of religion and politics. As a result, they favor strict separation of the two as a way to make sure that religious competition and religious proselytizing do not create disorder in the public sphere.

In the United States, the purpose of separating Church and State was to avoid interference of the government in church matters—including by forbidding the establishment of a “state” church that would then threaten minority religions. In other words, the intent was to protect religion from the State. In France, it was exactly the reverse: the purpose of separating Church and State was to protect the new French democracy from the Catholic Church, which was socially dominant and a strong political force opposed to the establishment of secular democracy.<sup>5</sup> After a long political battle (particularly in the period from 1875 to 1905), a law separating Church and State was passed in 1905. That law is now recognized, even by the Catholic Church, to have benefited all religions and to have helped preserve public order.

*Laïcité*, the French term for balancing religious freedom and public order, does not equate to secularism, for its aim is not to create a Godless country. On the contrary, it is a principle of religious neutrality that is intended to create the conditions for religious freedom. French public schools, in particular, have long been the places where a new civic identity could be nurtured, free of the anti-democratic influences of the Catholic Church. This is why the French put so much emphasis on the neutrality of schools and why political activism and religious proselytizing are banned there.

But the most important difference between France and the United States is that America is not being challenged by militant, radical Islam on its own soil, while France is. In every democracy, a balance needs to be struck between religious freedom and public order. As a result, some restrictions on religious freedom exist in all democracies. Thus, for example, both the United States and France prohibit polygamy although various religions and cults in both countries claim that the practice is integral to their religion. In the public sphere, one specific problem is to preserve the religious neutrality of the State as well as the neutrality of public places (e.g. schools, city halls, courthouses) so that no one group feels excluded. Thus, in 2003, the U.S. Circuit Court of Appeals in Atlanta unanimously ruled that the presence of a Ten Commandments monument in the Alabama State Judicial Building violated the Constitution and accepted the plaintiffs' testimony that they felt like "outsiders" because of its presence.<sup>6</sup>

But the State also has an essential function to preserve public order, particularly in public schools. For this reason, dress codes are common in American public schools and gang insignia are often prohibited because they interfere with essential social and educational functions. In

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<sup>4</sup> Alexis de Tocqueville, *Democracy in America*, edited and translated by Harvey Mansfield and Delba Winthrop, Chicago : University of Chicago Press, 2000.

<sup>5</sup> See Dominique Decherf, “French Views of Religious Freedom”, *U.S.-France Analysis Series*, July 2001 available at <http://www.brookings.edu/fp/cusf/analysis/relfreedom.htm>

<sup>6</sup> Stephen R. Glassroth , Beverly J. Howard v. Roy S. Moore, U.S. Court of Appeals, 11<sup>th</sup> Circuit, July 1, 2003.

essence, it is sometimes necessary to restrict civil liberties in specific places like schools to ensure an atmosphere free of intimidation.

As many as 5 million Muslims<sup>7</sup>—or 8.3% of the population—live in France, which for the United States would be the equivalent of 24 million people. France benefits immensely from this diverse population; a huge majority of French Muslims are moderate. Indeed, many of them could be better described as "persons of Muslim culture" or "Muslim origin," since they don't practice their religion: 36% describe themselves as practicing (and declarations to pollsters are thought to be overstated on this particular point), 42% describe themselves as believers who do not practice, and 16% describe themselves as simply "of Muslim origin".<sup>8</sup> A large majority (78%) favor *laïcité*, which they view as supportive of religious freedom.<sup>9</sup>

Nonetheless, the French Muslim community includes a fringe of Islamist militants who are taking advantage of the growing number of Muslims in France to "test" the French Republic, demanding privileges that other religions do not have and trying to rewrite some of the long-established rules of French society. In some instances, they have obliged girls to wear a headscarf in school (often against their will) in order to create pressure for other girls to do the same; they have forbidden girls from attending mandatory biology courses (because there are classes on reproduction) or physical education classes (because women should not participate in sports); and they have not allowed women to be treated by male doctors in public hospitals. Indeed, students inspired by a radical Muslim ideology have been so disruptive that, according to Minister of Education Luc Ferry, it has sometimes become difficult to teach the subject of the Holocaust in history classes.<sup>10</sup>

The United States does not face a similar challenge. America has a population of 5 to 6 million Muslims, or somewhat less than 2% of the population. That population is very diverse (estimated to be 33% South Asian, 30% African-American, and 25% Arab) and has not been influenced in a significant way by radical Islamist ideologies.<sup>11</sup>

### **Behind the Veil: the Challenge of Integration**

The headscarf controversy is a symptom of the process of adjustment of Islam to a new environment, that of a neutral society where many faiths must coexist peacefully. France has by far the largest Muslim minority in all of Europe (as well as the second largest Jewish minority in the world), and the social and economic challenge of integration is of extraordinary proportions.

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<sup>7</sup> Because criteria such as religion and ethnicity are recorded in the French census, social scientists have estimated the Muslim population with various methods. They usually estimate the population of Muslim origin in France to be somewhere between 4 and 5 million, even if sociologist Michèle Tribalat has very recently produced a lower estimate (3.7 million), based on country of origin of three generations of the latest census. See Jonathan Laurence, "Islam in France", *U.S.-France Analysis Series*, December 2001 available at <http://www.brookings.edu/fp/cusf/analysis/islam.htm>.

<sup>8</sup> IFOP Poll of October 2001, see <http://www.ifop.com/europe/sondages/OPINIONF/islam.asp>

<sup>9</sup> IPSOS Poll of April 2003, see <http://www.ipsos.fr/CanalIpsos/poll/7756.asp> ; see also <http://www.csa-fr.com/fra/dataset/data2004/opi20040121b.htm>

<sup>10</sup> Elaine Sciolino, "French Assembly Votes to Ban Religious Symbols in Schools", *New York Times*, February 11, 2004.

<sup>11</sup> See "The Mosque in America: A National Portrait", by the CAIR, <http://www.cair-net.org/mosquereport/>

As in other European countries, the response of the French State to the rapid increase of its Muslim population has been two-pronged. It has reformed its institutional structures to better take this religion into account by creating the CFCM (French Council for the Muslim Religion) in December 2002, a body that represents all Muslims in negotiating on practical problems of their religion with the French State (e.g., the creation of a meat market that accords with Muslim religious laws, the location of Muslim cemeteries, the building of mosques.)<sup>12</sup> The French government has also drawn red lines in the face of increasing challenges by militant radical Islam, and the new law is one of these red lines.

The overriding challenge of Muslim integration into France explains two of the criticisms often heard against the law. The first one is that it is a distraction from the integration process. In this view, banning headscarves in public schools is meaningless in the face of problems that are primarily social and economic. This criticism is valid, but it underestimates the specific challenge posed by radical Islam in public places such as the school or hospitals—a challenge that would not disappear even if progress was made on the socioeconomic front (which is where the main battle is fought).

A more valid criticism focuses on the signal sent to French Muslims: drawing a red line by banning a symbol of Islamic militancy—the headscarf—would have been more effective if it had been accompanied by a more positive signal sent to the immense majority of French moderate Muslims. Such simultaneous moves would have demonstrated that French society was also prepared to make adjustments and to further acknowledge the presence of Islam in its midst. For this reason, the Stasi Commission suggested, among other measures, that two national holidays be created to accommodate the most important Muslim and Jewish festivals (Aïd-el-Kebir and Yom Kippur); that a National School for Islamic Studies be established; and that efforts be made to recruit Muslim chaplains for the armed forces.<sup>13</sup> But the sole recommendation expressed in the new law is the ban on religious signs and some members of the Commission have publicly vented their frustration with this interpretation of their work.<sup>14</sup>

Some commentators doubt the necessity of a national law to ban headscarves in schools—given that many considered the national dress codes put in place by decrees in 1989 and 1994 were sufficient. They also fear that granting so much publicity to the ban might actually energize radical Islamic militants, fuel the general feeling of discrimination among Muslims, and produce more difficulties in schools in the coming years.

### **National and International Reactions to the New Law**

Nonetheless, the law has strong backing across the mainstream French political spectrum. Some 69% of the French population is in favor of the law.<sup>15</sup> Teachers and school administrators are the most supportive and indeed asked for the law, since they have to deal with the daily effects of

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<sup>12</sup> On CFCM, see Jonathan Laurence, “The New French Minority Politics,” *U.S.-France Analysis Series*, March 2003 available at <http://www.brookings.edu/fp/cusf/analysis/laurence.htm>

<sup>13</sup> Report by the *Commission Stasi*, <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf>

<sup>14</sup> See Philippe Bernard and Sylvie Kauffmann, “Voile: les états d’âme de quatre sages de la commission Stasi”, *Le Monde*, 3 February 2004.

<sup>15</sup> CSA Poll of December 16, 2003 see <http://www.csa-fr.com/fra/dataset/data2003/opi20031216a.htm>

Muslim radicalism in the schools. For them a statute is a stronger tool with which to enforce respect of religious neutrality.

Some parts of the electorate worry about Muslims challenging *laïcité*. Concern about French identity in the face of an increasing minority of Muslim origin has also played a role in the wide acceptance of the law. Jean-Marie Le Pen, the candidate of the explicitly anti-immigrant *Front National* (FN), received over 5.5 million votes in the last French Presidential election, nearly 18% of the vote. Aware of Le Pen's potential appeal among voters concerned by the social effects of immigration, the current government has emphasized its willingness to take strong stands on issues such as petty crime, delinquency and illegal immigration. Nonetheless, the headscarf ban should not be seen primarily in this light. Nicolas Sarkozy, the charismatic and popular Interior Minister, who has championed a hard-line approach to crime and delinquency opposed the law before bowing to presidential pressure and accepting it. Some even worry that the law might actually increase FN support by inappropriately highlighting the problems created by the presence of Muslims in France.

Moreover, the law was requested, and welcomed, by a sizeable minority of French Muslims, and has been accepted by many moderate Muslims around the world. French citizens of Muslim origin oppose the law by 53% against 42%, although many young girls of Muslim origin do favor it.<sup>16</sup> While sometimes wearing a headscarf or *hijab* is a free choice (and sometimes it is even used as a form of rebellion against parents and school by teenagers), sometimes it is imposed on girls or women by their fathers, brothers or husbands—at a time when many women in the Muslim world are fighting to take the *hijab* off. Many French women of Muslim origin thus defend the law because it provides younger girls with a moment of freedom from the obligation of having to hide themselves during their day.

The CFCM, while not enthusiastic about the law, did not oppose it. Its president publicly condemned demonstrations against it. The so-called "Parti des Musulmans de France" which organized demonstrations against the proposed law in Paris on January 17, 2004, is a fringe radical movement with a small regional audience in Eastern France. Headed by Mohammed Latreche, this group is virulently anti-Semitic.

Around the world, many Islamists—including the Iranian government and Ayman al-Zawahiri, a senior leader of Al Qaeda—have denounced the proposed law.<sup>17</sup> The U.S. government has also officially criticized the move.<sup>18</sup> But the leader of the Muslim world's most prestigious center of Sunni Islamic learning, the grand Sheik of Al Azhar University, Muhammad Sayed Tantawi, declared publicly that he saw no problem with the proposed law.<sup>19</sup>

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<sup>16</sup> CSA Poll of January 21, 2004, see [http://www.csa-fr.com/fra/dataset/data2004/ventilation/ventil20040121b\\_2.htm](http://www.csa-fr.com/fra/dataset/data2004/ventilation/ventil20040121b_2.htm)

<sup>17</sup> Neil MacFarquhar, "A Top bin Laden Aide Threatens New Attacks Against the U.S.", *New York Times*, February 25, 2004.

<sup>18</sup> Christopher Marquis, "Bush Not In Support of Ban on Symbols", *New York Times*, December 19, 2003.

<sup>19</sup> "Muslim Leader Says France Has Right to Prohibit Head Scarves", *New York Times*, December 31, 2003.

## Conclusion

It seems important that this traditional principle of neutrality be reasserted at this time in France, especially given recent tensions between various communities, notably Jews and Muslims, as well as the rise of anti-Semitism in areas where Muslim citizens are numerous.<sup>20</sup> The law should be accompanied, in the next few years, by other measures such as the ones suggested by the Stasi Commission, to encourage the full integration of Muslims into the fabric of French society. The creation of the CFCM in December 2002 provides a good example of what the French State can do to further integration. Finally, the adoption of the law shows that the French body politic is determined to strictly enforce the respect of every faith, every community, everywhere, and this effort begins in public schools.

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<sup>20</sup> See Jean-Marc Dreyfus and Jonathan Laurence, "Anti-Semitism in France," *U.S.-France Analysis Series*, May 14, 2002 available at [http://www.brookings.edu/fp/cusf/analysis/dreyfus\\_20020514.htm](http://www.brookings.edu/fp/cusf/analysis/dreyfus_20020514.htm)