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Liberté Religieuse en Europe: Discussing the French Concealment Act

*By Robert E. Snyder**

The right to freedom of thought, conscience and religion is probably the most precious of all human rights, and the imperative need today is to make it a reality for every single individual regardless of the religion or belief that he professes regardless of his status, and regardless of his condition in life.

- Acrot Kirshnaswami¹

According to French President Nicholas Sarkozy, “France is a country where there is no place for the burqa, where there is no place for the subservience of women.”² With the French President’s encouragement, France’s National Assembly and Senate voted to publicly ban face-concealing clothing.³ The legislation applies to any articles of clothing (e.g., masks, stockings, and balaclavas) that conceal the face when used alone or in conjunction with another garment.⁴ Although the text of the legislation does not specifically refer to Muslim garments, the legislation has a disparate impact on Muslim adherents whose clothing conceals their faces. Examples of Muslim clothing prohibited by the prohibition include burqas and niqabs.⁵ The burqa, traditionally from Afghanistan, covers the entire body and has a narrow gauze-covered slit for the eyes. The niqab is the burqa’s Arab equivalent, and only covers the face with a narrow opening for the eyes.⁶

The Concealment Act came into force on April 11, 2011, six months after approval by the Senate.⁷ On the same day the Concealment Act came into force, French police arrested two veiled women in front of the Notre Dame Cathedral in Paris, claiming that the arrests were based on illegal protests.⁸ Regardless of the arrests’ true purpose, enforcement of the French prohibition against the concealment of one’s face begs the question whether the European Court of Human Rights (Court) will find the new law compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). Specifically, the legislation triggers concerns with Article 9 of the Convention which protects the freedom of thought, conscience, and religion.⁹

Under Article 9, the Court has ruled on cases involving legislative restrictions on the Islamic headscarf similar to the Concealment Act. However, unlike the French restriction, these



Photo by Ohio Citizen Action.

The French Parliament in Session.

cases concerned more limited contexts such as schools, security points, and consulates. Under these narrow conditions, the Court upheld restrictions on wearing religious accoutrements because the restrictions had legitimate aims and the chosen means were proportionate to those aims. Similar to the Court’s case law, the Concealment Act has legitimate aims to maintain public order and to protect others’ freedoms. However, this article argues that the Act is unlikely to meet the proportionality requirements under the Court’s jurisprudence.

The first part of this paper discusses the Concealment Act and how it came to the forefront of France’s legislative agenda. The paper then examines three cases that the Court has analyzed under Article 9 of the Convention, namely *Dahlab v. Switzerland*,¹⁰ *Leyla Sahin v. Turkey*,¹¹ and *Dogru v. France*.¹² These cases provide the precedential backdrop for the legislation’s analysis. Relying on the Court’s case law, the paper then examines whether the Concealment Act has legitimate objectives and considers whether the law is proportionate to its stated objectives. Some concluding remarks are then offered.

THE FRENCH LEGISLATION

To understand the Concealment Act, one must understand the fundamental role of *laïcité* (the separation of state and religion) in French society. The Separation of Church and State Act of 1905 disallows any recognition or public funding of any religion in France.¹³ Article 1 of the French Constitution of October 4, 1958 also calls for a “[r]epublic, indivisible, secular, democratic, and social.”¹⁴ *Laïcité* has deep historical roots as far back as the fifteenth century.¹⁵ Historically, the Catholic Church played a critical role in creating a common cultural identity. One way that the pre-modern Catholic Church created this common cultural identity is through education.¹⁶

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Over the years, the French government has replaced the historical role of the Catholic Church in creating a common cultural identity.¹⁷ Functions commonly viewed as religious in nature such as maintaining a baptismal register or solemnizing a marriage have been taken over by the state.¹⁸ By assuming this function, the French government has followed a militant secularist model, dedicated to keeping religion out of the public sphere.¹⁹ In France, the public sphere includes the realms of education and politics, “which must be dedicated to the inculcation of a common French identity independent of religion.”²⁰

Secularism’s demand for religious neutrality has created tension with the public display and practice of religious beliefs maintained by an estimated five million Muslims in France.²¹ Tensions began to surface in public schools concerning the Islamic headscarves worn by Muslim girls. To maintain religious neutrality and protect secularism in schools, France passed the Law on Secularity and Conspicuous Religious Symbols in Schools (Law on Secularity) on May 15, 2004. This law prohibited symbols or dress that overtly manifested a religious affiliation.²² Effectively, the Law on Secularity banned the visible dress, such as headscarves worn by Muslim students, in schools.²³ Six years later the National Assembly and Senate voted the Concealment Act into law, which prohibits clothing designed to cover one’s face in public places.²⁴

The Concealment Act is much more far reaching than the Law on Secularity. The Concealment Act applies to a broader set of locations and circumstances than schools, such as public roads, public spaces, and locations used for public service.²⁵ Specific examples include “exhibition spaces, cinemas and theatres, businesses (cafés, restaurants, and shops), banking institutions, railway stations, airports and all means of public transport, as well as forests, beaches and public gardens.”²⁶

The Concealment Act also applies to all persons on French territory (even visitors from Muslim countries), irrespective of gender, age, and nationality.²⁷ Although the Law on Secularity speaks directly to the prohibition against the wearing of *religious* symbols, the Concealment Act does not explicitly target the outward expression of *religion* through garments or symbols. However, in practice the Concealment Act’s language has a disparate impact on Muslim women who cover their faces by wearing the niqab or burqa. Finally, the Law on Secularity requires that school officials speak with the students who violate the ban on religious symbols before imposing sanctions. In comparison, the Concealment Act automatically imposes a fine up to €150²⁸ for wearing a face-covering garment,²⁹ and forcing a minor to wear a face-covering is punishable by two years in prison and

€60,000 fine.³⁰ A person who forces a woman to conceal her face may incur a €30,000 fine and a year in prison.³¹ Although the exact statistics remain unclear, the Concealment Act is estimated to affect around 2,000 Muslim women who wear a face-concealing veil.³²

ARTICLE 9 OF THE CONVENTION – THE RIGHT TO MANIFEST ONE’S RELIGION

By indirectly restricting the expression of a person’s Muslim faith, the legislation may violate religious protections under Article 9 of the Convention. Article 9 provides robust protections for the freedom of thought, conscience, and religion. Significantly, the right to manifest one’s religion or belief, “in worship, practice, and observance” is included within these protections. Article 9 also allows states that belong to the Convention to derogate from these protections if prescribed by law and necessary to protect public safety, public order, health, morals, and the rights and freedoms of others.³³

Under Article 9, the Court has decided three cases similar to the French prohibition: *Dahlab v. Switzerland*,³⁴ *Leyla Sahin v. Turkey*,³⁵ and *Dogru v. France*.³⁶ These three cases specifically concern the enforcement of Article 9 protections in light of restrictions on religious symbols. In each case, state institutions implemented measures prohibiting the Islamic headscarf in schools. Unlike the burqa and niqab, the headscarf described in these cases did not conceal the face.

Although France does not share the exact same understanding of secularism as Turkey and Switzerland, these three countries share many of the same secular principles. For this reason and because these countries’ (France, Turkey, and Switzerland) secular values played an important role in the Court’s decisions, an explanation of France’s model of secularism may provide some helpful background in understanding *Dahlab*, *Leyla Sahin*, and *Dogru*.

In 2003, French President Jacques Chirac established the Stasi Investigative Commission (The Stasi Commission). The Stasi Commission concluded that ostentatious religious displays violated the French school system’s secular values.³⁷ The Stasi Commission stated:

For the educational community, the headscarf is too often a source of conflicts, divisions, and even suffering. The visible aspect of a religious sign is perceived by most people as contrary to the educational mission: to offer a neutral space where critical conscience may grow.³⁸

Living in a civil society, at times, requires that the majority accommodate the rights and interests of the minority To allow otherwise will erode religious freedom for all faiths, not just Europe’s Muslim minority.

Moreover, the Stasi Commission considered women wearing the Muslim veil as a sign of male domination that conflicted with French cultural practices based on “secular emancipatory norms.”³⁹ The Commission also said that “[i]n the most recent times, [the headscarf] is seen increasingly as a political symbol of Islamic fundamentalism that expresses the separation from values of western society.”⁴⁰ In the context of education, the Commission stated that French public schools’ primary role is to:

[t]ransmit knowledge, teach students critical awareness, assure autonomy and openness to cultural diversity, and encourage personal development. Schooling aims both to train students for a professional career, and to train them to become good citizens of the French Republic.⁴¹

The Commission also found neutrality of utmost importance because the headscarf could influence pupils and create conflicts.⁴² The need for fixed common rules such as deference to secularity and gender equality⁴³ underlie the findings made by the Stasi Commission and German Supreme Court.

Although *Dahlab*, *Leyla Sahin*, and *Dorgu* did not involve the prohibition against a face-concealing veil, the Court’s analysis in these cases is relevant as it provides insight about how the Court may rule in relation to the Concealment Act, which prohibits more ostentatious religious symbols. Moreover, within the Court’s jurisprudence, the underlying factual circumstances in these three cases provide the closest approximation to the French situation.

Several common principles underlie the Court’s three decisions. In each case, the Court recognized that democratic societies sometimes must restrict the freedom to manifest one’s religion to ensure respect of everyone’s beliefs.⁴⁴ Elaborating on this principle, law professor Samuel Issacharoff explains that when the “freedoms of the society as a whole are at risk,” the government may justifiably restrain the freedoms of certain groups. In a stable, well-ordered society, this will not often be necessary⁴⁵ To maintain a stable, well-ordered society, the state plays a central role in balancing religious beliefs with society’s needs to ensure “public order, religious harmony, and tolerance in a democratic society.”⁴⁶

However, the state must not eliminate pluralism solely to remove tension.⁴⁷ Although the majority’s interests at times subordinate individual interests, democracy does not always allow the majority to prevail.⁴⁸ When democratic societies reasonably differ on the state’s relationship with religion, the state enjoys a certain margin of appreciation.⁴⁹ A margin of appreciation affords the state’s decision “special importance” where opinions in democratic societies may reasonably differ and legal traditions vary. As a result, the state’s decision about the extent and form of its law will, up to a certain point, remain within the discretion of the state.⁵⁰ To determine the limits of this margin

of appreciation, the Court looks at the need “to protect the rights and freedoms of others, to preserve public order and to secure civil peace and true religious pluralism.”⁵¹

[T]he French government has followed a militant secularist model, dedicated to keeping religion out of the public sphere.

When analyzing Article 9, the Court follows a four-step process to determine whether an infringement has occurred.⁵² First, the Court determines whether the state interfered with the applicant’s rights. Second, the Court examines whether the law prescribed the

interference. Third, the Court considers whether the law pursued a legitimate aim. Aims are only legitimate in four instances: public safety, protection of public order, health or morals, or to protect others’ rights and freedoms. Finally, the Court determines whether the law constitutes a proportionate response to a pressing social need.⁵³ The subsequent discussion of the case law focuses on the third and fourth steps as they are the most salient parts of the analysis.

1. DAHLAB V. SWITZERLAND

In this case, Lucia Dahlab worked as a primary school teacher in Switzerland. During her employment, Dahlab converted from Catholicism to Islam and began wearing an Islamic headscarf to class. After returning to work from maternity leave, Dahlab learned that in her absence the Directorate General of Primary Education prohibited Dahlab from wearing a headscarf while fulfilling her professional duties.⁵⁴ She appealed the decision to the Court, which ruled in favor of Switzerland. The Court found the prohibition’s aims appropriate because they protected the rights of others, public safety, and public order.⁵⁵ The Court examined the measure’s proportionality by weighing Dahlab’s and her students’ rights and interests, and concluded that this prohibition only applied to Dahlab as a teacher.⁵⁶ Although Dahlab taught for three years while wearing the headscarf without complaint, the Court declared that her headscarf represented a powerful and influential symbol on young children. As such, wearing an Islamic headscarf lacked the tolerance, respect, equality, and non-discrimination that a teacher must convey to her students.⁵⁷ Given Switzerland’s desire to maintain denominational neutrality and the children’s “tender age,” the Court found that Switzerland had not exceeded its margin of appreciation.⁵⁸ Switzerland’s measure was in principle justified and proportionate to protecting “the rights and freedoms of others, public order, and public safety.”⁵⁹

2. LEYLA SAHIN V. TURKEY

Four years later the Court heard a similar case from Turkey. Lelya Sahin, a student, insisted on wearing an Islamic headscarf. While Lelya attended medical school, Istanbul University prohibited the Islamic headscarf in lectures, courses, or tutorials. If a student disregarded the new rule, the lecturer had to make the administration aware for disciplinary action.⁶⁰ While

wearing a headscarf, Lelya attempted to take exams, enroll in classes, and attend a neurology lecture.⁶¹ In all these instances, school officials denied Lelya access and eventually suspended her.⁶² Lelya enrolled in another university and brought a legal action against Istanbul University which eventually came before the Court.⁶³

The Court found that the prohibition's secular aims were consistent with the Convention and necessary to protect Turkey's democratic system.⁶⁴ At the time, extremist political movements existed in Turkey that wanted to impose their beliefs on society as a whole.⁶⁵ Turkey's regulations intended to preserve pluralism in the university. As a result, the restriction legitimately fell within the appropriate aims of maintaining public order and protecting others' rights and freedoms.

With regard to proportionality,⁶⁶ the Court recognized that because the prohibition only applied to specific academic events Muslim students largely remained free to manifest their religion.⁶⁷ Moreover, the university consulted with the community for several years before implementing the restrictions. During this consultative process, Istanbul University adapted its measures to Muslim concerns so they could access the university.⁶⁸ As a result, the Court found Turkey's measures proportionate.⁶⁹

3. DOGRU V. FRANCE

*Dogru v. France*⁷⁰ involved another student wearing the Islamic scarf. Dogru, an eleven-year old girl, attended state secondary school. When Dogru attended physical education classes, her teacher demanded she remove her headscarf because it was incompatible with physical education. When Dogru refused, the school expelled her.⁷¹

As in *Lelya Sahin*, the Court accepted France's aims of protecting the public order and the rights and freedoms of others.⁷² In examining the proportionality of France's action, the Court emphasized the secular constitutional parallels between *Dogru* and the Turkish cases. Like Turkey, France's constitution embodied principles of secularism.⁷³ These secular principles guaranteed democratic values, freedom of religion, and individual protection from arbitrary state interference.⁷⁴ These restrictions on the headscarf ensured a neutral environment in state schools. Although headscarves could be compatible with secularism in schools, they could become incompatible under certain conditions.⁷⁵ In this respect, the Court found that France fell within the margin of appreciation given to states when balancing respect for pluralism and the freedom of others.⁷⁶ Moreover, the ban on the headscarf during physical education was justified on grounds of health, safety, and assiduity.⁷⁷

ANALYSIS

Under the Court's case law, the Concealment Act may have legitimate aims but is ultimately incompatible with the Convention because the Act takes measures that are disproportional to the aims it seeks to achieve. Under the first prong of the test, the Concealment Act may seek a couple of different aims. First, the legislation may seek to protect women.⁷⁸ Restricting the use of face-concealing veils will liberate women from a subservient life style dominated by male perceptions of appropriate dress. Second, the legislation may seek to promote integration and security.⁷⁹ Eliminating face-concealing veils from

the public square will help Muslims integrate into the secular French society by keeping their religious expression in the private sphere. These objectives fall under the aims of protecting the public order and the freedoms of others. As in the case law, any of the French legislative aims are likely legitimate. The most difficult hurdle for the French legislation to pass will be proportionality.

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or Jews, every corner of life is
governed by ritual prescriptions.

PROPORTIONALITY

In comparing the legislation's scope with the narrowly tailored measures of *Lelya*, *Dogru*, and *Dahlab*, the legislation seems disproportionate. For example, in *Lelya Sahin* the headscarf prohibition only applied to specific academic events. Outside these specific academic situations, Muslim women could wear the headscarf. In *Dogru* the school only prohibited wearing headscarves during physical education. Similarly, in *Dahlab* the restriction on wearing the headscarf was confined to the school. Thus, *Dahlab* was allowed to wear the headscarf outside of school. In each case, the prohibition is specific and allows the individual to manifest his or her belief under most circumstances.

By publicly banning face-concealing veils in most places outside the home and places of worship,⁸⁰ the French legislation creates circumstances contradictory to the case law. Effectively prohibiting face-concealing veils almost anywhere outside the privacy of one's home in public places goes well beyond the restrictions of Islamic headscarves in school. Such an intrusive restriction cannot be proportional to the aims it seeks to achieve. Moreover, the very idea of private belief directly contradicts many of the public practices of worship required of Muslims.⁸¹ Separating belief between the private and public sphere does not come easily for many other religions as well. "For observant Muslims, or Hindus, or Sikhs, or Jews, every corner of life is governed by ritual prescriptions. There is no way of delineating a 'public' area in which religion does not apply."⁸² In other words, the French legislation has broader implications than for Islam alone. Nevertheless, the means necessary to obtain France's

legitimate aims might warrant a broader prohibition than seen in the previous cases. As a result, the legislation's proportionality must be examined in light of its potential aims: protecting women and integration and security.

1. PROTECTING WOMEN

The legislation's proponents argue that removing face-concealing veils from the public sphere will help liberate and protect women. For some, face-concealing veils have become symbols of abuse and repression.⁸³ For example, the Stasi Commission viewed Muslim women wearing face-concealing veils as a sign of male domination:

Young women are victims of a form of sexism that manifests itself through various social pressures and physical, psychological or verbal abuse. They are forced to cover themselves to the extent of becoming asexualized and to lower their gaze in the presence of men; if they do not respect these measures, they are stigmatized as 'sluts'.⁸⁴

According to this "Western" perception, women forced to conceal their faces are physically and emotionally abused.⁸⁵ Some believe that prohibiting face-concealing veils in public will emancipate Muslim women from this oppression.⁸⁶

Exactly how this public prohibition will remedy a private problem in the home is unclear. In cases of domestic abuse, by prohibiting Muslim women from concealing their faces in the public sphere, the Act is indirectly keeping these women almost exclusively in the private sphere — their homes — where the abuse occurs. More generally, if the argument that wearing a face-concealing veil is a form of female oppression has any merit, this legislation has the potential to further oppress women by restricting their liberty of movement.

Moreover, many Muslim women chose to cover their faces out of a sense of religious obligation. In this regard, Reem Ossama a Muslim woman said:

It's something that you love to do because it makes you feel that you are closer to Allah, that you're doing the right thing . . . Allah ordered us to wear the scarf . . . to protect our dignity, to protect women, [so we would] not be looked at just as a beautiful body, a beautiful face, [so others would] look at our minds and our personalities.⁸⁷

Other women cover themselves to show pride in their Islamic faith or to avoid harassment.⁸⁸ For those Muslim women who choose to wear a face-concealing veil, the legislation might create more problems than it solves by isolating them. As a result of being isolated, these women may not participate in society as frequently.⁸⁹ Instead of interacting within society, which can have a moderating effect on individuals, banning face-concealing veils may radicalize individuals by forcing them into seclusion. Such has been the case in Germany where laws preventing Islamic communities from obtaining the legal status of a corporation under public law have socially isolated Muslims.⁹⁰

Although face-concealing veils may signal repression to some people, Muslim women conceal their faces for many different reasons. Imposing "Western" interpretations about face-

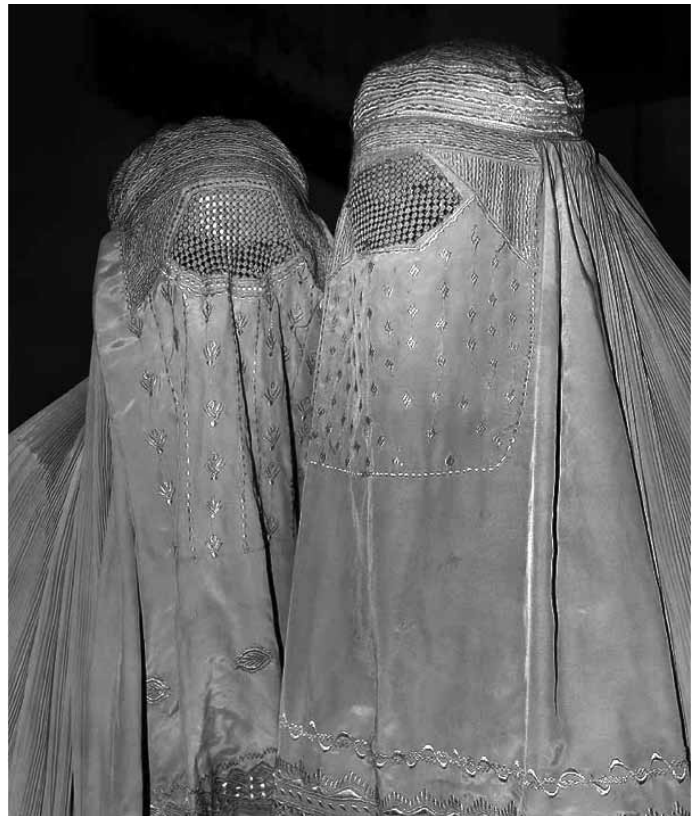


Photo by Steve Evans.

Afghan women wearing the burqa.

concealing veils, such as making them a proxy for repression and abuse, is not narrowly tailored to the objective of helping women and may even create circumstances that harm women. If in some limited circumstances domestic abuse has occurred, other means such as reporting the abuse to the authorities is a much more appropriate way to solve the problem.

2. INTEGRATION AND SECURITY

It is more difficult to determine whether the legislation is considered proportional to achieving the objectives of integration and security as opposed to the legislation's objective of protecting and liberating women. Some strong arguments exist for the legislation's proportionality. However, equally compelling arguments exist for why the legislation is disproportionate.

On a practical level, face-concealing veils make identifying individuals difficult and thus create a security risk. As criminals often try to conceal their identities, allowing unidentifiable people to mingle with society at large poses legitimate safety problem. An armed robbery committed in the Paris suburbs by individuals wearing burqas provides support for this assertion.⁹¹ The two robbers hid their handguns beneath their full veils. However, the frequency with which burqas or niqabs are being used to commit crimes appears to be extremely limited. Moreover, the Concealment Act is unlikely to make criminals anymore disposed to not conceal their identity. Given the potential for terrorist attacks, another threat posed by Muslim garments, like niqabs and burqas, includes the possibility that suicide bombers may dress in burqas or niqabs to hide bombs. However, this concern does not seem unique to face-concealing veils, because sufficiently baggy clothing or outerwear, such as coats, could just as easily conceal a bomb. Although these concerns may be legitimate, the problems that they pose are not unique to

or even solved by preventing Muslims who wear face-concealing veils from expressing their religious identity.⁹²

Integration of Muslims into French society may also be a legitimate security concern. Approximately five million Muslims live in France, making up between 8 and 9.6 percent⁹³ of the population.⁹⁴ Many Muslim immigrants are poor; they live in the outskirts of Paris in low-income and violence-prone neighborhoods, called the *banlieues*.⁹⁵ Some have voiced concern that these homogenous neighborhoods are inclined to anti-Semitism, sensitive to political Islam, and distant from French political and social life.⁹⁶

Publicly prohibiting face-concealing veils may help Muslims integrate for a couple of reasons. Generally, interaction between people requires face-to-face communication. Approaching someone with their face concealed or partially concealed creates physical separation that makes engaging them very difficult.⁹⁷ Second, in “Western” culture a mask usually denotes deceit.⁹⁸ Face-concealing veils directly challenge this “Western” assumption about deception.⁹⁹ Overall, a face-concealing veil serves as a visible sign of separation and differentiation that makes relations with the Muslim community difficult, especially in a secular society like France.¹⁰⁰

On the other hand, the legislation may thwart any effort for greater integration between Muslims and non-Muslim French nationals. French citizens and their Muslim counterparts share a history rooted in France’s colonization of the Maghreb countries in North Western Africa. The majority of immigrants, most of who are of a predominantly Muslim background, came to France from former colonies like, Morocco, Tunisia, Senegal, Mali, and Algeria.¹⁰¹ The 1962 Algerian war may still create feelings of resentment among the Maghreb Muslims in France, especially recent immigrants and their descendants. *The Battle of Algiers* portrays the feelings of Muslims toward the French colonizers during the 1960s. In the movie, Muslim Algerians thought that the French colonizers had made “the Arabs their prostitutes undermined the traditional authority of the Muslim family, brought cigarette smoking, alcoholism, and drug addiction to their community.”¹⁰² If France’s recent prohibition of headscarves in schools and in public service positions reopens these historic wounds, the Concealment Act may only incite feelings of resentment. Some Muslims may view the Concealment Act as another form of colonial suppression; this point of view will only frustrate efforts to integrate the French Muslim population.

However, concerns over integration created by face-concealing veils are minimal because most Muslim women do not cover their faces. Only an estimated 2,000 Muslims in France cover their faces.¹⁰³ Engaging the rest of the Muslim population should not require stripping the isolated few of their religious identity. Moreover, engaging the portion of the Muslim popula-

tion that does not wear a face covering could have a moderating impact on Islam’s more radical forms.

Finally, in lieu of encouraging integration, France’s actions may only feed fundamentalists’ flames. Religious freedom scholars Roger Finke and Brian Grim found that:

Social restrictions on religious freedom lead to government restrictions on religious freedom and the two act in tandem to increase the level of violence related to religion — which in turn cycles back and leads to even higher social and government restrictions on religion. This creates what we call the *religious violence cycle*.¹⁰⁴

Some indications exist that France’s recent restrictions on face-concealing veils in public and Islamic headscarves in schools have had a similar effect on the cycle of religious violence by fostering anti-government tendencies. A French Muslim anthropologist, Dounia Bouzar, has indicated that Muslim women might conceal their faces for reasons other than religious devotion. According to Bouzar, ninety percent of women concealing their faces are younger than forty. Two-thirds of these women are French nationals and half of them are second- or third-generation immigrants.¹⁰⁵ A quarter of the individuals who wear the niqab are converts to Islam.¹⁰⁶ In other words, the majority of the Muslim women in France who conceal their faces are not recent immigrants from the Middle East. Many of these women’s own mothers did not conceal their faces. These younger women wear a face veil to make a statement.¹⁰⁷

3. THE LEGISLATION’S PROPORTIONALITY TO ITS AIMS

These concerns make determining the legislation’s proportionality under the integration and security objectives difficult. Much will depend on how well France convinces the Court that people who wear face-concealing veils such as the burqa or niqab are radicals with anti-government tendencies, rather than religious adherents. Even with some doubt about the exact nature of the threat posed by face-concealing veils, France can argue that the Concealment Act falls within the margin of appreciation. As in *Dogru* and *Dahlab*, these restrictions on face-concealing veils create a more neutral environment that diminishes such a threat. Like *Leyla Sahin*, the secular principles underlying France’s democracy may have paramount consideration because it allows France to impartially balance the competing interests.

Such arguments are unconvincing. The Concealment Act does not fall within France’s margin of appreciation for several reasons. First, the proportion of Muslims who conceal their faces is extremely limited and is likely not to pose a legitimate threat to the security of French society. Second, a public ban on face-concealing veils may only strengthen fundamentalist

A variety of options exist to integrate Muslims into French society instead of legislation that deprives several thousand people of religious rights.

movements. Third, the prohibition is overly broad. A variety of options exist to integrate Muslims into French society instead of legislation that deprives several thousand people of religious rights. For example, a recent study suggests that allowing Muslims to practice their religion through involvement with the mosque increases civic engagement and support for democratic values.¹⁰⁸ Other initiatives could include programs led by Muslim leaders such as exchanges with Muslims who have adapted to the French lifestyle, or the implementation of culture and language classes.

CONCLUSION

For the Court to uphold the Concealment Act would mean undercutting the meaning of Article 9 and the Court's protective

function. As a supranational body, the Court holds the mandate to protect citizens' fundamental rights against coercive state action. The freedom of thought, conscience, and religion are among the most precious of those rights. A complete public ban of attire that conceals one's face, which encompasses the burqa and niqab, directly impinges on these rights. The Court must not allow France to eliminate pluralism solely to remove tension between France's Muslim population and the country's secular tradition. Living in a civil society, at times, requires that the majority accommodate the rights and interests of the minority. Religious protections need to become a reality for every single Muslim regardless of whether the belief he or she professes is popular. To allow otherwise will erode religious freedom for all faiths, not just Europe's Muslim minority.

Endnotes: Liberté Religieuse en Europe: Discussing the French Concealment Act

¹ Special Rapporteur of the Sub-Comm'n on Prevention of Discrimination and Prot. of Minorities, *Study of Discrimination in the Matter of Religious Rights and Practices*, U.N. Econ. & Soc. Council, 7, E/CN.4/Sub.2/200/Rev.1 (Oct. 14, 1959) (prepared by Arcot Krishnaswami).

² *President Sarkozy Says 'No Place' for Burqa in Secular France*, FRANCE 24, Nov. 12, 2009, available at <http://www.france24.com/en/20091112-president-sarkozy-says-no-place-burqa-secular-france> [hereinafter *President Sarkozy Says 'No Place' for Burqa*]; see also *Nicolas Sarkozy pushes for burqa ban in France*, THE TELEGRAPH, Nov. 12, 2009, available at <http://www.telegraph.co.uk/news/world-news/europe/france/6556300/Nicolas-Sarkozy-pushes-for-burqa-ban-in-France.html>.

³ Loi 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public (1) [Law No. 2010-1192 of October 11, 2010 prohibiting the concealment of the face in public space], Journal Officiel de la République Française [J.O.] [OFFICIAL GAZETTE OF FRANCE], October 11, 2010, p. 1834; see also David Gauthier-Villars & Charles Forelle, *French Parliament Passes Law Banning Burqas*, WALL STREET JOURNAL, Sept. 15, 2010, available at <http://online.wsj.com/article/SB10001424052748703376504575492011925494780.html>.

⁴ La République Française, Le Gouvernement, Act N° 2010-1192 of 11 October 2010: Prohibiting the Concealment of the Face in Public: Frequently Asked Questions, 2, available at http://www.diplomatie.gouv.fr/en/IMG/pdf/Q_A-ENG_2_.pdf.

⁵ *Id.*

⁶ Molly Hofsommer, *France's Burqa Ban Passes Constitutional Muster*, THE HUMAN RIGHTS BRIEF, Nov. 7, 2010, available at <http://hrbrief.org/2010/11/france-burqa-ban-passes-constitutional-muster/>; see also *The War of French Dressing: A Plan to Ban the Wearing of the Burqa in Public Stokes New Controversy*, THE ECONOMIST, January 16-22, 2010, at 49, available at http://www.economist.com/world/europe/displaystory.cfm?story_id=15270861 [hereinafter *The War of French Dressing*].

⁷ Steven Erlanger, *France Enforces Ban on Full-Face Veils in Public*, N.Y. TIMES (Apr. 11, 2011), available at http://www.nytimes.com/2011/04/12/world/europe/12france.html?_r=1&emc=eta1; CNN Wire Staff, *2 Arrested as France's Ban on Burqa's, Niqabs Takes Effect*, CNN (Apr. 12, 2011), available at <http://edition.cnn.com/2011/WORLD/europe/04/11/france.burqa.ban/#>.

⁸ Steven Erlanger, *France Enforces Ban on Full-Face Veils in Public*, THE NEW YORK TIMES, Apr. 11, 2011, available at http://www.nytimes.com/2011/04/12/world/europe/12france.html?_r=1&emc=eta1; see also CNN Wire Staff, *2 Arrested as France's*

ban on burqa's, niqabs takes effect, CNN, Apr. 12, 2011, available at <http://edition.cnn.com/2011/WORLD/europe/04/11/france.burqa.ban/#>.

⁹ See European Convention for the Protection of Human Rights and Fundamental Freedoms art. 9, Sept. 12, 1970, 213 U.N.T.S. 222, Nov. 1, 1998, available at http://www.echr.coe.int/NR/rdon-lyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf [hereinafter *Convention*].

¹⁰ *Dahlab v. Switzerland*, App. No. 42393/98, 2001-V, ECHR 2001, available at <http://www.echr.coe.int>.

¹¹ *Sahin v. Turkey*, App. No. 44774/98, ECHR 2006, available at <http://www.echr.coe.int>.

¹² *Dogru v. France*, App. No. 27058/05, ECHR 2008, available at <http://www.echr.coe.int>.

¹³ *Loi du 9 décembre 1905, Loi concernant la séparation des Eglises et de l'Etat* [The Law Concerning the Separation of Church and State (English Translation)], Journal Officiel de la République Française [J.O.] [OFFICIAL GAZETTE OF FRANCE], December 9, 1905. Article 2 reads:

La République ne reconnaît, ne salarie ni ne subventionne aucun culte. En conséquence, à partir du 1^{er} janvier qui suivra la promulgation de la présente loi, seront supprimées des budgets de l'Etat, des départements et des communes, toutes dépenses relatives à l'exercice des cultes. Pourront toutefois être inscrites auxdits budgets les dépenses relatives à des services d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics tels que lycées, collèges, écoles, hospices, asiles et prisons. Les établissements publics du culte sont supprimés, sous réserve des dispositions énoncées à l'article 3. [The Republic does not recognize payment or subsidies to any form of worship. Consequently, from the 1st January, following the enactment of the current law, all expenditures relating to the exercise of worship will be eliminated from the budgets of the State, departments and towns. Nevertheless, places of worship will be able to register the expenditures in their budgets relating to services of chaplaincy and destined to assure the free exercise of the worship in the public institutions such as high schools, high schools, schools, hospices, shelters and prisons. The public schools of worship are deleted, subject to the provisions set forth in article 3. (English translation)].

¹⁴ FR. CONST., 1958, preamble.

¹⁵ James Q. Whitman, *Separating Church and State: The Atlantic Divide*, 34 HIST. REFLECTIONS 86, 93 (2008).

¹⁶ *Id.*

¹⁷ *Id.*