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French Politics of the Veil in Relation to International Law

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*In the name of God, the Most Beneficent, the Dispenser of Grace, the
Lord of Worlds.*

To Mom and Dad – I love you eternally.

Abstract

The Universal Declaration of Human Rights (UDHR) and other international conventions have been ratified by many countries, yet the basic freedoms established therein continue to be taken for granted. In recent years, the Islamic veil has been widely debated as an oppressive garment against Muslim women and a threat to Western secular democracy. This debate has led countries, including France, to take legal action to ban clothing that completely covers the face. France has professed itself as a secular state for centuries following its historical revolution, with a narrative of guaranteeing equal rights and opportunity to all citizens. However, this secular orientation has, in practice, led to a law that has created and promoted juridical and institutionalized inequality. This thesis discusses the prohibition of the veil in relation to basic human rights and freedoms established by the UDHR, the European Convention on Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights, as well as other relevant documents that hold the central idea of protection of religious freedom and expression. These documents will be analyzed alongside John Stuart Mill's foundational philosophy on freedom. The main findings of this study are that the issue of the veil is complex, and its story must be understood before it can be judged. Muslim women who choose to wear the veil have a right to freedom of religion given by the UDHR. France is a signatory and therefore infringing on those rights is a violation of international law. This conclusion is supported by the theoretical foundations of freedom presented by John Stuart Mill and previous research that dealt with the issue of the veil in Western societies.

Keywords: Islam, veil, niqab, hijab, burka ban, international law

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Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HRC	Human Rights Council
ICCPR	International Convention on Civil and Political Rights
UDHR	Universal Declaration of Human Rights

Preface

Why study the French politics of the veil?

When I started this course, my plan was to write about the Asia Bibi ordeal in Pakistan and the idea of a country struggling with democracy and fundamentalism, exemplified by the decision of the supreme court of Pakistan to release Asia based on Islamic laws and principles while at the same time public demonstrations erupted in objection to the acquittal. While this struggle is mainly present in non-Western communities, I realized that the politics of the veil is an issue that is becoming relevant in Sweden, especially considering the recent 2020 decision by the Skurup municipality to ban headscarves in schools. I think that it is important for people of Muslim background to be invested with the knowledge needed to bring a different perspective and build bridges. I want to contribute to building this knowledge by understanding and shedding light on previous instances in which States took that position. Focusing on France was a natural option as being a French speaker would allow me to understand the complexity of things easily and read official documents. Before beginning the thesis, itself, it is important to give a background on the history of the veil.

The idea of veiling started a long time ago, perhaps from the beginning of human history. What has changed is its meaning. In most cultures today it has disappeared, but not in the Islamic one due to the position the veil holds in Islamic revelation. It would be easy to assume that veiling is a unique Islamic practice, but historians show otherwise. The veil has been a common practice in the Christian revelation, for example with the portrayal of the virgin Mary always with a veil.

While we live in a time where individual choice and freedom should be respected, including the right to wear whatever we choose, there is a serious issue under debate showing that the freedom to dress, express oneself, and practice religion as one chooses can still be taboo. We are currently living in societies where basic human rights are violated, and bigots can dictate what people should wear and how they should practice their religion. This phenomenon is present in both the East and the West. Laws and policies have been instituted in countries like France, Iran, and Saudi Arabia, obliging women to either wear or not wear certain clothes. This has led to discrimination and racial prejudice, depending upon the context, against those who either wear or don't wear the veil.

This thesis is not focused with contrasting the way women are treated in the Muslim East with the way they are treated in the Christian West. My extensive travels throughout different civilizations over the course of my life have familiarized me with the dynamics of gender, sexual equality in various cultures and how that relates to the clothes commonly worn in those places: beginning in the East, in the DRC (formerly Zaire) under President Mobuto; being raised in Burundi under complex political situations between the Hutu and Tutsi; spending my time during my youth with my Aunt in Arabia; having my first, shocking encounter with the burqa in a Nairobi market that sparked my curiosity about the head coverings specifically; and in my 20's spending my exile in the West, mostly Scandinavia, with short study periods in France and England, and regular visits to my sister pursuing her PhD in Law in Geneva. My life experience has helped me understand that sexual inequality is the basis of both Eastern and Western systems.

My travels have not only been physical, but also mental and have allowed me to immerse myself in a diversity of views around how the veil relates to gender and sexual equality. This has made a strong impression on me and shown me how complex the veil is as a concept. I have lived as Muslim minority in Burundi, a Christians country with Catholic majority, with different levels of conservatism – and yet I never experienced a more peaceful religious co-existence. Being from the Indian diaspora there, my mother, sisters, and other women in my family did not see the veil as compulsory, but more appropriate in certain economic classes or Islamic contexts and that ultimately, the veil is condition of the heart. Conversely, I have visited certain areas of Burundi where Muslims do wear the veil as compulsory, in many cases among those with roots in Arabia or the Swahili peoples who emulate Arab culture that spreads along the East African coast. I have traveled to Arabia where the veil is widely compulsory and considered a very natural thing, yet women commonly wear it while not covering all their face. I have been in the West where it is viewed mainly as a symbol of oppression and not an act of devotion as it is in the other places I mentioned. Others in the West endorse the veil in a stand against Western imperialism, claim their own identity.

Furthermore, during the more than 10 years I have been in Sweden, I have been part of the Islamic debate, being an advocate for reformed Islam featured in newspapers, radio, and public lectures. I find the issue of the veil particularly important given that anything that has happened in one European nation is more easily adopted in others. Associate Professor in the History of Ideas, Klas Grinell of Göteborg, whom I have had contact with since my debut in the Swedish media, argued that the work of this thesis is important as it raises questions in

relation to Francophone States and the French-speaking diaspora from former colonies residing France. As a native French speaker I have the possibility to understand and contribute to the debate.

Yasmin Mogahed, a prominent Muslim always reminds girls that a hijab is not for angels. Hijab is for flawed, beautiful humans, who are saying every day that they are trying and that there is so much beauty in that struggle. God sees it. Never belittle any act of love and worship. It could be this act of obedience that God accepts, and it could be because of it, that God forgives your other flaws.

Surprisingly, my sisters who have studied in the West felt more objectified there than in Africa or in the East, feeling that their value was defined according to men rather than the standard of God. Furthermore, many Muslimah¹ in general, including my sisters think the standard of equality of genders is manmade, given that the Qur'an states in Surat Nisa (chapter 4) that women are almost equal to God because they manifest all of God's attributes and are therefore superior to men.

The veil, for me, has represented many things throughout my journey. From women who wear it as a devoted Muslim, to those who wear it for cultural reasons, to Christian Pakistanis such as Asia Bibi who was accused of blasphemy (bless her for her courage), to leaders like Benazir Bhutto. All of these perspectives or instances involving the veil reflect for me the diversity within the Islamic faith, and of Muslim women.

The aim of this thesis is not to clarify according to my own point of view what practices and norms are better, but to understand the dynamics that govern wearing the veil in the West and the contexts in which those dynamics occur. This thesis will focus on the politics of the veil in France in relation to fundamental human rights. This thesis is aimed at those who are invested in understanding complexity and taking in an additional, relevant viewpoint. I thank the French Senate to provide the copy of the official legislation on the French law on the veil. Due to my multilingual abilities, I have been able to read material in English, Swedish and French and have obtained a deep understanding of the complexity of these topics.

¹Muslimah is the Arabic word for female followers of Islam

Introduction

In 2007, Nicolas Sarkozy from the conservative party union, *pour un mouvement Populaire*, came to power and became the President of France. His political party advocated for the criminalization of the comprehensive veil (niqab and burqa). Their argument was based on French law, but also on what they judged to be morally correct— to save Muslimah from oppression and honor-based violence. The French parliament decided to ban all clothing that covered the face in 2011. While the ban focused legally only on the full veil, socially it began to have implications for the many, many more Muslim women who embraced more minimal forms of the veil (hijab, eg.). This was something new in European politics— to take such a step and very interesting to investigate now with the perspective of human rights and the right to worship. The subject of the veil touches on women's rights, migration, politics, and Islam, the latter of which has been a central topic of debate the last two decades as a result of the terrorist attack on the World Trade Center in 2001. Islamic identity immediately became seen as a threat to Western democracy and identifying security measures became almost an obsessive pursuit under these circumstances (van der Schyff and Overbeeke, 2011). Islam has subsequently become a very important debate in modern Western politics as well as in the field of social science research including human rights and law.

For a number of years now, an ongoing debate has taken place in many Western states about how the Islamic veil should be abolished (Scott, 2010). The debate in France, Belgium, Netherlands and to some extent in Spain has not taken place only in discussion but also in prohibitions (Squires, 2010).

France and Belgium have completely banned all clothes that cover the face, which include the comprehensive veil (burqa) arguing that it is oppressive to use the burqa as it restricts women fundamental freedom and human rights. The law in France prohibits the full veil and invite women who are been caught wearing it to go through a rehabilitation program (Squires, 2010).

Italy and the Netherlands have implemented laws that abolish the veil that covers the face, arguing that the goal is to be able to fight terrorism in a proper way and to be able to identify people. These laws are commonly known as “antiterrorism laws” (Squires, 2010) and have been strategically formulated to be interpreted as not targeting the Islamic veil, since it specifies that it is only about clothing that covers the face. Similarly, we can also recall how

the Swiss minaret ban in 2009 was framed to be compatible with the International Religious Freedom report. As argued in the PhD thesis of Dr. Linde Lindkvist (2014), the proponents of this ban utilized the distinction between inner/external freedom of religion and the focus on individuals to claim that the construction of minarets were not protected.

These new rules state that every person who is wearing something that covers their face and cannot be identified will be punished according to the law, which is different for each country (Squires, 2010). One can argue that the law was meant to specifically target Muslim women but was very strategically formulated to not come into conflict with basic freedoms. Is that true? That will be clarified with my upcoming analysis and reading of human rights convention and declarations.

The debates in these countries also focus on how to implement these laws so they do not clash with fundamental freedoms and the Universal Declaration of Human Rights— specifically, religious freedom. France and Belgium have openly stated that these laws are targeted against the Islamic veil, particularly the burqa and niqab that cover women’s full face and lead to difficulties in identification (Squires, 2010). Nicolas Sarkozy and the Dutch Minister of Migration, Rita Verdonk, have been clear that they don’t like the Islamic veil, as it restricts Muslim women’s freedom and violates fundamental human rights, specifically women’s rights (van der Schyff and Overbeeke, 2011).

Amnesty International, a non-governmental organization has been very critical about the move of these countries in implementing laws that violate the freedom of expression and religion which is a foundation in human rights. John Dahluisen, who is expert on discrimination in Europe, argues that it is discriminatory to target a kind of clothing that relates to the freedom of expression and violates religious freedom (Amnesty International, 2014).

In this thesis I will analyze various international conventions that lift religious freedom as a fundamental human right. I will then analyze the burka ban in a liberal way (meaning, how it affects individuals), specifically with regards to how it restricts Muslim women in exercising their religious freedom. All the different types of veils (burqa, hijab, and niqab) will be referred to as “veil” in this research and pictures of these different types of veil are included in the analysis to help in differentiating between them (see the section on the Politics of the Veil in France, pg. 25).

Purpose and problem formulation

The purpose of this study is to shed light on the problem concerning the burka ban occurring when French legislation laid restrictions on expressions of religious affiliation in public. Furthermore this thesis will analyze the French legislation in accordance with international human rights law, more specifically, the provisions on religious freedom and freedom of expression in the Universal Declaration of Human Rights (UN General Assembly, 1948), European Convention on Human Rights (Council of Europe, 1950), and International Covenant on Civil and Political Rights (UN General Assembly, 1966).

This will be done by examining the different roles of the veil in women's life and in world society. Furthermore, analyzing the example of France, whether the burka ban is an unreasonable limitation on religious freedom or a justifiable restriction.

Previous research

This previous research section will be divided in two subsections: one on the veil, Islam, and human rights, and the other on France, the politics of the veil, and human rights law. The first part will mainly reference Muslimah scholars, who bring light to these complex topics and act as a primary source for this specific expertise around the link between liberation discourse and patriarchy. The second part of this previous research section that will be focused on the politics of the veil and human rights law, will review the role that secularism and the media has played in the narrative underlying the perceived conflict between Muslim and Western values.

The veil, Islam, and human rights

Professor of Islamic studies and specialist in exegetics, Amina Wadud (1999), argues in her book “The Qur’an and Women: Rereading the Sacred Text from a Woman’s Perspective” that there is no problem with the Islamic faith in regard to women’s rights. She argues rather that Islam liberates women and gives them freedom and that the greatest problem is not the faith itself but rather the patriarchal interpretation made by men appropriating the sacred text in the centuries following Islam’s golden ages. She believes that Islam give women the right to wear and not wear the hijab. According to her research, most women around the world are wearing the veil by choice. While there are also those who are obliged to do so for various reasons, including groups living in the west, Wadud argues that implementing laws is not the solution, as it will restrict and violate the religious freedom of those who choose to wear the veil voluntarily. She suggests that the solution is to continue to talk about reform from within Islam itself by engaging orthodox Islam and promoting the voices of Islamic feminists who raise and address important questions within the community.

Dr. and theologian Haifaa Jawad argue in her book “The Rights of Women in Islam: An Authentic Approach” (1998) and Leila Ahmed’s book “Women and Gender in Islam” (1992) describe the position of Muslim women in society. Jawad focuses on questions relating to education, and the right to get married according to the law which is central for a Muslim woman. She argues that contrary to the stereotypes associated with Muslim women, they are free and have their full rights of citizenship (Jawad, 1998).

Ahmed (1992) did a deep analysis about women pre-Islam and found that the tradition of the veil was inherited from Christian and Jiddisch tradition. She describes the first open debate about the veil that took place in the Arab world around 1900. She discusses

aspects such as class, imperialism, culture, and nationalism and the large role they each play in shaping the discourse around women's rights and the narrative that Muslim women need liberation from their culture. Her argument is that women within Islam have not been indoctrinated by Islam, but rather by patriarchy (Ahmed, 1992).

It has become a well-established tradition to discuss Muslim women by comparing them, implicitly or explicitly, to Western women. Fatima Mernissi, the Moroccan Professor in Sociology well-known for her book "Beyond the Veil", argues in her autobiography "Scheherazade Goes West" (2002) that for decades these kind of questions have distorted the analysis of Muslim women's situation, keeping it at the level of senseless comparisons and resulting in unfounded conclusions. This tradition and implementation of law reflects the general pattern that has been prevailing in both the East and the West reflected in the idea of Orientalism by Edward Said (1978) regarding "Who is more civilized than whom".

Mernissi (2002) also argues that since Western colonizers like France have taken on the defense of Muslim women, a paternalistic gesture in itself, any call for changes or improvement to the conditions women face within societies influenced by a patriarchal-interpretation of Islam, has become viewed as a concession to the colonizers. Women's liberation that advocates for rejecting the veil has become seen in many Eastern contexts as pushing for Muslim women to emulate Western women, and therefore is associated with surrendering to foreign aspirations.

Mernissi's book is critiqued by Katherine Bullock in her book "Rethinking Muslim Women and the Veil" (2002). Bullock, who herself is a Muslim converted from Christianity who found sense in Islam as a feminist religion, argues that Mernissi's perspective is oversimplified and overgeneralized.

Researchers Faegheh Shirazi and Smeeta Mishra wrote an article "Young Muslim Women in the Face of the Veil: A Tool of Resistance in Europe but Rejected in the United States" (2010), based on interviews with a young generation of Muslims living in the United States. They discuss the comprehensive veil (niqab, burqa) and lift controversial statements, such as the veil not being an Islamic practice but rather a from tribal culture in the pre-Islamic era. They argue that the practice is different in different contexts around the world, and that for migrants in the West, both the influence of their roots and the sociopolitical context of where they currently play a role in the choice to wear or not wear a veil. None of those interviewed said they felt obliged to wear the veil, while most of them attributed their choice to feeling

empowered, in control of their physical beauty, and to their Islamic beliefs. They also argued that wearing the veil can be a form of cultural expression, not tied only religion, but that it has become politicized over time. None of the participants said they would wear a full cover veil and argued that Islam gives women the choice. Shirazi and Mishra argued that in order to understand the perspectives of migrant communities in the West on wearing the veil, it is very important to understand colonial histories, sociopolitical contexts, and the feeling of intransigence that Western culture has towards Muslim women (Shirazi and Mishra 2010).

France, the politics of the veil, and human rights law

The American professor of anthropology John R. Bowen, in his book “Why the French Don’t Like Headscarves: Islam, the State, and Public Space” (2007) argues that the issue regarding state secularity has arisen numerous times throughout world history. The Greeks and Romans both had different ideas about secularity, equality, and citizenship, which have shaped foundational principles upon which nations were built (Bowen 2007). France professes itself to be a secular state with the goal to achieve equal rights, justice, and opportunity for all its citizens (Bowen 2007). However, secular laws surrounding certain pieces of clothing worn by Muslim women are promoting institutionalized inequality in the country. The Islamic veil has been an emblematic Muslim tradition practiced for centuries by many women, but the French government sees it as a sign of oppression, separation, and inequality between men and women (Bowen 2007). The veil, its history and complexity and the reasoning behind it must be understood before it can be judged. Muslim women who wear the veil have a right to do so according to international human rights documents and these rights are being infringed upon by the French government and their legal interpretation on the idea of laïcité².

Melanie Adrian writes in her article, “France, the Veil and Religious Freedom” (2009) that in 2004 France did an investigation on how to restrict children from using religious symbols at school. Melanie argues that this is due to poor integration policies that have been implemented in France. Based on ethnographic observations she concluded that if Muslims in France were given the chance to be integrated with the French lifestyle and culture then society would be more cohesive. Rather stereotypes of Muslims have been continually perpetuated in mainstream society, hindering the process of inclusion. She also analyses the French politics of the veil in relation to the International Declaration of Human Rights and concludes that there is a risk that the French state is violating religious freedom. She acknowledges that the

² French doctrine regarding the separation between religion and state

question of the veil touches on potential limitations to liberty, fraternity, and equality, but also states that if we are to aim for integration we must start by addressing the stereotypes about Islam through dialogue between Muslims and those of Western background who often do not know much about the religion (Adrian, 2009).

Joan Wallach Scott, the renowned pioneer of gender studies argues in her book, “The Politics of the Veil” (2010), that the burka ban itself is symptomatic of France’s reflection and failure to integrate its former colonial subjects as full citizens. She also examined the long history of France’s racist and colonial ties to Muslim nations among the most highly represented in France’s migrant population – specifically the North Africans, the people of Maghreb. She identifies ideological barriers to Muslim assimilation that are most related to secularism – in order to be full French, you need to assimilate to French values – and criticizes the idea as rooted in the prejudice that Islam is incompatible with Western values. She also emphasizes the conflicting approaches of sexuality that lay at the heart of the debate – that French supporters of the ban view sexual openness as the standard for normalcy, emancipation, and individuality, and the sexual control implicit in the veil as proof that the Muslim can never become fully French. Scott maintains that the law, far from reconciling religious and ethnic differences, only exacerbates them. She shows the insistence on homogeneity is no longer feasible for France – or the West in general – a little like the mirage of a utopia – and strengthens dynamics portrayed by Samuel Huntington in his book, “The Clash of Civilizations” (1996).

Michelle D. Byng wrote an article, “Symbolically Muslim: Media, Hijab and the West” (2010), using a random selection of articles from media sources, such as The New York Times and Washington Post, to understand the Western view of Islam after the September 11th attacks. She found that media reports play a key role in how Muslims and their traditions are viewed and results in the creation of dangerous stereotypes that influence political discourse and actions, such as the French politics of the veil. Her conclusion is that violence in the name of Islam has really demolished the beauty of the religion to people in the West and recommends to media consumers be more critical and focus on stopping anti-Islam propaganda (Byng, 2010).

As outlined above, previous research has touched on different components and ideas relevant to the politics of the veil and the veil itself, that give a deeper and more complex image of the

picture of the debate. Subjects like religious freedom, freedom of expression, and discrimination are brought to light which will be crucial for the analysis conducted in this thesis. Furthermore, it will highlight the need for a balanced conversation that includes consultation with women and girls, as well as Muslimah researchers who work with the topic, giving them a stronger voice in the debate. It will analyze that stance of international laws about states that decide to restrict the veil, using the framework of John Stuart Mill's philosophy on freedom. This work will be important, not only in France but in other countries like Sweden, where this debate has become more and more present and the necessity to ban the veil is been raised many times.

Theory: John Stuart Mill's *On Liberty*

As previously mentioned, in this essay I study the burka ban in relation to international conventions with a focus on France. Despite a common, normative agenda, philosophical work on international political morality and international law have, until recently, worked at a distance from one other. The mutual suspicion can be traced to different aims and methodologies, including a divide regarding matters of language, frameworks, and institutional analysis. International law influences state behaviors, and its only that more recently, philosophical work has had greater engagement with the moral aspect of international law. Philosophy has treated the rules of international law as a proper subject for philosophical inquiry. The field of law has used international legal rules to support moral arguments that touch aspects of the international order. Future dialogue and cooperation would benefit both fields by seeing one another as complementary and not competitors, particularly regarding challenges to global cooperation, such as nationalism, and for strategizing the allocation of responsibilities among global actors for eliminating and rectifying global harm and violence.

The notion of freedom, and individual freedoms, is relevant when we focus on this issue. In order to discuss this from a liberal point of view, I use the work of the philosopher John Stuart Mill to define freedom and then explore how it can be applied to the burka ban. John Stuart Mill was the most significant proponent of Liberalism in its various philosophical, social, and humanistic manifestation in 19th century Britain. The most famous of his work "On Liberty" was published in 1859, in which he developed the classical theory on liberty which became

foundational to subsequent theory on liberty, including the idea of international law. Mill's contention was that society had no claim to the private existence of the individual and could only interfere when actions of one individual adversely affected another. Mill was also forced to acknowledge that it was impossible to draw a distinct line between the individuals and those affected by individual actions. His conception of liberty came to depend on the way the individuals affected others to their collective advantages. Mill's philosophy thus became relevant to the topic of the burka ban and the subjects surrounding it. Critics claim that Mill's proximity to and support for the British empire, advocating for forced assimilation of people he regarded as uncivilized, makes his philosophy irrelevant for research pertaining to the global South (Tunick, 2006). However, even this simplified critique of Mill's is coherent with the burka ban, as the veil is viewed by some as backwards, and a ban on it would help civilize and educate Muslims. A more nuanced understanding of Mill's perspective is cited in work by Professor Mark Tunick in his paper, "Tolerant Imperialism: John Stuart Mill, Defense of British Rule in India" (2006) which examines Mill's social and political writing and practice while serving the British East Indian Company. The paper demonstrated that Mill did not see the principles of liberty as waived for the uncivilized or that the west should forcibly reshape them in its own monistic image. Rather, Mill defended the interference in India to promote the protection of legal rights, respect, and tolerance for conflicting viewpoints. Mill's tolerant imperialism reflects a tension between liberty and moral development that also appears in his work regarding the scope of government in civilized societies. The weight of influence his work has had, both philosophically and in shaping society, speaks to its timelessness and utility. Therefore, it is worth examining Mill's relevance to contemporary questions, even reinterpreted according to our modern context. That is why in the next chapter, I will focus more on what he would say regarding the burka ban.

John Stuart Mill in relation to individual and religious freedom and state involvement

As mentioned above John Stuart Mill was one of the greatest thinkers on liberalism and individual freedom. His central premise was that freedom is good not in its own right, but rather because it is conducive for human flourishing and the search for truth. It is the responsibility of everyone in a community to help maintain a free society (Mill, 1984, p.18).

According to Mill, individual freedom can be broken down into three dimensions:

- Freedom of conscience: the freedom to hold our own beliefs and so to live freely according to our own principles.
- Freedom of association: that is, the freedom to unite with others for a common purpose without harming others. (1984, p.20)
- Humans are born free and pure and that their life experiences can be both good and bad, and any experience that happens to humans can contribute to something constructive (1984, p67).

Mill also emphasizes that individuals have the freedom to have opinions and to think freely, which means that all opinions should be welcomed and should be respected whether they can be considered true or false. People should have the right to participate in open debate respectfully (1984, p.24-5).

Mill also considers the role of the state, which must think carefully before forcing regulations upon citizens or individuals and dictating to them how to live and how to handle private matters (1984, p.17). If some individuals attack or interfere with others or perform acts that restrict others' freedom, then states, after careful consideration, should get involved as an authority and decide what steps to take.

In this study, Mill's view on religious freedom is particularly relevant. He proposes that all individuals should have the right to live by their faith as long as it does not harm others, regardless of what others think is right. I interpret this as saying that each person should be able to decide what they want to believe, regardless of what others think or perceive about their belief systems, and that the most important thing is to be happy with one's own religious choice and identity (1984, p.101-3).

How can Mill's views be applied to the question of the veil?

Mill is relevant to use when we analyze the French politics of the veil and the laws that restrict the freedom to wear it, because he lifts the issues of individual freedom as it relates to both religion and expression. He also clarifies the powers of the state to interfere and the considerations such decisions should include.

One could conclude that Mill was a proto-feminist, and therefore from a personal perspective he would surely be horrified by European women wearing the veil, relating it to the sexual repression and patriarchal domination that is not too far from the Victorian society he lived in and sought to reform. Even so, Mill's philosophy orbited around a basic ethical premise: the harm principle and the non-paternalistic involvement of states in a private matter.

Mill argues that in regulating individual freedom, people have the liberty to express themselves however they choose regardless if others perceive them as wrong. This freedom must be respected if it doesn't violate other people's human rights. In that case, the state is permitted to come in and take the required actions (Mill, 1984, p90).

With Mill's view on freedom, can we then ask ourselves if those who are wearing the veil mean harm for other citizens or for Western democracy? Does the hijab cause harm? Those who choose to wear it argue no, it can give them a feeling of control to have an outward expression of their religious devotion and in protecting themselves from sexual objectification and exploitation. Other's will argue that the veil is meant to deny women equal rights and submit them to the men of their household and family.

Even if the veil was a degrading patriarchal garment, it is true that most Muslim women in Europe freely choose to wear it as demonstrated in the earlier chapter of the veil in this thesis. Therefore, these women are choosing to harm themselves, but under Mill's principles, no one has the paternalistic authority to forbid it. Veiled Muslimah appear to be very proud and happy with their head coverings. Critics will claim that it is internalized oppression. Mill's theory has little patience for such concepts as individuals are free to decide for themselves if they are experiencing internalized oppression. Individuals can grow out of it. For these reasons, the French ban of the veil puts an illegitimate face on Mill's principles of liberalism and harm, as veiled women do not harm. Mill's views support the wearer of the veil despite the probability that he himself would not agree with it, as for him, that bottom line is that states should not take the paternalistic role of involving itself in a private matter.

Mill argued that it is only when a situation occurs that can put others in danger was it justified for the state to interfere (Mill, 1984, p.18). Relating this to the burka ban, some argue that others in the general society feel unsafe when women have their faces covered – and as this is related to security, the state could then have the authority to interfere using the excuse that it must be necessary to identify people. Even in this scenario, we should question whether this causes a problem for everyday public life or if it would be more reasonable to require people to identify themselves when circumstances require it (with the possibility to uncover and then re-cover the face).

The purpose of this thesis is to analyze the burka ban in relation to human rights conventions and Mill's views are coherent with what they express. His philosophy has been pivotal in

defining both individual liberty regarding religion and the role of the state in upholding it. Therefore, it is useful to view the application of human rights instruments through his lens.

Methods and Sources

Part I: The Function of veil

While the debate around face coverings leading to difficulties in identification is a substantial topic with many complex aspects and perspectives, this study will focus specifically on the burka ban in France in relation to basic human rights. In my choice of materials, I have focused primarily on official documents and avoided debate and opinion articles, even regarding the included international conventions, as they stand for individual's own opinions and not the organization's per se. Likewise, it was important to not include any theological interpretations (more than necessary), as the subject of the veil within Islam is a large topic with diverse schools of thought. The choice of previous research crucial for this thesis is written by those who are most concerned with the question of the veil: Muslimah.

It would have been possible to conduct interviews, but I have chosen not to do so mainly because of the current situation due to COVID-19, which restricts the possibility to go out and interact face-to-face. Therefore, the materials I have chosen to focus on are books, journal articles, and news-reports. These sources deliberately feature the work of Muslimah scholars who can give an insider perspective ascertained through scientific approaches, and thereby are among the most legitimate contributors to the work on the veil, given their first-hand experience. In a recent conversation I had with Klas Grinell, Associate Professor in the History of Ideas, he elaborated on this point:

“As the minimum to complement empirical observations, it is necessary to hear out arguments grounded in lived experience. There is no substitute for subjective and engaged voice to understand the experience, even if experience often is not the only valid mode of knowledge (Grinell, 2020).”

This thesis also focuses on uncovering the complexity of the veil, considering both its theological and social functions. I will also delve into the controversy of the veil, as one of the most contested social symbols in Islam and its relationship to gender equality. As Dr. Grinell continued,

“It is therefore vital to go beyond support or condemnation to see both personal choice or relation to the Islamic faith or patriarchal structures and individual strategies to cope with them, and that the veil plays a role in both (ibid).”

Part II: The law of religious freedom

To achieve the purpose of this essay and to answer the given questions, the essay will use different sources of law. The sources of law that will be examined are, among other things, the foundational sources for French law, that is, the constitution.

Since the thesis does not only concern French law, but will mainly deal with international law, which has its own legal doctrine, sources of international law will be used. In the discourse surrounding the sources of international law, the starting point is usually Article 38 of the Statute of the International Court of Justice. The provision lists what the Court must consider when making judgements and is usually considered to be an authoritative representative of the sources of international law (Bring, Mahmoud and Wrangle, 2014, p.27). Although the purpose of the provision is not to determine the sources of international law, generally applicable sources of international law have been established.

The main sources of international law are international treaties, international customary law, general legal principles, judicial decisions, and the writings of legal experts. The first three sources constitute primary legal rules, and the last two constitute subsidiary legal rules which only serve as a tool for determining the applicable law (Sevastik, 2009, p.35).

International treaties have a central role in this essay and the interpretation of them is crucial for further analysis of the cooperation and compatibility of the provisions. In the interpretation of the regulations, guidance is taken by Article 31 of the Vienna Convention. It is clear from Article 31 that treaties are to be interpreted "honestly in accordance with the common sense of the terms expressed in the context and in the light of the purpose of the treaties" (United Nations, 1969, Article 31, further referenced as the Vienna Convention).

The interpretation can be done in three stages but should primarily be limited to an objective interpretation based on the meaning of the treaty text. This means that the authentic expression of the parties' intention is presumed to be evident in the usual meaning of the words. It is only in cases where ambiguity remains that another step should be considered. In such cases, the objective interpretation should be made in the context of the provision and in

view of the purpose of the treaty. Thus, it is a question of combining the objective and contextual interpretation with the theological interpretation (Sevastik, 2009, p. 62).

To make an interpretation of the treaty “in its context,” preamble and annexes are used. Ultimately, if obscurity still prevails, an interpretation is allowed by means of supplementary interpretations. Supplementary interpretations, which include preliminary work, are used to confirm the result achieved by the application of Article 31 or in cases where the interpretation of the wording of the treaty provisions leads to a “result which is manifestly absurd or unreasonable” (Ibid., p. 63).

Here, the treaty texts are studied based on its wording and external interpretation data is also considered as additional help. Practices and interpretations made by international bodies are important in this context and constitute a necessary complement to a further discussion around [The French politics of the veil].

From the international sources of law, it is primarily the doctrine, that helps the determination of applicable law, that is of the greatest relevance to this thesis, insofar as it interprets international customary law and treaties. From the sources, legal material, i.e. different norms, and legal principles, are extracted. Hopefully, this will lead to the legal material that points to a uniform legal application with clear principles. The material extracted from the legal sources, both French and international law, will then be analyzed and reviewed in order to create a picture of the legal rules that are relevant. It is these legal rules that should then be able to answer the questions listed in the Purpose and Problem Formulation (p. 11).

The focus here is on studying the international law regulations that are linked to the politics of the veil. More specifically, these provisions of parts of global international law are namely, regulations from and provisions on human rights. In addition to global international law regulations, there are additional treaty regimes that constitute regional international law. These include EU legal regulations.

To determine which global and regional international law regulations are the most relevant in this context, a selection of the regulations is made based on a relatively large body of previous research in the field. The international law material central to this thesis is mainly limited to three documents and I have selected them because 1) They are all applicable to France, and 2) are generally considered as the among the most central enunciations of human rights law in relation to religious freedom.: the United Nations Universal Declaration of

Human Rights (UDHR), 1948 (UN General Assembly); the European Convention on Human Rights and Fundamental Freedoms (ECHR), 1950 (Council of Europe); and the International Covenant on Civil and Political Rights (ICCPR), 1966 (UN General Assembly).

Another key element of this thesis is the identification and evaluation of the material used, considering the relevance, reliability, and authority of each piece (Sandgren, 2018, p. 36). Therefore, in this paper, additional material, in addition to the international treaties, is used as an asset to increase understanding of the regulations and their practical applications. Here, articles, books, and other work by prominent researchers in the field will be included. Other material such as reports by NGOs, national reports, and news articles are also included with the intention is to give an account of the boots-on-the-ground perspective.

The Politics of the Veil in France

In this chapter, I will give some background on the different roles the veil holds in different societies and what function it has for those who endorse it.

The Islamic veil

The existing literature shows that throughout history, it has been common for authors and scholars to address the complex and widely disputed meanings that exist regarding the veil and Islam. Some have argued that there is nothing in the holy texts that requires women to cover themselves, while others argue that it is an obligation supported by the holy texts. Dalia Mogahed, Director of Research at the Institute of Social Policy and Understanding established in 2002 with the goal to conduct evidence-based, solution-oriented research on matters relevant to Muslim Americans, found that the majority of women in the world that wear the veil, choose to do so (Ali, 2019). At the same time, she acknowledged that there are those that view rejection of the veil as deviant within the world of Islam. This section will explore the most common reasons for why Muslimah choose to wear the veil, including: as an act of worship and obedience; as a facilitator of liberation; as a defining feature of community and social inclusion; as a symbol of cultural identity; and as a fashion statement.

It is nearly impossible to come across literature that addresses any topic regarding Muslimah without discussing the question about the veil. The Islamic veil can take numerous forms. In this dissertation, I talk in general terms when referring to “the veil”, but there are several variations that will be helpful to differentiate: the “hijab” is a veil that covers the head and the chest that many Muslimah endorse; the “niqab” covers the head, chest, and face, leaving only the eyes uncovered; the “burqa” covers the whole body, with a sewn-in screen-like fabric over the eyes that allows the wearer to see; and the “dupatta” is a long shawl draped over the crown of the head, used mostly by Indian Muslimah and Pakistanis and peoples of South Asian origin.



Dupata

The importance of the veil as an act of devotion to God

For many women, the veil represents one of the most foundational concepts in Islam – submission to God – alluded to in this statement by the Institute of Islamic Information and Education:

“Why do Muslim women have to cover their heads?” This question is one which is asked by Muslim and non-Muslim alike. For many women, it is the truest test of being a Muslim.

The answer to the question is very simple - Muslim women observe HIJAB (covering the head and the body) because Allah has told them to do so” (Ali and Ali, n.d.).

The two verses from the holy texts most often cited evidence for the obligation to wear the veil are:

"Say to the believing men that they should lower their gaze and guard their modesty; that will make for greater purity for them and Allah is well acquainted with all that they do. And say to the believing women that they should lower their gaze and guard their modesty... and that they should not display their beauty and ornaments except what must ordinarily appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands..." (Qur'an 24:30-31)

"O Prophet, tell your wives and daughters and the believing women to draw their outer garments around them (when they go out or are among men). That is better in order that they may be known (to be Muslims) and not annoyed..." (Qur'an 33:59)

Wearing the veil is an act of modesty that is a reminder of the attitude of submission we should have towards God. The choice to wear it must be made based on how the woman feels about the different interpretations of the Qur'an and her own beliefs about how modesty influences service to God.

The importance of the veil as a facilitator of freedom

Anthropologist Hanna Papanek, described the veil as a tool for "portable seclusion" which became a "liberating invention because it enabled women to move out of segregation living spaces while still observing the basic moral requirements of separating and protecting women from unrelated men" (quoted in Abu-Lughod, 2002, p. 785). She argues that Islam itself does not oppress women but gives them the option to maintain their modesty from men outside their family with the veil. Papanek also argues that the majority of Muslimah wear it because they want people, particularly men, to see their minds rather than their bodies. The veil empowers many Muslimah with sense of authority and superiority to men. Ali C. Mary (n.d.) argues in her article, "The Question of Hijab: Suppression or Liberation" that the veil is empowering:

"A Muslim woman who covers her head is making a statement about her identity. Anyone who sees her will know that she is a Muslim and has a good moral character. Many Muslim women who cover are filled with dignity and self-esteem; they are pleased to be identified as a Muslim woman. As a chaste, modest, pure woman, she does not want her sexuality to enter into interactions with men in the smallest degree.

A woman who covers herself is concealing her sexuality but allowing her femininity to be brought out.”

The importance of the veil in defining community and social inclusion

The veil is an important identity marker for Muslimah. In fact, many Muslimah in Western society “come to rely on and create friendship networks that form around the veil” (Khabeer, 2016). Su`ad Abdul Khabeer, the American scholar of Somali origin, argues in her book, “Muslim Cool: Race, Religion, and Hip Hop in the United States” (2016), that for many Muslimah, the veil serves the purpose of unification by providing a sense of shared community and inclusion (p. 84). When a woman wears a veil, it is an easily recognizable indicator that she is different from Western women and that she is Muslimah. This gives a certain level of cultural comfort. When a woman wears the veil, other women initiate communication, building new ways to create contacts (p. 76).

While the veil can symbolize community for Muslimah, especially those living where the veil is not common in public spaces, many Western Muslimah have resisted the idea of traditionalism and choose to not wear clothes that symbolize religion. An interview-based study conducted by Bartlwasky and Read (2003), found that respondents’ sense of community with other Muslimah outside of their homes goes beyond the veil. Many veiled women empathize with their sisters who opted against wearing the veil (p. 86) and when asked about the level of devoutness of a Muslimah who chooses to not wear the veil, those who were covered were quick to defend unveiled Muslimah, arguing that religious beliefs were as important as religious practice per se. Those who were not veiled also showed empathy for those who chose to wear the veil and empathized with their likely increased experience of Islamophobia because of their choice (p. 76). The researchers also found that many who chose to wear the veil have previously gone without it. One respondent, Amma argued that the unveiled and veiled are alike and that Muslim society does not exist on the veil – without the veil, you will still be a Muslim (p. 85).

The veil as a symbol of cultural identity

How we choose to wear our clothes is a nonverbal way of communicating, coming before any sort of verbal exchange. Clothing can communicate information or misinformation by drawing out assumptions about the wearer’s age, gender, or socioeconomic status. The different types of veil are often a reflection of religious and cultural preference. When a

Swedish Muslimah chooses to wear a veil, we automatically realize that she is a follower of the Islamic faith, which Amina Wudud argues, can often lead to prejudice and therefore act as a barrier to assimilation with Western society (Wadud, 1999, p. 24). At the same time, Muslimah in the West embrace both cultures simultaneously and participate fully in societal life (Khabeer, 2016). Williams and Vashi (2007) state that the veil can act as bridge between arrival and integration, being a symbol of autonomy and equality as Muslimah women assert their participation in various contexts including those where wearing a veil was previously not the norm. Similarly, Professor Riffat Hassan proposed that many Muslimah college students in the West may see the veil as a means to bridge the gap between traditional Islam and Western values (Hassan, 2015). Williams and Vashi (2007) have also observed a need among many Muslimah college students to identify with the veil, as it is a visible reference for what an active Muslim woman in society looks like.

The veil as an expression of fashion

Islamic women's fashion is designed to exhibit modesty, and is therefore characterized by long sleeves, descending to the ankle, and having a high neckline. The outfit typically includes some form of head covering that is presented in various styles. Women who wear pants combine them with long-sleeve tunics that cover the buttocks. It seems that there is a growing trend to wear the veil with a different intention than the original one. The hijab especially, has become a fashion statement, which some believe defeats the original purpose of the veil according to some interpretations of Islamic doctrine. The hijab as fashion also invalidates feminist critiques about it being a tool of oppression since it is a fashion choice. This is demonstrated, for example, by the Somali American model, Halima Eden.

The Islamic fashion industry in the West began around the 1980s when ethnic grocers in Western Europe and the United States began to import clothes for its Muslim customers. It has been incorporated over the years into collections by some of the world's top designers and in some instances, has gained popularity even among non-Muslims. For example, the "Burkini" designer, Australian-Lebanese Aheda Zaneti, has become endorsed by women of diverse backgrounds. Overtime, Islamic fashion has become a very big business, with the largest markets in Turkey, United Arab Emirates, and Indonesia. By the year 2023, Islamic fashion will be worth \$361 billion USD a year (Navlakha, 2019).

Islamophobia

According to Khaled Beydoun, Professor in Constitutional Law, Islamophobia is the fear of Muslims and the Islamic faith (Beydoun, 2018). As outlined in the previous sections, Muslims have always been excluded and questioned in different ways in Western society, but since the September 11th attacks, bias toward Muslims has reached an all-time high. Even if we think rationally that it is a very small portion of Muslims who are responsible for acts of Islamic terrorism, many Westerners view Islam and Muslim as irrational, backward, and dangerous (Beydoun, 2018).

Since the niqab and burka are more extreme versions of the veil than the hijab, Muslimah who wear them may face even more bias than those who wear the hijab. El-Geledi and Bourhis (2012) surveyed views of Arab Muslims and the Islamic veil in Francophone undergraduate students in Quebec, finding that participants expressed the most social bias towards those wearing the niqab, followed by those wearing the hijab, with the most favourable attitude towards those in Western clothing (ie. not wearing a veil at all).

Since there are many theoretical ideas about what Islamophobia is, I will give an academic and practical explanation of what it can look like and how this affects the creation of laws like the burka ban in France. Instruments have been developed to measure Islamophobia empirically. Lee et al., (2007) measured Islamophobia with the Islamophobia scale, which has been described as “a self-report measure of an individual’s fear-related attitudes towards Muslims and the Islamic religion” (p. 157). The first eight items of the scale reflect the affective-behavioural component of Islamophobia, including items that focus on avoidance - related emotions and behaviours towards Muslim and Islam, for example, “if I could, I would live in a place where there are no Muslims”. The second eight items of the scale reflect the cognitive component of Islamophobia, including items that focus on the confirmation beliefs that Muslims are inherently violent and Islam is dangerous and threatening, for example, “Islam supports terrorist acts and death of infidels”.

Another measure Islamoprejudice, which was measured using items from the Short version of Islamoprejudice and Secular Critique of Islam (SIPSCI), developed by Imhoff and Recker (2012). The authors make the important distinctions between prejudice toward Muslims and secular critics of Muslim practice which can be argued was the motivation for the implementation of the French burka ban. They found that the measure of islamoprejudice and of the secular critique of Islam were mostly independent from each other, indicating the need to look into both areas when researching attitudes toward Islam (ibid).

The Legal Framework of the Thesis

Islam and French laicity

With the great North African colonialism and subsequent immigration of the 19th and 20th centuries, France found itself involved with more and more Islamic affairs and questions (Bowen, 2007). These countries adopted the French language due to the French occupations. Immigration intensified with the decolonization process that took place in the middle of the century (Scott, 2010). France has today more than 5 million citizens of Muslim heritage, which is almost 8-9% of the French population (Scott, 2010) and Islam as the second most common religion after Catholicism (Scott, 2010). The relationship between Muslim immigrants and the French majority population has generally been good and calm despite the presence of great segregation over the years (Adrian, 2009).

A look at France's conflict-ridden history can begin to explain why the public display of religion affiliation has been taken so seriously. Maximilien Robespierre's persecutions of all religions except Catholicism in 1793 led to a revolt in an attempt to end his tyrannical reign. This very bloody past has led France to reject everything related to religion and the idea of the "generic French citizen" emerged as one who did not have outward markers of religion that separated him/her from the rest of French society (Bowen, 2007).

In 1989, a controversy on the Islamic veil took place that sparked a public debate. The "Veil Affairs" arose when three students arrived to school wearing the burqa and were therefore excluded from class (Adrian, 2009). This finally raised questions of rights with respect to laïcité, because the rights of these young women were not respected. The French state then made a step forward with the less neutral idea of equality when the conseil d'état "found that the wearing of the veil was not a violation of the separation of church and state since the law applied to buildings and curriculum, but not to students unless they engaged in activities that disturbed peace" (Scott, 2005). Despite this ruling, not much changed due to the legacy of the Algerian war, the visible differences between the "native French" and "these new strangers", and the number of global events facilitating growing fears of Islam (Bowen, 2007).

The controversy over the veil arose again after September 11th and the perceived threat of religious fundamentalism against the West. In December 2003, French President Jacques

Chirac proposed to abolish the wearing of religious symbols in French public schools. Many felt his ideas supported the French tradition and key resolution of the French revolution, “Liberty, Fraternity, and Equality” (known in French as “Liberté, égalité et Fraternité”). He spoke about banning all religious symbols, including the cross, the kippa, the veil, and the Sikh turban. However, this was indirectly only addressed to the Islamic veils, as it is more noticeable than the other symbols, and wearing a cross is not an obligation in the Christian faith to confirm one's beliefs whereas wearing the veil can be interpreted as compulsory in some Islamic schools of thought (Shirazi and Mishra, 2010). The subsequent debate has been more focused on the burqa, since it is viewed by some as a dilemma to basic human rights as well as a juridical problem, given the need to be able to easily identify people, which the burqa restricts (Scott, 2010). Chirac's proposition was met with a lot of frustration and protests from Muslimah arguing that their religious freedom was being restricted (Adrian, 2009). It was also a clear sign that French integration policies had failed (Adrian, 2009). Researcher Adrian argued that, “A whole new generation of young peoples are choosing to reject French values, just as France rejected them” (Adrian, 2009).

The French law, laïcité, and relation to the burka ban

With growing Islamophobia in the West, in September 1994, François Bayrou, who was French Minister of Education at the time, responded to fears with a directive requiring principals to ban all “ostentatious signs” from schools. He made it clear that the directive was aimed at excluding all headscarves from school (Bowen, 2007, p. 89). Continued war in Algeria and the explosion of bombs in Paris and Lyon in 1995 intensified Islamophobia in French society. Islam was further politicized, using the veil as a tool to show that veil=Islam=terrorism (Bowen, 2007). French society began to associate the burka ban with a myriad of other initiatives aiming to improve basic freedoms (Bowen, 2007).

By 2004, the situation reached a critical point with showed that there would not be any compromise – it is either Islam or the Republic (Scott, 2010). On March 15, 2004, the French state officially banned the wearing of headscarves and religious symbols in public schools, leading to a great deal of demonstrations in the country (Scott, 2010). Islamophobia seemed rampant in society while Muslim women and girls protested the law. *Le Monde*, the most French prominent daily newspaper, took a strong stance against the law, charging that such a law will stigmatize, marginalize, and exclude a part of the population, going against the

overall goal of achieving greater integration (Bowen, 2007). This very poignant position brought to light the idea that the law was actually a form of discrimination, a violation of human rights, and unnecessary step in the direction of a more neutral but virtually unequal and oppressive republican society (Scott, 2010).

Some believed that the law was a result of the September 11th attacks and that the world seemed to have become more aware of fundamental Islam. Statesman Nicolas Sarkozy argued that since the hijab is endorsed by the majority of Muslim women in French society, it shows a great deal of identification with fundamentalism and political Islam. The idea of fundamental Islam has to be addressed as a public service, assisting people to learn to distinguish Islam from radicalized interpretations, by allowing Muslim women to wear the veil so non-Muslim women can observe that such women are not fundamentalist or potentially dangerous, but simply devout followers of their religion who are only trying to express themselves and their relationship to their religion (Joseph, 2011)

On April 2011, then French President Nicolas Sarkozy formally banned the wearing of the comprehensive veil publicly and France became the first country in Europe to place restrictions on clothing that many consider an obligation (Scott, 2010). According to an article of the New York Times, this law was viewed as necessary to promote French values and culture and fight separatist tendencies among Muslims (Farago, 2019). The specific paragraph that restricts clothes that cover the face and make it difficult to identify them states: “No one shall in any French public space, wear clothing designed to conceal the face” (Act No 2010-1192, Prohibiting the Concealing of the Face in Public).

This law also states that it is a crime to oblige others to wear such clothes because of their gender and it is stated in Article 4 of the same law that “whoever shall, by means of threats duress or constraint, under influence of misuse of authority, compel another person, by reason of the said person to conceal their face, shall be liable to punishment”.

The French constitution only mentions religion in relation to the claim that France will be a secular state. However, it is also mentioning that the state promotes equality regardless of race and gender. The law defies these statements in the Constitution because the prohibition of a religious garment is not “respecting their beliefs”. Abu-Lughod argues that these laws are oppressive because they do not allow women to celebrate their religion but restrict them to do so (Abu-Lughod, 2002, p. 784).

The French government published a debate by ambassador Daniel Jouanneau (2011) that explained why the law was implemented—it was for protecting democratic values and the rights of Muslim women to choose what to wear and adjust to a Western lifestyle. He also argued that only roughly 2000 women in France endorse the niqab or burqa and that such clothing is not at home in France, where everyone has to be able to see each other's face (Jouanneau, 2011).

The French idea of “equality” means total neutrality, removing any characteristics that might separate one Frenchman from another. This stems from the reconstruction after the French revolution in 1789, which caused a complete recreation of governmental systems after the feudal regime was taken apart (Bowen, 2007). The revolutionaries conceived of democracy as “the complete sacrifice of the individual to the republic”, where there is no political relevance to individuals (Bowen, 2007). This idea was expanded on by Chirac, as he stated in his speech on religious symbols: it is the neutrality of the public space that permits the peaceful co-existence of different peoples (Scott, 2010).

John R. Bowen addresses this in his book, “Why the French Do Not Like the Veil”, that the distinction between “religion and culture” is unclear, as culture is actually the “outward expression” of one's relationship to God and the affection and relationship the French population has towards “as mass, its buildings, and the teaching of its principles” is religious as well (Bowen, 2007). In this sense, culture becomes a part of the public sphere and is, therefore, something that should be controlled in order to ensure the republican conception of equality is upheld (Bowen, 2007).

International Instruments on Human Rights

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

The Universal Declaration of Human Rights (UDHR) is the foundational instrument for human rights which was adopted in 1948 as a resolution after various crises involving religious rights, including the incarceration of the Hungarian Cardinal Jozsef Mindszenty for his religious convictions, which pope Pius XII denounced as a violation of the “Holy rights of religion” (Lindkvist, 2017). Winston Churchill, for his part, used the case of religious persecution against an innocent man under the direct orders of Moscow to underpin his campaign for an effective European human rights framework. Such a system, he maintained,

would be crucial for cultivating a shared “sense of being European” (Lindkvist, 2017). The UDHR was finally adopted in December 1948 in Paris (Lindkvist, 2017). In the Declaration’s Article 18, we encounter a forty-seven-word sentence that has been characterised as “one of the most influential statements of religious rights of mankind” (Lindkvist, 2017):

Article 18 is more crucial for the question of the burka ban:

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

This article has influenced most of the later codifications of religious freedom in human rights law. It has informed Article 9 of the European Convention of Human Rights and article 10 of the European Charter of Human Rights, where the rights to freely express religion with symbols and rituals is permitted and should not be violated. It has also informed Article 18 of the International Covenant on Civil and Political Rights.

Article 19 in the UDHR establishes the concept of the right to freely express opinions as well as modes of expression:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

In practice, religious freedom and freedom of expression are indistinguishable and mutually reinforcing. In so far as religious acts are forms of expression, they are also protected by the right to free expression

This Article is relevant in relation to the burka ban, as the choice to wear veil the is a form of expression, as the veil is an expression of a person’s identity.

The burka ban focuses specifically on women and touches on discrimination, which is addressed in Article 7 of the UDHR:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

This Article unmistakably conveys that states that have adopted this Declaration cannot implement laws that lead to discrimination. Likewise, the last Article of the UDHR states clearly that the Declaration can never be interpreted in a way that justifies violating any of the rights or freedoms it delineates.

The International Covenant on Civil and Political Rights

The core of freedom of religion is not disputed, it is essentially clear from the text of the major international human rights instruments. The universal and regional texts are very similar, though one can notice several differences. Article 18 of the ICCPR (UN General Assembly, 1966) is one of the most widely accepted texts in this regard and in the debate surrounding the veil. It states:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

As restated by Sarah Joseph and Melissa Castan in their book, “International Covenant on Civil and Political Rights: Cases, Materials, and Commentary” (2013, ch. 17), Article 18 of the ICCPR makes clear that freedom of religion has a community dimension as it states “individually or in a community with others”. Nonetheless, wearing the veil is an individual right, for which individuals are free to “publicly or in private manifest his religion or belief”. They argue that “the observance and practice of religion or beliefs may include not only

ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings”. The principal focus of attention when states seek to prohibit the wearing of the veil will be articles 18(2) and 18(3). In practice, the second statement is central, because the possibility of a veil being worn out of coercion is a commonly cited reason for banning its use. The third statement forms the legal basis for instituting a ban, by delineating how they in some way inhibit “public safety, order, health or morals or the fundamental rights and freedom of others.”

Functions of a third party

It is argued by Professor Mark Klamberg in his book, “Power and Law in International Society” (2015, p. 92) that:

“In relation to the human rights institutions which are part of the UN family, a distinction should be drawn between treaty-monitoring bodies composed of experts, such as the Human Rights Committee on the one hand, and the Human Rights Council (HRC) with state representatives as members on the other hand. While the Human Rights Committee in several, but not all, regards are close to a judicial dispute settlement mechanism, the processes of the HRC should be perceived as political bargaining, as explained below. The membership of the HRC is composed of states. These states are to lesser and greater extent driven by their own interests. Some have questionable human rights records. This creates both a bias in favor of scrutinizing some states more often and an inability or unwillingness to examine other states. The HRC has several tools at its disposal. First, it may conduct universal periodic review of all UN member states. Second, it may respond to specific country situations, including holding special sessions. Special sessions are held at the request of a member of the HRC with the support of one-third of the membership of the HRC.”

The UN Human Rights Committee has also issued a General Comment on religious freedom, stating that that religious freedom clearly includes the “wearing of distinctive clothing or head coverings” as forms of expression protected under the UDHR. The General Comment states that:

“The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice, and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the

building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications (Joseph and Castan, 2013)”

The ban of these kinds of clothing become a restriction in individuals’ freedom of expression.

The EU Convention on Human Rights also states something that the UDHR does not—explicitly stating that the freedom of religion implies the non-involvement of the state.

Freedom of religion and expression are in many ways indistinguishable, so when the HRC addresses religious freedom, it immediately switches to the freedom of expression.

European Convention on Human Rights

The European Convention on Human Rights and Fundamental Freedoms (ECHR) was adopted by the Council of Europe in 1950 and entered into force in 1953 (Council of Europe, 1950). It is widely considered as the first binding international human rights treaty. Article 9 emphasizes and establishes rules with regards to freedom of thought, conscience, and religious freedom. The first statement was a direct copy of the UDHR:

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

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

As noted, even this Convention emphasizes the idea individuals practicing religion and rituals according to our own will. The national organization of church-state relations is infinitely variable along the spectrum from religiously based states, to states with established or recognized religions, to secular states and anti-religious states. The purpose of international human rights conventions is to function as a selection of orders that can guarantee human rights within a framework that respects both religion and culture. The second statement of Article 9, nearly identical to Article 18 (3) of the ICCPR, lifts the possibility of states to limit this freedom, but only after thorough investigation. It must be established that such freedom of religion presents a true threat to citizen security or restricts others' human rights in a free and democratic state.

The European Convention also emphasizes the importance to protect the freedom of expressions, particularly in Article 10. It is clearly stated that everyone has the right to express themselves without state or institutional involvement.

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary for a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The convention also gives guidelines in Article 18 on which restrictions and limitations that can be implemented, and under what circumstances. The rule of proportionality is introduced in which restrictions must not be more than what would mitigate the harm caused by a certain freedom. The convention states that:

“The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

Article 14 emphasises protection against discrimination and strengthens the idea that everyone is free and has the right to express their freedom.

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The part of this article pointing out the protection against discrimination on religious ground, race, gender, and minority is very relevant to this study as the question related to the burka ban touch these questions.

Taken together, these articles stipulate the nearly-absolute freedom of religion and expression entitled to individuals and under what conditions such freedoms may be restricted – namely in an emergency situations, where prescribed by law, proportional to the harm caused, and implemented with the purpose of protecting the general society.

Margin of appreciation

Professor Mark Klamberg further describes the idea of margin of appreciation and its implications in applying international human rights law (2015, pp. 91-2):

“The European Court of Human Rights (ECtHR) has in its case law introduced the doctrine of margin of appreciation. This doctrine may be perceived as an expression of moral relativism, based on the notion that each society is entitled to a certain amount of latitude in resolving the inherent conflicts between individual rights and national interests or among different moral convictions. This is yet another manner where the discretion of the state is widened to the potential loss of the individual’s rights. This may be illustrated by national restrictions on the right to wear a veil in public, which have been accepted by the ECtHR with reference to the states’ margin of appreciation. As Benvenuti argues, the universal aspirations of human rights are, to a large extent, compromised by the doctrine of margin of appreciation. International human rights organs other than the ECtHR have, for the most part, avoided a systematic use of the margin of appreciation doctrine. The moral relativism of the ECtHR becomes paradoxical in consideration of the debate between universalism and cultural relativism, where advocates of the later portray the human rights project as colonial, Euro-centric universalism. Mutua challenges human rights universalism as being imposed by the west and asks for dialogue, equality, diversity and difference. If

we believe that the human rights as developed in the west should be universal vis-à-vis other societies, how is it possible to allow human rights relativism within Europe? This demonstrates that the different manners whereby states may restrict right weakens the precision of state obligations.”

For the margin of appreciation to be granted to a state, the specific human rights restriction—including those limiting the freedom of religion and expression—is evaluated by three criteria: 1) the restriction must be permitted by national law; 2) the restriction must be proportional to achieving the intended objective; and 3) the restriction must have a legitimate aim, for example to ensure public safety or gender equality (Klamberg, 2015).

Shahin Leyla vs Turkey

In February 1998, the University of Istanbul informed students and faculty that students would not be permitted to wear headscarves or have long beards in lectures and examinations (Bring et al., 2020). Leyla Sahin was in her fifth year of medical school at the time and was denied entrance to lectures hall and prohibited from taking exams, because she was wearing a veil, which she wore in accordance of her Islamic religious beliefs. Sahin brought a lawsuit against Turkey, claiming it had violated her rights to education by denying her the right to religious expression. Ultimately, the University of Istanbul was found to be within its rights to enact a burka ban and Turkey was found to not have violated Sahin’s rights to education when it upheld the ban. Secularism in Turkey, similar to that in France, is regarded as a founding principle of the nation. The wearing of headscarves at Turkish universities had increased alongside the expansion of fundamental Islam throughout the region. Given this history, the wearing of the veil in Turkey is associated with political ideals. The state and the university argued that banning the veil in a public institution was done to prevent proselytizing in spaces that represented the secular state. Her numerous refusals to remove her veil resulted in a warning from the university and ultimately, a disciplinary hearing in March 1999. After participating in a demonstration at the Faculty of Medicine in protest the burka ban, Sahin and other demonstrators were suspended from the university. However, under a newly enacted amnesty law, all disciplinary penalties against the Sahin were revoked. Sahin filed an application with the Istanbul Administrative Court, requesting an order for the circular to be set aside. The Administrative Court dismissed her application and held that the Vice-Chancellor was within his rights to regulate dress to maintain order (Bring et al., 2020).

Sahin claimed that her rights under Articles 8,9,10 and 14 of the ECHR and Article 2 of Protocol No. 1 had been violated by both the burka ban and her subsequent suspension from the University of Istanbul (Case of Leyla Sahin vs Turkey, [2004]; Bring et al., 2020). However, as an initial matter, the European Court of Human Rights found that Sahin's arguments under Articles 8,10 and 14 all related to her allegations under Article 9 (freedom of religion). As such, the Court addressed only the violations alleged under Article 9 and Article 2 of Protocol no. 1 (the right to education). The Court found that her religious freedom had been restricted, but those restrictions were proportionate to the aims of the university of promoting democracy through the maintenance of secularism. It also found that the actions of the University were in accordance with Turkish Law. Therefore, the Court ruled in favour of Turkey, 16-1, finding that there had been no violation of either Article 9 of the ECHR, or Article 2 of Protocol no. 1, and it upheld unanimously that there has been no violation of Articles 8,10, and 14 (Case of Leyla Sahin vs Turkey, [2004]; Bring et al., 2020).

Analysis of Legal Sources

As noted previously in this thesis, the French state passed a law under assumption that the veil represents inequality and is worn because of oppression (see previous research section). However, as argued by Scott (2010) the French state's judgement on this issue was not correct and their arguments were based on speculation and postcolonialism judgement. The French state did not investigate to see how many women wear the veil by choice or are compelled to – without knowing the correct statistic, the State does not know the reasoning behind its constituents wearing the veil and therefore they cannot assume that banning it will promote equality. Even if some women are compelled to wear the veil, Bowen (2007) argues that banning it from the public life might remove a symbol perceived as unequal, but it is a very superficial measure that does not tackle the real problem in society. For the women who choose to wear the veil for out of religious conviction, the ban becomes a restriction on their religious freedom and does not promote their wellbeing.

The burka ban's potential to restrict freedom is well demonstrated by many French Muslimah, such as Faiza Silmi who was denied French citizenship after a government commissioner reported that Silmi wore the niqab based on her husband's orders and that she lived under pure submission (Emon, 2012). The report also said that Silmi normalized this way of life and did not find reason to questioned it. Contrary to the official report, Silmi argued that she

wears the niqab out of her own religious convictions and because she found it to be more modest than her Moroccan djellaba and wants to avoid men looking at her (Emon, 2012).

Before France passed the burka ban, with a focus on the niqab and burqa, women like Silmi were free to leave their house with a garment she endorses by choice. For those women in France who, like Silmi, choose to endorse the comprehensive veil as their personal choice, the burqa ban operates as a paternalist measure that, ironically, suppresses their freedom instead of vindicating their human rights, which goes in line with Mill's theory that states should not play a paternalistic role in society and restrict freedom of peoples regardless if we like their ways of life or not (see theory section).

For the women in France who are compelled to wear the veil, there is no evidence that shows that their conditions are going to improve because of the ban. Amina Wadud (2006) argues that the more traditional the gender roles and male dominance over women, the more likely violence against women is observed and condoned and that cultures with more traditional, patriarchal attitudes and more extreme conditions of subordination of women generate more severe and frequent violence against women. Therefore, if certain interpretations of Islam condone social inequality and obedience, then the men who believe those interpretations and force their closest females to wear the veil are more likely to be violent. It is reasonable then to assume that men who previously forced women to cover themselves in public because of a traditional view could respond to a burka ban with violence or force women to just stay home instead. Rather than being confined in the "jail" of their niqabs, they could end being jailed in their home (Wadud, 2006).

Additionally, the burka ban did not address a situation where the peoples prohibited to exercise their beliefs are in the position of exerting a strong influence on children. This is important, as it is unlikely that it could be argued as successfully as it was done in the ECHR precedent that the ban has the theoretical potential to promote gender equality due to the garb's influence of third person opinion on gender roles within Islam. In sum, the burka ban does not satisfy the requirements for margin of appreciation, even though the burka ban is legal in France, it is disproportional to the aim to promote gender equality and it is even more likely to negatively affect people's views regarding the status of women (Scott, 2010).

Several key factors suggest that the infringement upon Muslim's human rights to manifest their religion as they choose is quite limited. First, the ban prevents a seemingly small proportion of the French Muslim population, with only 2000 women in a population of 6

million who endorse the comprehensive veil. Furthermore, like the case of Leyla Sahin vs Turkey, French Muslimah are free to observe their religion despite being prohibited to wear certain clothing that manifests it publicly. Overall, these factors are proof that the ECHR does not support the burka ban, even though it is not excessive relative to its aims, the ban is over-inclusive and does not address gender equality enough to warrant a complete ban of these types of clothing.

As noted previously, before the ban from wearing the comprehensive veil, the French government did not assess how many women endorse it by choice or because of the patriarchal pressure. However, a study was done by the parliamentary commission of France showing that one in four women that convert to Islam choose to wear the veil (Barton, 2012). It is reasonable to assume that these women would have limited external pressure that would compel them to wear the veil against their wishes, so this survey supports the idea that the majority of women who do wear the veil do so by choice. The ban prevents these women and others from manifesting their religion in the way they find compatible with their convictions. This reasoning could find support in Mill's theory that everyone is free and entitled to their conscience as long it does not restrict others.

Therefore, with support of the relevant documents that stand as the foundation of this thesis, we can conclude that the ban becomes more comprehensive as it infringes and restricts the rights to many women to wear and worship according to their personal choice, and in fact, if we accept the supposition that those wearing the veil are compelled, the ban will worsen their conditions, becoming restricted to the home and therefore ultimately oppressed by the French government instead. Furthermore, several less restrictive alternatives exist that could address gender inequality with veiling, yet France adopted a measure that severely infringes and violate religious freedom.

Aim of promoting public safety

France stated that one of the aims of the ban was public safety, which on one hand could find support in the ECHR and be found legitimate according to the criteria for restrictions on freedoms. The ECHR and the other main declarations of this thesis recognize public safety as an important factor for the concern of nation states. While the aim of promoting public safety should be viewed as legitimate, the ECHR should also recognize the means of implementing the burka ban was not proportionate to the aim pursued. While the ban can theoretically achieve its safety aims, it is not necessary to ban headscarves to protect public safety and the weight of restricting religious expression caused by the ban is excessive relative to

this objective. As noted, the ban meets only one of the three requirements for margin of appreciation. Therefore, it is not necessary to implement this law in a democratic society and instead the state should align with John Stuart Mill's stance on how states should be careful interfering in personal affairs.

As noted, the identity control measures already established in France address most of the challenges in the public sphere. Without the burka ban, these laws operate where:

“In principle a person cannot conceal his face when / he/she needs to be identified in order to guarantee the safety of goods and persons, prevent or prosecute infringement of the law and more generally ensure respect for legal and regulatory provisions that make access to goods and services dependent upon personal attributes (General Assembly Conseil d’Etat, 2010).”

Because people are already legally required to remove face-coverings when identification is necessary, it is difficult then to buy the idea that the aim of the ban was also to promote public safety.

The burden that comes from the burka ban is more excessive than those imposed in ECHR precedent, as seen in the Sahil vs Turkey case. The Court's upholding of Article 9 was much narrower in application, as the restrictions were applied in a university setting, not broadly across wider society (Case of Leyla Sahin vs Turkey, [2004]). The Sahil case exemplified a wide margin of appreciation, in this case, to promote secularism. The Court emphasized that the Turkish Republic was founded on principles that the state should be secular and that the endorsement of the Islamic veil in schools was only a recent phenomenon that has arose as a symbol of political Islam. The Court also noted that securing “a true religious pluralism ... was a vital foundation for a democratic society” (Bring et al., 2020, pp. 230-3).

Similar justifications could be made here with regards to the French burka ban, given that some proponents argue that it promotes and strengthens secular values in the country (Scott, 2010). One could therefore assume that the Court would widen the margin of appreciation to condone the ban. However, the Court's trend of adjusting the margin of appreciation to promote secularism will likely not apply in the context of the burka ban primarily for three reasons (Scott, 2010). First, because the Grand Chamber of the Court has moved away from adjusting the margin of appreciation in favor of secularism. Second, the burka ban is distinct from the state actions in Sahin because the ban is far more expansive and cases like Sahin applied strictly in school settings. It is accepted that states have more freedom to restrict

freedom of religion within public institutions than in public spaces generally (Bowen, 2007). Third, it is unlikely that the French state would defend the ban with regards to articulating secular values, because State legal counsel warned legislators that secularism would not be enough to provide a foundation for a general restriction on freedom of expression in public spaces. Without that argument, the Court would have no reason to adjust the margin of appreciation.

Mark Klamberg argues that another margin of appreciation trend may be conducive to approving the ban – the Court has generally granted European states a wide margin of appreciation where the nation’s restrictions pursue the aim of public safety or promoting morality (Klamberg, 2015). Given that two main defences of the ban are to promote public safety and the equality of women, it is possible that the Court would grant a wide margin of appreciation to France and thereby condone the ban, regardless of its proportionality flaws.

All in all, the margin of appreciation serves as a mode to allow states to “do anything the Court does not consider incompatible with human rights” (Klamberg, 2015). One can hope that the Court appreciates how the burqa ban is extremely incompatible with human rights, as it is objectively disproportionate to its aims, discriminates against Muslims, and severely infringes upon religious freedom. Given that the burka ban has extensive application within France and other Western states that are planning to ban the veil will likely use France as a model, the Court should draw a clear line with France to set an example, recognizing that such a ban is a violation of foundational human rights declarations and should not be condoned.

In summary, the danger that the burka bans attempt to address is both minimal and speculative, while the burden imposed on the worshipper by restricting face-coverings is large. Therefore, the ban is very disproportionate to its public safety goals.

Synthesis: The Burka Ban and Religious Freedom

These declarations and conventions emphasize the idea of living a life of enjoyment, of basic freedom, including the freedom of thought, conscience, and religion. They emphasize the idea of being treated equally and fairly. In this part of the thesis, I will analyze this freedom in relation to the burka ban in France to understand what the ban means in practice.

The debate of the veil touches so many subjects— state authority, honor violence, war, political statement, Islam, and women’s rights.

The burka ban in relation to religious freedom

We all have rights to exercise our religious convictions personally or in a group, in the public sphere or privately, with customs or rituals. This is established freedom and rights delineated in Articles 9 and 10 of the ECHR as well as Article 18 of the UDHR. This is also in accordance with Mill’s view on religious freedom and religious practice (Mill, 1984).

Participation in a mass or religious lecture is recognized as a right in the principles of religious freedom. This is two obvious activities which are not difficult to interpret or understand. When it comes to wearing the veil, it is not as obvious to see it as a right with regards to religious freedom. Wearing the veil can be viewed as a ritual or custom.

The concept of *rituals* is used to describe one or more actions, often with a order, established within a religious context, but it can also be used to describe non-religious practices (Cambridge Dictionary, n.d.). It is often a social practice or symbolic tradition that can be viewed as holy and sacred that takes place a little outside of everyday life. A religious ritual can be a ceremony, or order in an ordinance, like a mass, a funeral, wedding, christening, confirmation, or prayer readings. A ritual is a form of action that can be repeated at a certain time and in certain ways (Cambridge Dictionary, n.d.). Given that the veil is a type of clothing, it would be unlikely to be viewed as a ritual.

A *custom* is a general habit or tradition, for example, in how we dress (Cambridge Dictionary, n.d.), or it can be a way to act or a practice done in a collective or in society. If we put the veil in this context, we can conclude that the veil is a custom worn out of tradition or a social condition related to religion, which may or may not be viewed as mandatory depending upon the interpretation of the holy Qur’an.

Therefore, wearing the veil can be viewed as a custom more than a ritual. It is also important to point out that many Muslimah of the West wear the veil by choice and therefore we can also conclude that the veil is a custom rather than something that women are obliged to wear (Jawad, 1998; Wadud, 1999; Mernissi, 2002; Shirazi and Mishra, 2010). According to Mill’s theory on religious freedom, it is up to every individual to decide which beliefs systems they want to follow as long it does not restrict other people’s freedom (Mill, 1984). Wearing the veil should be viewed as part of religious freedom as stated by Mill. The burka ban should be

viewed as a restriction on the right of religious freedom because it does not interfere with others' freedoms.

The burka bans in relation to the freedom of expression

The burka ban has been debated and discussed also in relation to the freedom of expression, with a starting point that the ban violates and limits the rights of women wearing the veil to express themselves.

In these cases, articles in the different conventions establish freedom in different ways.

The UDHR establishes the right to express oneself with an "expression", which includes expressing one's opinion. To relate to an "expression" is quite unique and is only done by the UDHR, which goes in line with Mill's view on the freedom of expression, where he points out that everyone has a right to follow his/her personal moral compass and will to express ourselves with what we want, no matter if others think it is wrong (Mill, 1984, p. 90). This is interesting in relation to the burka ban as the veil can be viewed as an "expression" to express one's opinions and beliefs.

The burka ban in relation to discrimination

The burka ban in relation to discrimination is another aspect relevant to religious freedom. Many of the scholars mentioned in the previous sections lift the intersection of Islam, with women's rights, and discrimination. Some of them argue that Muslim women have full citizenship rights and that the world is more focused on comparing Muslimah to Western women, which creates misconceptions (Jawad, 1998; Mernissi, 2002). Others argue that the Islamic religion itself does not discriminate and that it liberates women, but that the interpretation of the sacred text has been done through the male lens. Therefore, a reformation and rethinking of the text has to take place in order to have a more inclusive interpretation (Wadud, 1999). On the other side of the debate are those that argue that Muslim women have been victims and need to be liberated (Diffendal, 2006).

There is also the argument that the burka ban itself can be interpreted as discriminating against Islam and we that it facilitates propaganda against Islam, which needs to stop (Byng, 2010). Scholars like Scott and Bowen argue that the concept of secularism and laicite brought with the burka ban are not entirely valid as it fails to see women as free outside the boundaries

of secularism (Scott, 2010) and that the complexity of the reasoning behind the veil is ignored by many scholars and political figures (Bowen, 2007).

The burka ban can be interpreted differently according to these different understanding and expertise.

Mill's point is that each of us has the possibility and will to judge what religious rule or practices we should follow in life, and that we ourselves have knowledge of what is right and wrong (Mill, 1984, p. 66).

According to this statement, one can conclude that the burka ban is discrimination against those who choose to wear the veil.

If we study human rights conventions, we notice that there are rules and regulations in relation to discrimination and equality.

In the example of France, there is a very interesting perspective regarding discrimination and the establishment of the law. The debate, as well as the law itself, was formulated against the Islamic veil without mentioning it specifically as a focus. This was a strategic approach by the France state in order to avoid an accusation of violating human rights. In this regard, one can question why France really wants to implement laws that discriminate against their Muslim minority and Muslimah in particular (Scott, 2010).

The ECHR has a more detailed delineation of human rights related to discrimination and non-discrimination in its respective articles. It states that discrimination based on religion or on being a national minority, should not happen. This is a relevant consideration for this thesis, considering those that wear the veil are primarily national minorities. If we argue that wearing the veil is a custom grounded in religious freedom, the ban violates the no-discrimination clauses established in these conventions. In this case, the Muslim minority of France becomes discriminated against regarding their rights to practice and exercise their religion and their customs in public and private spheres.

Concluding Reflections

The French burka bans of 2004 and 2011 are rooted in three assumptions: protecting Muslim women from oppression, promoting secular values, and ensuring public safety. This thesis was dedicated to uncovering why these reasons are illegitimate for restricting freedom of religion, and in fact, also result in systematic discrimination and in violating the freedom of expression. Freedom of religion and expression—including the right to practice rituals and customs—and freedom from discrimination, are affirmed by the international conventions analyzed in this thesis – the UDHR, ICCPR, and ECHR. The novelty of this thesis further rests in pairing the analysis of these international conventions with John Stuart Mill’s foundational philosophy on freedom. In this final section, other relevant human rights documents are briefly acknowledged, as well as final thoughts on the assumptions underlying the burka ban. Suggestions are made throughout this final section for actions that should be taken to align France’s laws with the international standards to which they are bound.

John Stuart Mill delineates individual freedoms in line with the basic human rights documents, namely the UDHR, ICCPR, and ECHR, that have been studied for this research. This allows these documents to be analyzed with the help of Mill’s concept of freedom and the view of reasonable restrictions in relation to these. Mill emphasized that regardless of whether other people dislike someone else’s way of expressing their beliefs or opinions, restrictions can only be made when the public is at risk.

Even more than this disregard for the Muslim belief systems, the French law banning the veil goes against many other human rights documents. The French “Declaration of the Rights of Man and Citizen” was written during the French Revolution in 1789 as the first step in drafting the French constitution (National Assembly of France, 1789). Article 7 states: “The rights to express one’s thoughts and opinions by means of the press or in any other manner, the rights to assemble peaceably, the free pursuit of religion, cannot be forbidden”. Under the new laws, Muslim women cannot follow their religion peacefully. Article 6 states, “Liberty is the power that belongs to man to do whatever is not injurious to the rights of others”. The veiling ban violates this Article, because it makes wearing the veil illegal for women even though it does not disturb the public order. The Declaration also states, “There is oppression against the social body when one of its members is oppressed” (Article 34). Following this logic, the entire French body politic is oppressed, because of the veiling laws instituted by Chirac and Sarkozy. This should be challenged both within wider society and in the State’s

own legal mechanism. Given that most of the French population share the republican concept of equality as being synonymous with neutrality (which, ironically also developed during the French Revolution) (Scott, 2010), it is unlikely that they will be a significant challenging force against the ban. The Constitutional Council on the other hand, was instituted by the Constitution precisely to determine the constitutionality and legality of French law and referenda (Constitution of 1958). Since the veiling laws violate many declarations, it can be argued that the Constitutional Council has a duty to repeal them and declare them unconstitutional.

France also ratified the “Convention on the Elimination of All Forms of Discrimination Against Women” (CEDAW) in 1983 (UN General Assembly, 1979). Article 2 specifies the specific actions signatories will take, including:

e) To take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women.

The secular laws specifically targeting Muslim women is blatant discrimination on the part of the French government, rather than the “elimination” of it. The law of 1905 that separated church and state should have been repealed after this convention was ratified since it had the potential to (and in this case, did) discriminate against a particular group of women – in this case, Muslim women. Given that France is a signatory of this Convention, it could be argued that the French government is accountable to the international community as well for violating their international obligations with regard to the above Articles. It should be France’s responsibility to remove these laws and prevent new ones that similarly violate these rights from being ratified.

Taking a look at Sharia Law, the right to freedom of religion is delineated in Article XIII of the Islamic Universal Declaration of Human Rights, “every person has the right to freedom of conscience and worship in accordance of their own religious beliefs” (Islamic Council, 1981). The burqa, niqab, and hijab and other types of veils are customs related to the practice of Islam, in observance of religious mandates in the Qur’an. Contemporary Islamic thought has embraced the idea of freedom of conscience that is aligned with John Stuart Mill’s ideal on

the freedom of conscience, as well as the UDHR, ICCPR, and ECHR, which form the foundation of this research paper, with a brief spotlight on French human rights declarations. The law against the veil are discrimination against one religion, Islam, and against the devout women of that faith. If we reflect honestly, if France were truly a secular, neutral, society, all signs of religions would have been permitted or banned. Yet, the laws of 2004 and 2011 were formed strategically to specifically target the clothing of Muslim girls and women, because they were perceived disturbing the public sphere. As argued by Scott (2010), it is not a coincidence that Sarkozy chose to ban an article of clothing that is exclusively Muslim but has not addressed nearly identical clothing worn by Catholic nuns. Their habits are simply another form of religious dress for devoted adherents to that religion but are not perceived as disturbing in the public. This itself goes against the idea of a republic which Sarkozy claims to support. Bowen (2007) relates the connection between the veil, nun habits, and France's past:

“The veil and mosque are not objectively more visible than the nun’s habit and the cathedral, but they are, or were, subjectively shocking because they were new or foreign—or perhaps, as reminders of a bloody, recent colonial past, not foreign enough. Muslims’ demands to live their religion publicly also made explicit the contradictions already in place between French ideas about religion’s private character and the still-public role of France’s Catholic heritage. The public ubiquity of crosses and churches could be ignored—had to be ignored—for reasons of civil peace, but ignoring crescents and mosques was more difficult.”

The discomfort with foreign displays of religious practice alluded to in the above passage can be at least partially attributed to the increase in Islamophobia in Western society after September 11th, as well as the idea of Orientalism presented by Edward Said, especially when viewing in contrast with their Catholic counterparts and even the republican ideal of equality. As we know, Islamophobia has become rampant in Western society, and the West must learn to differentiate fundamentalist Muslims with the vast majority of Muslims, who are part of the world as any others humans and similarly strive for the same things and are entitled to the same freedoms. The world must learn to recognize and respect that.

Another justification for differential treatment of the Islamic veil and the Catholic habit is that the latter is a free choice, whereas Muslim women are presumed to be compelled to wear the veil. This dismisses the choice of most of the Muslim women who choose to wear the veil. It is freely endorsed for many reasons, including as a symbol of submission before God, as well

as for cultural and communal identity, being intellectually empowered rather than objectified, and fashion. Therefore, even according to the CEDAW, it is not a violation to wear the veil, rather it is a violation to prohibit it, as the veil is an essential aspect of their faith. This discrimination should not only be protested by the international community, rather, actions must be taken against these laws. Sanctions should be set against France and Nicolas Sarkozy should be brought to justice for violating international law obligations. The UDHR and all the other conventions outlined in this research thesis are recognized internationally as human rights doctrine. Yet, a great denial against these international laws continues, and the world community has a responsibility to act.

The burka ban is rooted in two stereotypes, namely that Muslimah need to be rescued from the ‘oppressive Islamic faith’ and that Muslim women with a veil pose a security risk to society. In this regard, all laws should be understood in the current political and social context. The fear of terrorism has been translated into Islamophobia and a burka ban is an attempt to suppress an Islamic practice that is viewed as threatening to Western values. The truth is that policies that prohibit women from wearing headscarves are as problematic as structures, practices, and policies that compel women to wear them by force. Both hinder individuals’ ability and choice to adopt a practice out of their own autonomy. Furthermore, these laws are based on a utopian ideal of secularism that discriminates against the 2000 women wearing the burqa in France (Bowen, 2007). The oppression of Muslim women in the name of secular values is Islamophobic at its core, and the secular West as a whole is in a clash with Islam due to its inability to imagine gender equality and religious freedom outside the confines of secularism. Complete and total secularism creates a neutral society in every sense, and full neutrality perpetuates censorship and thereby, more restrictions to human rights-based freedoms.

The French society itself has a skewed vision of what it means to be “equal”. It guarantees everyone rights but denies the same to Muslim women. The republican ideals of the French have created a stifling living space for Muslim women who choose to wear their veil. Their individual right to the freedom to practice their religion, as outlined in international human rights conventions which align with Mill’s philosophy on freedom, is being violated. This form of equality that France advocates for denying people their individual freedom and does not allow them to express their ideas, opinions, beliefs, and values in a society where it could be subjectively perceived as disturbing the public. However, rather than being viewed as a problem, it could be an opportunity to create intercultural and interfaith dialogue by

allowing people's religion to remain an important part of their life and identity, thereby creating an opportunity to build bridges between different peoples and cultures.

Given the points set down in this thesis, one wonders how these laws banning the veil have survived? The burka ban is hailed as a solution in many contexts. This thesis has sought to illustrate that such a ban is not justifiable. As other nations consider such a ban, my hope is that this thesis will bring awareness to the necessity of including the local Islamic community, engaging with Orthodox theological thinking, and most importantly, to center the subjects of the burka ban in the conversation, namely, Muslimah.

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³ Word to describe Father great sister in my mother tongue (paternal aunt)

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