Ban the Burqa?
France Votes Yes
by Benjamin Ismail

On July 13, 2010, France’s lower house of parliament, the National Assembly, approved a bill outlawing the wearing of “clothing intended to hide the face” in public spaces and slapping a fine and possible jail time on offenders; on September 14, the bill was also approved by the French senate. While the bill refrained from mentioning specific communities or religions, it was common knowledge that it was primarily aimed at the Muslim full body and face-concealing garments, the niqab and the burqa. Justice Minister Michèle Alliot-Marie, who presented the bill to parliament, had specifically argued that being forced to wear these Muslim garments “amounts to being cut off from society and rejecting the very spirit of the French republic that is founded on a desire to live together.” President Nicolas Sarkozy was even more forthright, stating that “the burqa is not welcome in France because it is contrary to our values and contrary to the ideals we have of a woman’s dignity.”

An increase in the number of immigrants and converts to Islam in France wearing the full-face cover had set off alarm bells about indigenous culture and traditions, and the prolonged parliamentary debates preceding the vote had centered on fears for the future of French values and the republic. How well founded were these fears? And why did the government decide to predicate the ban on a religiously and ethnically-neutral rationale rather than on the actual considerations underlying it?

RUN-UP TO THE VOTE

The 577-seat National Assembly approved the law with 335 votes to one out of a total of 339 votes. After having been amended, the bill set a maximum of a €150 fine per breach and penalties of up to €30,000 and a year in jail (doubled if the victim is a minor) for anyone forcing a person to cover his or her face in public. “Democracy thrives when it is open-faced,” enthused Alliot-Marie.

Opponents of the bill quickly pointed to the small number of women wearing the burqa and the niqab; and indeed, a 2009 Ministry of the Interior study estimated the number of...
women wearing the burqa and the niqab at 1,900, including 270 living in French territories overseas. Yet it was not the scope of the phenomenon that alarmed both parliamentarians and the public at large—a Pew Research Center poll done in April and May 2010 found that 82 percent of French voters favored the ban—but rather its underlying trends, notably that two-thirds of niqab and burqa wearing women were of French nationality, including many second and third generation immigrants.

**THE SITUATION IN EUROPE**

The bill put France at the forefront of proactive states within the European Union, alongside Belgium, which had passed a similar law on April 29, 2010. The Spanish government, after some local initiatives to ban full-face covers in public buildings, intends to present a law on the freedom of religion that will restrict their use in public places. In Germany, there is no general prohibition on concealing the face though the issue has been hotly debated for quite some time, and a few local bans, especially in schools, have taken place. In Denmark, wearing the burqa and the niqab in public places has been restricted since January 2010 while in the Netherlands, several bills prohibiting the burqa and the niqab, notably in the education and public sectors, are under preparation. In Britain, by contrast, the newly-formed Conservative-Liberal-Democrat coalition seems to have taken a rather contrarian approach; Immigration Minister Damian Green precluded such a move as “rather un-British” while Environment Secretary Caroline Spelman suggested that wearing the burqa could be seen as an “empowering” feminist statement.

This diversity of official attitudes and legislative approaches underlines the relative absence of an official EU position as Brussels prefers to leave its member states the wiggle room to legislate on the matter so long as they respect the European Convention on Human Rights. In this regard, the European Court of Human Rights had its say in 2005 in response to a writ by a Turkish student who objected to the burqa ban at the University of Istanbul. The court stipulated that freedom of conscience, protected by article 9 of the convention, “does not always guarantee the right to behave in a manner governed by a religious belief and does not confer on people who do so the right to disregard rules that have proved to be justified.” A later attempt by Turkey’s Islamist prime minister, Recep Tayyip Erdoğan, to pass a regulation allowing the headscarf in universities was struck down by the Turkish Constitutional Court.

In France, a similar “law on secularity and conspicuous religious symbols in schools” was passed on March 15, 2004, banning the wearing of the hijab (traditional Muslim headscarf) in public primary and secondary schools, alongside other symbols including crosses and the Star of David, and other clothing denoting religious affiliation. But, since the wearing of the full-face cover was almost nonexistent in the early 2000s, no additional law on the matter was passed until July 2010.

To be sure, in June 2009, following violent protests at NATO’s sixtieth anniversary summit in Strasbourg, a decree relating to illicit concealment of the face during public demonstrations was passed but was, at the time, aimed primarily

---

at masked delinquents.\textsuperscript{14} It was only after a string of recent incidents involving women with full-face coverings—refusal of a wedding by a mayor,\textsuperscript{15} denial of French citizenship for wearing the burqa,\textsuperscript{16} the booking of the first woman driver for wearing the niqab—that the wearing of these attires became a hot public issue.

Appearances, however, are often deceiving. Rather than the hasty outcome of vigorous public debate, the government’s bill was the result of much longer and more deliberative discussions on the legal, cultural, religious, political, and social aspects of legislating a ban, discussions which had begun in the French National Assembly two years earlier. These deliberations convinced the government to change the legal basis used to ban the niqab and burqa from the principles of secularism, gender equality, and other principles of a liberal democracy to the more politically correct and less contentious justification of maintaining public order.

**FIRST ATTEMPTS**

The first bill dealing with niqab banning was the so-called proposal No. 1121 “to fight against attacks on women’s dignity from certain religious practices,” presented by Member of Parliament (MP) Jacques Myard on September 23, 2008.\textsuperscript{17} In the explanatory memorandum introducing the bill, Myard pointed to the March 2004 school ban, noting that its application had not created any “major incident.” If the hijab was considered “a distinctive and proselytizing” sign, he reasoned, surely the niqab could not but be viewed in the same vein. While carefully refraining from targeting the full-body cover directly, he recalled the June 27, 2008 decision of the State Council validating a decree that had refused French citizenship to a Moroccan Muslim on the grounds that she was wearing the burqa. The decree had defined such dress as incompatible with the basic values of the French community, notably the principle of gender equality.

The proposed bill suggested a €15,000 fine and two months’ imprisonment for anyone on French territory concealing his or her face or encouraging others to do so, thus legislating two offenses punishable by the law. The bill stipulated the doubling of sentences for repeat offenders and allowed authorities to deport foreign offenders. It also noted that the prohibition referred to the “concealment of the face” and

\textsuperscript{14} Le Monde (Paris), June 20, 2009.
\textsuperscript{15} Le Figaro (Paris), Oct. 12, 2007.
\textsuperscript{16} L’Express (Paris), July 11, 2008.
\textsuperscript{17} No. 1121, Assemblée Nationale, Sept. 23, 2008.
not to the wearing of any special garment. Though specifically referenced in the explanatory memorandum introducing the bill, neither the burqa nor the niqab, nor for that matter Islam, were mentioned in the bill itself.

Myard’s bill raised the question of restricting certain religious practices protected by French laws and the French constitution, the European Convention on Human Rights, and the Universal Declaration of Human Rights. Yet it provoked little public reaction, probably because of the global financial crisis, which consumed the public’s attention at the time. Not having been vetted previously by the Commission of Constitutional Laws, Legislation, Universal Suffrage, the Rules and General Administration (commonly called the Law Commission), the proposal was not reviewed by the National Assembly, which would eventually discuss only the government bill. Yet it outlined the general gist of the debate in clear and unequivocal terms: The burqa and the niqab were clothes flaunting religious extremism that threatened the principle of laicism.

Almost a year later, on June 9, 2009, MP André Gerin and eighty members of all political persuasions (including Myard) proposed a resolution to the National Assembly “for the establishment of a commission of inquiry on the practice of wearing the burqa or the niqab on the national territory.” The memorandum included the content of the September 2008 proposal but went a step further by explaining the present state of laicism in France and by commenting on current Islamic dress habits. The text spoke of “threatened … laicism” and evidenced the statements of a French imam in 2004 “in favor of corporal punishment for adulterous wives” as an example of where French Muslims could be heading. Regarding the niqab and the burqa, it said that they were “virtual, itinerant prisons” putting women who wore them “in a situation of imprisonment, and unbearable exclusion and humiliation.” The MPs further stressed: “We also know that to this dress is added a degrading submission to their husbands, the men of their family, and a denial of their own citizenship.” Finally, the proposed resolution recalled the September 15, 2008 decision of the High Authority against Discrimination and for Equality. This decision confirmed the requirement to remove the burqa during a language course given by the National Agency for Welcoming Foreigners and Migrations as part of a welcome and integration contract—an optional contract mainly consisting of a day’s civic training presentation and an individual meeting with a social assessor, which foreigners admitted to

In the run up to the full-face ban, President Nicolas Sarkozy made his position crystal clear: “The burqa is not welcome in France because it is contrary to our values and contrary to the ideals we have of a woman’s dignity.”

---

18 Centpapiers.com, Oct. 9, 2008.

19 This, however, is not an uncommon practice as a mere 10 percent of proposed bills become laws. They are important, however, in that they alert the government to the desires and concerns of the MPs, and in this respect Myard’s bill achieved its main objective.

reside on French territory and wishing to settle permanently can sign to show their willingness to integrate. On June 23, 2009, the requested commission of inquiry comprising thirty members was created to study the practice of wearing the “full veil.” Neither the burqa nor the niqab were mentioned in its mandate, as the expression “full veil” was considered more neutral and general.

PARLIAMENTARY DEBATES

On January 26, 2010, after six months of investigation, including the testimony of more than two hundred people in France’s major cities—of which about 10 percent were key figures of the Muslim community such as Dalil Boubakeur, rector of the Great Mosque of Paris, or international public figures such as Tariq Ramadan—the committee published its conclusions in the form of a 650-page report.21 After a lengthy exposition on the historical and cultural aspects of the dress code in Middle Eastern societies, as well as a psycho-sociological examination of these practices, and a comparative legal study of twelve countries—ten European countries plus the United States and Canada—the report concluded that wearing the full-face cover affected “basic [French] values as expressed in the motto—freedom, equality, fraternity—and poses a challenge to [the] republic.” Although the commission admitted internal divergences over details, the final conclusion underscored multiparty consensus among its members regarding the need for legislation.22

Meanwhile, on July 27, 2009, fifty-four senators presented a proposal “to allow [for] the recognition and identification of persons.”23 The proposed law prohibited an “item of clothing of someone in the public space that prevents their recognition and identification” and punished violations by one month’s imprisonment. Terms like the niqab or the burqa, and even “full veil,” were visibly absent from the explanatory memorandum, yet upon closer examination, it was evident that these clothes had been taken into account in drafting the bill. Indeed, the preamble invoked article 9 of the European Convention on Human Rights, which allows the restriction of religious freedoms to ensure public safety, indicating that the senators braced themselves for any religious opposition that could arise from this legislation. Basing itself on the legal concept of respect for public order, this bill clearly stood out from Myard’s September 2008 proposal, which had referenced religious and ethical rationales.

On February 5, 2010, MPs of the center-right Union for a Popular Movement proposed a bill “to prohibit the wearing of uniforms or accessories that have the effect of concealing the face in public places and on public roads.”24 In its preamble, the bill referred to acts of masked delinquency and to the practice of wearing the niqab. The proposal’s main significance lay in its second article, which specified penalties on law violations. Unlike the two previously suggested bills, the latest proposal treated violations as misdemeanors, whose specific details were to be decided later by decree. This created a glaring contradiction between, on the one hand, the explanatory memorandum emphasizing the dangers posed by fully covered persons, such as the growing threat of terrorism, threats to public order, and sexual discrimination, and, on the other, the lightness of the proposed sentence, making wearing the full-face veil the least serious possible type of infraction in France.

Four days later, Senator Jean-Louis Masson underscored the evolution of the “law and order” basis for proposed legislation on the full-face cover by presenting his bill “to prohibit the

wearing of uniforms hiding the face of persons in public places.\textsuperscript{25} In Masson’s opinion, it was impossible to legislate a ban on religious dress because of the principle of laicism which prohibited state interference in individual religious choices. However, public order could be invoked without “specifically targeting the full veil worn by Muslim women.” While using the justification of public order as its underlying rationale, this proposal differed from the February 5 version by imposing one fine on women wearing the full-face cover for religious reasons and another for lawbreakers hiding their faces while perpetrating a crime. This differentiated penalty system stipulated a single €5,000 fine for the simple concealment of the face (an offence that clearly applied to those wearing the niqab or the burqa), as opposed to a three-month imprisonment for masked criminals.

On April 27, 2010, the Union for a Popular Movement came up with a new proposal, this time for a resolution on “the commitment to respect republican values against growing radical practices that could undermine them.” By way of strengthening its case, the proposal relied on six pieces of landmark legislation: the 1789 Declaration of the Rights of Man and of the Citizen, the preamble to the French 1946 constitution, the Universal Declaration of Human Rights of December 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of November 1950, the 1979 U.N. Convention on the Elimination of All Forms of Discrimination against Women, and the Charter of Fundamental Rights of the European Union of December 2000, as entered into force on December 1, 2009, and in particular article 20. Having concluded that the full-face cover was a radical and discriminatory practice against women and that the principle of freedom of religion did not justify it, the French National Assembly reaffirmed its intention to implement all appropriate means “to ensure the effective protection of women who suffer violence or pressure, in particular women being forced to wear a full veil.”\textsuperscript{26}

**THE ROAD TO THE BILL**

Although the resolution’s single article was not legally binding, it underscored the clear discrepancy between the principles it reasserted and the rationale used in the previous bills. Indeed, in a report that had been ordered by the prime minister and handed to him on March 30, 2010, the Council of State, advising the government on legal affairs, including the preparation of bills, ordinances, and certain decrees, argued that a total ban of the full-face cover on French territory “could find no unassailable legal basis.”\textsuperscript{27}

This was not what most MPs thought. A study published in May by the National Assembly describe the wearing of the full-face veil as “self-denial and a denial of others [that] forbids the establishment of a relationship between people. This practice carries in itself a symbolic violence which destabilizes the social pact.” Concealment of the face was not only an attack on the dignity of the human person that “attests to a fundamentally inequitable vision of relations between men and women,” the study added, but was also “a source of threats to public order.”\textsuperscript{28}

This parliamentary discussion was eventually followed by the submission of the government’s bill on May 19, 2010, for a total ban on the niqab in all public spaces and not just in places where public services were offered. The bill described the wearing of the niqab as

\begin{itemize}
\item No. 275, Sénat, Feb. 9, 2010.
\item No. 2455, proposition, Assemblée Nationale, Apr. 27, 2010; No. 459, resolution adopted, Assemblée Nationale, May 11, 2010.
\item “Étude d’impact,” May 2010.
\end{itemize}
“symbolic violence” that ran counter to the “republican social contract” thus causing a disturbance to “the public order.” Based on the jurisprudence of the Council of State, the bill stressed that “certain practices, even [if] lawful” might be “contrary to human dignity” and could therefore be prohibited. As such, it provided for a total ban on wearing any clothing hiding the face.

The bill added the possibility of requiring offenders to serve a probationary period of citizenship. However, its uniqueness lay in its far stricter penalization of persons forcing women to cover their face than the female violators themselves, imposing a €15,000 fine and one year imprisonment on perpetrators. Previously, only the 2008 Myard proposal had targeted people other than those actually hiding their faces.

Socialist opposition parties responded by submitting their own bill the next day—the last proposed bill in the run-up to the July 2010 resolution. The opposition MPs argued against a “burqa ban” in all public spaces, citing the March 30, 2010 opinion of the Council of State which expressed doubts about the “possibilities of [a] legal ban on wearing the full veil.” They also referred to a February 2010 assertion by the European Court of Human Rights whereby “to condemn [people] for wearing these clothes falls under the ambit of Article 9 of the Convention, which protects, inter alia, freedom to manifest religious beliefs.” In the opposition’s proposal, only places of public service would be affected by the ban and only if the identification of the person in those places was deemed necessary. The difference was significant because public places (parks, shops, streets) were to be excluded except in cases where chiefs of police invoked public safety concerns as a justification for prohibiting face concealment.

In June 2008, the French State Council validated a decree that refused French citizenship to a Moroccan Muslim on the grounds that she was wearing the burqa. The decree defined such dress as incompatible with the basic values of the French community, notably the principle of gender equality.

Despite the sweeping support for the ban in parliament where the burqa and the niqab were seen as contravening the principle of “vivre ensemble” (living together), some segments of the media, together with politicians from the opposition, sought to promote their own beliefs by deriding the ban as a political ploy aimed at creating a diversion. After accusations by Interior Minister Brice Hortefeux that the husband of a woman driver booked for wearing the niqab was also guilty of polygamy and cheating on welfare, the case turned into a political squabble that exacerbated the already polemical “grand debate on national identity” launched by the government in November 2009. Conducted on a national scale until

---

January 2010, the debate generated considerable controversy and drifted into other spheres not directly relevant to the issue such as “national identity” and “immigration.”

Indeed, the debate initially meant “to address the concerns raised by the resurgence of certain communitarianisms,” of which the case of the burqa was one example, and aimed at making all French citizens think carefully about what it means in the early twenty-first century to be French.

An Internet website allowed anyone to contribute to the debate by consulting a textual database and glancing at the positions taken by leading figures as well as to respond to a questionnaire or to provide reflections. The debate was also conducted locally through meetings in each of the 96 departments and 342 districts in mainland France and in the departments and territories overseas. These meetings were chaired by local civil servants or by one or more national parliamentarians, MPs, or senators.

However, the debate on national identity was strongly denounced by various parties from the opposition. Even though “the government said that more than 58,000 people [had] participated in the debate on an Internet site,” a poll conducted in January 2010 showed that only 22.2 percent of the French found the debate “constructive” while 53.4 percent thought it was an “electioneering move.”

### Debates preceding the ban delineated the contradictions between republican principles and those of Islam and its radical drifts.

CONCLUSION

Does the vehemence of some media criticism imply that the banning of the niqab and the burqa is too sensitive and too complex an issue to be determined by law? Quite the reverse in fact. The question of whether France should legally ban the wearing of the full-face cover on its territory was answered in the affirmative, resoundingly and unequivocally, during parliamentary debates held over the past two years. The only remaining problems for its enactment are more a matter of form over substance, namely, what will be the best rationale for this legislation?

Nor should lingering doubts about the bill’s constitutionality be overstated. While the media rarely tires of reiterating the possibility of the French Constitutional Council or the European Court of Human Rights ruling against a ban—a ruling presented by opponents as a possible propaganda coup for religious extremists—this eventuality is highly unlikely. An EU decision to invalidate the French ban would have to be based on the unlawfulness of the government’s bill or some of its provisions. Yet this possibility has been fully anticipated by the government which, by changing the bill’s rationale from the principles of secularism or the dignity of women to public order, has greatly reduced the likelihood of invalidation. Moreover, and contrary to the received wisdom in the media and press, the extent of the prohibition specified in article 2 of the government’s bill is not fully challenged by the Council of State’s ruling. Although the council found no “unassailable legal basis” for a total ban, it does not automatically follow that such a ban would be unconstitutional. Furthermore, Belgium’s April 2010 ban on face-concealing attire in public spaces created a powerful precedent and made it easier for other EU states to follow suit.

---

35 L’Union (Reims), Feb. 4, 2010.
37 Ibid.
41 L’Élégramme (Paris), May 21, 2010.
42 Le Monde, Apr. 29, 2010.
Thus far the French bill has triggered no reaction from the European Court of Human Rights or the European Commission, which is loathe to legislate on the subject. Even years of parliamentary debates preceding the ban may not have provided a definitive answer regarding the validity of a total ban. Nonetheless, they helped delineate the substantial contradictions between the republican principles of secularism, human, and female dignity and those of Islam and its radical drifts. Additionally, the discussions have helped sharpen the legal options available to implement the values that various parliamentarians have sought to affirm so forcefully.

It is precisely these tensions between long-held French notions of religious freedom and governmental disinclination to interfere in the religious sphere that explain why one of the most avowedly secular Western societies has found it so problematic to legislate against dress codes that contradict its ideological ethos, despite overwhelming public support for such measures. Meanwhile, countries where Islam is the state religion, such as Tunisia or Syria, have had few qualms about banning the public donning of the niqab, basing their decisions on a desire to combat what Damascus termed an “ideological invasion” and what Tunis called a “sectarian form of dress which had come into Tunisia uninvited.”

---

43 Le Figaro, June 28, 2010.

---

Of Men and Turkish Mustaches

ISTANBUL—Facial hair is not just about fashion in Turkey where a large, thick walrus-style mustache can mark a man as a leftist, and a neatly trimmed almond-shaped one can mark him a conservative.

The mustache issue most recently became a source of debate on July 16, when Hüssein Çelik, deputy leader of the ruling Justice and Development Party, or AKP, brought the topic up during a discussion about the cadre of professional soldiers being formed to patrol the country’s borders in the southeast. In a television interview, Çelik referred to an anti-terror unit employed in southeastern Turkey in the 1990s and accused of many human-rights violations as an example of what the new forces would not be like.

“There were people who were so wrong in the Special Operations Teams. There were men whose mustaches were hanging down with the typical MHP [Nationalist Movement Party] militant look, driving around in private cars with long-barreled weapons,” Çelik said. The “MHP mustache” is characterized by its two ends extending downwards like the two sides of a horseshoe.

Çelik’s remarks angered MHP leader Devlet Bahçeli, who responded the next day, calling the AKP deputy leader an “enemy of Turkishness” and accusing Çelik of knowing nothing about the “holy struggle” the special teams were engaged in for years in southeastern Turkey.

“He is saying they are from the MHP because their mustaches were hanging downward,” Bahçeli said. “What will we do now? They [the AKP] are founding a private army. Will this be an army of people with ‘badem’ mustaches?”

Some conservative men in Turkey favor the “badem” (almond) style, a small and neatly trimmed mustache. Members of the religious Gülen community, meanwhile, are generally clean-shaven, especially the youth, the source added.

In many Muslim countries and communities, a full beard is seen as a symbol of piety. Radical Islamist groups, such as the Taliban in Afghanistan and Hizbul Islam in Somalia, have ordered men to grow their beards and trim their mustaches in keeping with strict Shariah mandates.

Hürriyet, Aug. 6, 2010