

# JUSTICE MUST BE SEEN TO BE DONE: ORGANISATIONAL JUSTICE AND THE HEADSCARF AND BURQA LAWS IN FRANCE

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## ABSTRACT

This article discusses the ‘affair of the headscarf’ in France in 1989, its aftermath, the 2004 enactment of a secularism law forbidding students to wear visible religious signs in public schools, and the 2010 adoption of a law prohibiting the wearing of the burqa. This article examines these events and community responses to the two laws in the context of organisational justice, which looks at individual perceptions of whether organisational change is morally right or fair, and considers whether organisational justice theories may help to explain aspects of the affair of the headscarf and the issues surrounding the burqa.

**Keywords:** Islamic headscarf; burqa; law; secularism; France; organisational justice

## INTRODUCTION

In late 1989, the first events of the ‘affair of the headscarf’ in France came to the attention of national and international media when three Muslim students were expelled from their public school in Creil, near Paris, for wearing (and refusing to remove) their Islamic headscarves. Their expulsion sparked further incidents in which more Muslim girls were suspended or expelled from schools around France, amid growing public protests which were widely reported in local and international media. A number of schoolgirls appealed against their expulsions and, over the course of the 1990s and 2000s, French administrative courts heard the cases at first instance and the appeals from those decisions.

Since those incidents, the French Parliament has passed two laws which impose restrictions on what Muslim girls and women may wear. In 2004, the government signalled its intention to pass a so-called ‘law on secularism’ to forbid students from wearing in public schools ‘signs or clothing by which students visibly manifest a religious affiliation’. The law was intended to ban the wearing of the Islamic headscarf, although its broad scope extended the prohibition to other visible religious signs in public schools. The proposed law prompted a surge of protests by Muslims living in many cities across France, and indeed in other countries<sup>1</sup> (Le Monde, 2004; Dufour, 2004; Henley, 2004a; The Guardian, 2004). It also provoked protests by members of other religious groups who were concerned about being caught up in the ban.

Although the public protests subsided over the following years, the debate over religious clothing had not finished. In 2010, the French Parliament enacted a law to prohibit the wearing of clothing which would conceal a person’s face in public places—in effect, legislation prohibiting the wearing of a burqa. The law attracted considerable international attention—and support. Indeed, France is not the only country to consider such a law: the

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<sup>1</sup> In January 2004, tens of thousands of Muslims marched in protest against the proposed law on secularism in Paris, Marseille, Lille and other cities across France, while other protests were held in London, Berlin, Stockholm, Brussels, Cairo and Bethlehem.

Belgian government enacted similar legislation in 2010, while legislatures in the United Kingdom, Italy, Holland, Spain, Germany, Norway, Denmark, Austria and Switzerland have also debated the adoption of laws banning the wearing of the burqa.

Despite their different scope and subject matter, the 2004 law and the 2010 law have both been the subject of considerable public debate and controversy in France. This article will discuss the two laws in the context of organisational justice, which looks at individual perceptions of and reactions to whether organisational change is morally right or fair. The article will consider two principal components of organisational justice: procedural justice and distributive justice. Procedural justice is concerned with the fairness of the procedures which are followed when decisions are made. Distributive justice involves notions of fairness or equity in relation to the outcomes of decision-making or the distribution of resources (whether tangible, such as money, or intangible, such as power).

In view of these theories, it is important to note individual and community perceptions of and responses to the two laws in order to appreciate fully their effects and implications. What have been the responses of French people to the new laws? Have the reactions of the Muslim community been different? How have Muslim women responded? And how do they feel about another law telling them what not to wear? Organisational justice theories may offer some clues to understanding the responses of the Muslim and the broader French communities at the time the legislation was passed, and how these communities are likely to respond in the years to come.

## **THE 'AFFAIR OF THE HEADSCARF'**

### **Events of the Affair**

In September 1989, at the start of the new school year, three Muslim schoolgirls wearing Islamic headscarves to classes at their school in Creil, north of Paris, were asked to remove their headscarves while at school. The girls refused, whereupon the school principal and teachers interpreted this refusal as an attack on secularism in public education and immediately suspended them.

This confrontation attracted widespread media attention and over the following weeks there was heated debate in national newspapers over the principle of secularism and the girls' rights to education and freedom of religion. By late October, newspapers were reporting similar incidents taking place in other cities across France (Gaspard & Khosrokhavar, 1995: 14-15). Muslim schoolgirls in Montpellier (France-Soir, 1989), Marseille (Chikha, 1990: 1; Le Point, 1989), Avignon (Chikha, 1990: 2) and Lille (Glasberg, Albinet & Wenz-Dumas, 1989), some of whom had been wearing their headscarves for months and even years previous to this, were finding themselves suspended or expelled from their schools (Chikha, 1990: 2).

On 4 November 1989, Education Minister Lionel Jospin sought the opinion of the Conseil d'État, France's highest administrative court whose function is to advise the government on legislative and administrative matters, on whether 'the wearing of signs of affiliation to a religious community is or is not compatible with the principle of secularism.' After deliberating for three weeks, the Conseil d'État handed down its opinion. On the basis of a number of constitutional and statutory texts in French and international law, the court concluded that in schools, the wearing by students of signs by which they wish to manifest their affiliation to a religion is not by itself incompatible with the principle of secularism,

insofar as it constitutes the exercise of freedom of expression and freedom of manifestation of religious beliefs [...]. (Conseil d'État, 1989)

In practice, this meant that wearing 'signs of religious affiliation' such as the Islamic headscarf in secular public schools was not incompatible with the principles of secularism or secular public education, and could not by itself result in a student's suspension or expulsion. However, the Conseil d'État noted that the students' rights to freedom of expression and freedom of religion could be limited if the religious signs which they wore would constitute an act of pressure, provocation, proselytism or propaganda, would jeopardise the dignity or freedom of the student or of other members of the school community, would compromise their health or their safety, would disrupt the progress of teaching activities and the educational role of teachers, and finally, would disturb order in the school or the normal operation of the public service. (Conseil d'État, 1989)

Thus, in addition to recognising students' rights, the Conseil d'État also acknowledged that students had certain responsibilities and obligations: to participate in classes and not to jeopardise health and safety, disrupt teaching activities or disturb order in the school.

The Conseil d'État's opinion effectively established certain principles, confirming that secularism was to be understood in conjunction with other values (such as freedom of expression and freedom of religion) but also indicating that both secularism and freedom of religion could be legitimately restricted when the observance of one started to interfere with observance of the other. In practice, respect for both values was to be a balancing act, and establishing the balance was to prove one of the most contentious problems of the affair of the headscarf.

A number of the schoolgirls and their families brought legal action in France's administrative courts appealing against the expulsion decisions. In the majority (around 83%) of the cases, the schoolgirls' expulsions were overturned by the administrative courts, while in approximately 15% of the cases, their expulsions were upheld.

A relatively consistent set of principles emerged from the 'headscarf' case law. Although the Conseil d'État had consistently maintained that wearing the headscarf was not by itself sufficient reason to expel a student, this principle did not apply where the student engaged in certain activities or behaviours. So, for example, a student's expulsion could be justified if the student had engaged in political acts or activism (including attempting to pressure or proselytise to other students), had disturbed public order in the school by distributing brochures, or circulating petitions to other students or participating in protests, or had breached her obligations to attend all compulsory classes or to obey a teacher's instructions. Such acts brought political or public interests within the school arena and as such were incompatible with secularism in public education.

### **Symbolic Meanings of the Headscarf**

There were many reasons for the conflicts and controversy over the wearing of the Islamic headscarf. For one thing, the affair of the headscarf struck a number of cultural, social and political 'nerves'. In 1989, Education Minister Jospin noted some of these factors: the emergence of 'a powerful anti-Arab feeling' stemming from the Algerian war of independence; the controversial issue of immigration; socio-economic problems such as high unemployment and inadequate housing experienced by many Muslim people; and, finally,

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‘the question of French national identity and the place that foreigners can have in it’. According to Jospin, the fact that the French community ‘could become so inflamed about [the affair of the headscarf was] most certainly a sign of unease’ about issues such as these (1996: 76-7).

Another reason was the headscarf itself, an item of clothing which has historically been a potent symbol with powerful, complex and sometimes contradictory political, religious, cultural and social connotations. At times, the headscarf functioned—and was used—as a form of propaganda, sending a particular message and representing extremes of religious fundamentalism and even political terrorism. In 1994, for example, there was reported to be widespread public support for a ban on the headscarf in schools on the basis that it was ‘necessary’ and that it ‘sent a message to overly strident Muslim groups’. According to one political commentator, ‘[t]his expulsion tactic was a spectacular means of showing the Arab community [France’s] muscles’ (Waxman, 1995). The events of the affair also provided opportunities for conservative political parties such as the right-wing National Front to take a strong stand on social policies such as immigration, integration and assimilation, as well as offering a context for the expression of racist and anti-religious sentiments.

To many French people, the headscarf appeared to signify the Muslim girls’ refusal to become French (DeBula Baines, 1996: 311). Newspaper reports quoted admonitions by various citizens: ‘[These young girls] are in France, they must follow the customs of the country’ and ‘in France, [Muslims] must adapt to our habits, or else return to their own country’ (France-Soir, 1989). Of course, one of the difficulties was that many of the schoolgirls had been born or had grown up in France—so they were in their own country. Another irony of the situation was that Muslim girls, who generally performed better at school than their male counterparts and were more likely to find work afterwards, had tended to be regarded as ‘the most capable of integrating’ (Le Quotidien de Paris, 1989).

Perhaps the most important factor in the affair of the headscarf was the fundamental role of secularism in France. The principle of secularism is a central tenet of French public policy, and public education in particular. Secularism also represents a set of social and cultural values which have profound historical resonances for many French people. In this context, many non-Muslim citizens believed that wearing the headscarf posed an unacceptable challenge to the fundamental Republican principle of secularism in public schools.

#### **2004 LAW: SECULARISM AND VISIBLE RELIGIOUS SIGNS**

In 2003, government agencies hosted a number of events to consider the question of secularism or, more specifically, the Islamic headscarf in public schools. A one-day Round Table, attended by the media, government ministers (including then-Education Minister Luc Ferry), academics, education authorities, student representatives and experts on questions of integration, was organised on 22 May 2003 to focus on ‘Schools and Secularism today’ (Assemblée Nationale: Commission des Affaires Culturelles, Familiales et Sociales, 2003). The French national human rights commission interviewed various intellectuals and experts during October and December 2003, before producing an interim report entitled ‘Secularism today’ (Commission Nationale Consultative des Droits de l’Homme, 2003).

Perhaps the best-known of these groups was the Commission to Consider the Application of the Principle of Secularism in the Republic, appointed by President Jacques Chirac in July 2003 and headed by Bernard Stasi, Ombudsman for the Republic and a former French and

European parliamentarian. Over six months, the commission interviewed many members of the community during more than 100 public hearings across the country and stimulated widespread debate on ‘the question of secularism’ before handing down its report in December 2003. The Commission recommended that a secularism law be drafted to include the following provision: ‘In respect for freedom of belief and for the particular nature of private schools, clothing and signs manifesting a political or religious affiliation shall be prohibited in primary and secondary public schools’ (Commission de réflexion sur l’application du principe de laïcité dans la République, 2003: 58).

The prohibition would apply to ‘visible signs, such as large crosses, headscarves, or *kippas* [Jewish skull caps]’ but not to smaller ‘discreet signs’ such as medallions or pendants consisting of small crosses, stars of David, Hands of Fatima or miniature Qur’ans (Commission de réflexion sur l’application du principe de laïcité dans la République, 2003: 58-9). This signalled a clear intention that the new law would apply to all religious signs, in contrast with previous conflicts which had in practice overwhelmingly concentrated on the Islamic headscarf.

In March 2004, the law on secularism, entitled ‘Law concerning the application of the principle of secularism, the wearing of signs or clothing manifesting a religious affiliation in public schools, lower secondary and secondary schools’, was passed. It inserted the following provision into the Code of Education: ‘In primary, lower secondary and secondary public schools, the wearing of signs or clothing by which students visibly manifest a religious affiliation is forbidden [...]’ (Law No. 2004-228: Art. 1).

In accordance with the Stasi Commission’s report, this meant that Islamic headscarves, Jewish skullcaps and visible Christian crosses would be prohibited in public schools. Thenceforth, students wearing these signs risked suspension and even expulsion. Indeed, the law appeared to extend further, prompting concern among many Sikh students that it would prevent them from wearing their turbans (Henley, 2004c). Education Minister Ferry fuelled their concern by speculating that beards or bandanas worn by students might also be prohibited if they appeared to be religious: ‘As soon as anything becomes a religious sign, it will fall under this law’ (Henley, 2004b).

Despite the vigorous protests, the affair of the headscarf and the profound social and political fragmentation which it catalysed appeared to subside in 2005. However, the debate over religious clothing in France was not finished.

### **2010 LAW: CLOTHING CONCEALING THE FACE**

In 2009, President Nicolas Sarkozy gave a speech to Parliament in which he announced that the full-face or full-body veil, also known as the burqa or niqab, was not welcome in France, and that a parliamentary commission would examine the practice of wearing the burqa in France. The commission reported back to the National Assembly in January 2010 and made a number of recommendations. The first of these stated that the burqa should be condemned as contrary to Republican values and that discrimination and violence against women should also be condemned. Others recommended that immigration and refugee laws should be amended to require would-be citizens and refugees to accept values such as equality of the sexes and the principle of secularism and to allow religious fundamentalists to be refused residency status and citizenship. Recommendation 13 advocated the adoption of a law which

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would prohibit the hiding of one's face in public places (Assemblée Nationale: Mission d'information sur la pratique du port du voile intégral sur le territoire national, 2010: 123-85).

In September 2010, the Parliament passed a law prohibiting the wearing of clothing which would conceal a person's face in public places. Any breaches of the law could attract a maximum fine of 150 euros, or an order to attend citizenship classes, or both. The law also prohibited anyone from forcing another person to conceal the face, on penalty of one year's imprisonment and a 30,000 euro fine. Both penalties were to be doubled if the person so constrained was a minor.

### **DIFFERENT CLOTHING AND DIFFERENT LAWS**

It is important to note a fundamental distinction between the headscarf and the burqa: they are different items of clothing which aroused quite different sentiments—and concerns—in the broader community when they were worn. The two laws enacted to restrict them were also different in their content and scope: the 2004 law prohibited public school students from wearing religious signs at school, while the 2010 law applied more broadly to people in public places.

There were some similarities between the laws: both were controversial, prompting vigorous and widespread public protests in France and other countries when they were passed. Both laws focused on clothing, which invited some practical questions, particularly in relation to the headscarf, of how to identify a religious sign as opposed to an item of clothing with no religious significance. Further questions might also have been asked regarding where the limits of such legislation might be found, and how were such laws to be monitored or enforced?

Perhaps the most obvious common element to the laws was in relation to the group of people most heavily affected or likely to be affected: in practice, both laws restricted the choices of clothing available to Muslim women and girls.

### **IMPACTS OF THE LAWS**

Before the enactment of the 2004 law banning the wearing of visible religious signs, one cause for concern for many Muslims was that the Islamic headscarf appeared to be the only religious sign considered incompatible with secularism in French public schools. Muslim schoolgirls felt unfairly targeted by a ban that seemed to apply only to them rather than to other students. As one father commented in 1989: 'Here in France people dress the way they want. Why not my daughters?' (Le Parisien, 1989).

The passage of the legislation radically changed the legal regime which had hitherto governed the wearing of headscarves in school. Indeed, in 2004, some newspapers reported that the law might have created more headscarf wearers than it discouraged. Many Muslims felt 'stigmatised' by the ban on religious signs (Henley, 2004b), while some girls expressed resentment at the government's headscarf ban, particularly since one of the reasons was ostensibly to prevent their families from imposing it: '[b]ecause of this law, people will put on a headscarf just out of defiance' (Walter, 2004; Duval Smith, 2004).

Certainly, the headscarf was more visible than some other religious signs which can be worn underneath clothing, such as a Christian cross or crucifix or a Jewish Star of David. Rather, the headscarf is in effect part of a person's clothing. However, on at least several occasions,

members of the Jewish community had been openly reassured that Jewish students wearing the *kippa*, or skullcap—an item of clothing worn on the head and arguably comparable to a headscarf—would not be suspended or expelled from their schools (Le Tourneau, 1997: 294; Bernard, 1994; Tincq, 1994).

At the same time, the public comments and criticism directed at students wearing the Islamic headscarf also attracted some sympathy from non-Muslim students. When one Avignon schoolgirl was suspended for wearing the headscarf, her classmates showed their solidarity by coming to classes also wearing headscarves (Seignoret, 1989).

Although the broad overall purpose of the 2004 law was to expunge religious influences from public school precincts, the ban did not meet with the same level of protests from Jewish and Sikh students. This may have been because they did not appear to share the same compulsion to wear their religious signs to school as Muslim students, or simply because they were fewer in number.

However, a primary purpose of the 2004 law was to prevent students from wearing the headscarf and, for Muslim schoolgirls, this represented a radical change to the legal regime which had hitherto governed the wearing of headscarves in school. Where previously the French administrative courts had found that Muslim schoolgirls were permitted to wear the headscarves but were prohibited from political or proselytising activities or disturbing public order or classes, the 2004 law on secularism imposed a straightforward ban on wearing visible religious signs, with no further qualification.

The 2010 law prohibiting the burqa has an even greater and more disproportionate impact on Muslim women, who are virtually the only people likely to wear a burqa.

### **ORGANISATIONAL JUSTICE AND PERCEPTIONS OF FAIRNESS**

In view of the different effects of the two laws on many Muslim and non-Muslim communities in France, there are several ways in which organisational justice theories may contribute to a general understanding of the affair of the headscarf and the issues surrounding the burqa.

Organisational justice theories concern individual perceptions of and responses to organisational change and a person's belief that the changes are morally right or fair. Making decisions—in this case, enacting the 2004 and 2010 laws—in accordance with organisational justice considerations would require a decision-maker to follow fair procedures and adhere to notions of fairness or equity in relation to the outcome of a decision or the distribution of resources.

This article considers the effect of the 2004 and 2010 laws in the context of two principal components of organisational justice: procedural justice and distributive justice. Procedural justice, which is concerned with the fairness of procedures followed when a decision is made, is noted only briefly, because there was no reason to consider that fair procedures were not followed when either law was passed. Indeed, the governments of the time went to great lengths to undertake, or at least to appear to undertake, extensive public consultation and communication. The number of committees formed and reviews, reports and private bills drafted to consider issues related to secularism in the modern French Republic, including the wearing of the headscarf and the burqa, reflects an extraordinary level of government and

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community preoccupation with secularism over the past decade. Although this may not have convinced all Muslim citizens that the governments of the time were following fair procedure as they moved towards enacting the 2004 and 2010 laws, the public nature of the consultation and committee work was nonetheless an open acknowledgement that the governments were taking the enactment of the laws very seriously.

The other limb of organisational justice is distributive justice, which concerns perceptions of fairness or equity in relation to the outcomes of decision-making or the distribution of resources. This aspect raises interesting questions because there appeared to be a strong community perception that the 2004 and 2010 laws did not have fair or equitable outcomes. Although the governments of the time would hardly have been surprised that the laws would disproportionately affect non-Muslim and Muslim citizens, they should have allayed or at least addressed the widespread perceptions of inequity should have been allayed. On each occasion, they needed to communicate the content and implications of each law with considerable sensitivity at the time the law was enacted.

In some cases, in the earlier years of the affair of the headscarf, good communication and dialogue between school authorities and the Muslim schoolgirls and their families helped to resolve the conflicts. However, for some families, their attempts to resolve their daughters' matters were further complicated by being at a linguistic disadvantage: they were unable to express themselves well in French and encountered difficulties making themselves understood by the school authorities (Glasberg, Albinet & Wenz-Dumas, 1989).

The communication problems were compounded by socio-economic factors which also hampered attempts to discuss the issues or negotiate a compromise. Many of the families were working class or poor, often living in crowded conditions on housing commission estates on the outskirts of major cities. As a result, they were at a relative disadvantage in attempting to resolve disputes. One father in Lille explained that the principal of his daughter's school had told him that he must come to the school to discuss the matter, otherwise his daughter would be expelled: 'As a result, on Monday I wasn't able to go to work. I am a builder. And in a temping agency, missing a day of work means losing your job' (Glasberg, Albinet & Wenz-Dumas, 1989).

Stories such as these highlight the circumstances of relative disadvantage experienced by many Muslim schoolgirls and women and their families. They also raise broad questions of whether the government's failure to ensure equitable distribution of available resources such as employment, housing and health among French Muslim communities may explain some of the responses to the laws. In circumstances such as these, perceptions of equity and fairness by Muslim women and girls, as well as by other members of the Muslim community, would arguably influence—and perhaps even determine—whether and how they accepted the outcomes of the laws.

Research on distributive justice and organisational justice more broadly may help to explain why it was important for the French government to communicate—particularly to Muslim citizens and communities—how and why the 2004 and 2010 laws were passed. Studies of employee attitudes reveal that employees' perceptions of fairness in the workplace can affect the extent to which they accept and adjust to organisational change. These perceptions can be influenced by factors based on communication and involvement, which help them to understand the reasons for the change and to make sense of their new environment. In turn,



this process can prompt the employees to sustain their commitment and loyalty to the organisation (Baldwin, 2006: 10).

Interestingly, interpersonal aspects of procedural justice may also be important in shaping perceptions of procedural justice. Research into organisational justice trends suggests that people's perceptions are influenced by factors other than whether fair procedure has been followed; rather, people will value interpersonal elements, such as the way they are treated by decision-makers, and will consider such treatment to be a determinant of fairness. In other words, if people are treated with honesty and courtesy, shown respect for their rights, if they are given timely feedback and justifications or explanations for actions, these factors will play an important role in those people's assessments of whether they have been fairly treated, regardless of the actual outcomes of their treatment (Greenberg, 1990: 411).

If these principles are applied to a community environment, in which the government may be assumed to represent the employer organisation and the individual citizens the employees, then it seems clear that the French government must ensure that it communicates frequently and effectively with its Muslim citizens and that it also involves them in its decision-making processes. This might require the government to explain to Muslim people and communities the objectives, progress and effects of its decisions, allow them to express their views and concerns, take these views and concerns seriously and act upon their suggestions. Clearly, the governments of the time took some of these steps when they enacted the 2004 and 2010 laws.

## **CONCLUSION**

This, then, is the challenge for modern secularism in contemporary France. It is clear from events in France over the past two decades that secularism is still considered by many French people to be a fundamental element of their culture and law. Equally clearly, the affair of the headscarf and the events surrounding the burqa signals that there are still fundamental questions to be asked about the nature of secularism and how it is to be lived in modern French society. Such questions were unthought and indeed unthinkable when secularism was formally enshrined in legislation more than 100 years ago, but they are ones to which the French government—representing at once the Republic and the people themselves—must respond.

Even more importantly, the government must work to ensure that the French people, and perhaps especially Muslim citizens, understand and accept decisions such as the enactment of laws regulating the headscarf and the burqa, for such community understanding and acceptance will determine the strength and stability of the government, as well as the relevance and future of secularism in the modern French Republic.

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