

Paper 1: Justice Must Be Seen To Be Done': Organisational Justice And Islamic Headscarf And Burqa Laws In France

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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.

Since then, the French Parliament has passed two laws which impose restrictions on what Muslim girls and women may wear. The 2004 ‘law on secularism’ prohibits students from wearing visible religious signs or clothing in public schools. The 2010 law bans the wearing of clothing which would conceal a person’s face in public places – in effect, prohibiting the wearing of a burqa.

This paper 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 paper will consider two components of organisational justice: distributive justice and procedural justice. Distributive justice involves notions of fairness or equity in relation to the outcomes of decision-making or the distribution of resources. Procedural justice is concerned with the fairness of the procedures which are followed when decisions are made.

It is important to note individual and community perceptions of and responses to the two laws in order to appreciate fully the effects and implications of the laws. Organisational justice theories may offer some clues to understanding the responses of members of the French and Muslim communities at the time the legislation was passed, and in the years to come.

THE ‘AFFAIR 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’. Education Minister Lionel Jospin noted some of these factors in 1989: 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, ‘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 had powerful, complex and sometimes contradictory political, religious, cultural and social connotations. 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 – they were in their own country.

VISIBLE RELIGIOUS SIGNS AND CLOTHING CONCEALING THE FACE

In March 2004, the law on secularism was passed, inserting 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). This meant that Islamic headscarves, Jewish skullcaps and visible Christian crosses would be prohibited in public schools. Indeed, the law appeared to extend further, prompting concern among many Sikh students that it would prevent them from wearing their turbans (Henley, 2004b). Education Minister Luc Ferry speculated that beards or bandanas 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, 2004a).

The affair of the headscarf, and the profound social and political fragmentation which it reflected and catalysed, subsided somewhat in 2005. However, the debate over religious clothing in France was not finished. In 2009, President Nicolas Sarkozy announced in a speech to Parliament that the full-face or full-body veil was not welcome in France. A year later, in September 2010, the Parliament passed a law prohibiting clothing which would conceal a person’s face in public places. A breach 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 doubled if the person so constrained was a minor.

DISPROPORTIONATE IMPACTS AND ORGANISATIONAL JUSTICE

Both the 2004 law and the 2010 law affect Muslim women and girls directly by restricting their choice of clothing. Indeed, even before the 2004 law, many Muslims were concerned 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 any or all 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 enactment of the 2004 law represented a radical change to the legal regime which had hitherto governed the wearing of headscarves in school. Where previously Muslim schoolgirls were permitted to wear headscarves but prohibited from political or proselytising activities, disturbing public order or disrupting classes, the law imposed a straightforward ban on wearing visible religious signs, without further qualification. In 2010, the law prohibiting the burqa had an even more disproportionate impact on Muslim women, who are virtually the only people likely to wear a burqa.

The different effects of the two laws on Muslim and non-Muslim communities mean that organisational justice theories may contribute to a general understanding of the affair of the headscarf and the issues surrounding the burqa in several ways. Procedural justice will be noted only briefly because there is no suggestion that fair procedures were not followed when the laws were passed. However, distributive justice, which concerns perceptions of fairness or equity in relation to the outcomes of decision-making or the distribution of resources, raises interesting questions because there appeared to be a strong community perception that the laws did not have fair or equitable outcomes. Although it was hardly surprising that banning religious clothing such as the headscarf or burqa would not affect Muslim and non-Muslim citizens in the same way, when each law was enacted the government of the time needed to communicate its content and implications with considerable sensitivity.

In the earlier years of the affair of the headscarf, dialogue and good communication between school authorities and the Muslim schoolgirls helped to resolve some of the conflicts. However, other girls’ families found that trying to resolve the matters was further complicated by their 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 and 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 schoolgirls' 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 any 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 and Wenz-Dumas, 1989).

This raises broad questions of whether the government's failure to ensure equitable distribution of available resources such as employment, housing and health throughout 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, and other members of the Muslim community, would arguably influence – and perhaps even determine – how and whether they accepted the outcomes of the 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 signal 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, including Muslim citizens themselves, understand and accept decisions such as its enactment of laws regulating the headscarf and the burqa, for such community 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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