

Recent Debates on the Headscarf in Europe and Their Meaning for Religious Pluralism

Gritt Klinkhammer

University of Bremen, Germany

The European debates about the use of the headscarf on which I focus in this presentation could be perceived merely as the “Islamophobia” and racism of Western societies or – in another opinion – as a reaction to Islamic fundamentalism and terrorism. In my own opinion, it is a compensation for upholding taboos and a lack of awareness about many aspects of the religious and cultural identity of European people after a century of secularisation. I think people should be allowed to wear whatever they like to wear, or what they feel they have a personal duty to wear, also in the public sphere, because the public sphere should reflect the existing plurality of a society. This opinion is shared by many people in Europe.

Nevertheless, I would like to try to give an explanation of some important features in the background to these debates, because from a more detailed and historical point of view, one may find important and controversial questions concerning the relationship between democratic societies and religious faith within the headscarf conflict. Questions such as: How to deal with minorities? How to deal with the plurality of ideologies and religions? How to establish social cohesion? Do all members of a society have to accept secularity in principle or in special public spheres? And what *is* secularity? To what extent can religion persist in democratic societies? – Of course, I cannot answer all these questions, not even at the end of my paper.

The complexity and variety of solutions to these problems in Europe became apparent in the differences in the headscarf debates in various European countries. While the issue of teachers wearing headscarfs is debated in most parts of Germany, in France pupils wearing headscarfs in public schools are accused of expressing their religious faith illegally and obsessively. Interestingly however, England with its “established church” system has allowed headscarfs in school as well as in other public jobs such as in the police force. Indeed, the topic is still highly debated there, too. In most cases, the headscarf is understood as an implicit criticism of the general foundations of secular Western systems in which all members of society are supposed to be equal. The headscarf seems to question the equality not only of men and

women but also of believers and non-believers. The headscarf makes the affiliations and particular beliefs of Muslim women visible and seems to create an image of a “superior” Muslim woman.

The visibility of the headscarf as a religious expression seems to provoke the self-understanding of secular democratic societies, too. When the headscarf is worn in the public sector of society as in public schools in France, by teachers in Germany, or in parliament in Turkey, the fear arises that the relationship of religion and the state becomes intertwined or that women wearing headscarfs neglect the principle of the separation of religion and state.

Various arguments are put forward by opponents of the right to wear a headscarf in the public sector of society, for example in schools, parliament and the courts. Some people who argue against wearing headscarfs in the public sphere refer to the constitutional law of the separation of religion and state in France, which includes the provision that religious symbols should not be demonstrated ostentatiously in state schools or other public institutions. These institutions, it is argued, ought to remain neutral, and religion should be restricted to the private sphere.

Some people also argue that officials or civil servants must always give backing to the constitution of the state or to civil rights, which also means they should stand up for the equality of men and women. They assume Muslim women wearing a headscarf cannot do that, because wearing a headscarf is a symbol of the inequality of the sexes. It might be a bad example for pupils, especially in schools.

Another common argument of the opponents is that the headscarf could also be a symbol of the politicisation of religion, which contradicts a constitution demanding the separation of politics and religion.

A final argument against the headscarf refers to the old tradition of Christian values in Europe which is supposed to set the rules for every member of society, including Muslims. Christians make up the majority of the population and new members of European societies should integrate themselves into the standards of values of these societies. No changes are welcome.

In order to discuss these arguments in the context of these three European countries – Germany, France and England – it is important to look at their special understandings of secular society and the freedom of religion.

The Road to Religious Freedom in France, Britain and Germany: Historical Backgrounds and Differences

Today all three societies guarantee religious freedom in the constitution or by law and therefore allow religious pluralism, as stated in various European constitutions and resolutions of human rights in the twentieth century. In the

historical perspective the laws of religion in European countries are deeply rooted in disputes between church and state. Differences in the legal systems resulted from the impact of the Reformation and the wars that followed in the sixteenth and seventeenth centuries. In some countries like Switzerland or Denmark, the Reformation was successful and new state-church systems were installed. In others like Germany and the Netherlands, the two main churches, the Protestant and the Catholic, remained dominant. During the seventeenth and eighteenth centuries all European countries were ruled by an absolutistic system of a state-church regime. In the nineteenth century the development changed and most of the European countries were involved in the so-called *Kulturkampf*, the struggle between state and church in which the state deprived the church of its power in society. Education and other public sectors were secularised during this period, and the churches lost many of their possessions. Three basic systems of law relating to religion developed and may be identified in different European countries as follows.

Type 1

The first type continues to show basic characteristics of a state-church system like England, Denmark and other countries. Here one can find many links between legislation and the claims of the churches.

For instance, the Anglican Church as the "Established Church of England" is in some ways connected to the government: the king or queen must be an Anglican and is the secular head of the church. He or she appoints the bishops and archbishops. Some archbishops and bishops are part of the parliament (the "House of Lords") and therefore take part in the process of legislation. In the other direction, the church must get permission from the House of Lords if it wants to change central aspects of its internal law. However, the church does not get financial support from the government and is dependent on its own means.

The system of Education in Britain is a mixed one. There are public and independent schools (sometimes called private schools). Almost a third of English primary schools are jointly funded by Local Education Authorities (the local community) and Church Authorities. The Anglican and Roman Catholic faiths are the two most commonly involved in the joint funding agreement though Jewish, Methodist and Quaker schools can also be found.

In accordance with the Education Act of 1944, religion is taught in all schools in the United Kingdom and it is intended that an act of "collective worship" should mark the beginning of the school day. However there is no further instruction about what this collective worship should consist of (for further details see Loudon 2003). The school curriculum, especially concerning religious education, depends on the Local Education Authorities

(Education Reform Act 1988). In fact, in public schools religious education is conceptualised to take account of the multi-religious landscape of Britain.¹

Despite the close relationship between the churches and the state, religious freedom is still guaranteed in the curriculum of the school. The government's desire to acknowledge plurality is expressed in the right to practise special group interests, which is stated for example in the Race Relations Act of 1976. Referring to this Act, the government allows Jews and Muslims to slaughter animals in their traditional way and Sikhs to wear a turban instead of a helmet when they ride a motorcycle.

Therefore, secularity in England does not mean the strict separation of religion and the state and neutrality or equal treatment. The church keeps most of its old rights, and the new law seems to imply the public conviction that any foreign religion of migrant groups is likely to be better than none at all. The decisions made about headscarfs seem to follow this concept. At the beginning the desire of Muslim women to wear a headscarf in the public sphere, for example in public schools, as a policewoman or as a lawyer at the court was not accepted by law. The total number of these cases was very low, only about 2% of British Muslim women. British lawyers argued that it was not necessarily a common Muslim group tradition or interest. In the meantime they broadened the Race Relations Act (by an amendment in 2000), so that such individual interests would also be recognised. Today school-uniforms and police-uniforms include an additional garment: a headscarf for girls and women who want to wear it.

Type 2

The second type is laicism, which propagates the strict separation of state and church as an ideal like in France.

If the history of England can be characterised as the tendency to monopolisation on the part of the Anglican Church, the history of France may be understood as the rejection of the dominant Catholic Church since the nineteenth century. The French Act of Secularisation of 1905, which goes back to the Revolution, constituted strict laicism: freedom of conscience, the separation of church and state and the prohibition of public financial support for religious communities. The churches lost most of their possessions, but the church has been able to manage its own buildings – the government even pays the priests to maintain and protect the buildings.

Laicism, as a principle of law, means neutrality of the state and tolerance towards individual rights. Nevertheless, religious communities can form special "associations culturelles" which receive tax advantages and may have

1 See also Wanda Alberts' article in this volume (see above pp. 267–278). There one can find more about religious education in England in detail.

their own internal hierarchy which allows a bishop to make final decisions inside the community. Apart from this possibility, all religious and non-religious people have the right to unite in an association, but without these financial advantages.

As a matter of fact, the laicist understands religion almost exclusively as the individual practice of worship. Therefore, the laicist state does not hesitate to support various commitments of the churches in youth welfare, health, schools and universities. This virtually invisible inequality regarding financial support of the Christian churches is currently often compensated by the state's support of new buildings for other religions, in particular some mosques for Islam. So we can observe a new kind of compensatory, peace-bearing, regulatory and integration-oriented laicism in France.

The public ideological propagation of laicism in the past, however, often seemed to follow the principle that no religion is better than any religion. The rights of citizens should be treated as equal, the republic of France should be undivided and if religion nevertheless exists this should only take place at a private level. The idea was to build a homogeneous society of liberty and equality where every human being enjoys and follows the same rights. Separation due to ethnicity or religion should not be promoted, neither by the state nor by men or women (for example Baubérot 1994).

The French debates on politics concerning Islam can be taken as an example of the influence of two different powers, the compensatory practices of the last ten years on the one hand and the French ideological ideal of strict laicism on the other. Therefore, the state is committed to building mosques and supporting the establishment of an Islamic representative association, as took place last year, but nevertheless wearing a headscarf in public schools is forbidden. The government wishes society not to be separated out by special ideologies. Plurality should be a private matter. As a result of these politics, it is possible to establish private schools: Catholics have many such schools where they also give lessons in religion. So, after the first of the French "affaires de foulard", an Islamic group established their first private school in 1997. Since the French High Court's decision on the general prohibition of the headscarf (and all other "ostentatious expressions") in public schools at the end of 2003, it can be assumed that more Islamic groups will be interested in establishing private schools. Recent laicism accepts diversity in the private sphere, but the public sphere with its state schools, the courts and parliament should remain secular and homogeneous.

Type 3

The third type can be characterised as a mixture of laicism and monopolisation which aims at the separation of state and church but implies that some social

tasks are common public tasks. Germany, Austria, Italy and other countries fall into this category. The state and the churches make contracts when there is an overlap of interests. Here I will focus on the situation in Germany.

The relationship of religion and state in Germany is based on Article 4 of the constitution, which says that everybody may have a belief or a philosophy of life and may act accordingly if it does not interfere with other basic rights, for instance the right to life and the inviolability of persons. Thus religious freedom is guaranteed. Generally, all religions are acknowledged in Germany and at the same time secularity in the sense of the separation of state and religious institutions is taken for granted.

Schools are secular but in principle all religions are allowed to give lessons on their religion, by agreement with the state. Religious communities which have a large number of members and have existed for a certain period of time in Germany have a good chance to get permission to teach their religion in public schools. However, until now Islamic communities have not achieved this right. That has been a subject of dispute over the last fifteen years.

The special laws on religions were laid down in the constitution of 1919, which is also the basis of the current German rules for establishing religious communities. This granted the two big Christian churches the privilege of having the status of a 'statutory body' (*Körperschaft des öffentlichen Rechts*). Such status includes several privileges regarding taxation, public welfare, special legal internal structures, etc. Other religions are generally allowed to establish associations for non-profit organisations, which also creates some tax relief for their activities. Although the constitution of 1919 confirmed secular public structures concerning marriage and education, in order to defend the churches, it may also have been intended to support the Christian churches as guarantors of the tradition of common values of life and therefore of the cohesion of its citizens. After World War II the Allies regarded the churches as a guarantee for non-nationalistic forces which, it was intended, should participate in most public sectors. The new parliament also tried to manifest this structure in order to defend the country against any nationalistic force. Therefore, representatives of the churches were asked to participate in various public commissions such as for example those relating to the media.

The headscarf debate in Germany has been very vivid in the last four years, since a teacher started proceedings in court when her school prohibited her to teach while she was wearing the headscarf. Last year the German constitutional court came to a decision about her case which has generated further debates on the relationship between secularity, religious plurality and democracy. The court acknowledged that there is no academic proof of any harm caused when pupils are taught by teachers who wear headscarfs. With regard to Muslim women the court also recognised that empirical scientific

studies have shown that there is no obvious correspondence between wearing a headscarf and conservative or Islamist conviction and belief (for example Klinkhammer 2003).

The court also argues that the state should guarantee the free religious expression of groups and individuals so that it is forbidden to discriminate against people according to their convictions. Referring to the rule of the neutrality of the state the court has acknowledged that there is on the other hand a need to defend all state affairs from religious monopolising. Since teachers in public schools are representatives of the state, they should also represent the rule of neutrality.

As we can see, these two laws overlap: the right of the freedom of the individual and his/her religious conviction and practice and the neutrality of the state and its representatives in public spheres like public schools. Therefore, the constitutional court decided that there are two possible ways of dealing with the rights of female Muslim teachers: the first possibility is that the German federal states, which are permitted to rule on educational affairs in Germany, are allowed to choose strict laicism. This would mean that each federal state is allowed to make a law prohibiting all religious symbols in school. Then, not only will Muslim teachers be forbidden to wear headscarfs in public schools, but also Jewish teachers to wear a Kippa and Catholic nuns to teach in their habit (which is still usual in some regions of Germany). The other possibility is that the German states could continue to allow Muslim women to wear headscarfs, and then no new law would be needed since pluralism would be supported and publicly represented by the teachers in public schools. This open decision of the court has been heavily and very controversially debated.

Conclusion

As a result, we can summarise that although each of these three Western societies accept religious plurality in principle, on the basis of a general principle of the separation of Church and state, they have great difficulties in tolerating and accepting the headscarf as a religiously legitimate, different garment of some Muslim women. Some Western social psychologists and feminists explain these debates as a deep fear of untouchable and unsolved problems in our societies concerning questions of sex and gender inequality (Rommelspacher 2001). From the perspective of sociological and historical studies of religion I would like to point out at least three dimensions of the conflict:

Even if the laws concerning religion in these societies aim at religious freedom they are deeply rooted in a history of struggle with Christianity and

Christian culture. It seems that the hard struggles for power between the Churches and the state, in history, have been continued in the battle against Islamic symbols in the public spheres of the state.

All three societies – although they are called secular societies – are dealing with particular public politics of religion. These politics aim at integrating influential religious groups like Christians and Muslims. But secularity, understood as the neutrality of the state, seems to be thwarted when the state forbids some religious groups to go into the public sphere while granting this right to others. The demand of the ideology of secularity that religion should be a private matter, in order to keep the government neutral, does not work out in practice. In each case we can see that the principle of the separation of state and church is asserted, but at the same time there are special explicit or implicit contracts concerning matters of public interest like education, welfare and so on.

France, as the strictest secular type, shows the least amount of flexibility concerning the ongoing debate about the headscarf. The scarf, as a public sign of affiliation to a particular religious group and a private sign of religiosity, breaks the conventional understanding of religion as a private matter. Surprisingly, the “established church” system of England shows the greatest flexibility in the case of the headscarf. It may be surmised that a strong, integrated value system and the system of decentralising communal affairs holds more possibilities of tolerating ‘deviant’ minorities.

The third and last point which I would like to mention is that even if the term secularity is often used in theory as a neutral one, we were able to see that in practice it either has an anti-religious tendency or it implies a one-sided ideology of what religion should be. So, when secularity is understood as neutrality and neutrality is understood as an attempt to separate religion from the public sphere, the history of the separation of state and church and the dynamics of politics are not being taken into account sufficiently. The questions raised by the debates on the headscarf illustrate new European criteria for an understanding of the term “neutrality”, which may be understood as the duty to represent the plurality of society in all public spheres. To allow plurality to enter the public sphere also means keeping public discussion of different ideologies vivid and visible. This in turn implies a readiness to make a shift from social cohesion based on the similarity of all citizens to social cohesion despite different worldviews.²

2 This final statement follows the ideas of Taylor 2002.

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