

CHAPTER 8

UNVEILING DISTRIBUTION: MUSLIM WOMEN WITH HEADSCARVES IN FRANCE AND GERMANY

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What constitutes the fixity of the body, its contours, its movements, will be fully material, but materiality will be rethought as the effect of power, as power's most productive effect.

—Judith Butler, *Bodies that Matter*

Introduction

Despite an official separation between state and religion in France and a *Volk*-centered idea of nationhood in Germany,¹ it becomes less and less plausible to define French and German societies in culturally homogeneous terms. Throughout both countries, in fact, more and more Muslims² are expressing and demanding recognition of their religious particularity. Such demands are translated, understood, and produced through the lens of “identity politics,” a discursive framework for the interaction between the Liberal state and minorities that has become, we argue, the hegemonic and inescapable way in which the situation of Muslims in general and Muslim women in particular has been framed in France and Germany. In this chapter, we critically investigate the case of Muslim women with headscarves facing a French legislator or a German judge. In reflecting upon the nature of power in producing subjectivity, and questioning its relation to the sexed/asexualized female subject, we focus on the ways in which legal rules in French and German liberal states have attempted to discipline, punish, and regulate the body of the Muslim woman, thereby producing her as the subject of an anxious sexuality. This chapter will also and most importantly provide an opportunity to examine what identity politics can and cannot do for Muslim women, particularly with regard to distributional

preoccupations. After having discussed the legal contexts in both European countries, we ask whether identity politics, by so perfectly capturing the multiple meanings of the headscarf (“the headscarf as a political threat,” “the headscarf as a symbol of gender oppression,” “the headscarf as a religious sign”, “the headscarf as a form of terrorism”), has, in fact, rendered invisible the distributional stakes of such a display of identity (“the headscarf as related to socio-economic conditions”).

France: The Headscarf as a Symbol of Gender Oppression

The most important feature of current French politics is its neo-republican discourse on French identity (Leruth, 1998) in which membership in the national community involves an absolute commitment to the Republic and to its core values of *égalité* (equality) and *laïcité* (the separation of state and religion). This republican model was forged in the context of the French Revolution, as a direct reaction to the historical French struggle against its own monarchy, ruling aristocracy, and religious establishment.

In France, the strict separation of Church and state is explicitly affirmed by two legal documents. First, by Article 1 of the *Constitution of October 4, 1958*, which holds in part that “France shall be an indivisible, secular, democratic and social Republic”;³ and, second, by *the Separation of Churches and State Act 1905*,⁴ which states that there is no recognition and no direct public funding of any religion in France. Consequently, France does not allow the state to officially support any exemption for or special representation of immigrant or national minorities.⁵ While strategies are employed for individual integration into the French state, the formation of “communities” of immigrants is highly discouraged (Safran, 1991).

It is in this context that French President Jacques Chirac established, in July 2003, an investigative committee (*la commission Stasi*) to examine how the principle of *laïcité* should apply in the context of educational settings. The *Stasi Commission* published its report on December 11, 2003, ruling that ostentatious displays of religion violated the secular rules of the French school system.⁶ The report recommended a law forbidding pupils from wearing “conspicuous” signs of belonging to a religion, meaning any visible symbol meant to be seen. Prohibited items would explicitly include headscarves for Muslim girls, yarmulkes for Jewish boys, turbans for Sikh boys, and large Christian crosses, whereas discreet symbols of faith, such as small crosses, Stars of David or Fatima’s hands, would be allowed.⁷ The report also emphasized the duty of the French State to protect Muslim girls from several forms of violence, including genital mutilation and polygamy.⁸

The Commission clearly identified the role of publicly funded schools in France, which is to “transmit knowledge, teach students critical awareness,

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assure autonomy and openness to cultural diversity, and encourage personal development. Schooling aims both to train students for a professional career, and to train them to become good citizens of the French Republic.”⁹ Such a mission, according to the report, presupposes fixed common rules, like gender equality and respect for secularity. Following entirely the Commission’s recommendations, the *French law on secularity and conspicuous religious symbols in schools* was adopted on March 15, 2004.¹⁰

In many ways, the existing conception of “laïcité” marks identity as necessarily “private,” and thus demands on the part of the state to preserve the “neutrality” of the public sphere by excluding in advance any sign of religious beliefs. The commission states: “For the educational community, the headscarf is too often a source of conflicts, divisions, and even suffering. The visible aspect of a religious sign is perceived by most people as contrary to the educational mission: to offer a neutral space where critical conscience may grow.”¹¹ But can neutrality truly be neutral? The headscarf debate in France, far from being simply about dress codes in French educational settings, speaks of the impossible neutrality of the French state when it so perfectly reveals its hidden mission of “saving brown women from brown men.”¹² The commission, in fact, sees the headscarf not as an article of clothing but rather as an implicit sign of Muslim women’s domination by their male relatives:

Young women are victims of a form of sexism that manifests itself through various social pressures and physical, psychological or verbal abuse. They are forced to cover themselves to the extent of becoming asexualized and to lower their gaze in the presence of men; if they do not respect these measures, they are stigmatized as “sluts.”¹³

While Islamic norms are equated with gender oppression, French cultural practices are viewed as secular emancipatory norms. Caught up in liberal arguments around the choice/coercion divide, the commission thus identified the headscarf as the ultimate symbol of coercion, one that the state can and should prevent. Muslim women, who are assumed to have no choice but to wear the ideological flag of patriarchy imposed by their religious group, are depicted as passive subjects produced by a system of authority in which they have no say. Surely, the idea of representation of Muslim women (and the role of law in speaking for its subjects) is itself a representation that serves the purpose of ideology:¹⁴ French assimilation.¹⁵

Whereas it is clear that the French state aims at producing “docile subjects”¹⁶ through legislating against the veil, subjects that will “recognize” the existing Republic and be obedient to the state, to the president, to the school, to the teacher, to the unveiled majority, one may wonder about how

effective banning the veil is outside this legal intervention. Could it possibly have the counter-effect of more veiling? What would a cost/benefit analysis of legislating against the veil reveal? In advocating for a non-discriminatory system of education, legislating against the veil will very likely create and reinforce the very discrimination that it so hopes to eradicate, that is, indirectly exclude Muslim women from the public school system and hence infringe upon their right to education. Those are the conclusions reached by *Human Rights Watch*:

The impact of a ban on visible religious symbols, even though phrased in neutral terms, will fall disproportionately on Muslim girls, and thus violate antidiscrimination provisions of international human rights law as well as the right to equal educational opportunity. Indeed, the promotion of understanding and tolerance for such differences in values is a key aspect of enforcement of the right to education. In practice, the law will leave some Muslim families no choice but to remove girls from the state educational system. (Human Rights Watch, 2004)

As stated by Human Rights Watch, legislating against the veil in the name of “neutrality” will further ghettoize *some* Muslim girls (probably the most vulnerable ones) and encourage *them* to either join or remain within the traditional Islamic private schooling. Such social costs are systematically ignored by identity politics in its attempt to regulate Muslim girls’ sexuality from the perspective of “the law in books” rather than “the law in action.”¹⁷ Moreover, imposing “freedom” through “coercion” by banning the veil does little to address the concerns expressed by the Stasi Commission, that is the pervasiveness of several forms of violence experienced by Muslim girls in French suburbs (including rape, forced marriages, and sexual mutilations). If anything, the ban obscures the logic and dynamics of the social and economic conditions under which Muslim girls live in France as well as the possible relationship between the headscarf and political defiance in the face of such economic and social marginalization by the larger culture.

Germany: The Headscarf as a Political Threat

Germany has historically characterized itself as a nation based on common blood descent (Brubaker, 1991: 82). It is important to note that the idea of German nationhood was partly formed in opposition to Napoleon, an external threat, whereas the idea of French nationhood was forged internally in the struggle against its own monarchy and religious establishment. It may be because of these differences that Germans cannot easily accept that Islamic religious communities be granted the legal status of a corporation under public law.

In fact, Islamic groups have been trying to obtain legal status for their religious communities since the early 1970s but their petitions have until now been rejected by the courts. According to the *1949 Constitution*, religious denominations can acquire the status of public-law corporation provided that they guarantee continuity with their bylaws and the number of their members.¹⁸ If these requirements are not met, these religious denominations must organize themselves as mere associations under private law. In 1977, the Islamic community in Germany applied for the status of a corporation of public law¹⁹ so that Islam would be publicly recognized and acknowledged as an equal religion before the law.²⁰ The District Court of Baden-Württemberg rejected the application (Jonker, 2000: 313). Two years later, a similar attempt was launched in Cologne with no success, although the applicants referred explicitly this time to Article 4 of the *German Constitution*, which guarantees freedom of faith and religious practice.²¹ For Mathias Rohe, an expert on the legal treatment of Islamic minorities in Germany, the applications made by various Muslim groups to obtain such status have been rejected on the ground that insufficient guarantees of their duration and stability were provided: "According to a decision of the conference of the state ministers of interior in 1954 the necessary stability of the community has to be proven over a period of 30 years. Up to now, the Jewish community reached this status, whereas no Muslim community succeeded in that so far. This is certainly due to the fact that there were no ideas of a long-lasting presence among larger groups of Muslims until recent times" (Rohe, 2004: 87).

Gerdien Jonker, a scholar well-known for her empirical work on religious minorities in Germany, has expressed the opposite view. She believes that the verdict was based not only on the fact that the judges believed the applicants to be pursuing right-wing activities but also due to the impression that " 'Islam' shaped the everyday life of its followers in a way that was not acceptable and not in accordance with the German understanding of what religion is about" (Jonker, 2000: 314). Moreover, she further suggests, these court rulings were "signals toward segregation and have had a palpable effect on contemporary Islamic religious life. For those Muslims who are observant, the clash between Islamic legal concepts and German legal guidelines has resulted in social isolation" (Jonker, 2000: 312). At present, no Islamic religious community has the legal status of a corporation under public law, unlike Christian churches and the Jewish community; Islamic organizations are rather considered private associations without legal standing.

On September 30, 2003, the German Supreme Court in *BVerfGE, 2BvR, 1436/02* upheld a Muslim woman's right to wear the headscarf as a teacher in a public school,²² but solely on the ground that Baden-Württemberg

lacked, at the time, any statutory law explicitly authorizing the school-board to ban the headscarf. While the court's opinion emphasized the importance of freedom of conscience as a principle, the court nevertheless transferred the final say on the matter to the democratic legislatures:

However, the *Land* legislature responsible is at liberty to create the statutory basis that until now has been lacking, for example by newly laying down the permissible degree of religious references in schools within the limits of the constitutional requirements. In doing this, the legislature must take into reasonable account the freedom of faith of the teachers and of the pupils affected, the parents' right of education and the State's duty of ideological and religious neutrality.

Under the Constitution, however, the restriction of fundamental freedoms and the balancing of conflicting fundamental rights are reserved to parliament, in order to ensure that decisions with such repercussions result from a procedure that gives the public the opportunity to develop and express its opinions, and that requires parliament to clarify the necessity and extent of encroachments upon fundamental rights in public debate.²³

Ultimately adopting a state neutrality approach, the German Supreme Court decided not to constitutionally protect minority rights against the will of democratic legislatures. With growing cultural and religious variety, the requirement of state neutrality has become more and more important, warns the court. And so it comes as little surprise that the state government in Stuttgart enacted a law forbidding the *hijab* in its schools in April 2004, a move promptly taken by a handful of other states on the basis of state's religious neutrality.²⁴

In exploring the complex semiotic of the headscarf, the German Supreme Court first departs from the French approach by giving agency to Muslim women to re-signify the meaning of the headscarf outside of the patriarchal structures of the family: ". . . *the interpretation of the headscarf may not be reduced to a symbol of the social repression of women*. Rather, the headscarf can for young Muslim women also be a freely chosen means to conduct a self-determined life without breaking with their culture of origin."²⁵

Presented as creating a "potential situation of danger"²⁶ in the classroom, the court rather regards the headscarf as an expression of political Islam: "In the most recent times, it is seen increasingly as a political symbol of Islamic fundamentalism that expresses the separation from values of western society."²⁷ Even though, "according to the findings of fact in the oral hearing, this is not the message that the complainant wishes to convey by wearing the headscarf,"²⁸ the court still expresses fear that such symbol

would, in and of itself, threaten the educational mission:

If teachers introduce religious or ideological references at school, this may adversely affect the state's duty to provide education which is to be carried out in neutrality It at least opens up the possibility of influence on the pupils and of conflicts with parents that may lead to a disturbance of the peace of the school and may *endanger* the carrying out of the school's duty to provide education. The dress of teachers that is religiously motivated and that is to be interpreted as the profession of a religious conviction may also have these effects

If a teacher wore a headscarf in lessons, this could lead to religious influence on the students and to conflicts within the class in question, even if the complainant had credibly denied any intention of recruitment or proselytising. The only decisive factor was the effect created in students by the sight of the headscarf. The headscarf motivated by Islam was a plainly visible religious symbol that the onlooker could not escape.²⁹

The causal relationship between, on the one hand, the headscarf as a religious (dangerous) symbol and, on the other, the ideological (negative) influence it may have on German students is not supported by the empirical evidence put before the court. In fact, not only is this line of reasoning not introduced by any of the expert witnesses but it is further explicitly stated by the court as *not* reflecting the reality of students' experience: "No tangible evidence could be seen in the proceedings before the constitutional courts that the complainant's appearance when wearing a headscarf created a concrete endangerment of the peace at school."³⁰ Moreover, the actual dynamic created by the court may pave the way to the Muslim woman's early and premature departure from the "public political culture" to an increasingly ghettoized, Islamic cultural space.

Although power struggles and competing negotiations have occurred over the symbolic dimension and function of the headscarf for the Muslim women wearing it in Western educational settings,³¹ we have tried to demonstrate how recent legal cases in France and Germany have not captured these contradictory voices. Reading both the Stasi Commission's analysis and the German Supreme Court's decision within the paradigm of identity politics allows one to examine the techniques of power that are being used in Western liberal states to hide those structures and practices in which socioeconomic inequality is rooted and reproduced. If strong political emphasis is placed on depicting the French headscarf as gender oppressive, as unfair, as unfortunate, and the German headscarf as threatening, unfamiliar, and dangerous, then an examination of state power expressed as techniques of maintaining class domination is surely not undertaken. In the same manner with which it portrays religious references at school as a threat to education,

and in the same manner with which it produces the headscarf as an individual, personal, subjective, and discretionary gesture, identity politics mystifies the powers that hide, construct, and *veil* the Muslim woman. Is the Muslim woman wearing the headscarf worse off economically? Where does she live and where does she go? What is her background legal situation as determined by immigration laws, social security, and employment law?

The Headscarf as Related to Socioeconomic Conditions

In political discourse, egalitarian social movements have shifted away from the politics of distribution to the politics of recognition (Fraser, 1995). Proponents of the politics of recognition argue that the liberal state has betrayed its commitment to neutrality by privileging the ways of life of dominant groups.³² Yet because oppressed groups have distinct cultures, experiences, and perspectives on social life, the appropriate remedies on the part of constitutional liberal states consist of affirming cultural differences in the public sphere. While proponents of the politics of recognition emphasize notions of identity, rights, and mutuality, a distributional analysis of justice focuses rather on class conflict within liberal constitutional regimes and demands the fair distribution of material goods as a response to material inequality generated in capitalist societies. The modern extension of this approach goes beyond class issues, however, and addresses the distribution of wealth and power between men and women as well as between racial groups,³³ and explores how law participates in the bargaining power within different structures such as the state or the family unit.³⁴

A liberal theory of minority rights, we argue, not only reduces the issues of immigrants and minorities to mere “identity politics,” but it simultaneously de-historicizes the immigrant rights debate and neglects the capitalist social formation and related socioeconomic realities that immigrants face in their struggle to “live the life of a civilized being”³⁵ (Marshall, 1965: 78). In this section, we use the example of Muslim women with headscarves in France and Germany to show that the political and legal debate over religious symbolism has removed questions of socioeconomic inequality from the political arena. Although we are interested in the distributional consequences of identity politics on the gendered lives of Muslim women living in constitutional liberal states in general, we develop in this section a sociological analysis in particular of Turkish immigrants living in Germany as well as of Muslim immigrants established in France.

Turkish Communities in Germany

The improper balance of socioeconomic distribution in Germany is clear: for example, non-EU citizen immigrants in Germany receive an unequal

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share of such material goods as education, income, wealth, and jobs. In February 2000, the German Federal Commissioner for Foreigners, Marieluise Beck, admitted that “the unemployment rate among immigrants remains at almost 20 percent, demonstrating that foreigners continue to be subject to unemployment twice as often as Germans” (efms, 2000). The plight of Turkish immigrants is even more devastating: 26.2 percent of all immigrants in the Turkish enclave of Kreuzberg are unemployed, and 42 percent receive social assistance.³⁶

In fact, immigrants form the majority of workers in the cleaning sector, the care of the elderly, and construction; moreover, they are at the bottom of the hierarchy in each of these sectors. Czarina Wilpert (1990) showed that 73 percent of immigrant women workers were employed in manual jobs, such as cleaning and service sector jobs, whereas only 30 percent of German women were employed in these sectors. In a recent study of Turkish immigrant women in Berlin, 59 percent of the participants stated that they are employed as cleaners; 43 percent of the currently unemployed women who participated in this research stated that they worked as cleaners in their last job (Erdem, 2004).

Not only are Turkish immigrants poor but they also and most importantly live and work as an insular group, in territorially defined subdivisions. The problem of chronic unemployment is exacerbated by a difficult integration of immigrant children in the German education system. Second and third-generation German citizens of Turkish background, and Turkish immigrant children, complain that they are not given equal opportunity in the education system (am Orde, 2002). First, the German education system determines a child’s prospective school career at an early age. Many German Turkish children are sorted out to lower levels of schooling, because they mostly speak Turkish at home and their language skills may be less developed than their German counterparts. Second, discrimination against immigrant children in German schools has had a tremendous effect on the German Turkish population (Keskin, 2002), and as a result many children drop out of school. Thus, “while only eight percent of German young people and adults remain without vocational training, the rate of unskilled Turkish young people is five times higher, at about 40 percent” (The Federal Government’s Commissioner for Foreigners’ Issues, 2000).

Many German state authorities argue that high levels of unemployment and low levels of educational achievement are related to immigrant incorporation. That is, in their view, once immigrants are better integrated into the German society, the problems of unemployment and educational achievement will automatically be solved. To this end, and in order to accelerate immigrant incorporation, German state authorities recently introduced several new measures, among them a new citizenship law. With this law, *Staatsangehörigkeitsgesetz*, the German state partially discarded in

1999 the traditional idea of ancestral origin, and began to naturalize the migrant population.³⁷ According to the *Staatsangehörigkeitgesetz*, children born in Germany after the year 2000 can be granted dual citizenship: German and their parents' native citizenship.³⁸

Although many Turkish immigrant associations encourage Turkish immigrants to apply for German citizenship, there has been a decreasing trend in these applications, specifically after the year 2000, arguably because according to article 85 of the *Zuwanderungsgesetz* (immigration law), German citizens are not allowed to hold the citizenship of another country, unless they can prove that they will suffer financial or legal loss³⁹ by this abandonment. Because German state authorities do not allow dual citizenship, the Turkish state introduced in 1995 a legal status for Turkish citizens who had to give up their citizenship; this status is known as the *Pembe Kart* (*Pink Card*) among immigrants. What it means is that Turkish immigrants who give up their Turkish citizenship in order to become German can maintain most of their legal and financial rights in Turkey simply by receiving the *Pink Card* from the Turkish embassy. According to Turkish law, *Pink Card* holders can buy and sell land in Turkey⁴⁰ and are entitled to inherit. There has been much confusion over the use of the *Pink Card*, and the arbitrariness of the German citizenship law has caused a certain amount of distrust among immigrants. As a result, many Turks have chosen to keep their Turkish passport until the chaos surrounding the *Pink Card* and the Turkish and German citizenship issues is clarified.

Muslim Communities in France

France represents a case different from Germany, partly because of its history of colonialism. Up to 1962, the largest number of immigrants came to France from its former colony, Algeria. Morocco, Tunisia, Senegal, Mali, and the Indian Ocean, all former French colonies, have also sent immigrants. And while Turkey was never a French colony, there are a significant number of Turks in France. Thus, when one talks about "foreigners" or "immigrants" in France, one is generally thinking of North Africans and/or Turks, all of whom are of predominantly Muslim background. In fact, Islam is France's second largest religion (Viorst, 1996).

Because of its *jus soli* principle in the *Code de la nationalité* (law of French citizenship), French state authorities encourage the naturalization of immigrants, especially the second generation, until, ideally, there are no "foreigners" left among second-generation immigrants. In fact, many Muslims have become French citizens either by birth or by naturalization (Bowen, 2004; also see Venel, 2004). Moreover, as in Germany, immigrants

are, de jure, entitled to employment, education, health insurance, and pensions. Unfortunately, however, neither the encouragement to naturalize nor the official equality of immigrants with respect to social rights eliminates the effects of segregated territorial boundaries on socioeconomic opportunities in French society.

In fact, Patrick Simon shows, based on data from *Enquête Histoire Familiale*, that the vast majority of immigrant groups are living in poverty in France (2003). He also reports that second-generation youths, whose parents are from Turkey and Morocco, are twice as likely to be unemployed as others among the total youth population (Simon, 2003; also see Tribalat, 1995). This alarming phenomenon is even more pronounced in the case of better-educated second-generation youth: "Turks and Moroccans with a high school diploma are more affected by unemployment than the average with same qualifications" (Simon 2003: 1112).

Moreover, the education statistics of the second-generation Turkish and Moroccan youth show high levels of school dropout: 46.4 percent of all Turkish second-generation youth, and 24.3 of all Moroccan and mixed-marriage⁴¹ second-generation youth drop out of school. The education level of Moroccan women is better than the Turkish women, however. On the one hand, while 22.6 percent of all Moroccan women drop out of school, 28.3 percent make it to university. On the other hand, 51.6 percent of all Turkish women drop out of school, and only 7.7 percent go to university. Simon compares these numbers to the French working class, and discovers that 26.5 percent of French working-class women drop out of school, a figure which is slightly higher than the number of Moroccan women who drop out (22.6 percent). However, almost twice as many Turkish women (51.6 percent) drop out of school (Simon, 2003: 1105).

The unemployment level among second-generation immigrants is significantly gendered in France as well. More women than men are unemployed. Further, unemployment rates are higher among certain immigrant groups. The unemployment rate of second-generation Turkish women stands at 47 percent, compared to Moroccan women, whose rate is 29.7 percent. This is dramatically different from other immigrant women groups, such as Portuguese immigrant women, who have a 20.4 percent unemployment level (Simon, 2003: 1112).

Conclusion

In contemporary constitutional democracies, the rise of "identity politics" has been concurrent with the delegitimation and de-centering of class struggle

as a political model for achieving social justice. Nancy Fraser has argued that economic injustices are compounded by persistent patterns of cultural denigration, while misrecognition harms are often increased by economic deprivations (1995). Hence, she concludes that “justice today requires *both* redistribution *and* recognition” (1995: 68). What is the relationship between recognition and redistribution in the headscarf debate in France and Germany? What are the social costs and shortcomings at stake in the legal monopoly of identity politics as the hegemonic emancipatory discourse? Does capturing the headscarf *as* a manifestation of self-identification simultaneously obscure the institutional arrangements that distribute powers and desires in the form of background legal rules and background social norms?

In France and Germany, Muslim immigrant groups often work in the segmented labor market and experience little, if at all any, social mobility. The unequal distribution of resources is structurally maintained in these receiving societies through the segregation of immigrant groups into certain sectors and themes. In both countries, however, the state apparatus discussed the headscarf in terms of religious rights, equality before the law, or state neutrality, while ignoring the socioeconomic aspects of Muslim women’s lives. This empirical “disappearance” is no surprise, given the limited scope and discursive power of identity politics.

The “recognition” discourse in constitutional liberal states also casts as “private” potentially political contests about distribution of resources. We have argued against the French and German approaches that have reduced the headscarf to an *individual* symbol of either gender oppression or political threat while simultaneously failing to address the broader *collective* role of constitutional liberal states in ensuring true and effective integration of immigrants at the socioeconomic level. Analytically, the “imagined communities”⁴² created by identity politics, and the representation of space as images of break, rupture, and discontinuity with the dominant society, has the effect of *veiling* the uneven distribution of goods and resources to immigrant Muslim groups. In this article, we have attempted to bring back to the fore such issues of material (mal)distribution—systematic impoverishment, increasing material inequality, “structural” unemployment, economic segmentation, and so on—systematically ignored by the categorical framework of the theory of recognition. In order to “‘transform’ the[m] into subjects” (Althusser, 1971: 118), the ideological state apparatus of constitutional liberal states must interpellate Muslim girls by encouraging meaningful integration; such *metissage* may well change, for the better, “the very parameters of what is considered ‘possible’ in the existing constellation” (Žižek, 1999: 119).

Notes

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1. German nationhood is rooted in the concept of the *Volksgeist* (spirit of the people), i.e., the people as an organic cultural and racial entity marked by a common language. See Von Savigny (1975 [1831]). Savigny's theory of law was directed in part against ideas that had come to prevail in France after the French Revolution and that had spread throughout Europe: that legislation is the primary source of law, and that the legislator's primary task is to protect the "rights of man." In opposing these views, Savigny considered law to be an integral part of the common consciousness of the nation, organically connected with the mind and the spirit of the people.
2. Estimates from 2004 show over five million Muslims in France, which is about 8% of the French population. That is the highest percentage of Muslims in a Western European country. See Basdevant-Gaudemet (2004: 62). In Germany, the Muslim community counts more than three million members out of a total population of 82 million, of whom the majority (89 percent) are Turkish. See Rohe (2004: 83).
3. Constitution du 4 octobre 1958, Article 1: "La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances."
4. *Loi du 9 décembre 1905, Loi concernant la séparation des Eglises et de l'Etat*. Article 2 reads:

La République ne reconnaît, ne salarie ni ne subventionne aucun culte. En conséquence, à partir du 1er janvier qui suivra la promulgation de la présente loi, seront supprimées des budgets de l'Etat, des départements et des communes, toutes dépenses relatives à l'exercice des cultes.

Pourront toutefois être inscrites auxdits budgets les dépenses relatives à des services d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics tels que lycées, collèges, écoles, hospices, asiles et prisons.

Les établissements publics du culte sont supprimés, sous réserve des dispositions énoncées à l'article 3.

5. However, there are some exceptions to this rule. As correctly suggested by Basdevant-Gaudemet (2004: 59).

"Equally, although there is no direct funding of religions from the public budget, public communities are not prohibited from granting subsidies to

cultural or social institutions of a religious nature, and religions can also benefit from major forms of indirect aid in the form of tax deductions, in the context of private denominational schools, or by other means.”

6. *Commission de réflexion sur l'application du principe de laïcité dans la République*, Rapport au Président de la République, France, December 11, 2003.
7. *Commission de réflexion sur l'application du principe de laïcité dans la République*, *Ibid.* The translation is ours: “Les tenues et signes religieux interdits sont les signes ostensibles, tels que grande croix, voile ou kippa. Ne sont pas regardés comme des signes manifestant une appartenance religieuse les signes discrets que sont par exemple médailles, petites croix, étoiles de David, mains de Fatimah, ou petits Coran.”
8. *Commission de réflexion sur l'application du principe de laïcité dans la République*, *Supra*, note 7, at Par. 3.3.2.1.
9. *Commission de réflexion sur l'application du principe de laïcité dans la République*, *Supra*, note 7. The translation is ours: “La question de la laïcité est réapparue en 1989 là où elle est née au XIXème siècle: à l'école. Sa mission est essentielle dans la République. Elle transmet les connaissances, forme à l'esprit critique, assure l'autonomie, l'ouverture à la diversité des cultures, et l'épanouissement de la personne, la formation des citoyens autant qu'un avenir professionnel. Elle prépare ainsi les citoyens de demain amenés à vivre ensemble au sein de la République.”
10. *L. n° 2004–228, 15 mars 2004, art. 1er et 3*, March 15, 2004.
11. *Commission de réflexion sur l'application du principe de laïcité dans la République*, *Supra*, note 7. The translation is ours: “Pour l'ensemble de la communauté scolaire, le port du voile est trop souvent source de conflits, de divisions et même de souffrances. Le caractère visible d'un signe religieux est ressenti par beaucoup comme contraire à la mission de l'école qui doit être un espace de neutralité et un lieu d'éveil de la conscience critique.”
12. We borrow this expression from Spivak (1994).
13. *Commission de réflexion sur l'application du principe de laïcité dans la République*, *Supra*, note 7. The translation is ours: “Les jeunes femmes se retrouvent victimes d'une résurgence du sexisme qui se traduit par diverses pressions et par des violences verbales, psychologiques ou physiques. Des jeunes gens leur imposent de porter des tenues couvrantes et asexuées, de baisser le regard à la vue d'un homme; à défaut de s'y conformer, elles sont stigmatisées comme 'putes.' ”
14. For an analysis of the “ideological state apparatus” as producing legitimating discourses, see Althusser (1971: 85–126).
15. The model of French individual assimilation is analyzed by Taguieff (1995: 13–28).
16. We borrow this expression from Michel Foucault, in *The History of Sexuality, Volume II, the Use of Pleasure* (1992).
17. See D. Kennedy (1997), *A Critique of Adjudication (fin de siècle)*, Harvard University Press, Cambridge, particularly Chapter 11.
18. This status provides far-reaching rights, such as the right to levy taxes from members of the community and to organize a parish, the right to employ people under a belief-oriented labour-law, the right to nominate members to

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- broadcast-councils, tax reductions for property placed under public property law, etc. See Rohe (2004: 87).
19. *Körperschaftsstatus*.
 20. See Vocking (1993).
 21. Article 4 (Freedom of faith, conscience, and creed) reads:
 1. Freedom of faith and conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.
 2. The undisturbed practice of religion shall be guaranteed.
 22. *BVerfGE, 2BvR, 1436/02*, Judgment of the Second Senate of September 24, 2003 on the basis of the oral hearing of June 3, 2003.
 23. *Ibid*, at Par. 72.
 24. See <http://www.dw-world.de/dw/article/0,1246372,00.html>.
 25. *BVerfGE, 2BvR*, *Supra*, note 24, at Par. II (5). This emphasis is ours.
 26. *BVerfGE, 2BvR*, *Supra*, note 24, at Par. III (1).
 27. *BVerfGE, 2BvR*, *Supra*, note 24 at Par. II (5) a.
 28. *Ibid*.
 29. *BVerfGE, 2BvR*, *Supra*, note 24, at Par. I (6).
 30. *BVerfGE, 2BvR*, *Supra*, note 24, at Par. II (5) d.
 31. See Ahmed (1992: 144–169).
 32. See W. Kymlicka (1995); J. Spinner (1994); J. Baker (1994); M. L. Minow (1995); C. Taylor (1994).
 33. See K. Crenshaw (1989); R. T. Ford (1992); bell hooks (1990); J. C. Williams (1991); J. Butler (1990); D. Cornell (1991); E. Kosofsky Sedgwick (1990).
 34. See R. Hale (1923).
 35. According to T. H. Marshall, the social element of citizenship involves “the right to a modicum of economic welfare and security to the right to share the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (1965: 78).
 36. See I. Beer and Reinfried Musch (2005) <http://www.sozialestadt.de/en/veroeffentlichungen/zwischenbilanz/2-berlin-english.shtml#2>. The data is from 2000, except the social assistance data which is from 1998.
 37. One of the strongest reactions to this came from the CDU/CSU (Christian Democratic Union/ Christian Social Union) parties. In January 1999, they organized a campaign against the changes and were supported by such dignitaries as the mayor of Berlin, Eberhardt Diepgen (Hürriyet, 1999). A major slogan of the campaign was “For integration—against dual nationality” (Klopp 2002: 2). Two Turkish immigrant associations, the TBB and the *Cemaat*, quickly responded with a joint counter campaign. In a press release, they said that the CDU/CSU campaign should be perceived as a prevention of immigrant integration, and they emphasized that a new definition of “German” should rightly include Germans with non-German background (TBB press release, January 12, 1999).
 38. However, this major change from *jus sanguinis* to *jus soli* also hinges on the following paradox: in order to be granted German citizenship, a child born in Germany has to give up the citizenship of his/her parents’ native country between the ages of eighteen to twenty three (Joppke, 1998; Beauftragte der

- Bundesregierung für Migration, Flüchtlinge und Integration, 2000; Schirmer, 2002).
39. The citizen should prove that her/his financial loss is more than 10,000 Euro per year.
 40. Until 2004, foreign citizens could not buy and sell land in Turkey. This law has changed recently and now non-Turkish citizens can also buy and sell land in Turkey.
 41. It should also be noted that mixed-marriages among the second generation of Turks is lower than among Moroccans (Simon, 2003).
 42. We borrow this expression and use of term from Benedict Anderson in *Imagined Communities: Reflections on the Origin and Spread of Nationalism*.

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