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The veil as exception and difference in French discourse and policy

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The Veil as Exception and Difference in French Discourse and Policy

A Thesis

Presented in Partial Fulfillment
of the Requirements for the Degree of
Master of Arts

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BY

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1. Introduction

In 2007, Nicolas Sarkozy's presidential campaign platform promised that under his administration there would be a new national debate to determine what it meant to be French in an increasingly globalized world.¹ The idea for this debate was anything but novel. It was part of an ongoing saga that had been playing out in France over the past several decades.

In the fall of 1989, three teenage, Muslim girls in Creil, France decided to wear their headscarves (*foulard* in French, *hijab* in Arabic) to public school, and were accused of violating France's policy of *laïcité*, or a particular French version of secularism.² The reaction of the education ministers led to a media frenzy that echoed over the next two decades. Known as the first *affaire du foulard*, the media's attention coincided with the bicentennial of the French Republic, which celebrated the values and accomplishments of the Enlightenment and the French Revolution, and a Presidential election. In 1994 and 2004, respectively, two other 'headscarf affairs' resulted in legislation banning the article of clothing, and other 'ostentatious' signs of religious affiliation in public schools. At least in part, the controversy over the 1994 affair was a response to a French integration policy and the Pasqua Laws, which set the new laws and standards for immigration policy and nationalization of French citizens, and in 2004, the banning of the headscarf (as well as other signs of religious affiliation in schools) in response to a reevaluation of French secularism.

¹ Marquand, Robert. 2009. "France's Sarkozy Launches Controversial National Identity Debate" *The Christian Science Monitor*. Nov 3, 2009.

² See Appendix A.

The three *affaires du foulard* have become synonymous with the crisis of French identity.

Others who have studied and analyzed the headscarves have focused, mainly, on the ways that Islam can or cannot be French. In this thesis, I want to reveal why the discussions about Islam, and particularly the headscarf, become all-or-nothing debates. I am looking at the ways that the French state positions Islam as something that is either compatible or more commonly, incompatible with French values.

In France, a systematic approach to ‘otherness’ is often times tied together with postcolonial confrontations with Islam. In France, the contemporary discussion posits the North African/Arab/Muslim Other against the Universalist values of the French national Republic I will use the headscarf affairs in France and the 2004 banning of ‘ostentatious’ signs of religious affiliation to trace how governance operates when a Universalist state comes in contact with the historical colonial. The State’s multiple rulings on religious symbols are an example of the confrontation of the French, republican, universalist state with the historicized, gendered, exoticized subject. I will argue that the banning of headscarf in public schools reveals the exceptional measures that the French state takes to neutralize differences.³

³ The veil and the different types of Islamic covering are contested from context to context. Women choose (in some cases it is not a choice) to veil for a number of complex reasons. One such interpretation, the veil represents a mechanism of seclusion between the public and the private sphere; when the woman is veiled, she is able to make the private sphere portable. In this sense, veiling can be explained as a political act. It is a reaction to outside power structures as well as internal reactions to those structures. Some individuals view this portable private sphere as an effective form of agency for women in Muslim societies. Some describe the veil described as ‘portable seclusion’. This ‘portable seclusion’ is not a lack of agency but allows women the choice to veil (any of the types of veiling) for different reasons.

The symbol of the veil in France is specifically read in place of the individuals who are using the symbols for personal, particular reasons.⁴ In France, the veil is seen as a symbol that represents difference. These readings of the veil become political and are used as a placeholder for certain, particular individuals and not for others creates boundaries for national inclusion and exclusion. When law regulates the veil in a complex context, such as France, it limits the complexities that the veil represents and everything that has been historically tied to the veil. Not only are these particular individuals grouped and essentialized but they are also excluded from the full rights and acceptance guaranteed to all French citizens. This concept of citizenship is not simply a matter of legal access to the rights of a citizen, but also includes being treated with equal respect and the intangible ability to inhabit the identity of 'Frenchness' if one so chooses to accept or pursue it.

1.1 Project Overview

A History of French Immigration and the Headscarf Affairs in France

Chapter two examines the debates surrounding the headscarf in France. I provide a detailed summary of the events surrounding the headscarf in France over the last two decades: 1989, 1994, and 2004. This chapter provides a brief summary of the states rulings on immigration and the headscarf throughout the 1900s.

The Veil in Colonial Algeria

Benhabib, Seyla. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press. 190; Göle, Nilüfer. 1996. *The Forbidden Modern: Civilization and Veiling*. Ann Arbor: University of Michigan Press; Shaikh, Nermeen. 2002. "Women and Islam: An Interview with Lila Abu-Lughod" *AsiaSource*. www.ciaonet.org/wps/abl02/index.html (Accessed 02-Jun-2010).

⁴ See Appendix A.

Chapter three traces the French colonial conquest of Algeria. I use Algeria as a case study because it provides a specific context to analyze. This provides the historical context for understanding France's contemporary situation. I analyze the role of the veil in relation to representations of female identity during France's colonial enterprise in Algeria. Historical effects of colonization and the process of Othering transcend time and space and play an important role in identity construction in contemporary France. The political manipulations of the veil in France are reminiscent of the manipulations of female identity and the veil during colonial Algeria. Analyzing women and symbols of femininity in the colonial context is important for understanding the way gendered identity is read in a postcolonial context.

France's Exceptional Universalism

Chapter four discusses Giorgio Agamben's *The State of Exception* and how it can be used to show how the French state uses Republican rhetoric to emphasize and excluded particular groups of individuals. Agamben's state of exception can be used to show how the problematic banning of the headscarf in public schools not only limits the possibilities for identity construction and expression by particular groups of individuals but also how the state limits the possibilities for understanding difference. First, I outline the Republican Universalist values and *laïcité*. Then I use Agamben to show how the state utilized the rhetoric of the French revolution in order to ban the headscarf in public schools in 2004. Using Agamben, I reveal how Republican Universalist values have been used to position the Other as a threat to the French nation.

I conclude this thesis by explaining that the headscarf affairs and the banning of the veil and other 'ostentatious' religious symbols in public schools is an example of a legal exercise, establishing a norm used to handle the presence of visible signs of difference in France. Although, the Republic posits itself as universal, when the values of this particular type of universalism are used to support hegemonic domination, which in turn creates a marginalized excluded population, the inclusionary aspect of the universal values is lost. This universal context then creates fissures between differing identity groups which become politicized.

2. A History of French Immigration and the Headscarf Affairs in France

In 1989, headscarves became front-page news in France. The headscarf affairs in France can be used to explain how the State's attempt at legally banning religious signs of 'ostentatious' nature does not address the social conceptions of identity and difference. The debate on secularism reveals the inner workings of the French Republic and its desire to create the universal subject. The augmentation of Islam and the representations of Muslim identity have become regulated in the Republic as a protectionist mechanism to preserve the French nation. The headscarf affairs are examples of the way identity is made political.

2.1 History of Immigration in France

In order to understand the confrontation of difference and with the headscarf, there must be an understanding of the history of the outsider in France. Immigration is not a new phenomenon in France; yet, immigration and the politics that surround it are often excluded from the collective French memory.⁵ One example used to shed light on the issue took place in 2010. An organized protest "*La Journée Sans immigrés – 24 Heures Sans Nous*" exposed the importance of the history of immigration and the immigrants' contemporary role in France.⁶ The laws and policies regarding immigration impact those who fall under their purview.

The population of foreign-born immigrants living in France in early the 20th century had remained consistently just under 3% of the general population until the

⁵ Noiriel, Gerard. 1996. *The French Melting Pot: Immigration, Citizenship and National Identity*. Minneapolis: University of Minnesota Press.

⁶ Lehn, Suzanne. 2009. "France: The Day Without Immigrants" *Global Voices Online*. <http://globalvoicesonline.org/2009/12/01/france-the-day-without-immigrants/> (Accessed 14-Jan-2010).

outbreak of World War I.⁷ Most of the migrant population before this time were individuals coming from neighboring European countries. Italians, for example constituted a large number of the migrant population from the 1870s through the 1940s.⁸

During World War I, France experienced a critical loss of the labor force. In order to keep the French economy running at a productive rate and avoid labor shortages, France opened its borders to foreign-born workers to fill temporary work positions. The percentage of foreign-born immigrants doubled during this time. These immigrants filled the jobs that French nationals often rejected. These were unskilled jobs, industrial jobs, and domestic work.⁹

The French government administered different tools for regulation and monitoring the immigrant populations. In the nineteenth century, the French government began issuing standardized identification cards that grouped individuals based on type of labor/skills, and at times ethnicity or religion. For example, these cards were used during the Vichy government, in collaboration with the German Nazi regime, when Jews were required to state their race on the identification card, for example. The use of these cards was, in part, to ensure that the migrant workers would only work where labor was necessary. In conjunction with the identification cards, France also passed a formal Nationality Code.¹⁰

⁷ Hargreaves, Alec. 2007. *Multi-Ethnic France: Immigration, politics, culture and society*. 2nd Ed. New York: Routledge. 17.

⁸ Lucassen, Leo. 2005. *The Immigrant Threat: The Integration of Old and New Migrants in Western Europe since 1850*. Urbana: University of Illinois Press. 74-93.

⁹ Noiriel, 1989. 102-104.

¹⁰ Noiriel, 1989. 60-64.

The laws surrounding both the identification cards and the Nationality Code shifted and reshaped themselves depending on the socio-political atmosphere in France. The first Nationality Code was recognized on June 26, 1889.¹¹ The law stated that any child born on French soil would be French (*jus soli*) and regulations on the naturalizations of foreigners would be loosened to allow for increased migration. The 1889 Nationality Code made it easier to naturalize foreigners to French citizens, which in turn supported the rebuilding of the French army following the Franco-Prussian War. In 1881, before the passage of the Code, 75,000 foreigners became naturalized citizens. By 1911, that number increased to 250,000.¹²

The 'Card and the Code' as Gerard Noiriel describes them, were mechanisms of governance and regulation of foreign-born populations living in France.¹³ The information provided on the card defined the foreign workers identity. This identity defined what rights would be given to these individuals at any time depending on their categorization. The 'Card and the Code' made it possible for foreigners to work in France but it also regulated their agency in France. For example, these limitations became a powerful tool for organizing these individuals when there were periods of political or economic crisis. As non-citizens, these people did not have control or power over their own legal right. They were at the will of the French government.

¹¹ Decouflé, Andre-Clement. 1992. "Historic Elements of the Politics of Nationality in France" in *Immigrants in Two Democracies: French and American Experience*. D. Horowitz and G. Noiriel, eds. New York: New York University Press.

¹² Lucassen, 2005. 89.

¹³ Noiriel, 1989. 66.

France's losses during World War I profoundly affected nationalization laws. France lost 1.3 million men, with another 1.1 million wounded.¹⁴ In 1927, France's Nationalization laws were further loosened. The end of World War II and the break up of French colonies caused a flooding of the French labor market, which in turn caused the borders slowly to tighten. The 1970s global oil crisis resulted in a slowing of major manufacturing operations in France and around the world. This caused the demand for labor to also drop. Due to the decrease in demand for labor, major migration regulations were put into place to curb the influx of immigrants that could not be guaranteed work. By the end of 1970s French immigration was significantly slowed. The borders would remain strictly regulated through the 1980s. In 1994, the Pasqua Laws, or the laws that halted immigration into France, would become the standard policy on immigration and naturalization in to the Republic.

Immigrants from European countries were treated differently than those from the former colonies of North Africa. Post-colonial migrant workers continued to be viewed as 'subjects' not citizens by the French state.¹⁵ Due to the historical colonial relationship between France and North Africa, the social, political and economic rights granted to immigrants from those countries were handled differently than other foreign-born nationals. Algerian immigrants represented a specific case because of their colonial relationship and history with France. In 1914, France allowed members of colonized Algeria to travel to the métropole. They were

¹⁴ Lacussen, 2005. 90.

¹⁵ Lewis, Mary Dewhurst. 2007. *The Boundaries of the Republic: Migrant Rights and the Limits of Universalism in France, 1918-1940*. Stanford: Stanford University Press. 188.

not foreigners but internal migrants within the French state. Random arrests made against North African immigrants were not uncommon through the 1920s but did not become common practice against immigrants of European descent until World War II. During the Great Depression of the 1930s, programs that help support North African immigrants and their families were also cut.¹⁶ Social representations of North Africans also painted an unkind picture. For example, although they were legally not foreigners, Algerian migrants were seen as dirty and uncivilized 'Arabs' although most were Berbers from the Kabylia region of Algeria. They were positioned in the media and in the minds of the metropolitan French as violent criminals and sexual deviants.¹⁷

Organizations that represented the civil and social rights of these immigrant workers began forming in the time leading up to the Second World War. One such organization was the North African Indigenous Affairs Service (SAINA), which help serve as intermediaries between these individuals and the French state.¹⁸ This is only one example of the many minority and Muslim groups that have formed over the past several decades in France in order to give political voice for underrepresented individuals.

2.2 1988-1989: The Presidential Elections of 1988 and the First Headscarf Affair

The arrival of the growing immigrant population in France required the Republic to face its changing national identity. In the year of the celebration of the

¹⁶ Lewis, 2007. 189.

¹⁷ Lucassen, 2005. 181.

¹⁸ Lewis, 2007, 189.

bicentennial of the Declaration of the Rights of Man and of Citizen, new challenges confronted *laïcité*, or the French version of Universal secularism. This reflected the changing social and political environment within the French Republic. In the mid-late 1980s, France was in the midst of reforming their laws on nationality. The Parliament revised Article 44 of the *Code de la Nationalité Française* (CNF) making children of immigrant families ineligible for automatic French citizenship under the tradition of *jus soli*, or birth within the national territory of France. The government would now require children of immigrants born in France to petition for French nationality. The French government claimed the new petition process gave children of immigrant families a choice in whether to become a French citizen, instead of citizenship automatically forced upon them by the state. In reality, it increased the difficulty for the children of immigrants to request and be granted citizenship due to the limitations and conditions attached to the new application for citizenship. These conditionalities were tied to the level of integration that the child would receive before being granted full French citizenship. The State wanted to be assured that children of immigrant families were loyal to the French Republic. This was accomplished by proving their loyalty through successful integration of their children into French society.¹⁹

The proposed revision was met with heavy resistance by a wide variety of public interest groups throughout France. A Nationality Commission (*Commission de la Nationalité*) assembled to determine the underpinnings of the debate on national identity and what recommendations could be made for reforming France's

¹⁹ Hargreaves, 2007. 155-156.

nationality laws and what it meant to be French from a citizen's point of view.²⁰ The Commission presented its findings in the January of 1988 forum of formal hearings. Jacques Chirac, 1988 conservative Presidential candidate (RPR), pushed to have the legislation passed before the spring elections of that year. The Commission reported that nationality for immigrant children born *jus soli* should be given the choice whether to accept French citizenship, simply by checking a box and adding a signature, not by an oath of allegiance. Criminal offenses could not hinder an individual's integration until 18 years of age. The Commission also suggested that the French state should not discriminate in providing citizenship on the presupposition of an individual's moral character or poor assimilation.²¹ Although Chirac lost the 1988 elections to socialist incumbent president François Mitterrand, the debate on nationality and identity would continue to ferment into the early 1990s. From 1990 until 1993, the *Haut Conseil à l'Intégration* worked to analyze the effectiveness of the French integration system and if there were any ways to improve assimilation to the Republic.²² The reforms suggested by the Nationality Commission in 1988 became the foundation for the 1994 Pasqua Laws that would institute France's current Nationalization policy.

The debate on nationality and integration became amalgamated with new debates on secularism and Islam in the Republic. In September of 1989, Ernest Chenière, principal of Gabriel Havez School in the Parisian suburb of Creil, suspended three Muslim girls- Leila, Samira, and Fatima- all of North African (two

²⁰ Favell, Adrian. 1998. *Philosophies of Integration: Immigration and the idea of citizenship in France and Great Britain*. Hampshire: MacMillan Press LTD. 42-43.

²¹ Hargreaves, 2007, 157-159.

²² Favell, 1998, 43.

Moroccan and one Tunisian) descent (ages 13 and 14). Chenière, disciplined the young girls for wearing their headscarves in the classroom.²³ A meeting between Chenière, the girls, and their parents followed the suspension where they discussed and agreed on a compromise that the girls would not cover their heads in the classroom. The families of the girls contacted the head of *Intégrité* and the former president of the National Federation of Muslims in France, M. Daniel Youssouf Leclercq, for advice on the matter. Leclercq determined that if the girls were to wear the scarf, it would be a conscious political action that challenged the foundations of France's Republican values.²⁴ The suspension carried out by Chenière, was in defense of France's policy of *laïcité*, the French Republican version of secularism which removes religion from the public space of France.

On October 4th, France's Leftist newspaper *Libération* broke the story.²⁵ From that moment, the media attention was fixed on these three girls. They became the center of a debate on *laïcité* and symbolized the future of secularism in France. These events were not only timed with the bicentennial of the French Republic, but also legislation that protected a student's right to freedom of expression. An anti-racist organization, SOS-Racisme appealed to then Minister of Education, Lionel Jospin (Socialist Party), arguing that Chenière victimized these girls on the basis of their religious affiliation. Jospin sought the advice of the *Conseil d'État*, France's highest administrative court, in November of 1989. The *Conseil d'État* became responsible for investigating whether or not wearing the headscarf in public school,

²³ Hargreaves, 2007. 111.

²⁴ Benhabib, 2004. 186-187.

²⁵ Silverstein, Paul. 2004. *Algeria in France: Transpolitics, Race and Nation*. Bloomington: Indiana University Press, 139.

in fact, violated France's policy on secularism. If so, what religious signs would be allowed in schools, and what would the consequences be for those who chose to violate the ruling?²⁶ The Conseil's decision would have to be conscious of the protection of *laïcité* and the freedom of religion expressed by the students.²⁷ The *Conseil d'État* overturned Chenière's decision and reinstated the three girls into the public school on the ruling that the headscarf did not violate France's policy of *laïcité*. Jospin later released a circular explaining the details of the *Conseil d'État's* ruling. Several similar cases developed in the years following the first ruling, and each case was left up to the discretion of the regional educational administrator or the *Conseil d'État*.^{28 29}

2.3 1993-1994: Pasqua Laws and the Bayrou Circular

The reform on nationality, originally proposed by the 1988 Nationality Commission, was revisited in a movement headed by Charles Pasqua (Gaullist), then Interior Minister in 1993. Supporters of the original reform pushed further for the revision of Article 23 of the Code de la Nationalité Française (CNF). At the time, Article 23 ensured that children of immigrants living in France from France's former colonies would automatically be given citizenship at birth. The proposed reform would require that the parents would had to have lived in France for 5 years before the birth of their children in order for these children to receive automatic

²⁶ Beller, Elisa. 2004. "The Headscarf Affair: The Conseil d'État on the Role of Religion and Culture in French Society". *Texas International Law Journal*. Vol 39:581-622.

²⁷ Benhabib, 2004. 188.

²⁸ Silverstein, 2004, 140; Hargreaves, 2007, 112.

²⁹ The media often used political or mainstream cartoons of veiled women in order to create a common image of Islam and women in France. These cartoons mirrored the rhetoric that Islam and difference did not belong in schools or in France. Bloul, Rachel. 1994. "Veiled Objects of (Post-)Colonial Desire: Forbidden Women Disrupt the Republican Fraternal Sphere." *Australian Journal of Anthropology* 5 (1-2): 113-123.

citizenship. The bill was passed in 1993 and the Pasqua Laws were enacted on January 1, 1994.³⁰ This law also limited the rights of asylum seekers and gave the French police more freedom in conducting identity checks.³¹ The passage of the Pasqua Laws increased harassment and stigmatizing of minority groups. From then on, Charles Pasqua made it his mission to promote zero immigration and keep immigrants out of the workforce in France.³²

In public schools, Center-right Minister of Education, François Bayrou took a tougher position on secularism and allowing religious signs in schools than education ministers of the past. In autumn of 1994, Bayrou produced an education circular reiterating the policy of *laïcité* and the standards that all educators and educational administrators should support. The circular stated that *laïcité* in the educational system was integral for the creation of a unified nation of France sharing a common French destiny.³³ Schools would be a place free of discrimination based on sex, class, culture or race. Religious signs that disrupt the learning environment, must be deemed ‘ostentatious’ and therefore removed from the environment. Bayrou states “These symbols are, in themselves, elements of proselytism, especially when they are accompanied with a calling into question of certain courses or disciplines, and they put at risk the security of the children or they introduce

³⁰ Hargreaves, 2007, 159.

³¹ Doty, Roxanne Lynn. 2003. *Anti-Immigration in Western Democracies: Statecraft, desire, and the politics of exclusion*. New York: Routledge, 66-67.

³² Body-Gendrot, Sophie. 1995. “Models of Immigrant Integration in France and the United States: Signs of Convergence?” in *The Bubbling Cauldron: Race Ethnicity, and the Urban Crisis*. Michael Peter Smith and Joe R. Feagin, eds. Minneapolis: University of Minnesota Press, 253.

³³ O’Brien, Robert. 2005, *The Stasi Report: The Report of the Committee of Reflection on the Application of the Principle of Secularity in the Republic*. Buffalo: William S. Hein & Co., Inc, 1-2.

disruptions in the common life of the institution.”³⁴ Discreet signs would be accepted because they do not disrupt the “common life of the institution.” The Bayrou Circulaire and the elections of Jacques Chirac in 1995, positioned immigration and national identity reform as essential components for the future of policy and social reform in the French Republic

2.4 2003-2004: The Stasi Report

While the Pasqua Laws tightened immigration and integration policy in France and the Bayrou Circular attempted to define the difference between ‘ostentatious’ and ‘discreet’ signs more clearly, there continued to be a variety of rulings and consequences surrounding the wearing of the headscarf in the French public school system. On July 3rd 2003, Jacques Chirac appointed Bernard Stasi to head a committee of nineteen members to analyze the status of secularism in France.³⁵ A minister and expert on immigration and integration, Stasi headed the Committee of Reflection on the Application of the Principle of Secularity. The commission surveyed civil servants, educators, students, business leaders, religious officials, and several other diverse groups of individuals to understand how the people of France understood *laïcité* today, and the issues that individuals saw for the *laïcité* and Republicanism of the future. The Commission’s goal was to determine where the gaps were in the policy of secularism. The main concern voiced was the role of the State in monitoring religious expression, specifically the role of religion and religious expression in the educational system.

³⁴ See Appendix A.

³⁵ Debray, Regis. 2004. *Ce Que Nous Voile le Voile*. Paris : Gaillmard. 9.

The Commission re-affirmed secularism as a part of French history, and freedom of religion as a fundamental value of the French Republic. One condition of freedom of religion in France is that, while religion is free, it remains in the private sphere. The 1905 division of Church and State was an initiative to transfer power from the Catholic Church and place it in the hands of the State. By 2003, the State, no longer concerned with the problem of Catholicism, was weary of the rise of Islam in the Republic as a threat to French secularism. In that same year, the French government established the French Council of Muslim Faith (*Conseil Français du Culte Musulman*) representing 5 million of France's Muslims.³⁶ At that time the council consisted of four branches: the Union des Organisations Islamique de France (UIOF) which was the most radical of the branches and consisted of a mixing of different Muslim representatives from different backgrounds, and the other three branches representing Muslims from Morocco, Turkey and Algeria. Currently the council experiences many divisions when it comes to determining their position on particular issues due to the clashing views of many of its group members.³⁷

Tensions toward Muslims across Europe were high following the September 11th attacks on the United States. As previously explained, the influx of North African immigrants during the 1950s and 1960s had brought the confrontation between the State and Islam to the forefront of French integration policy. The Commission's reports argue that Islam and Muslim cultures are not incompatible with French secularism. The Commission agreed that there are ways in which Islam is able to adjust to the secular framework of the Republic. This can only be true if

³⁶ Benhabib, 2004. 193.

³⁷ Hargreaves, 2007. 108.

Islam or Muslim cultures do not interfere with 'freedom of conscience.' Freedom of conscience gives the individual the right to express their religious preference, as long as that expression does not interfere with the order of the state. The Commission recognized that in the case of Islam, the state now must decide whether the expression of Islamic faith and culture in fact interferes with that order of the Republic. Yet Islam is sometimes viewed as a political statement rather than a religious faith. The politics skew the analysis of individuals on a case-by-case basis surrounding the different, complex issues facing Muslims in France and across Europe.

Secularism in Schools

The education system in France has become the setting for most of the debate on secularism. Secularism in the public school system was established between 1881 and 1882.³⁸ The French Republic requires that the educational system is a space free from discrimination, or pressures that influence the freedom of conscience of the students. The educational space is one that must remain neutral. The French school system is the environment responsible for the 'common French destiny.' The educational sphere is where, at least in theory, individuals become equal citizens and assimilated members of the state. Each student in France is promised the same neutral and uniform experience across the Republic.

³⁸ Boyzon-Fradet, Danielle. 1992. "The French Education System: Springboard or Obstacle to Integration?" in *Immigrants in Two Democracies: French and American Experience*. D Horowitz and G. Noiriel, eds. New York: New York University Press. 149.

Children in France are required to attend school from ages 6 to 16.³⁹ Since 1936, foreigners have been required by law to enroll their children in French schools.⁴⁰ Immigrants are permitted to open private schools although there is little public funding for such schools. On the other hand, the public school system is promoted as the forum for assimilation and integration into the French nation. This is the reason schools became the forum of the debates on secularism and identity. The first two headscarf affairs questioned whether or not the Muslim headscarf interfered with the policy of *laïcité* and public order. The Stasi Commission determined that the headscarf did interfere with secularism because it created a distraction within the school space. The headscarf was not the only religious symbol banned as an indiscreet sign of religious affiliation, but also the yarmulke and large crosses.

Banning ostentatious signs of religious affiliation was not the only suggestion that the Stasi Commission suggested for the protection of secularism in the French Republic. The Commission's findings claimed a number of problems within the Republic had to be addressed before the law would be able to move forward to protect the policy of *laïcité* that is so important to the French identity. For example, the Commission suggested that the state address the gaps in historical education of Islam and Judaism as world religious and cultural lifestyles. The Commission also declared that an in-depth understanding of the colonial past and the process of immigration and integration is required for understanding differences with sensitivity to the protection of universalist ideals.

³⁹ Hargreaves, 2007. 78.

⁴⁰ Boyzen-Fradet, 1992. 152.

The Republic's removal of religious signs from the educational system (public schools through the Baccalaureate, not the university system) was supported by the argument that the schools were a place of neutrality where French identity is instilled in the pupils. The State and the Commission argue that the religious signs such as the headscarf, large crosses, and yarmulkes disrupt the students' freedom of conscience and the creation of a common French identity. The Commission suggested that the Republic not incorporate a new secularity without teaching a history of colonialism or an understanding of world religions and global cultures, though that recommendation was left out of the final passed law.

Class, race, gender, and ethnicity continue to divide and position individuals in a social power structure. The legal sterilization of difference does not address these slippages. By banning the headscarf and other 'ostentatious' signs of difference in schools, the state does not address the social and political power structure that underpins every conversation about identity. The French constitution grants each citizen the same legal status in the eyes of the state. But recognizing a legal individual does not translate to a 'true' equality among different social groups.

2.5 Conclusion

The three different headscarf affairs exposed the French government to the instability of their universally structured Republic. Although it was determined by the Stasi Commission that Islam did not violate secularism, conflict surrounding Islamic, as well as other minorities, continued. The headscarf affairs were not the only areas of tension for France in the 2000s. In 2005, riots broke out in the

banlieues of major urban areas across France. The riots were a reaction to the economic, employment, education and housing disadvantages that many minority groups face. In areas such as Dreux, poverty, not the status of Islam in France is the main concern among Muslim citizens.⁴¹ The individuals who participated in the riots were socially young, raced, ethnicized, classed, marginalized males.⁴² These individuals were not immigrants but French citizens protesting against their lack of integration and recognition by the state. Although these young men were legal citizens, they continued to be underrepresented and discriminated against by the social and economic structures of the state. The failure of the state to recognize the fissures within their social structure became a source of tension. Sarkozy, who was then France's interior minister claimed that the solution to the riots was to 'clean out' the 'thugs' from these neighborhoods, the neighborhoods that were predominantly inhabited by the Arab community of France.⁴³ The government enacted a state of emergency. Their solution to dealing with these problems was increased policing, which then caused further harassment and stigmatization of this population of people.⁴⁴

⁴¹ Kuper, Simon. 2009. "Immigrant Muslims in Belleville." *Financial Times*. Oct 2 2009.

⁴² Hargreaves, Alec. 2005. "An Emperor with No Clothes?". *Social Science Research Council*. Retrieved Oct. 5 2009 from <http://riotsfrance.ssrc.org/Hargreaves/>.

⁴³ Smith, Craig. 2005. "Immigrant Rioting Flares France for the Ninth Night". *The New York Times*. Nov. 4, 2005.

⁴⁴ Murray, Graham. 2006. "France: the riots and the Republic." *Race and Class*. Vol. 47(4): 26-45.

3. The Veil in Colonial Algeria

France's imperial history plays an important role in providing the background for the headscarf affairs in France. The French occupation of Algeria from 1830 until the early 1950s and the war for independence that followed provides such an example. French colonialism differed on a case-by-case, colony-by-colony basis, although some similarities were seen throughout the empire. Along with the ideas of French republican enlightenment, French Colonialism, as colonialism elsewhere, brutalized entire populations and created hostile environments for identity constitution and expression of agency. The impact of colonial rule and identity construction can be seen in the shifting roles/identities of Algerian women during French rule of the territory and after independence. The ways that women and symbols of femininity were represented and manipulated in the colonial context is important for understanding how those representations continue to be connected to the symbol of the veil in France today.

3.1 Orientalism

French imperialism in Algeria can be partially explained by Edward Said's theory of Orientalism. Although at times problematic, Said's Orientalism can be used to analyze the ways the French systematically restructured the power dynamic in Algeria through much deeper and profound ways than an exclusively military conquest and rule. The French conquered Algeria in stages, first military, then through an infiltration of the daily lives of the Algerians. Here, I will explain Said's Orientalism and how colonization used this discourse in Algeria to exploit populations and amplify the role of patriarchy in and historical gender differences.

In 1978, Edward Said's *Orientalism* opened a new type of discussion on the role of colonialism and its implications for the future. Using Michel Foucault's discursive framework for analysis, Said reveals the structural violence that took place between the 'West' (Europe) and the 'Orient'.⁴⁵ Foucault's theory of discourse develops from a number of European neo-Marxist thinkers. In his work, *The Archaeology of Knowledge*, Foucault explains that discourse is not simply a series of words, phrases, and understandings. Discourse also builds on itself and is internally structured.⁴⁶

The 'Orient' was an imaginary concept that came to represent the land areas of the Middle East, Africa, Asia, and South America. The Orient is a constructed fantasy of the Western imagination. Europeans dismantled the previous structures of the land and built their colonies in a way that aimed to fulfill the imagination of those who had only seen the Orient in representations and exhibits in Europe.⁴⁷ Upon arriving in the Orient, Europeans found their imaginations were not fulfilled. Instead, a new world was created in the colony to satisfy this European exotic fantasy. Europeans colonized lands and created a world around them that satiated that phantasm, but could never fulfill it, because it did not truly exist.

But the Orient itself is not only an imaginary place. Said explains, "The Orient is an integral part of the European material civilization and culture."⁴⁸ The Orient became a European production. The Orient was a stage, a theater in which Europeans could act out their fantasies. Discursive structures of Orientalism

⁴⁵ Said, Edward. 1978. *Orientalism*. New York: Vintage.

⁴⁶ Mills, Sara. 1997. *Discourse*. London: Routledge. 48-49.

⁴⁷ Mitchell, Timothy. 1988. *Colonizing Egypt*. Berkeley: University of California Press, 35.

⁴⁸ Said, 1978. 2.

controlled the actors and set the scene. Through colonization and the creating of these new scenes of the Orient, the *colons* recreated the history that once existed for the now colonized individuals.⁴⁹ By defining the Orient in their own terms, Europeans were able to set the limitations of what could or couldn't exist in this context.

The construction and definition of the colony in European terms and ideas created a discursive structure that also reflected how the people of this colony were viewed and organized as subjects, for example, of French imperialism. The people of the Orient were considered 'uncivilized', 'backward' and 'barbaric' by Europeans, therefore it was the European's responsibility to Westernize the people of the Orient, thus civilizing them. This Orientalist mindset framed the policies that affected the lives of Algerian people. As I explain later in this chapter, the 'emancipation' movement of the French government during the 1950s was a function of this Orientalist discourse.

The remainder of this chapter is focused on the ways that the French restructured the colony in Algeria to fulfill their Orientalist ideal of the uncharted and uncivilized territory. Not only did they create the definitions of political, legal, and economic constructs of the colony. They also defined the identity of the people operating in that context. An important example is the way that the identity and role of Algerian women was defined by colonizer and manipulated to position these women in such a way to take the power away from the Algerian people as a whole. This was done many times by controlling the symbol of the veil.

⁴⁹ Lazreg, Marnia. 1994. *The Eloquence of Silence: Algerian Women in Question*. New York: Routledge, 36.

3.2 The Conquest of Algeria

The colonization of Algeria is an example of the materialization of the European imaginary of the Orient. The French organized the population of Algeria in such a way to stabilize control of the population and embed a European mindset into the Algerian people.⁵⁰ ⁵¹ Before colonization, Algeria was mainly a rural territory of a number of diverse settlements inhabited by tribes. The French settlers slowly moved into the rural lands with the intention of 'civilizing' the Algerian agriculture industry.⁵² Another strategy of colonization became known as *colonisation de peuplement*, or the settler strategy.⁵³ The more French that occupied the Algerian territory, the more secure the French position became. In 1841, 37,374 *piet-noirs* or the French population who had settled in the colony had increased to 200,000 by 1870.⁵⁴ That population continued to rise, reaching 733,206 in the years

⁵⁰ The territory that is now Algeria has been a crossroads for many conquering empires. In 1830, before the French occupation, Algeria had been under the loose control of the Ottoman Turks. Leading up to the French conquest, French merchant ships had continuously fallen victim to pirate attacks in the Mediterranean off the coast of Africa. The French sought support from the Ottomans but instead were met with insults and hostility.⁵⁰ In 1827, the French imposed a blockade on Algeria and in 1830 with the assistance of 34,000 French soldiers, Turkish occupied Algiers fell.⁵⁰ In 1834, the French annexed the occupied territory, which was a result of the instability of the French July Monarchy, when the Bourbon French monarchy reclaimed governmental authority in France, post-revolution.⁵⁰ In order to reestablish the strength of the monarchy and France, the monarchy solidified France's colonial interests. The French securely established their government in Algeria by 1841. SEMP. 2007. "Colonizing and Decolonizing French Algeria, 1830-1962" in *Suburban Emergency Management Project*. Dec. 26, 2007.

http://semp.us/publications/biot_printview.php?BiotID=487 (Accessed 03-Jun-2010); Horne, Alistair. 2006. *A Savage War of Peace: Algeria 1954-1962*. New York: New York Review of Books.; Metz, Helen Chapan, ed. 1994. "Algeria: A Country of Study". *Washington: GPO for the Library of Congress*, <http://countrystudies.us/algeria.htm> (Accessed 03-Jun-2010); Price, Roger. 2005. *A Concise History of France*. 2nd Ed. Cambridge: Cambridge University Press. 193-198.

⁵¹ Europeans would take the images they created in the Orient and recreate them in the salons and palaces of Europe, perpetuating the myth they believed to be the Oriental phantasm.

Pao, Angela. 1998. *The Orient of the Boulevards: Exoticism, Empire and Nineteenth-Century French Theater*. Philadelphia: University of Pennsylvania Press.

⁵² MacMaster, Neil. 1997. *Colonial Migrants and Racism: Algerians in France, 1900-62*. Hampshire: MacMillan Press.

⁵³ MacMaster, 1997. 26.

⁵⁴ Horne, 2006, 30-32.

between 1921 and 1933.⁵⁵ Table 1 shows the distribution of the population before the revolution in 1954. This chart shows that although the indigenous population had migrated to the urban areas, most of the non-European population of Algeria remained in the rural areas.

Table 1: Geographical distribution of European and Muslim populations c. 1954⁵⁶

Area	European Populations	Muslim Population
Zone 1 47 Major Towns	800,000	1,430,000
Zone 2 Evolved Small Towns and Communes (30,000 sq. km)	180,000	1,830,000
Zone 3 Under-developed Rural Areas (200,000 sq. km)	36,000	5,450,000

After the settler colony had been established, the French now had to construct the new social, political and economic structures of the colony. The French destroyed any institutions left by the Turks or anyone else who had set up bureaucracy or socio-political-economic structures in Algeria. Documents were destroyed and the bureaucratic structure that previously existed was rebuilt according to the French model.

The French began to acquire and accumulate more Algerian lands from around 1871 to 1920. Pre-colonial Algerian cities were used mostly as centers of trade. European travelers and migrants flooded the large cities of Algiers, Oran, and Constantine. The colonial enterprise was not only to acquire lands, but to expand on the French economic empire. The French needed to establish their economic

⁵⁵ SEMP, 2007.

⁵⁶ MacMaster, Neil. 2009. *Burning the Veil: The Algerian war and the 'emancipation' of Muslim women, 1954-62*. Manchester: Manchester University Press. 29.

market in the Algerian colony. The first step towards instituting a capitalist market society is the privatization of communal lands.⁵⁷ Private property was viewed as a necessary element for founding a civilization.⁵⁸ This phase of French colonization relied heavily on legal privatization of these lands from existing tribal communities. The French also bought potentially valuable lands in order to build French settlements.⁵⁹ By the 1920s, the French settlers had taken over the best land in Algeria and forced the colonized population to the undesirable farming land.⁶⁰ The apparent universality of the legality of private property laws allowed the French colons to dismantle and reconstruct Algerian cities and villages according to a European model.

The French government created villages and colonists were invited to occupy these newly established European-style spaces.⁶¹ In 1865, the *senatus-consulte* law divided the main tribes into smaller *douars*.⁶² The passage of this law reduced their tribal unity to communal lands and tied the tribes to specific areas of land throughout the territory, thus uprooting families. This law also created a clear division between those who held of full French citizenship, or the colonizers, and the Algerians, who were considered second-class citizens under the Muslim personal status law. The law provided the French with the justification for ruling the Algerians, who outnumbered the French without violating their Universalist

⁵⁷ Polanyi, Karl. 1944. *The Great Transformation: The Political and Economic Origins of our time*. Boston: Beacon.

⁵⁸ Mitchell, Timothy. 2002. *Rule of Experts: Egypt, Techno-politics and Modernity*. Chicago: University of Chicago Press.

⁵⁹ Metz, 1994.

⁶⁰ MacMaster, 2009. 28.

⁶¹ SEMP, 2007.

⁶² MacMaster, 1997.

Republican values by stating that the Algerians did not have full citizenship, therefore could not be counted as having equal access to the universal rights provided by the Republic. The discussions surrounding the status of Algerians as citizens were continually referenced by Orientalist rhetoric, noting the ‘backward’ nature of the Algerian people and the social conventions they practiced.⁶³ These policies, alongside extreme tax hikes on imported and produced goods embedded the European market into the Algerian socio-economic structure. French colonialism also revoked the power of Islamic law that protected female inheritance. These revised land laws left women with little legal rights to the land belonging to them.⁶⁴

Although the French colonization of Algeria was extensive, the day to day lives of the average families were not drastically changed. The French government did not recognize Algerians as equal citizens, but people in the colony worked closely together. In fact, the French and the Algerians lived alongside one another; children attended school together, adults worked with one another and families would be invited into each other’s homes.⁶⁵ This complicated the relationship between the two groups; although they lived together and shared similar experiences, they were never politically equal in the eyes of the government.

3.3 Women in Colonial Algeria

Women experienced colonialism in ways much different than men in Algeria. Until the revolution, Algerian girls attended schools at the rate of one in sixteen,

⁶³ MacMaster, 2009. 50-51.

⁶⁴ Lazreg, 1994, 44-45.

⁶⁵ Djebar, Assia. 1985. *Fantasia: An Algerian Cavalcade*. Portsmouth, NH: Heinemann Press.

while Algerian boys had attended at the rate of one in five. 1948 statistics show that 90% of boys age ten and up were illiterate compared to 96% of girls that age. These numbers reflect the lack of investment on behalf of the French government in education for all Algerians. Specifically, Algerian girls were victims of a patriarchal system that regulated the movement of girls in the public space.⁶⁶

Some argue that throughout Algeria's history, the status of women has been inferior to men and they have often times been misrepresented, politically, socially, and economically.⁶⁷ Others reveal that although patriarchy manifested itself in Algeria, matriarchy continued to play an important role in establishing the gender roles. For example, Frantz Fanon explains, "the role of the Algerian mother, that of the grandmother, the aunt and the 'old woman', were inventoried and defined."⁶⁸ In the context of Islamic societies, there are often two realms; the public space and the private space. Women often represent the private space, while men inhabit the public. The boundaries of the public and private depend on a number of factors in each different context. Every Islamic society has a different interpretation of the division of public and private. These divisions are not always fixed, but shift with political and social changes. Women occupy the private space, which the home and family represent. Men occupy the public space, which is the space of politics, work and religious practices.⁶⁹ Although Islamic societies define these spaces in different terms, these concepts are not much different from Western historical traditions of

⁶⁶ MacMaster, 2009. 29-30.

⁶⁷ Heggoy, Alf Andrew. 1974. "On the Evolution of Algerian Women" *African Studies Review*, Vol 17, No 2 (Sept.), 449-456.

⁶⁸ Fanon, Frantz. 1965. *A Dying Colonialism*. London: Penguin Books. 23.

⁶⁹ Boariu, 2002.

gender roles and identity which have restricted women to roles within the home, while the men work outside of the home to support the family.

The social constructs within Algerian society seemingly creating clear definitions of what it meant to be an Algerian woman, the French were able to dictate specific policies that infiltrated the private space of family and the home. It was assumed by the French that if Algerian women were assimilated, they would assimilate their own families because they were the head of the private sphere. Official colonial French doctrine stated “If we want to destroy the structure of Algerian society, its capacity for resistance, we must first of all conquer the women; we must go and find them behind the veil where they hide themselves and in the houses where the men keep them out of sight.”⁷⁰ In response to French pressure, Algerian men felt it was necessary to protect the women, as they were the protectors of the private sphere.⁷¹ The Algerians exercised Islam as a form of resistance against the French imperial powers.⁷² The high value placed on the familial relationship was a means of resistance.

In the 1930s and 40s, the French expanded their attempts at unveiling Algerian women. This initiative was conducted to make Algerian women more 'modern'. Also, the veil was seen as a prominent symbol for nationalist and religious values.⁷³ Clothing marked a cultural difference between the Europeans and the Algerians. Apparel was an important tool used by the European tourists in

⁷⁰ Fanon, 1965. 23.

⁷¹ Cherifati-Merabtine, Doria. 1994. “Algeria at a Crossroads: National Liberation, Islamization and Women” in *Gender and National Identity*. Valentine Moghadam, ed. London: Zed Books. 42.

⁷² Moghadam, Valentine. 2003. “Gender and Revolutions” in *Revolutions: Theoretical Comparative, and Historical Studies*. J. Goldstone, Ed. Belmont, CA: Wadsworth/Thomson Learning.

⁷³ Heggory, 1974; Metz, 1994.

identifying not only Algerian women but also Algerian men. The veil signified Algerian women, while the fez or a turban signified the Algerian men. Fanon states:

“The officials of the French administration in Algeria, committed to destroying the people’s originality, and under instructions to bring about the disintegration, at whatever cost, of forms of existence likely to evoke a national reality directly or indirectly, were to concentrate their efforts on the wearing of the veil, which was looked upon at this juncture as a symbol of the status of the Algerian women.”⁷⁴

In other words, the veil represented a clear symbol of the Algerian woman and all of the complexities of the female identity.

Women in Algeria also represented a complex manifestation of a desire of the Orient, which at times was sexual in nature. Women have served as symbols of the Orient; the exotic; an object to be conquered. The harem, or private space, and the veil became objects of desire and obsession for the colonizers.⁷⁵ Obsession with veiling and the exotic in Algeria are found in the mass production of post-cards representing women of the Orient. Produced between 1900 and 1930, these post-cards perpetuated the Orientalist obsession with the colonial female body using photography of ‘realistic’ images of the Algerian female body.⁷⁶ The photographs gave the impression of a fleeting, *real* moment. The images portrayed scenes of Oriental women, barely dressed or with their families or in groups of women, which seemed to give a glimpse into their private lives. But the images were not a realistic portrayal but a scene created by the photographer. Similar to the ways that the

⁷⁴ Fanon, 1965. 21-23.

⁷⁵ Boittin, Jennifer Anne. 2010. "Feminist Mediations of the Exotic: French Algeria, Morocco, and Tunisia, 1921-39" in *Gender and History*. Vol. 22, 1, 131-150.; Cherifati-Merbatine, 1994.

⁷⁶ Alloula, Malek. 1986. *The Colonial Harem*. Minneapolis: University of Minnesota Press.;

colonizer organized the space of the 'Orient' to fulfill the Imperial desire, the artist, in this case the photographer, had taken the power he had over the image to create a scene that satisfied the fantasy of the Orient. For the colonizers, the veil was a barrier between the public and the private, which they could not penetrate.⁷⁷ Veiled Women could see, but could not be seen. In these photographs, women were stripped of their veils and most of their clothing, revealing the secrets of the Orient. The unfixed nature of identity is revealed in these photos through contradictions of ethnicity, race and gender that the photo claimed to represent.

The 'Kabyle myth' or the myth that the Berbers of the Kabylia region were superior to Arabs helped the French to divide the interior ethnic groups of Algeria. Paul Silverstein cites Jean Morizot's observation that "The French created the term 'Kabylia', just as they had created the term 'Algeria'; they multiplied it into 'Kabylias'.⁷⁸ The French not only defined this region, they divided it to serve their own purposes for organization of different regional and ethnic groups in the colony. This myth also transcended into issues surrounding gender.⁷⁹ These myths created and perpetuated by French writers reporting on the colonial, created and deepened the divides between ethnic groups. The effect of this myth was also important to the identity definition of women within these groups. Not only were women structurally 'Othered' by their gender, they became essentialized into ethnic and/or religious groups.⁸⁰

⁷⁷ Boariu, Maria. 2002. "The Veil as Metaphor for French Colonized Algeria" *Journal for the Study of Religious Ideologies*. Vol. 3, 173-188.

⁷⁸ Silverstein, 2004. 52-53.

⁷⁹ Boittin, 2010.

⁸⁰ Another form of gendered marginalization used by the French was prostitution. For centuries, women had participated in controlled prostitution under the Turks. The French promoted sex-tourism throughout

French women living in Algeria during colonialism treated Algerian women much their male Orientalist counterparts. The ability of the French women to move within the private spaces of the Algerian home and female space brought them deeper into the private social interaction of the Algerian people. The access to this particular space gave French women an increased and reinforced sense of superiority. Although French women claimed that they wanted to 'free' Algerian women from the social constructs that limited their agency, they were unaware of the possible position of power that they possessed. Their inability to understand the different cultural power structures in place caused the French woman to make the same mistakes in understanding the world outside of the West.⁸¹

Women in France participated in elections for the first time in October of 1945.⁸² The French women's movement to create a 'new Algerian woman' who exhibited the rights of a true, free, liberal, empowered woman. This creation of a 'new Algerian woman' required education, Western socialization, and of course unveiling. Algerian women were highly illiterate and only represented an extremely small portion of the educated elite. These were the qualities that defined agency and power in France and therefore it only made sense to the French women that these values must be instilled in the minds of Algerian women as well. In the late 1920s and early 1930s, French women rallied the Algerian women in hopes to grant

its colonial enterprise in Algeria. Prostitution was also punishment for those who would not collaborate with the *colons*. The French targeted desperate and poor women and families for the sex trade. From 1830 onward, the French implemented programs that controlled and regulated 'safe' prostitution, as it had done in the *métropole*. Although the French blamed moral instability for the presence of prostitution in the colony, it was French demand that promoted and sustained the sex trade in the colonies.

Lazreg, 1994, 21-28; 55.

⁸¹ Yegenoglu, Meyda. 1998. *Colonial Fantasies: Towards a feminist reading of Orientalism*. Cambridge: Cambridge University Press.

⁸² Price, 2005. 341.

women suffrage rights in the colonies. French feminists viewed the colonies as grounds to speak out towards the rights of women. In 1947 the right to vote was extended to Algerian women as a reflection of their roles as citizens (albeit second-class citizens) of the French Republic and in 1958 Muslim women participated in the elections for the first time.⁸³ Until the Algerian women were assimilated to Western/French culture, it was argued that France had defaulted on its promise of its 'civilizing mission'.⁸⁴ Algerian women were also reluctant to position themselves alongside the French feminists. In the 1940s, the Algerian women's movement began to take root and became an important instrument for expressing female agency during the independence movement.

Another example of the French control over Algerian female representation was in the form of literature. French women used Algerian authors to support their role as 'emancipators of Algerian women.' Elissa Rhaïis is an example of one such author. In the early 1900s (around 1919), Rhaïis spoke for the Algerian women as an authentic voice for women in Islam. Instead of discussing the challenges that women faced in Algeria under colonial rule, Rhaïis argued that Algerian women were perfectly content in their position.⁸⁵ This representation creates a problematic environment for women who are trying to express their agency and identity. When assumptions are made about women, specifically 'Third World women' as we see in the case of Algeria, they are made within the context of a power discourse.⁸⁶

⁸³ Heggory, 1974.

⁸⁴ Boittin, 2010.

⁸⁵ Boittin, 2010.

⁸⁶ Mohanty, Chandra Talpade. 2006. "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*. Durham: Duke University Press.

Authors who are taken as experts, such as the feminist writers in France and Algerian writers like Rhaïis, are speaking for generalized representations of women who are capable of speaking for themselves. Many French authors writing on the state of Algerian women, and authors like Rhaïis who speak on behalf of all Algerian women fall into this trap.

Algerian author Assia Djébar provides a different literary perspective on the lives of Algerian women. Both Djébar's poetry and prose represent the diverse lives of women living in Algeria during colonialism. In her writing, Djébar does not attempt to speak for women. For example, in her book *Fantasia*, she gives readers a glimpse into the personal experience of a young Algerian girl who comes of age during French colonization of Algeria.⁸⁷ The different stories told by Djébar, not only in this book but in other works as well, reveal the complexities of the colonial experience. The young narrator in the story is trying to make sense of a place where traditions are changing. What Djébar reveals in her writing is the way that Algerians negotiated their space alongside the French settlers.

3.4 The Independence Movement and the role of the Veil

The Algerian war for independence is known as one of the most brutal and violent confrontations in the world's recent history. Independence movements, such as *Étoile nord-africaine*, had been present in Algeria since the late 1920s.⁸⁸ The start of the global decolonization movement followed the end of World War I. United States President Woodrow Wilson pushed for an end of world empires and a

⁸⁷ Djébar, 1985.

⁸⁸ MacMaster, 2009. 1.

movement towards world organizations like the League of Nations.⁸⁹ France's other colonies had begun to show resistance against the colonial government in the post-WWI era. France felt the pressure of growing nationalist movements in Algeria, but held onto their colonial 'bijou'. Following the conclusion of World War II, tensions resulted in violence. On May 8th, 1945, VE Day marking the end of the war, police massacred Algerians who supported independence movement in Sétif. The police opened fire on a group of nationalists who parading with the illegal flag of the independence movement. This led to a small-scale revolt, which ended in the deaths of a hundred settlers.⁹⁰

This massacre provided the catalyst for violent outbursts to become a more regular occurrence. The National Liberation Front (FLN) began the liberation movement on November 1st 1954.⁹¹ The FLN operated within the territory of Algeria and on the ground in France to put an end to the colonial rule.

The posed threat of losing the Algerian colony brought distress to France. Extreme measures were taken in order to secure the French position in Algeria. These measures included extensive torture and brutality; extensive repression of the colonized peoples; years of bloody war that left Algeria, structurally in ruins; and penetration of the familial structure in order to psychologically alter the identity and motivations of the revolutionary Algerians. The efforts to infiltrate the private sphere profoundly affected the roles and identities of Algerian women.

⁸⁹ Aldrich, Robert. 1996. "Colonial Nationalism and Decolonization." *Greater France: A History of French Overseas Expansion*. New York: St. Martin's Press.

⁹⁰ MacMasters, 2009. 1.

⁹¹ Cherifati-Merabtine, 1994.

Control over the role of women began to become even more imperative for the French and the opposing Algerian position in the colony during the years leading up and throughout the Franco-Algerian war.⁹² The Algerian independence movement took the route of the first example, the patriarchal model of revolution. The French continued a push for the unveiling of women while Algerian nationalist movements called for a re-veiling. As tensions between the two sides mounted, Algerian nationalists became hostile to those women who seemed to have become Westernized by the French. The nationalist movement called for both men and women to return to their traditional Algerian roots as acts of resistance against the colonial powers. Women were encouraged to turn to Islamic schools in order to provide proper guidance for their families. Nationalists heavily promoted veiling in order to assure that Muslim women were protected from the colonists and that they protected the private space.

Although both sides of revolution were attempting to position Algerian women to suit their best advantage, Algerian women had also been organizing in order to represent themselves. The mid-1940s and the outcome of the massacre at Sétif bought a breath of life to the women's movement in Algeria. In the early stages of the organized movement there were three main parties that represented the voices of Algerian women: the *Parti communiste algérien* (PCA), the *Union démocratique du manifeste algérien* (UDMA), and the *Mouvement pour le triomphe*

⁹² During periods of revolution there are often times two approaches to the role of gender and the involvement of women in the conflict. The first approach is the patriarchal model of revolution, which can be called the 'women in the family' approach. This model, which developed out of the Enlightenment and the French revolution, creates a positive linkage between patriarchal structure, the nation and religion. The second, is the modernization model or the 'women's emancipation model'. The Algerian independence movement took the route of the first example, the patriarchal model of revolution. Moghadam, Valentine. 2003.

des libertés démocratique (MTLD). These organizations eventually melded together and by 1956 they had become part of the FLN. Although the late 1940s proved to be advantageous for Algerian women, providing them with a political voice through the right to vote, the support for the women's movement in the colony slowed in the 1950s. This is due to the decline of the intensity of the women's movement in France during that time.⁹³

The politics surrounding the veil did not slow during the 1950s. During the late 1950s the independence debate shifted its focus to the role of women. The French government under Robert Lacoste had been hesitant to implement any policy that would result in an intense backlash from the Algerian population. In 1956, Lacoste began creating the French policy on the emancipation of Algerian women. The right-leaning media outlets in France reported on the efforts of the French administration to liberate Algerian women, shedding a positive light on the continued occupation of the colony.⁹⁴

In 1956, *pied-noir* ethnologist Jean Servier was given the responsibility by the French government to determine and execute the psychological means necessary for infiltrating the Algerian social structure and dismantling it. Servier's plan for the emancipation of Algerian women was based on the idea that because "women constituted the very bastion of Algerian-Muslim identity, culture, and tradition, and its point of reproduction, a key aim of psychological warfare must be to intercept and reshape this habitus".⁹⁵ By building contact within between the French and the

⁹³ MacMaster, 2009. 31-32; 56.

⁹⁴ MacMaster, 2009. 78-90.

⁹⁵ MacMaster, 2009. 91-92.

Algerians, they could gain knowledge on how the lives of Algerians are structured and then break down the structures of their daily life. This included people in the rural as well as the urban areas. The policies implemented through what was known as Operation Pilot: 1) address the subjugation of women by making sure she is free to move between the private and public space, dress and live as she chooses. The French would attempt to address these issues through education. 2) Women must be equal to men. 'Barbaric' household practices supported by Islamic law would not be tolerated. These practices included but were not limited to keeping young girls from attending school, not practicing or placing value on personal hygiene, and keeping traditional means of cooking.⁹⁶

At the same time that the French had been implementing their policies on emancipation, the Algerian nationalist movements had been developing their own policies towards women. In the mid-1950s the FLN had begun recruiting women to their organization. The FLN took advantage of the Orientalist perception of veiled women as meek, reserved beings. Using this 'disguise' the FLN used women to move about the urban areas as spies as well as concealing weapons and bombs. The famed 1957 battle for the Casbah and the roles of these women within the FLN were depicted in Gillo Pontecorvo's film 'The Battle of Algiers'.⁹⁷

In May of 1958, things in Algeria took an important turn. The revolution hit a tipping point on May 13th when anti-French activist stormed the Gouvernement-Générale in Algiers.⁹⁸ In response to the demonstrations, the French government

⁹⁶ MacMaster, 2009. 92.

⁹⁷ *The Battle of Algiers*. 1966. Gillo Pontecorvo, Dir. DVD. 121.

⁹⁸ Horne, 2006. 273-298.

staged mass unveilings as part of their emancipation policies.⁹⁹ The symbolic unveiling of Algerian women was a public spectacle used to assert the positive role that the French had over the Algerian people. Not only did women public remove their veils but they also participated in burnings of the veil as well, as seen on the 17th of May 1958 by twelve teenage girls who had been influenced by a number of older Algerian women.¹⁰⁰

The establishment of the Fifth French Republic and Charles de Gaulle's return to power in France in 1958 expanded the policy for emancipation for women in France and in the colony. In 1959, the new Gaullist government in France published an ordinance involving the marriage and family code.¹⁰¹ This law provided women with extended access to legal familial rights not granted to them under Islamic family law. Neither the French, nor the Algerians were against promoting educational, economic, and political rights of women. The French promotion of the code was to target familial structure in order to bring emancipation, but also provide support and rights to women who had become the heads of their households, for example from being widowed by the war. There would now be an age requirement for marriage, women being fifteen and men being eighteen; both individuals would have to be present for the marriage; a certificate

⁹⁹ Fanon, 1965.; Kelifi, Ghania. 2008. "The Veil in Algeria: A Bit of History" *BabelMed*. http://www.babelmed.net/Countries/Algeria/the_veil.php?c=3296&m=11&d=en (Accessed 03-Jun-2010).; MacMaster, Neil. 2007. "The Colonial 'Emancipation' of Algerian Women: The Marriage Law of 1959 and the Failure of Legislation on Women's Rights in the Post-Independence Era" in *Stichproben. Wiener Zeitschrift für kritisch Afrikastudien* Nr.12/2007, 7.; Vince, Natalya. 2009. "Colonial and Post-Colonial Identities: Women Veterans of the 'Battle of Algiers'" in *French History and Civilization. Papers from the George Rude Seminar*. <http://www.h-france.net/rude/rudeTOC2009.html> (Accessed 03-Jun-2010).

¹⁰⁰ MacMaster, 2009. 128.

¹⁰¹ MacMaster, 2007.

for marriage had to be procured before the marriage ceremony could be performed; the husband or wife could now dissolve the marriage by appearing in front of a judge; and when children were involved in the dissolution of marriage, there would be a determining of the level of familial support to be provided to the children and to the mother. The attempt to change the family code was met with opposition from Algerian religious leaders as well as nationals who were suspicious of the reforms that were not requested by the Algerian people were being used as a distraction from the war.¹⁰² Policy aimed at promoting the position of women in Algeria continued throughout the revolution.

3.5 Conclusion

Eight years after the beginning of the revolution, the independent Algerian state was established in 1962. Although the war had ended, the psychological and structural damage had already been done. The European conquest of Africa, Asia and the Americas established a complex, deeply rooted power structure that infiltrated every aspect of life under colonialism. The abolishment of the colonies does not erase the history of that discursive power that is embedded in the colonial administrative power. In 1994, during the Algerian civil war, unveiled women were targeted and threatened by Islamic extremists, some resulting in death, as was the case with Raziqa Meloudjemi, 18 and Naima Kar Ali, 19.¹⁰³ The veil has become a politicized image/symbol of Algerian women, no matter the reasons for choosing to wear the veil (or other types of veiling or concealing the body). Nilüfer Göle states, “When the veiling of women is claimed as the symbol of Islamic movements, what is

¹⁰² MacMaster, 2009. 271-291.

¹⁰³ Ibrahim, Youssef. 1994. “Bareheaded, Women Slain in Algiers”. *New York Times*. Mar. 31, 1994.

actually being acted out is the intersection of political ideology and the power relations between sexes.”¹⁰⁴ Women and the veil have become the symbols of identity for the post-colonial world.¹⁰⁵ The regulation of the veil and the ‘emancipation’ of women in Algeria were used as a political tool and a mechanism of governance of a colonial subject within a gendered, hegemonic power structure.

¹⁰⁴ Gole, Nilufer. 1996. 136.

¹⁰⁵ Abu-Lughod, Lila. 1998. *Remaking Women*. Princeton: Princeton University Press.

4. The French State of Exception

In this chapter, I explore the definitions of the values of French Republican Universalism and how these values have become the means for creating and defining an excluded population in France. This chapter will uncover what the headscarf affairs are really saying, or not saying about identity politics in France. Contrary to the values established by the Republic, the banning and regulating of the headscarf in the name of these values has done more to divide France than to unite it. Yet the conventional interpretation of the French Republican tradition has set the 'norms' for French social interaction. In times of perceived crisis, the French government has used these norms to position outsiders as enemies to these inherently French values.

First, I discuss the Republican Tradition in France and how it posits itself as a Universalist institution. Next, I explain Giorgio Agamben's *'State of Exception'* to analyze how the French government is able to use Republicanism to create an exceptional Other. The banning of the veil in public schools and the banning of the burqa throughout France are two examples of the ways law sets limitations that strictly define a symbol and therefore puts boundaries on the interpretations of the symbols. The veil is positioned as a threat to French secularism; therefore rejects the norms established the French state. All of the complex symbolism that the veil represents is essentialized into a singular one-dimensional object that represents a rejection of French values, which are also complex and historical values that have evolved over time. The French state has made an effort to create a space for Islam

in the Republic.¹⁰⁶ Islam has been a part of French society for a number of decades but there the state has continually fallen short when recognizing of its role as an aspect of French culture and in times of national crisis, it is continually positioned as an enemy of the state.

I conclude this chapter with revealing the ways that the veil is tied to complex identity structures that have historically been discursively marginalized. This discursive positioning is not removed by the banning of the headscarf in public schools, but covered up. When the headscarf is banned as an exception to the norm, through legal action, the possibilities for interpretation of that symbol are now limited to anything outside of that set of norms. All of the complex historically constituted symbolism or identity tied to the veil is determined to be an exception outside of the norm.

4.1 The Republican Tradition and Universalist Discourse

Republican Universalism is the norm for the French social and political identity. The French state views freedom, equality and individualism as basic human rights. These rights become celebrated through the ideology of Republican Universalism, symbolized by the Declaration of the Rights of Man and of Citizen. French ideology is based on how these Republican universal values unite the population as a collective entity. France's history of universal ideals begins in the reformation, extending into the Enlightenment and revolutionary period. Throughout France's history, these values have repeatedly been defended by the people of France when the actions of the state has threatened or created boundaries

¹⁰⁶ Bowen, John. 2010. *Can Islam be French?: Pluralism and Pragmatism in a Secularist State*. Princeton: Princeton University Press. 15.

on their access to these rights. For example, the French resistance against the Vichy government during World War II, the women's movement in the 1940s and French protests against the colonization of Algeria during their war for independence. All individuals of the French Republic are granted the right to be treated equally under French law. This also requires the state to view each of its citizens as a universal subject.

The concepts of unitarianism, secularism, and assimilation support universalism and constitute the Republican Tradition.¹⁰⁷ Unitarianism refers to the idea that the state would not recognize differences between people. As stated above, the state is required to view each citizen as a universal subject. Secularism, or *laïcité*, refers to an absence of religion in the public sphere. Freedom of religion is granted to all citizens of France, as long as that religion is practiced discreetly and in the private sphere.

Assimilation is the means through which the norms of the Republican tradition can be transmitted to the citizens and, specifically to new individuals to the Republic. In France, the education system is where most assimilation takes place. This occurs at the inception into the school system, until the student enters university. It is argued that France's concept of assimilation and 'naturalization' lies at the heart of the problem in identity politics.¹⁰⁸

There are two key ideas important to understanding the processes and policies involving integration in France. History plays an important role in the construction of France's ideas of citizenship, integration and inclusion. Following

¹⁰⁷ Hargreaves, 2007, 148.

¹⁰⁸ Noiriel, 1996.

these criteria it is believed that a true French citizen is a member of a collective identity, which is based on a shared history and tradition of 'Frenchness'.¹⁰⁹ This collective French memory then creates the possibility and perpetuation of the shared French destiny that was defended during the investigation carried out by the Stasi Commission. The protection of the French nation must also be upheld. It is integral that an individual must uphold the 'nation of France' above all else in order to be included and accepted as a citizen of the Republic.

Citizenship is currently a contested concept and it is impossible to claim that there is a uniform idea of citizenship operating in any liberal democracy.¹¹⁰ Through administrative laws, a political community, in order to organize and categorize individuals in that political context, creates citizenship. When looking at citizenship rights and an individual's status of inclusion or exclusion from those rights, there is also the existence of semi-citizens. France has had a history of defining certain groups of individuals as second class citizens, i.e. women, Jews, and colonial subjects. Although there are means through which individuals can achieve citizenship legally, there are overlapping qualities for inclusion and exclusion that exist in certain groups of individuals that keep them from attaining the full rights that citizenship claims to provide to individuals in general. Though individual members of these groups may become integrated as a French citizen, they are still the Other, and are viewed as such.

¹⁰⁹ Favell, 1998, 44.

¹¹⁰ Cohen, Elizabeth. 2009. *Semi-Citizenship in Democratic Politics*. Cambridge: Cambridge University Press.

The Republican tradition is practiced at the state level. It determines how the state views its citizens and the legal obligation the state holds in protecting the rights of those citizens. There are, however, contradictions in the way the French conceive national identity. The state has created a universal environment but difference continues to exist within the social fabric of France. The state decides that it will not recognize difference, but it does not negate its existence. Nor does it mean people will not see these differences. Yet, the French government is strongly opposed to policies of multiculturalism. Multiculturalism differs from context to context, as is the case with universalism. A Multiculturalist state recognizes differences between groups and gives these groups political recognition. Often times these are groups of minorities such as women, racial groups, religious groups, etc. France rejects these policies because it is against the Republican Universalist policies to recognize and politicize differences between individuals. This causes both positive and negative discrimination that result in unequal representation of individuals.

Without an understanding of difference, and why it exists, conflicts of inclusion and identity will continue to occur within the French social system. Critiques of Republican Universalism expose the particularism that exists within the claim to universalism. The claim to universalism in practice is the claim to a particular type of universalism that was created through the ideals of European Enlightenment.¹¹¹

¹¹¹ Wallerstein, Emmanuel. 2006. *European Universalism: The Rhetoric of Power*. New York: The New York Press.

The French Republic's confrontation with the particularized individual is evident in the headscarf affairs. The Committee of Reflection on the Application of the Principle of Secularity (the Stasi Commission), led by Bernard Stasi, of 2003 and the official banning of the headscarf in public schools in 2004 was centered on the defense of *laïcité* in the French Republic. The secularism of the Republic was enunciated during the revolution and written into the Declaration of Rights of Man and of Citizens in 1789. Article 10 reads: "Nobody should be disquieted because of his opinions, including religious views, provided that expression does not disturb public order that is established by the law."¹¹² This declaration maintains that every citizen is free to harbor their own religious convictions as long as they do not disturb the public order. In 1905, the French Republic formally defined the restrictions on separation of church and state.

First enacted to deal with problems between the state and the Catholic Church, Item I of the law declares: "the Republic ensures freedom of conscience. It guarantees freedom of worship, with restrictions hereafter only in the interest of public order."¹¹³ The major concern in the 1905 law is keeping the public free of any chaos or issues that may arise because of religion. It is integral that religious groups are unable to impress their opinions or ideologies on other members of the population. In the 1946 constitution, the Republic states: "France is an indivisible, secular, democratic and social republic."¹¹⁴ This establishes that secularism is among the most important pillars of the Fifth Republic.

¹¹² O'Brien, 2005, 14.

¹¹³ O'Brien, 2005, 15.

¹¹⁴ O'Brien, 2005, 21.

From these doctrines, it follows that the State and the Church have certain roles that must be fulfilled and boundaries that must not be crossed. The State will not interfere with any religious matters and it cannot privilege any religious option. The Church must not privilege its authority over that of the State. Also, it is a right of the individual to have the freedom of religious or spiritual choice. The Republic stresses the importance of 'freedom of conscience.' The Stasi Commission states, "In guaranteeing freedom of expression of everyone, in assuring for the education that forms autonomy and freedom of judgment, the State inscribes secularism in the list of human rights. It cannot be content with withdrawing from religious and spiritual affairs."¹¹⁵ The expression of the freedom of conscience is not limited to the private sphere and can be expressed publicly as long as that expression does not interfere with the order of the state or the freedom of other individuals in the public sphere.

The French Republic's 2004 banning of 'ostentatious' signs of religious affiliation reaffirmed the French understanding of its Republican values and secular history. The French government did not target Catholic symbols as feverishly as symbols of Islam and Judaism. Catholic symbols have become embedded in French society as a social and cultural norm. This approach to secularism positions people in an inclusive versus exclusive power dynamic. By creating the legal boundaries that individuals must adhere to, a new norm is created. Those who do not follow the new legal norm are penalized. By penalizing students who do not follow the norms of the Republic, an excluded population is created on the margins of the boundaries of the law.

¹¹⁵ O'Brien, 2005, 18.

Connecting the Stasi Commission's case back to discursive theory, individuals at every level read alongside an understanding of discursive framings. The French state is not a sterile environment, where in the public sphere, people are blank bodies. Identity and difference cannot be removed from an individual's self, or their body. No individual body is blank, and if the state wants to keep social order, they must recognize that some type of difference exists. The inability to challenge the power structure causes slippages that occur when the state attempts to 'deal' with change without challenging the superstructures that have rooted all social norms. France's historical understanding of difference has created a blockade for changes in identity politics to develop. For example, the colonization of Algeria left a very deep scar on the French collective memory but it is rarely publically addressed. The historical discursive structure that operated in the colonies, continues to operate in France. The flood of North African, Caribbean, and Asian immigrants from former colonies in the post-World War II period did not escape the stereotype of the Orientalist 'Other'.

4.2 The French State of Exception

The Contradictions between the established values of the Republic and the targeting of difference and positioning Islam as an enemy to those values can be explained partially by Giorgio Agamben's *State of Exception*. In this section I will explain Agamben's theory of the state of exception and how it can be useful in explaining how and why the French state uses the Republican values to neutralize difference in a politically aggressive way.

Giorgio Agamben bases his argument on the theories of Carl Schmitt. Schmitt's work states that "the sovereign is he who decides on the exception."¹¹⁶ Legal order, or the order defined by set laws, requires there to be an existence of a normal state of operation. Agamben uses Schmitt to explain how the sovereign determines the laws and therefore determines the normal order of the State. Law becomes a mechanism for creating the norms that we must adhere to in order to be accepted as an included member of that socio-political unit. In order to create an exception there has to be a norm to posit the exception against.

Agamben argues that the state of exception was intended to be used as an extraordinary and specific case, in order to establish the sovereign power of the state's authority.¹¹⁷ Also, this state of exception was only to be implemented for a limited period of time. It was intended to be an exceptional form of governance that was not meant to be the normal legal order of the state.

Agamben argues that the 'exceptional' nature of the state of exception no longer exists.¹¹⁸ A perpetual state of exception has been perpetuated by modern nation-states in order to maintain authority over a population. For example, during times of crisis, European States, such as France, Germany, Italy, and even the United States, have demonstrated a vaguely defined extension power of the executive branch of power. After the initial crisis has passed, the use of the 'state of exception' has extended past the point of crisis to now govern our daily life. Under the constant state of a false sense 'crisis' the sovereign is able to bypass what legal

¹¹⁶ Mills, Catherine. 2008. *The Philosophy of Agamben*. Montreal: McGill-Queen's University Press. 61.

¹¹⁷ Raulff, Ulrich. 2005. "An Interview with Giorgio Agamben" *German Law Journal*. Vol. 5 Nov 05.

¹¹⁸ Agamben, Giorgio. 2005. *State of Exception*. Chicago: University of Chicago Press.

norms only apply to the normal order of operation for the state. The state's extension of power to control exceptional periods of crisis is done by applying, executing, and upholding the 'natural' laws we live by. But the natural laws that governments refer to are not naturally constituted, but are created over time by processes of building and rebuilding. Agamben argues that through the perpetuation of the state of exception the periods that were once defined as exception, have now become the constant process for governing modern nation-states.

Agamben attributes France's crisis of government to the French Revolution in 1789. The tumultuous periods of instability that followed the initial upheaval of the monarchy were marked by fluxes in periods of *état de siege*. In order to assert authority, the state used an extension of governance mechanism to manage the perceived state of crisis. The current state of exception in France can also be tied to the events of World War II. The Nazi invasion and occupation of France not only posed a threat to the state, but also to the French nation. The legacy of the Vichy government continues to haunt the collective French memory as one of the darkest periods in French history. Another example of the exercising of the state of exception was post- World War II when De Gaulle implemented Article 16 to the Constitution of the 5th Republic, giving extended executive powers during times of crisis, bypassing the once powerful French Assembly. In March of 1956, this extension of the executive powers of the government was used to combat the FLN, giving the government in Paris and Algiers power to increase the military presence in Algeria. Robert Lacoste used this extension of powers to also implement the

policies towards the emancipation of Algerian women at this time.¹¹⁹ This article was rarely implemented after the Algerian crisis of the late-1950s to early-1960s when it became a new means of governing.

The headscarf affairs reveal the contemporary state of exception that is exercised in order to combat the perceived threat to the French 'nation'. The Republican Universalist values represent the French norm. These values are proudly upheld and celebrated by the people of France. But the identity debates and debates on secularism in France have used rhetoric that uses the norms of Republicanism to position the headscarf as a conflicting ideal to the French state. The state has determined that wearing the headscarf in public schools is an exception to the norm of Republican Universalism. In order to maintain 'normal' order, the exception must be neutralized with an established legal order. The law banning the headscarf in public school establishes that order.

4.3 The Banning of the Headscarf, the Neutralization of Identity

The banning of this particular article of clothing is historically tied to a variety of complex representations and identities that have been positioned as conflicting ideologies that the French have set as norms for the Republic. The headscarf in France is read in a particular way. Individuals who wear the veil are read in a number of different ways based on the article of clothing they wear.

The neutralization of the veil neutralizes the complex identities that the veil may or may not represent. Specifically, a gendered, historicized and raced identity.

¹¹⁹ MacMaster, 2009. 78.

Margot Badran states, "Being a woman is about gender and power."¹²⁰ Women are to assist and shape the socio-political communities that they are a part of.

Discursive structures play a role in positioning gendered individuals. Not only were the individuals who participated in the headscarf affairs raced and ethnicized, they were also gendered. Discrimination becomes legitimate through its constituted relationship to a constructed biological identity. This connection between domination and masculine identity is embedded and carried out through social constructs.¹²¹ Many post-colonial theorists have failed to address the gender component of the discursive hegemonic framework and the impact that this has on the individual. The body itself is a constructed idea. The body has been given meaning through defining its different functions. Masculine domination has given priority to 'male' defined functions of that body.¹²²

The ways 'woman' is identified and how women identify themselves are not static. They can mean a number of different things at a number of different times in many different contexts. These identities or masks can change based on experience or gained knowledge, sometimes without the subject being aware of it. Analyzing gender identity in a post-colonial context is extremely difficult and essentializing the position of women becomes an easy slip for those analyzing issues of gender.

Women are grouped first as women, then as women of the Third world.¹²³ This limits the conditions of possibility for the creation of personal identity and

¹²⁰ Badran, Margot. 1995. *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt*. Princeton: Princeton University Press.

¹²¹ Bourdieu, Pierre. 2001. *Masculine Domination*. Stanford: Stanford University Press. 23.

¹²² Bourdieu, 2001. 11.

¹²³ Mohanty, 2006.

expression of agency of that individual. Gendered individuals are put into neatly organized categories based on what our discursive reasoning and conception of the world can allow for. The role that women play as fixed individuals in the home and with the family is an example of this categorization. It becomes confusing to understand women as anything other than mother, wife, sister, etc. when those are the only terms used by society to define that group of individuals.¹²⁴

Gender is a constructed identity that is not fixed or universal.¹²⁵ The headscarf is an object that France and other Western cultures have, through epistemological frameworks, associated with difference. When you see symbol of the veil, you associate it with that difference. We become confused when the sign of the veil is disconnected from the signifier that we have associated with it. When this happens we label it a phenomenon or a particularity. It becomes exotic or intriguing. It also becomes political, depending on the threat that is perceived. The events of the headscarf affair, and a confrontation with difference, occur in a context where individuals are unable to understand the world outside of their epistemological understanding.

The veil is then given a political voice that is not the voice of the individuals who hold the agency of wearing this specific article of clothing.¹²⁶ Individuals are saying something and acting in ways that are challenging the hegemonic power structure but we are unable to hear them because we only use the lens of that

¹²⁴ For example, the French relied on those fixed identities to manipulate the roles of women in Algeria, as shown in Chapter 3.

¹²⁵ Abu-Lughod, 1998.

¹²⁶ Spivak, Gayatri C. 1988. "Can the Subaltern Speak?" in *Marxism and the Interpretation of Culture*, edited by G. Nelson. Chicago: University of Chicago Press.

structure to analyze and understand our world. The veil/headscarf/hijab/burqa/niqab is a symbol of difference that represents an exception to the norm in a context where difference is a threat to the order and sovereignty of a state.

When the headscarf is banned in the public schools through legal measures it is because the state has determined it to be an exception to the norms. The veil is now positioned outside of the law. But because the veil is tied to a number of symbols and identities that cannot be removed from the signifier of the veil, those identities tied to it also become the exception.

4.4 Conclusion

The French government has historically used the concept of Universal Republicanism to define the norms and boundaries of the French nation. During times when the government perceived a threat to the nation and/or the state, it positioned the values that state has defined as the exception or the Other against the values of the Republic. This created artificial boundaries between groups in France. Although these boundaries are artificial, the politics that these boundaries create play out in very real ways. Conflicts over the role of difference and they ways that difference should be recognized in France are framed within this artificial criteria. Islam and France are not incompatible with one another, but they have been positioned as such throughout the debates on French national identity.

5. Conclusion

In June of 2009, the rhetoric against the veil in France reached a new pinnacle when, as President of France, Sarkozy announced “the burqa is not welcome on the territory of the French Republic.”¹²⁷ The burqa is a version of the veil that covers the face and body, worn by a small percentage of Muslim women. His declaration provoked immediate reactions in favor or against those who choose to wear the burqa or niqab (face veil).¹²⁸

On November 2, 2009, Sarkozy opened his public debate to determine the status of what it meant to be French now. The “*Grand débat sur l’identité nationale*”, headed by Eric Besson, *Ministère de l’Immigration, de l’intégration, de l’identité nationale et du développement solidaire* (Minister of Immigration, Integration, National Identity and Solidarity Development) focused on what it meant to be French in an era of globalization, increased presence of the European Union, and confrontation of difference and status of the burqa in France.¹²⁹ The parameters of this debate were vague and ambiguous which proved to be a challenge that would develop from the inception of the debate.

The forum for discussion was based primarily from the website www.debatidentitenationale.fr. Prompts from officials, religious leaders, business leaders, educators, and the average Frenchman were posted on the website to provide examples of what being French meant to them. French people were then

¹²⁷ Kuper, 2009.

¹²⁸ See Appendix A.

¹²⁹ Ministère de l’immigration, de l’intégration, de l’identité nationale et du développement solidaire. 2009. “Les Objectifs du débat” *Grand débat sur l’identité nationale*. <http://www.debatidentitenationale.fr/organisation/les-objectifs-du-debat.html> (Accessed 16-Aug-2010).

asked to post on discussion boards what being French meant to each person. The website was supplemented by local debates and town hall meetings to discuss identity and 'Frenchness'. All discussions were scheduled to conclude on January 31, 2010 and be analyzed by a government panel.¹³⁰ The debate was highly controversial from the moment of its commencement. Regional elections took place in 2010 and some argued that reopening this debate was part of President Sarkozy's effort to sway right-wing voters who often support the National Front and lead them to the more moderate-right party, the UMP (Union for a Popular Movement) which just so happens to be Mr. Sarkozy's party.¹³¹

The 2009 identity debate sparked a variety of reactions from the French public. The conversations that took place in the town-hall meetings and online forums represented some constructive answers and others that were xenophobic. Violent acts against Muslims and different groups of 'Othered' individuals soon followed. In February of 2010, a mosque north of Paris was vandalized. The vandals painted "Islam get out of Europe" and "France is for French" on the doors of the mosque. They also hung pig's feet from the mosque, a gesture aimed at defying the Muslim *halal* practices.¹³² Fears of further acts of Islamophobia spread through France, causing even more controversy than originally raised by the debate.

Another controversial case occurred when a man of Moroccan origin and his wife

¹³⁰ Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire. 2009. "L'Organisation du débat" *Grand débat sur l'identité nationale*. <http://www.debatidentitenationale.fr/organisation/les-objectifs-du-debat.html> (Accessed 16-Aug-2010).

¹³¹ Beardsley, Elanor. 2009. "Meetings Debate The Question of French Identity" *National Public Radio*. <http://www.npr.org/templates/story/story.php?storyId=121963766> (Accessed 13-Jan-2010).

¹³² AFP. 2010. "French Muslims fear rise in Islamophobia after mosque attack" *France24*. <http://www.france24.com/en/20100202-mosque-attack-islamophobia-france-immigration-veil-burqa-islam-muslim-besson> (Accessed 4-Feb-2010).

were denied French citizenship because she wore the burqa.¹³³ According to the officials in charge of administering citizenship in France, the burqa was seen as a clear example of the family's lack of assimilation to French culture/identity, therefore their request for citizenship was denied. This case is noteworthy because it occurred before the formal legal ban on the burqa was passed.

The debate, originally scheduled to conclude in spring of 2010 was abruptly terminated in early February of that year due to its controversial flaws. This was timed just before the regional elections in March. By the conclusion of the debate, 340 regional forums were held, the website received 750,000 visits and 58,000 people had contributed to the online discussion.¹³⁴ Based on the responses given by the French public, the committee determined that national pride, unity, and identity are foundations of the French Republic. A number of recommendations from the committee followed. First, a full-time commission would be implemented. This commission would be responsible for monitoring the status of the values of the Republic and whether or not they were being upheld. Second, French civic education classes would become more important in public education, promoting civil service among students whom would eventually become professionals in the French work force. The French government aims to push youth to become further involved in their civic duties as members of the Republic. This would insure that from a young age, the French population would be filled with loyal, active citizens

¹³³ Kurczy, Stephen. 2010. "French citizenship denied to man with veiled wife." *The Christian Science Monitor*. <http://www.csmonitor.com/World/Global-News/2010/0203/French-citizenship-denied-to-man-with-veiled-wife> (Accessed 4-Feb-2010).

¹³⁴ Fillon, François. 2010. "Point presse du Premier ministre François FILLON: Séminaire gouvernemental sur l'identité nationale". *République Française*.

and prospective civil servants. Pride in the French Republic would be instilled through singing of *la Marseillaise*, the French national anthem, in schools; a larger selection of honorary members during the national celebrations such as Bastille Day; and every school must have the Tricolor (the French flag) and Declaration of Rights and of Man and of Citizen in every classroom.

Another objective of the new Republican policy is that immigrants and foreigners would be better integrated into French society. As far as the naturalization of foreigners, there would be a more systematic and formal approach to process of applying for citizenship, to ensure that the applicant understands the true meaning of becoming a member of the French nation. It is proposed that there be better welcoming centers and protocol, as well as programs for parents of foreign students to better integrate their children into the public school system.

The banning of the burqa was passed through French legislation in October of 2010. The conversation over the status of the burqa in France and cross Europe continues to bring controversy. On one side, there is continued support for the upholding of *laïcité* across France. The prominent French-Arab based feminist organization *Mouvement Ni Putes Ni Soumises* (Neither Whores Nor Submissives) believes that *laïcité* is integral to the Republic. The organization was founded to rally for all women facing abuse and discrimination with a particular concentration on the 'immigrant' women living in the banlieues.¹³⁵ The organization has supported a wide variety of causes for women in France and around the world and has become the voice for Muslim women in France. It has also played a strong role

¹³⁵ Hargreaves, 2007. 102.

throughout the headscarf debates throughout the past twenty years. The organization also strongly supports the burqa ban across France and across Europe, through their campaign *Ni Putes Ni Soumises, Ni Burqa!*¹³⁶ President of *Ni Putes Ni Soumises*, Sihem Habchi calls the ban a “victoire des femmes” (victory for women).¹³⁷ Yet, other women do not support the banning of the burqa and the niqab, and argue that the burqa can be worn as a form of oppression or an expression of faith.¹³⁸ By banning the burqa, the law now defines the burqa as only an oppressive symbol, discursively closing off the possibilities for the symbol to be seen as anything but that.

The debate surrounding veiling or laws is continually heated by new controversy in France and across Europe. Muslims and non-Muslims have supported the ban on the burqa in France for a number of different reasons. Marnia Lazreg as warned that women who are seeking emancipation from the patriarchal structural imposed by particular readings of Islam should not use any form of the veil.¹³⁹ As revealed in France and in their colonial history in Algeria, the veil is a symbol that is deeply rooted in a history that cannot be separated from the symbol. Modern symbolism in the veil is continually tied to this history of oppression and inequality towards women in Islam. Although Lazreg has strongly supported

¹³⁶ Mouvement Ni Putes Ni Soumises. 2010. “Ni Putes Ni Soumises, Ni Burqa!” <http://www.niputesnisoumises.com/burqa/> (Accessed 16-Aug-2010).

¹³⁷ AFP. 2010. “Sihem Habchi voit dans le projet de loi sur le voile ‘une victoire des femmes’ *Libération*. <http://www.liberation.fr/politiques/0101631436-loi-sur-le-voile-integral-une-victoire-de-femme-pour-sihem-habchi> (Accessed 16-Aug-2010).

¹³⁸ Davies, Lizzy. 2010. “The Young French Women Fighting to Defend the Full Face Veil.” *The Guardian*. <http://www.guardian.co.uk/world/2010/jan/31/french-muslim-burqa-veil-niqab> (Accessed 4-Feb-2010).

¹³⁹ Lazreg, Marnia. 2009. *Questioning the Veil: Open Letters to Muslim Women*. Princeton: Princeton University Press.

women removing their veils, she also argues that laws mandating or banning these symbols is a political act for or against what this symbol represents. Veiling should be an individual choice, though it must be taken into account that in some cases it is not.

The headscarf affairs can be used as an entry point to reveal the deeper socio-political and economic issues that are taking place in France. This thesis reveals that the legal banning of the headscarf in public schools and recent burqa ban in function of modern form of governance known as the *state of exception*. The veil, historically, has been politically manipulated to speak over 'othered' individuals.

When law regulates the veil in a complex context, such as France, it limits the complexities that the veil represents and everything that has been historically tied to the veil. The underlying signifiers related to the symbol of the veil cannot be removed. Whether or not the veil is worn, difference is visible. Understanding the roots of those differences is the first step in overcoming discrimination based on these differences.

The French legal banning of the veil in public schools and the banning of burqa throughout all of France are reminiscent of the attempts to control the role of women in colonial Algeria. In Algeria, the control of the veil by both the French and the Algerian nationalist was intensified by the threat that France felt to losing one of its most major economic assets. Using Agamben, I argue that this is a function of a perceived crisis of the nation or state. The current economic crisis faced by France and the rest of the world has poses a threat to the ruling political parties of major

global economies. Nicolas Sarkozy is desperate to assert control over the French Republic due to the political threats that face his presidency and his political party. In his attempts to solidify his position, Sarkozy has emphasized the Republican values not only in the identity debate, but also in a number of public speeches. The emphasis on these values then positions nationality at the center of the debate on how to handle the crisis that France is facing.¹⁴⁰

The veil in France has historically, as shown in the early sections of this thesis, been positioned as a threat to the French nation. The burqa has been a much more hotly debated symbol of Muslim faith and those debates have been and continue to be played out in France as well as in other European countries. But to ban the burqa and create a spectacle surrounding a reignited identity debate is a distraction from the real problems that face France, the UMP party and specifically the Sarkozy administration since the start of the global recession in 2009.

The French protection of Universalism is important to many people in France, no matter the background. What is lacking is universal equality in granting these universal rights to people. Addressing the use of the Republican values to position difference as an enemy of the French nation is lacking. Because these values are so deeply embedded in the French collective memory, the political manipulation of these values to target particular groups is a problem. These values are pillars of the French socio-political context and therefore are intertwined with issues with education, integration and of citizenship. Instead of using the strength of

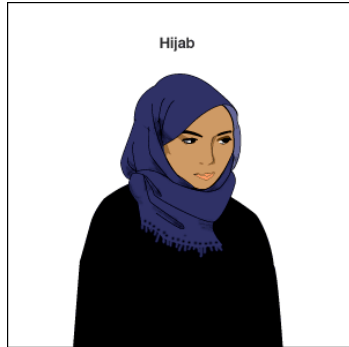
¹⁴⁰ This has also been the rhetoric that has been used by the Tea Party in the United States during the mid-term elections of 2010.

these values to unite the French population, they are used to define difference and divide the population.¹⁴¹

¹⁴¹ This crisis of identity of the nation is happening outside of France. In November of 2010, German Chancellor Angela Merkel announced that the Multiculturalist approach in Germany has “utterly failed”. Goodman, A. & Zizek, S. 2010. “Slavoj Zizek: Why Far Right and Xenophobic Politicians are on the Rise in Europe”. *Democracy Now*. Oct. 27. <http://www.alternet.org/story/148648/> (Accessed 5 Nov 2010).

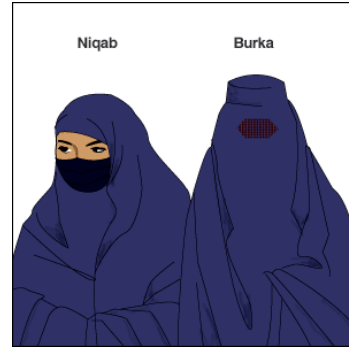
Appendix A

Types of Veiling



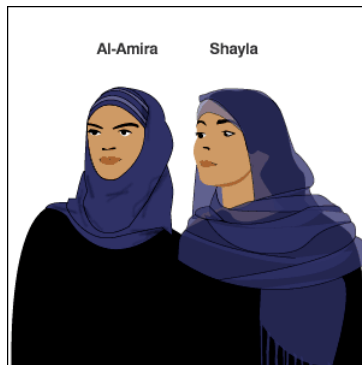
The Hijab

The word hijab comes from the Arabic for veil and is used to describe the headscarves worn by Muslim women. These scarves, regarded by many Muslims as a symbol of both religion and womanhood, come in a myriad of styles and colours. The type most commonly worn in the West is a square scarf that covers the head and neck but leaves the face clear.



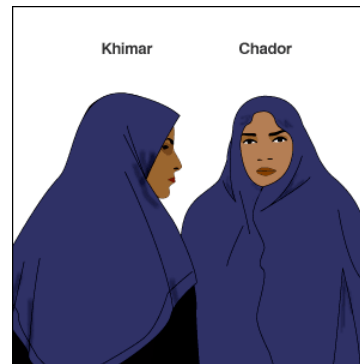
The Niqab and the Burka

The niqab is a veil for the face that leaves the area around the eyes clear. However, it may be worn with a separate eye veil. It is worn with an accompanying headscarf. The burka is the most concealing of all Islamic veils. It covers the entire face and body, leaving just a mesh screen to see through. There have been attempts to ban both the niqab and burka in some European countries.



The Al-Amira and the Shayla

The al-amira is a two-piece veil. It consists of a close fitting cap, usually made from cotton or polyester, and an accompanying tube-like scarf. The shayla is a long, rectangular scarf popular in the Gulf region. It is wrapped around the head and tucked or pinned in place at the shoulders.



The Khimar and the Chador

The khimar is a long, cape-like veil that hangs down to just above the waist. It covers the hair, neck and shoulders completely, but leaves the face clear. The chador, worn by many Iranian women when outside the house, is a full-body cloak. It is often accompanied by a smaller headscarf underneath.

Source:

http://news.bbc.co.uk/2/shared/spl/hi/pop_ups/05/europe_muslim_veils/html/1.stm

Appendix B

Code Civil

Titre I bis De la nationalité française

Chapitre I : Dispositions générales

Article 17

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 10 août 1927 art. 13)

La nationalité française est attribuée, s'acquiert ou se perd selon les dispositions fixées par le présent titre, sous la réserve de l'application des traités et autres engagements internationaux de la France.

Article 17-1

Les lois nouvelles relatives à l'attribution de la nationalité d'origine s'appliquent aux personnes encore mineures à la date de leur entrée en vigueur, sans préjudicier aux droits acquis par des tiers et sans que la validité des actes passés antérieurement puisse être contestée pour cause de nationalité.

Les dispositions de l'alinéa précédent s'appliquent à titre interprétatif, aux lois sur la nationalité d'origine qui ont été mises en vigueur après la promulgation du titre Ier du présent code.

Article 17-2

L'acquisition et la perte de la nationalité française sont régies par la loi en vigueur au temps de l'acte ou du fait auquel la loi attache ces effets.

Les dispositions de l'alinéa qui précède règlent, à titre interprétatif, l'application dans le temps des lois sur la nationalité qui ont été en vigueur avant le 19 octobre 1945.

Article 17-3

(Loi n° 93-933 du 22 juillet 1993 art. 50 Journal Officiel du 23 juillet 1993)

(Loi n° 95-125 du 8 février 1995 art. 34 Journal Officiel du 9 février 1995 en vigueur le 1er août 1995)

Les demandes en vue d'acquies, de perdre la nationalité française ou d'être réintégré dans cette nationalité, ainsi que les déclarations de nationalité, peuvent, dans les conditions prévues par la loi, être faites, sans autorisation, dès l'âge de seize ans.

Le mineur âgé de moins de seize ans doit être représenté par celui ou ceux qui exercent à son égard l'autorité parentale.

Doit être pareillement représenté le mineur de seize à dix-huit ans dont l'altération des facultés mentales ou corporelles empêche l'expression de la volonté. L'empêchement est constaté par le juge des tutelles d'office, à la requête d'un membre de la famille du mineur ou du ministère public, au vu d'un certificat délivré par un médecin spécialiste choisi sur une liste établie par le procureur de la République.

Lorsque le mineur mentionné à l'alinéa précédent est placé sous tutelle, sa représentation est assurée par le tuteur autorisé à cet effet par le conseil de famille.

Article 17-4

Au sens du présent titre, l'expression "En France" s'entend du territoire métropolitain, des départements et des territoires d'outre-mer et des collectivités territoriales de Mayotte et de Saint-Pierre-et-Miquelon.

Article 17-5

Dans le présent titre, majorité et minorité s'entendent au sens de la loi française.

Article 17-6

Il est tenu compte pour la détermination, à toute époque, du territoire français, des modifications résultant des actes de l'autorité publique française pris en application de la constitution et des lois, ainsi que des traités internationaux survenus antérieurement.

Article 17-7

Les effets sur la nationalité française des annexions et cessions de territoires sont réglés par les dispositions qui suivent, à défaut de stipulations conventionnelles.

Article 17-8

Les nationaux de l'Etat cédant, domiciliés dans les territoires annexés au jour du transfert de la souveraineté acquièrent la nationalité française, à moins qu'il n'établissent effectivement leur domicile hors de ces territoires. Sous la même réserve, les nationaux français, domiciliés dans les territoires cédés au jour du transfert de souveraineté perdent cette nationalité.

Article 17-9

Les effets sur la nationalité française de l'accession à l'indépendance d'anciens départements ou territoires d'outre-mer de la République sont déterminés au chapitre VII du présent titre.

Article 17-10

Les dispositions de l'article 17-8 s'appliquent, à titre interprétatif, aux changements de nationalité consécutifs aux annexions et cessions de territoires résultant de traités antérieurs au 19 octobre 1945.

Toutefois, les personnes étrangères qui étaient domiciliées dans les territoires rétrocédés par la France, conformément au traité de Paris du 30 mai 1814 et qui, à la suite de ce traité, ont transféré en France leur domicile, n'ont pu acquérir, de ce chef, la nationalité française que si elles se sont conformées aux dispositions de la loi du 14 octobre 1814. Les français qui étaient nés hors des territoires rétrocédés et qui ont conservé leur domicile sur ces territoires n'ont pas perdu la nationalité française, par application du traité susvisé.

Article 17-11

Sans qu'il soit porté atteinte à l'interprétation donnée aux accords antérieurs, un changement de nationalité ne peut, en aucun cas, résulter d'une convention internationale si celle-ci ne le prévoit expressément.

Article 17-12

Lorsqu'un changement de nationalité est subordonné, dans les termes d'une convention internationale, à l'accomplissement d'un acte d'option, cet acte est déterminé dans sa forme par la loi de celui des pays contractants dans lequel il est institué.

Chapitre II

De la nationalité française d'origine

Section I : Des français par filiation

Article 18

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 10 août 1927 art. 13)

Est français l'enfant, légitime ou naturel, dont l'un des parents au moins est français.

Article 18-1

Toutefois, si un seul des parents est français, l'enfant qui n'est pas né en France a la faculté de répudier la qualité de Français dans les six mois précédant sa majorité et dans les douze mois la suivant.

Cette faculté se perd si le parent étranger ou apatride acquiert la nationalité française durant la minorité de l'enfant.

Section II : Des français par la naissance en France

Article 19

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 10 août 1927 art. 13)

Est français l'enfant né en France de parents inconnus.

Toutefois, il sera réputé n'avoir jamais été français si, au cours de sa minorité, sa filiation est établie à l'égard d'un étranger et s'il a, conformément à la loi nationale de son auteur, la nationalité de celui-ci.

Article 19-1

(Loi n° 98-170 du 16 mars 1998 art. 13 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Est français :

1° L'enfant né en France de parents apatrides ;

2° L'enfant né en France de parents étrangers et à qui n'est attribuée par les lois étrangères la nationalité d'aucun des deux parents.

Toutefois, il sera réputé n'avoir jamais été français si, au cours de sa minorité, la nationalité étrangère acquise ou possédée par l'un de ses parents vient à lui être transmise.

Article 19-2

Est présumé né en France l'enfant dont l'acte de naissance a été dressé conformément à l'article 21-14 du présent code.

Article 19-3

Est français l'enfant, légitime ou naturel, né en France lorsque l'un de ses parents au moins y est lui-même né.

Article 19-4

Toutefois, si un seul des parents est né en France, l'enfant français, en vertu de l'article 19-3, a la faculté de répudier cette qualité dans les six mois précédant sa majorité et dans les douze mois la suivant.

Cette faculté se perd si l'un des parents acquiert la nationalité française durant la minorité de l'enfant.

Section III : Dispositions communes

Article 20

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 10 août 1927 art. 13)

L'enfant qui est français en vertu des dispositions du présent chapitre est réputé avoir été français dès sa naissance, même si l'existence des conditions requises par la loi pour l'attribution de la nationalité française n'est établie que postérieurement.

La nationalité de l'enfant qui a fait l'objet d'une adoption plénière est déterminée selon les distinctions établies aux articles 18 et 18-1, 19-1, 19-3 et 19-4 ci-dessus.

Toutefois, l'établissement de la qualité de français postérieurement à la naissance ne porte pas atteinte à la validité des actes antérieurement passés par l'intéressé ni aux droits antérieurement acquis à des tiers sur le fondement de la nationalité apparente de l'enfant.

Article 20-1

La filiation de l'enfant n'a d'effet sur la nationalité de celui-ci que si elle est établie durant sa minorité.

Article 20-2

Le français qui possède la faculté de répudier la nationalité française dans les cas visés au présent titre peut exercer cette faculté par déclaration souscrite conformément aux articles 26 et suivants. Il peut renoncer à cette faculté à partir de l'âge de seize ans dans les mêmes conditions.

Article 20-3

Dans les cas visés à l'article précédent, nul ne peut répudier la nationalité française s'il ne prouve qu'il a par filiation la nationalité d'un pays étranger.

Article 20-4

(Loi n° 98-170 du 16 mars 1998 art. 18 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Le Français qui contracte un engagement dans les armées françaises perd la faculté de répudiation.

Article 20-5

(Loi n° 98-170 du 16 mars 1998 art. 14 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Les dispositions contenues dans les articles 19-3 et 19-4 ne sont pas applicables aux enfants nés en France des agents diplomatiques ou des consuls de carrière de nationalité étrangère.

Ces enfants ont toutefois la faculté d'acquérir volontairement la qualité de Français conformément aux dispositions de l'article 21-11 ci-après.

Chapitre III

De l'acquisition de la nationalité française

Section I : Des modes d'acquisition de la nationalité française

Paragraphe I : Acquisition de la nationalité française à raison de la filiation

Article 21

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 10 août 1927 art. 13)

L'adoption simple n'exerce de plein droit aucun effet sur la nationalité de l'adopté.

Paragraphe II : Acquisition de la nationalité française à raison du mariage

Article 21-1

Le mariage n'exerce de plein droit aucun effet sur la nationalité.

Article 21-2

(Loi n° 98-170 du 16 mars 1998 art. 1 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

L'étranger ou apatride qui contracte mariage avec un conjoint de nationalité française peut, après un délai d'un an à compter du mariage, acquérir la nationalité française par déclaration à condition qu'à la date de cette déclaration la communauté de vie n'ait pas cessé entre les époux et que le conjoint ait conservé sa nationalité.

Le délai d'un an est supprimé lorsque naît, avant ou après le mariage, un enfant dont la filiation est établie à l'égard des deux conjoints, si les conditions relatives à la communauté de vie et à la nationalité du conjoint français sont satisfaites.

La déclaration est faite dans les conditions prévues aux articles 26 et suivants. Par dérogation aux dispositions de l'article 26-1, elle est enregistrée par le ministre chargé des naturalisations.

Article 21-3

Sous réserve des dispositions prévues aux articles 21-4 et 26-3, l'intéressé acquiert la nationalité française à la date à laquelle la déclaration a été souscrite.

Article 21-4

Le Gouvernement peut s'opposer par décret en Conseil d'Etat, pour indignité ou défaut d'assimilation, à l'acquisition de la nationalité française par le conjoint étranger dans un délai d'un an à compter de la date du récépissé prévu au deuxième alinéa de l'article 26 ou, si l'enregistrement a été refusé, à compter du jour où la décision judiciaire admettant la régularité de la déclaration est passée en force de chose jugée.

En cas d'opposition du Gouvernement, l'intéressé est réputé n'avoir jamais acquis la nationalité française.

Toutefois, la validité des actes passés entre la déclaration et le décret d'opposition ne pourra être contestée pour le motif que l'auteur n'a pu acquérir la nationalité française.

Article 21-5

Le mariage déclaré nul par une décision émanant d'une juridiction française ou d'une juridiction étrangère dont l'autorité est reconnue en France ne rend pas caduque la déclaration prévue à l'article 21-2 au profit du conjoint qui l'a contractée de bonne foi.

Article 21-6

L'annulation du mariage n'a point d'effet sur la nationalité des enfants qui en sont issus.

Paragraphe III : Acquisition de la nationalité française à raison de la naissance et de la résidence en France

Article 21-7

(Loi n° 98-170 du 16 mars 1998 art. 2 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Tout enfant né en France de parents étrangers acquiert la nationalité française à sa majorité si, à cette date, il a en France sa résidence et s'il a eu sa résidence habituelle en France pendant une période continue ou discontinue d'au moins cinq ans, depuis l'âge de onze ans.

Les tribunaux d'instance, les collectivités territoriales, les organismes et services publics, et notamment les établissements d'enseignement sont tenus d'informer le public, et en particulier les personnes auxquelles s'applique le premier alinéa, des dispositions en vigueur en matière de nationalité. Les conditions de cette information sont fixées par décret en Conseil d'Etat.

Article 21-8

(Loi n° 93-1417 du 30 décembre 1993 art. 11 I Journal Officiel du 1er janvier 1994 en vigueur le 1er mars 1994)

(Loi n° 98-170 du 16 mars 1998 art. 3 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

L'intéressé a la faculté de déclarer, dans les conditions prévues aux articles 26 et suivants et sous réserve qu'il prouve qu'il a la nationalité d'un Etat étranger, qu'il décline la qualité de Français dans les six mois qui précèdent sa majorité ou dans les douze mois qui la suivent.

Dans ce dernier cas, il est réputé n'avoir jamais été français.

Article 21-9

(Loi n° 98-170 du 16 mars 1998 art. 4 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Toute personne qui remplit les conditions prévues à l'article 21-7 pour acquérir la qualité de Français perd la faculté de décliner celle-ci si elle contracte un engagement dans les armées françaises.

Tout mineur né en France de parents étrangers, qui est régulièrement incorporé en qualité d'engagé, acquiert la nationalité française à la date de son incorporation.

Article 21-10

(Loi n° 98-170 du 16 mars 1998 art. 5 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Les dispositions des articles 21-7 à 21-9 ne sont pas applicables aux enfants nés en France des agents diplomatiques et des consuls de carrière de nationalité étrangère. Ces enfants ont toutefois la faculté d'acquérir volontairement la nationalité française conformément aux dispositions de l'article 21-11 ci-après.

Article 21-11

(Loi n° 98-170 du 16 mars 1998 art. 6 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

L'enfant mineur né en France de parents étrangers peut à partir de l'âge de seize ans réclamer la nationalité française par déclaration, dans les conditions prévues aux articles 26 et suivants si, au moment de sa déclaration, il a en France sa résidence et s'il a eu sa résidence habituelle en France pendant une période continue ou discontinue d'au moins cinq ans, depuis l'âge de onze ans.

Dans les mêmes conditions, la nationalité française peut être réclamée, au nom de l'enfant mineur né en France de parents étrangers, à partir de l'âge de treize ans et avec son consentement personnel, la condition de résidence habituelle en France devant alors être remplie à partir de l'âge de huit ans.

Paragraphe IV : Acquisition de la nationalité française par déclaration de nationalité

Article 21-12

(Loi n° 98-170 du 16 mars 1998 art. 7 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

L'enfant qui a fait l'objet d'une adoption simple par une personne de nationalité française peut, jusqu'à sa majorité, déclarer, dans les conditions prévues aux articles 26 et suivants, qu'il réclame la qualité de Français, pourvu qu'à l'époque de sa déclaration il réside en France.

Toutefois, l'obligation de résidence est supprimée lorsque l'enfant a été adopté par une personne de nationalité française n'ayant pas sa résidence habituelle en France.

Peut, dans les mêmes conditions, réclamer la nationalité française :

1° L'enfant recueilli en France et élevé par une personne de nationalité française ou confié au service de l'aide sociale à l'enfance ;

2° L'enfant recueilli en France et élevé dans des conditions lui ayant permis de recevoir, pendant cinq années au moins une formation française, soit par un organisme public, soit par un organisme privé présentant les caractères déterminés par un décret en Conseil d'Etat.

Article 21-13

Peuvent réclamer la nationalité française par déclaration souscrite conformément aux articles 26 et suivants, les personnes qui ont joui, d'une façon constante, de la possession d'état de Français, pendant les dix années précédant leur déclaration.

Lorsque la validité des actes passés antérieurement à la déclaration était subordonnée à la possession de la nationalité française, cette validité ne peut être contestée pour le seul motif que le déclarant n'avait pas cette nationalité.

Article 21-14

Les personnes qui ont perdu la nationalité française en application de l'article 23-6 ou à qui a été opposée la fin de non-recevoir prévue par l'article 30-3 peuvent réclamer la nationalité française par déclaration souscrite conformément aux articles 26 et suivants.

Elles doivent avoir soit conservé ou acquis avec la France des liens manifestes d'ordre culturel, professionnel, économique ou familial, soit effectivement accompli des services militaires dans une unité de l'armée française ou combattu dans les armées françaises ou alliées en temps de guerre.

Les conjoints survivants des personnes qui ont effectivement accompli des services militaires dans une unité de l'armée française ou combattu dans les armées françaises ou alliées en temps de guerre peuvent également bénéficier des dispositions du premier alinéa du présent article.

Paragraphe V: Acquisition de la nationalité française par décision de l'autorité publique

Article 21-14-1

(inséré par Loi n° 99-1141 du 29 décembre 1999 art. 1 Journal Officiel du 30 décembre 1999)

La nationalité française est conférée par décret, sur proposition du ministre de la défense, à tout étranger engagé dans les armées françaises qui a été blessé en mission au cours ou à l'occasion d'un engagement opérationnel et qui en fait la demande.

En cas de décès de l'intéressé, dans les conditions prévues au premier alinéa, la même procédure est ouverte à ses enfants mineurs qui, au jour du décès, remplassaient la condition de résidence prévue à l'article 22-1..

Article 21-15

(Loi n° 99-1141 du 29 décembre 1999 art. 2 Journal Officiel du 30 décembre 1999)

Hors le cas prévu à l'article 21-14-1, l'acquisition de la nationalité française par décision de l'autorité publique résulte d'une naturalisation accordée par décret à la demande de l'étranger.

Article 21-16

Nul ne peut être naturalisé s'il n'a en France sa résidence au moment de la signature du décret de naturalisation.

Article 21-17

Sous réserve des exceptions prévues aux articles 21-18, 21-19 et 21-20, la naturalisation ne peut être accordée qu'à l'étranger justifiant d'une résidence habituelle en France pendant les cinq années qui précèdent le dépôt de la demande.

Article 21-18

Le stage mentionné à l'article 21-17 est réduit à deux ans :

- 1° Pour l'étranger qui a accompli avec succès deux années d'études supérieures en vue d'acquérir un diplôme délivré par une université ou un établissement d'enseignement supérieur français ;
- 2° Pour celui qui a rendu ou qui peut rendre par ses capacités et ses talents des services importants à la France.

Article 21-19

(Loi n° 98-170 du 16 mars 1998 art. 8 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Peut être naturalisé sans condition de stage :

- 1° L'enfant mineur resté étranger bien que l'un de ses parents ait acquis la nationalité française ;
- 2° Le conjoint et l'enfant majeur d'une personne qui acquiert ou a acquis la nationalité française ;
- 3° (supprimé) ;
- 4° L'étranger qui a effectivement accompli des services militaires dans une unité de l'armée française ou qui, en temps de guerre, a contracté un engagement volontaire dans les armées françaises ou alliées ;
- 5° Le ressortissant ou ancien ressortissant des territoires et des Etats sur lesquels la France a exercé soit la souveraineté, soit un protectorat, un mandat ou une tutelle ;
- 6° L'étranger qui a rendu des services exceptionnels à la France ou celui dont la naturalisation présente pour la France un intérêt exceptionnel. Dans ce cas, le décret de naturalisation ne peut être accordé qu'après avis du Conseil d'Etat sur rapport motivé du ministre compétent ;
- 7° L'étranger qui a obtenu le statut de réfugié en application de la loi n° 52-893 du 25 juillet 1952 portant création d'un Office français de protection des réfugiés et apatrides.

Article 21-20

Peut être naturalisée sans condition de stage la personne qui appartient à l'entité culturelle et linguistique française, lorsqu'elle est ressortissante des territoires ou Etats dont la langue officielle ou l'une des langues officielles est le français, soit lorsque le français est sa langue maternelle, soit lorsqu'elle justifie d'une scolarisation minimale de cinq années dans un établissement enseignant en langue française.

Article 21-21

La nationalité française peut être conférée par naturalisation sur proposition du ministre des affaires étrangères à tout étranger francophone qui en fait la demande et qui contribue par son action éminente au rayonnement de la France et à la prospérité de ses relations économiques internationales.

Article 21-22

A l'exception du mineur pouvant invoquer le bénéfice du deuxième alinéa (1°) de l'article 21-19, nul ne peut être naturalisé s'il n'a atteint l'âge de dix-huit ans.

Article 21-23

Nul ne peut être naturalisé s'il n'est pas de bonnes vie et moeurs ou s'il a fait l'objet de l'une des condamnations visées à l'article 21-27 du présent code.

Les condamnations prononcées à l'étranger pourront toutefois ne pas être prises en considération ; en ce cas, le décret prononçant la naturalisation ne pourra être pris qu'après avis conforme du Conseil d'Etat.

Article 21-24

Nul ne peut être naturalisé s'il ne justifie de son assimilation à la communauté française, notamment par une connaissance suffisante, selon sa condition, de la langue française.

Article 21-25

Les conditions dans lesquelles s'effectuera le contrôle de l'assimilation et de l'état de santé de l'étranger en instance de naturalisation seront fixées par décret.

Article 21-25-1

(inséré par Loi n° 98-170 du 16 mars 1998 art. 15 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

La réponse de l'autorité publique à une demande d'acquisition de la nationalité française par naturalisation doit intervenir dix-huit mois au plus tard après la date à laquelle a été délivré au demandeur le récépissé constatant la remise de toutes les pièces nécessaires à la constitution d'un dossier complet.

Ce délai peut être prolongé une seule fois de trois mois par décision motivée.

Paragraphe VI : Dispositions communes à certains modes d'acquisition de la nationalité française

Article 21-26

(Loi n° 98-170 du 16 mars 1998 art. 9 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Est assimilé à la résidence en France lorsque cette résidence constitue une condition de l'acquisition de la nationalité française :

1° Le séjour hors de France d'un étranger qui exerce une activité professionnelle publique ou privée pour le compte de l'Etat français ou d'un organisme dont l'activité présente un intérêt particulier pour l'économie ou la culture française ;

2° Le séjour dans les pays en union douanière avec la France qui sont désignés par décret ;

3° La présence hors de France, en temps de paix comme en temps de guerre, dans une formation régulière de l'armée française ou au titre des obligations prévues par le livre II du code du service national ;

4° Le séjour hors de France en qualité de volontaire du service national.

L'assimilation de résidence qui profite à l'un des époux s'étend à l'autre s'ils habitent effectivement ensemble.

Article 21-27

(Loi n° 93-1027 du 24 août 1993 art. 32 Journal Officiel du 29 août 1993)

(Loi n° 93-1417 du 30 décembre 1993 art. 11 II Journal Officiel du 1er janvier 1994)

(Loi n° 98-170 du 16 mars 1998 art. 10 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Nul ne peut acquérir la nationalité française ou être réintégré dans cette nationalité s'il a été l'objet soit d'une condamnation pour crimes ou délits constituant une atteinte aux intérêts fondamentaux de la Nation ou un acte de terrorisme, soit, quelle que soit l'infraction considérée, s'il a été condamné à une peine égale ou supérieure à six mois d'emprisonnement, non assortie d'une mesure de sursis.

Il en est de même de celui qui a fait l'objet soit d'un arrêté d'expulsion non expressément rapporté ou abrogé (Dispositions déclarées non conformes à la Constitution par décision du Conseil

constitutionnel n° 93-321 DC du 20 juillet 1993), soit d'une interdiction du territoire français non entièrement exécutée.

Il en est de même de celui dont le séjour en France est irrégulier au regard des lois et conventions relatives au séjour des étrangers en France.

Les dispositions du présent article ne sont pas applicables à l'enfant mineur susceptible d'acquérir la nationalité française en application des articles 21-7, 21-11, 21-12 et 22-1.

Section II : Des effets de l'acquisition de la nationalité française

Article 22

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

La personne qui a acquis la nationalité française jouit de tous les droits et est tenue à toutes les obligations attachées à la qualité de français, à dater du jour de cette acquisition.

Article 22-1

(Loi n° 98-170 du 16 mars 1998 art. 11 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

L'enfant mineur, légitime, naturel, ou ayant fait l'objet d'une adoption plénière, dont l'un des deux parents acquiert la nationalité française, devient français de plein droit s'il a la même résidence habituelle que ce parent ou s'il réside alternativement avec ce parent dans le cas de séparation ou divorce.

Les dispositions du présent article ne sont applicables à l'enfant d'une personne qui acquiert la nationalité française par décision de l'autorité publique ou par déclaration de nationalité que si son nom est mentionné dans le décret ou dans la déclaration.

Article 22-2

Les dispositions de l'article précédent ne sont pas applicables à l'enfant marié.

Article 22-3

Toutefois, l'enfant français en vertu de l'article 22-1 et qui n'est pas né en France a la faculté de répudier cette qualité pendant les six mois précédant sa majorité et dans les douze mois la suivant. Il exerce cette faculté par déclaration souscrite conformément aux articles 26 et suivants. Il peut renoncer à cette faculté à partir de l'âge de seize ans dans les mêmes conditions.

Chapitre IV

De la perte, de la déchéance et de la réintégration dans la nationalité française

Section I : De la perte de la nationalité française

Article 23

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

Toute personne majeure de nationalité française, résidant habituellement à l'étranger, qui acquiert volontairement une nationalité étrangère ne perd la nationalité française que si elle le déclare expressément, dans les conditions prévues aux articles 26 et suivants du présent titre.

Article 23-1

La déclaration en vue de perdre la nationalité française peut être souscrite à partir du dépôt de la demande d'acquisition de la nationalité étrangère et, au plus tard, dans le délai d'un an à compter de la date de cette acquisition.

Article 23-2

(Loi n° 98-170 du 16 mars 1998 art. 19 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Les français de moins de trente-cinq ans ne peuvent souscrire la déclaration prévue aux articles 23 et 23-1 ci-dessus que s'ils sont en règle avec les obligations du livre II du code du service national.

Article 23-3

(Loi n° 98-170 du 16 mars 1998 art. 20 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Perd la nationalité française le français qui exerce la faculté de répudier cette qualité dans les cas prévus aux articles 18-1, 19-4 et 22-3.

Article 23-4

Perd la nationalité française, le français même mineur, qui, ayant une nationalité étrangère, est autorisé, sur sa demande, par le Gouvernement français, à perdre la qualité de français. Cette autorisation est accordée par décret.

Article 23-5

(Loi n° 98-170 du 16 mars 1998 art. 21 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

En cas de mariage avec un étranger, le conjoint français peut répudier la nationalité française selon les dispositions des articles 26 et suivants à la condition qu'il ait acquis la nationalité étrangère de son conjoint et que la résidence habituelle du ménage ait été fixée à l'étranger. Toutefois, les français âgés de moins de trente-cinq ans ne pourront exercer cette faculté de répudiation que s'ils sont en règle avec les obligations prévues au livre II du code du service national.

Article 23-6

La perte de la nationalité française peut être constatée par jugement lorsque l'intéressé, français d'origine par filiation, n'en a point la possession d'état et n'a jamais eu sa résidence habituelle en France, si les ascendants, dont il tenait la nationalité française, n'ont eux-mêmes ni possession d'état de Français, ni résidence en France depuis un demi-siècle.

Le jugement détermine la date à laquelle la nationalité française a été perdue. Il peut décider que cette nationalité avait été perdue par les auteurs de l'intéressé et que ce dernier n'a jamais été français.

Article 23-7

Le français qui se comporte en fait comme le national d'un pays étranger peut, s'il a la nationalité de ce pays, être déclaré, par décret après avis conforme du Conseil d'Etat, avoir perdu la qualité de français.

Article 23-8

Perd la nationalité française le français qui, occupant un emploi dans une armée ou un service public étranger ou dans une organisation internationale dont la France ne fait pas partie ou plus généralement leur apportant son concours, n'a pas résigné son emploi ou cessé son concours nonobstant l'injonction qui lui en aura été faite par le Gouvernement.

L'intéressé sera, par décret en Conseil d'Etat, déclaré avoir perdu la nationalité française si, dans le délai fixé par l'injonction, délai qui ne peut être inférieur à quinze jours et supérieur à deux mois, il n'a pas mis fin à son activité.

Lorsque l'avis du Conseil d'Etat est défavorable, la mesure prévue à l'alinéa précédent ne peut être prise que par décret en conseil des ministres.

Article 23-9

La perte de la nationalité française prend effet :

- 1° Dans le cas prévu à l'article 23 à la date de l'acquisition de la nationalité étrangère ;
- 2° Dans le cas prévu aux articles 23-3 et 23-5 à la date de la déclaration ;
- 3° Dans le cas prévu aux articles 23-4, 23-7 et 23-8 à la date du décret ;
- 4° Dans les cas prévus à l'article 23-6 au jour fixé par le jugement.

Section II : De la réintégration dans la nationalité française**Article 24**

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

La réintégration dans la nationalité française des personnes qui établissent avoir possédé la qualité de français résulte d'un décret ou d'une déclaration suivant les distinctions fixées aux articles ci-après.

Article 24-1

La réintégration par décret peut être obtenue à tout âge et sans condition de stage. Elle est soumise, pour le surplus, aux conditions et aux règles de la naturalisation.

Article 24-2

(Loi n° 98-170 du 16 mars 1998 art. 22 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Les personnes qui ont perdu la nationalité française à raison du mariage avec un étranger ou de l'acquisition par mesure individuelle d'une nationalité étrangère peuvent, sous réserve des

dispositions de l'article 21-27, être réintégrées par déclaration souscrite, en France ou à l'étranger, conformément aux articles 26 et suivants.

Elles doivent avoir conservé ou acquis avec la France des liens manifestes, notamment d'ordre culturel, professionnel, économique ou familial.

Article 24-3

La réintégration par décret ou par déclaration produit effet à l'égard des enfants âgés de moins de dix-huit ans dans les conditions des articles 22-1 et 22-2 du présent titre.

Section III : De la déchéance de la nationalité française

Article 25

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

(Loi n° 96-647 du 22 juillet 1996 art. 12 Journal Officiel du 23 juillet 1996)

(Loi n° 98-170 du 16 mars 1998 art. 23 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

L'individu qui a acquis la qualité de français peut, par décret pris après avis conforme du Conseil d'Etat, être déchu de la nationalité française, sauf si la déchéance a pour résultat de le rendre apatride :

1° S'il est condamné pour un acte qualifié de crime ou délit constituant une atteinte aux intérêts

fondamentaux de la nation ou pour un crime ou un délit constituant un acte de terrorisme ;

2° S'il est condamné pour un acte qualifié de crime ou délit prévu et réprimé par le chapitre II du titre III du livre IV du code pénal ;

3° S'il est condamné pour s'être soustrait aux obligations résultant pour lui du code du service national ;

4° S'il s'est livré au profit d'un Etat étranger à des actes incompatibles avec la qualité de français et préjudiciables aux intérêts de la France.

Article 25-1

La déchéance n'est encourue que si les faits reprochés à l'intéressé et visés à l'article 25 se sont produits dans le délai de dix ans à compter de la date de l'acquisition de la nationalité française.

Elle ne peut être prononcée que dans le délai de dix ans à compter de la perpétration desdits faits.

Chapitre V

Des actes relatifs à l'acquisition ou à la perte de la nationalité française

Section I : Des déclarations de nationalité

Article 26

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

(Loi n° 98-170 du 16 mars 1998 art. 12 I Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Les déclarations de nationalité sont reçues par le juge d'instance ou par les consuls suivant les formes déterminées par décret en Conseil d'Etat.

Il en est délivré récépissé après remise des pièces nécessaires à la preuve de leur recevabilité.

Article 26-1

Toute déclaration de nationalité doit, à peine de nullité, être enregistrée soit par le juge d'instance, pour les déclarations souscrites en France, soit par le ministre de la justice, pour les déclarations souscrites à l'étranger.

Article 26-2

Le siège et le ressort des tribunaux d'instance compétents pour recevoir et enregistrer les déclarations de nationalité française sont fixés par décret.

Article 26-3

(Loi n° 98-170 du 16 mars 1998 art. 12 II Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Le ministre ou le juge refuse d'enregistrer les déclarations qui ne satisfont pas aux conditions légales.

Sa décision motivée est notifiée au déclarant qui peut la contester devant le tribunal de grande instance durant un délai de six mois. L'action peut être exercée personnellement par le mineur dès l'âge de seize ans.

La décision de refus d'enregistrement doit intervenir six mois au plus après la date à laquelle a été délivré au déclarant le récépissé constatant la remise de toutes les pièces nécessaires à la preuve de recevabilité de la déclaration.

Le délai est porté à un an pour les déclarations souscrites en vertu de l'article 21-2.

Article 26-4

(Loi n° 98-170 du 16 mars 1998 art. 12 III Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

A défaut de refus d'enregistrement dans les délais légaux, copie de la déclaration est remise au déclarant revêtue de la mention de l'enregistrement.

L'enregistrement peut encore être contesté par le ministère public en cas de mensonge ou de fraude dans le délai de deux ans à compter de leur découverte. La cessation de la communauté de vie entre les époux dans les douze mois suivant l'enregistrement de la déclaration prévue à l'article 21-2 constitue une présomption de fraude.

Article 26-5

(Loi n° 98-170 du 16 mars 1998 art. 12 IV Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Sous réserve des dispositions du deuxième alinéa (1°) de l'article 23-9, les déclarations de nationalité, dès lors qu'elles ont été enregistrées, prennent effet à la date à laquelle elles ont été souscrites.

Section II : Des décisions administratives

Article 27

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

Toute décision déclarant irrecevable, ajournant ou rejetant une demande d'acquisition, de naturalisation ou de réintégration par décret ainsi qu'une autorisation de perdre la nationalité française doit être motivée.

Article 27-1

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

Les décrets portant, acquisition, naturalisation ou réintégration, autorisation de perdre la nationalité française, perte ou déchéance de cette nationalité, sont pris et publiés dans des formes fixées par décret. Ils n'ont point d'effet rétroactif.

Article 27-2

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

Les décrets portant acquisition, naturalisation ou réintégration peuvent être rapportés sur avis conforme du Conseil d'Etat dans le délai d'un an à compter de leur publication au Journal officiel si le requérant ne satisfait pas aux conditions légales ; si la décision a été obtenue par mensonge ou fraude, ces décrets peuvent être rapportés dans le délai de deux ans à partir de la découverte de la fraude.

Article 27-3

Les décrets qui portent perte pour l'une des causes prévues aux articles 23-7 et 23-8 ou déchéance de la nationalité française sont pris, l'intéressé entendu ou appelé à produire ses observations.

Section III : Des mentions sur les registres de l'état civil

Article 28

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

(Loi n° 98-170 du 16 mars 1998 art. 16 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

Mention sera portée, en marge de l'acte de naissance, des actes administratifs et des déclarations ayant pour effet l'acquisition, la perte de la nationalité française ou la réintégration dans cette nationalité.

Il sera fait de même mention de toute première délivrance de certificat de nationalité française et des décisions juridictionnelles ayant trait à cette nationalité.

Article 28-1

(Loi n° 98-170 du 16 mars 1998 art. 17 Journal Officiel du 17 mars 1998 en vigueur le 1er septembre 1998)

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

Les mentions relatives à la nationalité prévues à l'article précédent sont portées sur les copies des actes de naissance ou des actes dressés pour en tenir lieu.

Ces mentions sont également portées sur les extraits des actes de naissance ou sur le livret de famille à la demande des intéressés. Toutefois, la mention de la perte, de la déclinéation, de la déchéance, de l'opposition à l'acquisition de la nationalité française, du retrait du décret d'acquisition de naturalisation ou de réintégration ou de la décision judiciaire ayant constaté l'extranéité est portée d'office sur les extraits des actes de naissance et sur le livret de famille lorsqu'une personne ayant antérieurement acquis cette nationalité, ou s'étant vu reconnaître judiciairement celle-ci, ou délivrer un certificat de nationalité française a demandé qu'il en soit fait mention sur lesdits documents.

Chapitre VI

Du contentieux de la nationalité

Section I : De la compétence des tribunaux judiciaires et de la procédure devant ces tribunaux

Article 29

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

La juridiction civile de droit commun est seule compétente pour connaître des contestations sur la nationalité française ou étrangère des personnes physiques.

Les questions de nationalité sont préjudicielles devant toute autre juridiction de l'ordre administratif ou judiciaire à l'exception des juridictions répressives comportant un jury criminel.

Article 29-1

Le siège et le ressort des tribunaux de grande instance compétents pour connaître des contestations sur la nationalité française ou étrangère des personnes physiques sont fixés par décret.

Article 29-2

La procédure suivie en matière de nationalité, et notamment la communication au ministère de la justice des assignations, conclusions et voies de recours, est déterminée par le code de procédure civile.

Article 29-3

Toute personne a le droit d'agir pour faire décider qu'elle a ou qu'elle n'a point la qualité de français. Le procureur de la République a le même droit à l'égard de toute personne. Il est défendeur nécessaire à toute action déclaratoire de nationalité. Il doit être mis en cause toutes les fois qu'une question de nationalité est posée à titre incident devant un tribunal habile à en connaître.

Article 29-4

Le procureur est tenu d'agir s'il en est requis par une administration publique ou par une tierce personne ayant soulevé l'exception de nationalité devant une juridiction qui a sursis à statuer en application de l'article 29. Le tiers requérant devra être mis en cause.

Article 29-5

Les jugements et arrêts rendus en matière de nationalité française par le juge de droit commun ont effet même à l'égard de ceux qui n'y ont été ni parties, ni représentés. Tout intéressé est recevable cependant à les attaquer par la tierce opposition à la condition de mettre en cause le procureur de la République.

Section II : De la preuve de la nationalité devant les tribunaux judiciaires

Article 30

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

La charge de la preuve, en matière de nationalité française, incombe à celui dont la nationalité est en cause.

Toutefois, cette charge incombe à celui qui conteste la qualité de français à un individu titulaire d'un certificat de nationalité française délivré conformément aux articles 31 et suivants.

Article 30-1

(Loi n° 99-1141 du 29 décembre 1999 art. 3 Journal Officiel du 30 décembre 1999)

Lorsque la nationalité française est attribuée ou acquise autrement que par déclaration, décret d'acquisition ou de naturalisation, réintégration ou annexion de territoires, la preuve ne peut être faite qu'en établissant l'existence de toutes les conditions requises par la loi.

Article 30-2

Néanmoins, lorsque la nationalité française ne peut avoir sa source que dans la filiation, elle est tenue pour établie, sauf la preuve contraire si l'intéressé et celui de ses père et mère qui a été susceptible de la lui transmettre ont joui d'une façon constante de la possession d'état de français.

La nationalité française des personnes nées à Mayotte, majeures au 1er janvier 1994, sera subsidiairement tenue pour établie si ces personnes ont joui de façon constante de la possession d'état de français.

Article 30-3

Lorsqu'un individu réside ou a résidé habituellement à l'étranger, où les ascendants dont il tient par filiation la nationalité sont demeurés fixés pendant plus d'un demi-siècle, cet individu ne sera pas admis à faire la preuve qu'il a, par filiation, la nationalité française si lui-même et celui de ses père et mère qui a été susceptible de la lui transmettre n'ont pas eu la possession d'état de français. Le tribunal devra dans ce cas constater la perte de la nationalité française, dans les termes de l'article 23-6.

Article 30-4

En dehors des cas de perte ou de déchéance de la nationalité française, la preuve de l'extranéité d'un individu peut seulement être établie en démontrant que l'intéressé ne remplit aucune des conditions exigées par la loi pour avoir la qualité de français.

Chapitre VII : Des effets sur la nationalité française des transferts de souveraineté relatifs à certains territoires

Article 32

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

Les français originaires du territoire de la République française, tel qu'il était constitué à la date du 28 juillet 1960, et qui étaient domiciliés au jour de son accession à l'indépendance sur le territoire d'un Etat qui avait eu antérieurement le statut de territoire d'outre-mer de la République française, ont conservé la nationalité française.

Il en est de même des conjoints, des veufs ou veuves et des descendants desdites personnes.

Article 32-1

Les français de statut civil de droit commun domiciliés en Algérie à la date de l'annonce officielle des résultats du scrutin d'autodétermination conservent la nationalité française quelle que soit leur situation au regard de la nationalité algérienne.

Article 32-2

La nationalité française des personnes de statut civil de droit commun, nées en Algérie avant le 22 juillet 1962, sera tenue pour établie, dans les conditions de l'article 30-2, si ces personnes ont joui de façon constante de la possession d'état de français.

Article 32-3

Tout français domicilié à la date de son indépendance sur le territoire d'un Etat qui avait eu antérieurement le statut de département ou de territoire d'outre-mer de la République, conserve de plein droit sa nationalité dès lors qu'aucune autre nationalité ne lui a été conférée par la loi de cet Etat.

Conservent également de plein droit la nationalité française les enfants des personnes bénéficiaires des dispositions de l'alinéa précédent, mineurs de dix-huit ans à la date de l'accession à l'indépendance du territoire où leurs parents étaient domiciliés.

Article 32-4

Les anciens membres du parlement de la République, de l'assemblée de l'Union française et du conseil économique qui ont perdu la nationalité française et acquis une nationalité étrangère par

l'effet d'une disposition générale peuvent être réintégrés dans la nationalité française par simple déclaration, lorsqu'ils ont établi leur domicile en France.

La même faculté est ouverte à leur conjoint, veuf ou veuve et à leurs enfants.

Article 32-5

La déclaration de réintégration prévue à l'article précédent peut être souscrite par les intéressés, conformément aux dispositions des articles 26 et suivants, dès qu'ils ont atteint l'âge de dix-huit ans ; elle ne peut l'être par représentation. Elle produit effet à l'égard des enfants mineurs dans les conditions des articles 22-1 et 22-2.

Chapitre VIII : Dispositions particulières concernant les territoires d'outre-mer

Article 33

(Loi du 8 mars 1803 promulguée le 18 mars 1803)

(Loi du 31 mai 1854)

Pour l'application du présent code dans les territoires d'outre-mer :

Les termes "tribunal de grande instance" sont chaque fois remplacés par les termes "tribunal de première instance".

Article 33-1

Par dérogation à l'article 26, la déclaration est reçue par le président du tribunal de première instance ou par le juge chargé de la section détachée.

Article 33-2

Par dérogation à l'article 31, le président du tribunal de première instance ou le juge chargé de la section détachée a seul qualité pour délivrer un certificat de nationalité française à toute personne justifiant qu'elle a cette nationalité.

Source : <http://www.legislationline.org/topics/topic/2/country/30>

Appendix C

Bayrou Circular

For many years, numerous incidents have occurred in academic institutions, sometimes spectacular manifestations of religious or community affiliation.

Principals of schools and the faculties have repeatedly shown their desire to receive clear instructions. It therefore seems necessary for me to provide you with the following specific rules.

In France the national goal and the republican goal have merged with a certain idea of citizenship. This French idea of the nation and of the Republic is, naturally, respectful of all beliefs, in particular religious and political beliefs and cultural traditions. But it excludes the splintering of the nation into separate communities that are indifferent to one another, considering only their own rules and their own laws, engaged in simple coexistence. The nation is not only a body of citizens possessing individual rights. It is a common destiny.

This ideal is formed first in schools. The school excels at being the place of education and integration where all children and all young people repeatedly come together, learning to live together and to respect one another. In the school, the presence of symbols and of behavior which demonstrate that they are neither able to conform to the same obligations, nor take the same courses, nor follow the same programs would be a negation of this mission. At the door of the school all discrimination ends, be it by sex, by culture or by religion.

This secular and national ideal is the very substance of the Republican school and the foundation of its duty of civic education.

That is why it is not possible to accept in school the presence and the multiplication of symbols so ostentatious that their significance is precisely to separate certain children from the rules of common life of the school. These symbols are, in themselves, elements of proselytism, especially when they are accompanied with a calling into question of certain courses or disciplines, and they put at risk the security of the children or they introduce disruptions in the common life of the institution.

Therefore, when the interior regulations are being written, I ask your good will in proposing to the Administration Council the banning of ostentatious symbols, knowing that the presence of more discreet signs, indicating only devotion to a personal conviction, cannot be hindered at all, as the Council of State and administrative jurisprudence have indicated.

I ask you also not to lose sight of the fact that our duty is education first and foremost.

No educational enterprise is conceivable without prior expression of clear rules. But conforming to a rule is often the result of persuasion.

The superintendents and academic inspectors will therefore support all your efforts to convince instead of constrain, to look for mediation with the families, and to prove to the students concerned that our course of action is a respectful one. Access to knowledge is the crucial means for constructing an autonomous personality. Our mission is certainly to continue to offer it to each and everyone.

I ask you to not omit informing all families of the interior regulations adopted by the administration councils of the institutions.

I ask you to require of faculty in all disciplines, educational staff, and the rest of your crew, to explain to the students in their care that they have the double task of respect for convictions and firmness in the defense of the republican project of our country.

Administrators in your institutions, in cooperation with the teaching staff, representing the ministry, I assure you that you have my complete confidence that you will seek the best timing and the best conditions for applying these principles.

Appendix

A proposed article to be inserted into institutional regulations:

In institutions students are allowed to wear distinctive symbols, manifesting their personal attachment to convictions, especially religious, is allowed. But ostentatious symbols, which constitute in themselves elements of proselytism or of discrimination are forbidden. Provocative behavior, failure to fulfill obligations of conscientiousness and safety, acts susceptible of being construed as pressure on other students, disturbing the functioning of activities, or disrupting the order of the institution are forbidden.

Source: *The Stasi Report: The Report of the Committee of Reflection on the Application of the Principle of Secularity in the Republic* by Robert O'Brien

Appendix D

The 2004 Law Banning the Signs of Religious Affiliation in France

JORF n°65 du 17 mars 2004 page 5190
texte n° 1

LOI

LOI n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics (1)

NOR: MENX0400001L

L'Assemblée nationale et le Sénat ont adopté,
Le Président de la République promulgue la loi dont la teneur suit :
Article 1

Il est inséré, dans le code de l'éducation, après l'article L. 141-5, un article L. 141-5-1 ainsi rédigé :

« Art. L. 141-5-1. - Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.

Le règlement intérieur rappelle que la mise en oeuvre d'une procédure disciplinaire est précédée d'un dialogue avec l'élève. »

Article 2 [En savoir plus sur cet article...](#)

I. - La présente loi est applicable :

1° Dans les îles Wallis et Futuna ;

2° Dans la collectivité départementale de Mayotte ;

3° En Nouvelle-Calédonie, dans les établissements publics d'enseignement du second degré relevant de la compétence de l'Etat en vertu du III de l'article 21 de la loi organique n° 99-209 du 19 mars 1999 relative à la Nouvelle-Calédonie.

II. - Le code de l'éducation est ainsi modifié :

1° Au premier alinéa de l'article L. 161-1, les références : « L. 141-4, L. 141-6 » sont remplacées par les références : « L. 141-4, L. 141-5-1, L. 141-6 » ;

2° A l'article L. 162-1, les références : « L. 141-4 à L. 141-6 » sont remplacées par les références : « L. 141-4, L. 141-5, L. 141-5-1, L. 141-6 » ;

3° A l'article L. 163-1, les références : « L. 141-4 à L. 141-6 » sont remplacées par les références : « L. 141-4, L. 141-5, L. 141-6 » ;

4° L'article L. 164-1 est ainsi modifié :

a) Les références : « L. 141-4 à L. 141-6 » sont remplacées par les références : « L. 141-4, L. 141-5, L. 141-6 » ;

b) Il est complété par un alinéa ainsi rédigé :
« L'article L. 141-5-1 est applicable aux établissements publics d'enseignement du second degré mentionnés au III de l'article 21 de la loi organique n° 99-209 du 19 mars 1999 relative à la Nouvelle-Calédonie qui relèvent de la compétence de l'Etat. »
III. - Dans l'article L. 451-1 du même code, il est inséré, après la référence : « L. 132-1, », la référence : « L. 141-5-1, ».

Article 3 [En savoir plus sur cet article...](#)

Les dispositions de la présente loi entrent en vigueur à compter de la rentrée de l'année scolaire qui suit sa publication.

Article 4

Les dispositions de la présente loi font l'objet d'une évaluation un an après son entrée en vigueur.

La présente loi sera exécutée comme loi de l'Etat.

Fait à Paris, le 15 mars 2004.

Jacques Chirac

Par le Président de la République :

Le Premier ministre,

Jean-Pierre Raffarin

Le ministre de la jeunesse,

de l'éducation nationale et de la recherche,

Luc Ferry

La ministre de l'outre-mer,

Brigitte Girardin

Le ministre délégué

à l'enseignement scolaire,

Xavier Darcos

(1) Travaux préparatoires : loi n° 2004-228.

Assemblée nationale :

Projet de loi n° 1378 ;

Rapport de M. Pascal Clément, au nom de la commission des lois, n° 1381 ;

Avis de M. Jean-Michel Dubernard, au nom de la commission des affaires culturelles, n° 1382 ;

Discussion les 3, 4 et 5 février 2004 et adoption le 10 février 2004.

Sénat :

Projet de loi, adopté par l'Assemblée nationale, n° 209 (2003-2004) ;

Rapport de M. Jacques Valade, au nom de la commission des affaires culturelles, n° 219 (2003-2004) ;

Discussion et adoption le 3 mars 2004.

Source: *La République Française*

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