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Religious symbols in public spaces: the politics of regulation in England and France

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ABSTRACT

This thesis examines the regulations of religious symbols in public spaces in England and France. It contends that these cannot be understood just by reference to historical and cultural contexts, and argues they can only be more fully explained by the agency of actors involved in shaping them. The thesis first develops a novel framework to thoroughly map which symbols are regulated and where, the penalties for infringing the regulations, and the extent to which these are enforced. Then, it deploys a second framework that focuses on the actors to explore why the regulations in the two countries are the way they are.

The thesis finds significant differences in the regulations in the two countries, and argues that these are explained by different constellations of actors, and differences in the arguments that they have made. In England debates over religious symbols have been balanced between those who favour new regulations and those who do not, while in France they have been very one-sided. The debates in England have also included many different arguments about the place of religious symbols in public spaces, while in France they have been more focused on the threat that religious symbols are believed to pose to secularism and universalism. Moreover, while debates in England have mainly occurred amongst political elites, in France they have involved a wider range of actors. These differences underline the importance of agency, and do much to explain why significantly more regulations exist in France than in England.

The thesis contributes to understanding why regulations of religious symbols in the public space are the way they are in different countries, and offers a political science perspective to the topic, which to date has been lacking. It also makes an analytical and theoretical contribution by proposing alternative ways of exploring policy making.

Table of Contents

Chapter 1: Introduction......1

Chapter 2: The Public Space and the Accommodation of Religion......18

Chapter 3: Analytical Framework – Tools and Concepts......32

Chapter 4: The Scope, Depth and Enforcement of the Regulation of Religious Symbols in England......68

Chapter 5: Explaining the Limited Nature of Regulations of Religious Symbols in England......135

Chapter 6: The Scope, Depth and Enforcement of the Regulation of Religious Symbols in France......205

Chapter 7: Explaining the Nature of Regulations of Religious Symbols in France......254

Chapter 8: Conclusion......339

References......358

Dedications

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Chapter 1: Introduction

Freedom of religion and other dimensions of freedom go hand-in-hand. Religious freedom is a relevant component of human freedom. Guaranteeing freedom in religious affairs allows religious groups to participate in democracy. Therefore, as Stepan (2012: 90) argues, there needs to be cooperation and toleration between religious and democratic institutions for the coexistence of religion and democracy in a society.

The aim of religious freedom is not to promote the position of certain creeds, or use religion for the benefit of the state or society. Rather it is to ensure the protection of individual freedom (Mahlmann, 2009: 2491). This argument is based on Rawls' (1993) normative principle of freedom and equality for all. Such a concern for the individual, the believer and the non-believer, constitutes the basis of human rights and requires the protection of the individual's freedom of religion. Mahlmann (2009: 2491) supports freedom of religion and religious tolerance on the basis that no religion holds legitimate claim to religious truth and because it justifies the protection of human dignity.

Yet, despite its importance, religious freedom has received little consideration when compared to other dimensions of freedom. Indeed, it has famously been described as the 'orphan of human rights' (Hertzke, 2004: 69). This lack of attention is perhaps explained by the assumption that religiosity in Western democracies would gradually attenuate (Levey, 2009: 1), and by 'the belief that outbreaks of politicized religion are temporary detours on the road to secularization' (Shah and Toft, 2006: 43). Yet today these assumptions appear inaccurate, as 'new forms of religious expression and the intensification of religious sentiment' are increasingly observed (Levey, 2009: 2), and as religious intolerance grows in

many parts of the world, including Western Europe. More than ever, therefore, religious freedoms and restrictions deserve to be explored.

Arguably, questions concerning the exercise of freedom of religion can be best understood through examining the display of religious symbols because the right to freedom of religion is often associated with the prerogative to wear religious symbols and clothing. In this way, then, ongoing debates over the display of religious symbols reflect wider attitudes in politics and society about religious freedom. Moreover, an appreciation of why particular restrictions on religious symbols have come about allows for a better awareness of the specific nature of the conflicts over religious freedom in different countries.

It is tempting to think that West European countries have similar attitudes towards religious freedom. However, this is not the case. Despite their longstanding democratic practices and common Christian legacy, some West European states display higher levels of de jure restriction on the display of religious symbols in their public space than others. Indeed, there is substantial variation in the ways in which religious freedoms are treated in different states, and the same is the case for religious symbols. While some states ban the display of all religious symbols in public, others allow the display of symbols from all religions. It is therefore important to appreciate this variety and to understand why it exists.

A focus on religious freedom and religious symbols is not only important, but it is also particularly timely because the contemporary period has witnessed and is continuing to witness growing religious plurality in Europe. One consequence of this is the increasing debates in both the media and in political circles about the place of religion in society, and

about whether or not religious freedoms and displays of religion (which many argue constitute fundamental human rights) should be restricted in any way. A particular concern among many in these debates is the need to accommodate diversity in a manner that will nonetheless preserve and protect national identity and culture.

Attitudes about religious freedom and about the display of religious symbols in the public space are not just shaped by recent developments, however. Rather, these views and the policies that governments pursue and enact are also influenced by legacies and traditions, and in particular by historical church-state relations. Indeed, in their study on the accommodation of Muslims in three countries, Fetzer and Soper (2005: 16) show that policies concerning the accommodation of (non-majority) religions vary from country to country and argue that these differences are explained by the 'inherited state-church structures in particular nations.' The same is likely to be the case for policies regarding the display of religious symbols in the public space.

Despite the important and timeliness of the subject, there is nonetheless a relative shortage of academic studies that have examined the regulation of religious symbols in public spaces, at least from a political perspective. This can be partly explained by the fact that political science, as a discipline, has not engaged very much at all with religion. As Kettell (2012: 93) has argued, 'religious issues have been largely overlooked by political science', despite the increasing influence of religion in the contemporary period and the conflicts that this has sparked. Instead, research into the regulation of religious symbols has, to date, been dominated by work from legal scholars.

Many of these scholars have focused on bans on the display of religious symbols in public spaces, and on cases that have arisen from these. Some have explored these from a case law perspective, examining whether they have constituted breaches to human rights or to anti-discrimination legislation (e.g. Squelch, 2010; Howard, 2012), or why they have been interpreted by the courts in the ways they have (Vakulenko, 2007). Others have engaged in broader discussions of religious freedoms and their consequences for democracy (Hunter-Henin, 2012, 2020), or in assessments of how these bans, the conflicts that arise from them, or simply the growing diversity of populations challenge the constitutional identity (Mancini, 2009, 2010), and legal cultures or jurisprudence of individual states (Cotterrell, 1997, 2006; Nelken, 2007; Twinning, 2009; Bhamra, 2011).

These studies are certainly all helpful in that they contribute to a better understanding of the regulation of religious symbols in public spaces, and in particular of how laws or bans are justified and defended, and of what their implications are. Yet, what this research does not consider is what has led to these laws being made in the first place. To appreciate this, it is necessary to turn to a different and much smaller literature that comes mainly from political science, sociology, and anthropology.

Within this body of work, a few studies have examined state policies towards religion. Fetzer and Soper (2005), for instance, investigate the accommodation of Muslim religious practices by the state, while Kuru (2009) explores the varying tolerance levels of different secular states towards religion. In their conclusions, both these studies emphasize the importance of historical processes – and historical church-state relations in particular – in explaining different approaches towards religion. Likewise, in their analysis of why the 2004

law banning the display of religious symbols in schools in France came about, both Scott (2007) and Bowen (2008) underline a history of racism, a longstanding sensitivity to the presence of religion in schools, and a more recent fear of radical Islam.

These studies therefore inject an appreciation of historical factors and an understanding of the political in explaining the regulations of religious symbols in public spaces. However, they still only provide a limited account of these regulations because their focus is primarily on the context in which the regulations have come about. What is still missing is an examination of agency, and of what decisions were made, when, by whom and why in the process of regulating these symbols. In other words, to fully understand why regulations come about, it is necessary to not only examine the political context in which the regulation of religious symbols takes place, but it is also essential to investigate the key roles that different actors have played in the debates surrounding the regulation of religious symbols and in the legislation that has often come from these debates.

A small number of studies do just this. Winter (2008) provides an account of the run up to the introduction of the 2004 law in France, and discusses the role of various actors in the debates in the 1989 to 2004 period. Likewise, Grillo and Shah (2012) examine the arguments put forward by a range of actors across Western Europe who oppose the wearing of face veils, and similarly, some of the contributions in Ferrari and Pastorelli's edited volume (2016) detail the position of different parties in drawing up legislation to regulate the display of religious symbols, and the stances of Muslim communities and other societal actors in the debates surrounding the regulations.

These studies are few and far between, however. Moreover, for good reasons, each have a limited focus. The book by Winter (2008) concentrates on one case only – France – and is concerned with one specific law that regulated the display of religious symbols in one public space only, namely schools. In addition, even though that law did concern all religious symbols, Winter's discussions revolve around one symbol only – the Islamic headscarf. The same is the case for the studies by Scott (2007) and Bowen (2008); they too explore the debates leading up to the 2004 law in France and focus their attention on the headscarf. In a similar fashion, Grillo and Shah's (2012) study and Ferrari and Pastorelli's (2016) volume concentrate only on the debates surrounding, and the laws pertaining to, the wearing of Islamic dress.

Contribution

Given the relative shortage of studies on the topic, and the limited focus of the ones that do exist, this thesis engages in an examination of the regulations on the display of religious symbols in the public space in two West European countries, England and France. In doing this it asks two related research questions, namely: What are the policies surrounding the regulation of religious symbols in the public space and how have these developed over time? And why and how have these restrictions come about? In asking these questions, and in engaging in this analysis, the thesis makes a number of important contributions to the existing research on religious freedom and religious symbols.

Firstly, the thesis simply aims to add to the small literature that has examined the regulation of religious symbols in public spaces from a political science rather than a legal perspective, and does so by taking into account both the context in which the regulations occur, and the agency of the various actors involved in the debates and the legislation.

Secondly, the thesis builds on and strengthens the existing literature by taking a comprehensive approach to which regulations it explores. It does this by investigating regulations pertaining to a variety of religious symbols – including crucifixes and other Christian religious symbols, Sikh symbols, as well as Islamic ones – and a range of public spaces, including hospitals, schools, courts, and open public spaces. Moreover, it examines the regulations of religious symbols over a long time period. This broad approach sets the thesis apart from existing studies that have focused on the regulations of one specific religious symbol, or that have investigated the disputes surrounding one particular event in one individual space. This allows for a fuller appreciation of the different types of regulations that exist, including differences that result in some symbols being regulated against while others are not, and differences between regulations imposed on religious symbols in institutional public spaces on the one hand, and in open public spaces on the other. This then enables a much firmer understanding of how regulations have come about, and why they have come about.

Thirdly, the thesis contributes to a wider understanding of the regulations of religious symbols by examining the issue in two very different countries. By engaging in such comparative research, the thesis is able to explore the influence that different historical legacies, different political cultures, and different political systems have on the debates over

the place of religious symbols in the public space, and on the regulations that end up being introduced. This adds to a field of research that, to date, has been largely dominated by single country studies, and ultimately helps explain why some countries have chosen to regulate the wearing of (some) religious symbols in certain public spaces while others have not.

Finally, in addition to addressing an under-researched topic, and to taking a wide and comparative approach to its investigation, the thesis makes a further important contribution through its development and deployment of two novel analytical frameworks with which to study the subject. As will be become apparent in the course of the thesis, these frameworks allow for a detailed and systematic examination of the nature of the regulations pertaining to religious symbols, and of their development over time, and of the actors involved in the debates leading to the regulations, of their arguments, and ultimately of their relative success. Both these frameworks are exportable and can, in future, be applied to other cases.

Focus and Research Design

As has been made clear, this thesis examines the regulations on the display of religious symbols in the public space in England and France. While religious symbolism is a contested concept, and there is no universally accepted definition of what constitutes religious symbolism, Evans (2009) nonetheless provides some clarity over how religious symbols may

be conceived, and suggests two possible ways of viewing them. The first sees symbols as figures of religious devotion, while the second embraces all elements that comprise the life of a believer, such as clothing or personal adornments, written materials, pictures, and other items (Evans, 2009: 63; Ferrari 2013). This study will focus on visible signs of manifestation of religion that can be seen in public, i.e. open signs of devotion. These can be items of clothing (e.g. headscarves, full-face veils, or turbans), clothing accessories (e.g. kippahs), jewellery (e.g. crucifixes or purity rings), and other objects (e.g. Sikh knives). Often, as in the case of wearing a crucifix for example, these religious symbols are voluntary manifestations of a religion. However, in other instances, like with the headscarf or the turban, an individual may feel that wearing the item is a religious obligation.

The thesis is concerned with the regulations pertaining to the display of these symbols in the public space. As will be discussed in more detail in Chapter 2, in this study the public space refers to physical spaces that are supposedly accessible to all. These spaces include institutional public spaces, such as hospitals, schools, courts, and other sites of public administration, as well as open public spaces like streets, squares, parks and beaches.

This project examines the regulations on the display of religious symbols in the public space in England and France, and as such, it adopts a comparative case study research design. The selection of cases is crucial in such a design, especially with such a small number of cases, and the logic of selection must be both purposive and thought-through. As Thelen and Mahoney (2015: 13) emphasize, what is important in such designs is 'getting [the] cases right'.

England and France are selected for analysis because they are similar in many ways, yet crucially, they exhibit significant differences when it comes to how religious symbols in the public space are regulated. Put differently, the two countries have many things in common but display quite different outcomes 'on the dimension of theoretical interest' (Seawright and Gerring, 2008: 296). As will be discussed in Chapter 2, England resembles the 'plurality model' of religious diversity in which religious symbols are generally accommodated in the public space, whereas France exemplifies the 'neutrality model' where there is no place in the public space for religion and religious symbols.

Despite these differences, however, England and France share a number of important similarities. Both the United Kingdom and France are Western European, and are consolidated advanced industrial democracies, with similar levels of economic development, and with a commitment to human rights and religious freedom. They also share important institutional features. In particular, they are both centralized states (Lijphart, 2012: 307), meaning that, notwithstanding devolution in the UK (see below), policies regarding the regulation of religious symbols are not the responsibility of regional or local government.

Moreover, the two cases both have a common Christian heritage and one predominant traditional religion – Protestant in the case of England, and Catholic in that of France. They also exhibit similarities in terms of the nature of their migrant populations. Both have a large, religiously diverse migrant population which includes a high proportion of Muslims who originated from former colonies (Fetzer and Soper, 2005: 16). Indeed, among West European countries, the United Kingdom and France have the highest Muslim populations:

Muslims make up between 3 and 7 percent of the population of these countries (Hackett, 2015).

As has become clear already, the focus in the thesis will be on England, rather than on the United Kingdom or Great Britain. This is because the four home nations (England, Scotland, Wales, and Northern Ireland) exercise a significant degree of autonomy with regard to policy making in public services, and as will be seen, it is within public institutions that religious symbols are subject to regulation. Even before devolution, the four nations operated different school systems (Atkins et al., 2021: 56), while Scotland and Northern Ireland have always had their own legal systems. Devolution, as set out in the respective Acts of 1998, then brought further differences between the nations with regard to how public services were to be run, with the transfer of competencies for health and education policy to Edinburgh, Cardiff, and Belfast. This left England as the sole nation legislated in these areas by the UK government (i.e. by the government at Westminster). Therefore, as Bevan et al. (2014: 22) explain, post devolution, there 'is one set of policies for public services for the 50 million who live in England, and different policies in each country for the 10 million who live in Scotland, Wales and Northern Ireland'. Given this, a UK-wide focus would require the thesis to explore four distinct policy-making and regulatory frameworks, something which is not possible within the confines of time and space. The study therefore concentrates on England only, for reasons of its size and dominance in the Union.

While this study focuses on only two cases for reasons of manageability, careful case selection means that it will still be able to illustrate and explore the considerable variation that exists in how and why religious symbols are regulated in the public space. This is also

made possible through the long time period that the project investigates. The study examines the regulations of religious symbols over the last two to three decades, analysing the period from 2000 to 2017 in the case of England, and the period from 1989 to 2017 in that of France. As will become clear in the case study chapters, the starting dates are explained by critical junctures in each of the countries.

Research Methods and Sources

To investigate the regulations of religious symbols in the public space this study engages in qualitative research. This is an appropriate approach because qualitative research seeks to explore a phenomenon by undertaking a comprehensive description of it, to then be able to generate an in-depth understanding of it and an explanation of how and why it came about. It is also fitting because qualitative research tends to be associated with small-scale projects that explore phenomena in their context and emphasize 'the importance of multiple inter-relationships among a wide range of factors in operation at any one time in the setting' (Denscombe, 2017: 6).

To achieve this, the project engages in documentary research and analysis. Documentary research 'is a systematic procedure for reviewing or evaluating documents' which requires that 'data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge' (Bowen, 2009: 27). As Yin (1994) explains, this research method is particularly suitable for intensive case studies, like the ones in this thesis, because

it enables the production of in-depth descriptions of a phenomenon. Moreover, as Sidney and Beatrice Webb noted long ago (1932: 105), documents are also essential in any study interested in reconstructing specific events and in exploring their impact.

Both the research approach and the research design adopted in this thesis call for the use of multiple sources. Indeed, Denzin and Lincoln (2018: 43) emphasize that qualitative research involves the collection and use of a variety of empirical materials, while in describing case study research, Robson (1993: 146) also underlines the need to investigate ‘a particular contemporary phenomenon within its real life context using multiple sources of evidence’. In reflection of this, the thesis makes use of a whole range of documents, from multiple sources. These include ‘formal’ or official documents, as well as documents from non-governmental organisations, research institutes, and media sources.

One first set of documents that the thesis draws on includes official documents such as national constitutions, constitutional amendments, bills passed by parliaments, and government recommendations (e.g. *circulaires*), as well as case law and decisions made by national courts and the European Court of Human Rights. In addition to these, the thesis makes use of documents produced by public bodies such as the British Equality and Human Rights Commission, as well as those released by state institutions such as hospitals and schools. These include guidelines on uniform policy in health settings, dress codes in schools, and guidance to judges about dress policies in courts.

A second group of documents include reports published by the United Nations Human Rights Committee (the body of independent experts that monitors implementation of the

International Covenant on Civil and Political Rights), as well as those produced by international non-governmental organisations including Human Rights Watch, Amnesty International, Minority Rights Group International, and the European Centre for Law and Justice.

A third set of documents comes from research institutes and academic projects devoted to the study of religion, law and politics, including for example the International Center for Law and Religion Studies at Brigham Young University, the Centre for Law and Religion at Cardiff University, the EU-funded Religious Diversity and Secular Models in Europe project, and the Religious Freedom Project at Georgetown University's Berkley Center for Religion, Peace and World Affairs. All these well-respected research centres provide useful information on religion and religious practices around the world, and expert analysis of issues related to religious beliefs, religious freedom and secularism.

Lastly, the thesis makes extensive use of media sources. These documents include coverage of events, and commentaries on issues, and come from a wide range of newspapers and other media sources, from multiple countries. The different outlets vary in their political leanings, with some being more right-wing, others being more left-wing, and others having no political affiliation. Efforts are made to make use of only sources deemed 'reputable'.

Access to all these sources is relatively straightforward. The vast majority of sources are available online, while a few require Freedom of Information requests or direct contact via email. Most sources are available in English, and those that are not can be easily translated.

The documents listed above thus include both primary sources, and a range of secondary ones. The primary sources – mainly used in Chapters 4 and 6 – set out the regulations pertaining to the display of religious symbols, as well as legal rulings and challenges to these. By contrast, the secondary ones – employed chiefly in Chapters 5 and 7 – provide details of the debates surrounding the regulations, offer evaluations of the regulations, and comment on reactions to them.

There are of course important considerations to bear in mind when making use of secondary sources, and when employing media sources in particular. As Vella notes, newspapers are not 'neutral conduits of information' (2009: 193). Rather, outlets have their own biases and their own 'material or ideological interests [and] what appears, what does not appear, the way the news is framed … reflect the values, priorities and interests of the buyers, the sellers, the product and the professionals that serve them' (2009: 198-9). Some would argue that all sources, even those that are publicly owned and have no political affiliation, contain biases because decisions still have to be made about which stories to prioritize and which opinions to include, quote or foreground (Baker et al., 2013: 8). In short then 'all forms of analysis, being conducted by human beings, are inevitably subject to various biases' (Baker et al., 2013: 23).

In spite of this, a number of steps can be taken to mitigate the bias and to retain the use of media sources. In the first instance, it is important to make use of coverage from a wide variety of media outlets, encompassing different political persuasions and affiliations, and different ownerships, and coming from a range of countries. Secondly, media sources should be read with a critical lens, paying attention to how the coverage might be affected by who

owns and controls the outlet, what organisations or political parties it is affiliated to, what its reach is, and who its readers are (Vella, 2009: 198). Thirdly, it is important to compare how different news outlets report on the same individual event or the same specific debate. Different sources will offer different explanations of how events unfolded, they will give different interpretations of what really mattered, they will describe different reactions, and they will assign more or less importance to different aspects of debates. They will thus offer competing narratives, and they will then often go on to 'engage in elaborate and unfolding debates with one another' (Vella, 2009: 200). It is essential to recognize this, and to then compare the coverage that different sources offer, by reading each side by side. In this way, some balance can be achieved, and 'the broad lines of mood and opinion' on the event or debate can be discerned (Föllmer, 2009: 76).

The thesis adopts all these steps in order to deal with the bias inherent in media coverage yet still retain media sources as a key source of information. Indeed, as will become clear, media sources are crucial to this study as they contain a wealth of information on the debates over the place of religious symbols in the public space that exists nowhere else.

Outline of the Thesis

In order to investigate policies towards the display of religious symbols in the public space, and to ultimately answer the two research questions posed, the thesis begins by considering what the public space is, and how religious diversity is accommodated within it. This is what

Chapter 2 does. It explores how historical traditions and legacies, and church-state relations in particular, have influenced the place of religion and religious symbols in the public space, and it considers different approaches to how religious diversity has been accommodated. Then, Chapter 3 sets out the two analytical frameworks developed and deployed in the thesis that enable the investigation to first examine the nature of the regulations and how these have developed over time, and to then explore how and why the regulations have developed in the ways they have.

Having done this, the next chapters turn to the two case studies. Chapter 4 explores the regulations pertaining to the display of religious symbols in the public space in England, and charts how these have developed over time. Then, Chapter 5 considers how and why the regulations in England developed like they did. Chapters 6 and 7 then repeat the process with reference to France. That is, Chapter 6 maps the regulations on religious symbols that exist in France, while Chapter 7 examines the debates behind these so as to explain why the regulations are the way they are. Chapter 8, the final chapter of the thesis, then draws on the previous chapters to compare the regulations that exist in the two countries, and to reflect on how and why they are so different. It considers how the debates over religious symbols progressed so differently in the two countries, and explores differences in the nature and constellation of the actors involved in these debates, and in the arguments that they made. It then closes by underlining the contributions made by the thesis.

Chapter 2: The Public Space and the Accommodation of Religion

This chapter will begin by defining the concept of public space and will explain how this concept will be used in this thesis. Then, it will turn to exploring how religion has been accommodated in the public space. In doing this, it will first draw on different models of religious diversity to highlight different approaches to this issue. Then, it will consider how historical traditions and legacies have informed the approaches that states have taken in their accommodation of religion, and how more recent developments and events have also influenced matters. By discussing these questions, this chapter provides an understanding of the context in which the regulations discussed in the case study chapters to come have been developed and introduced.

Public Space

In this thesis the public space refers to physical spaces that exist outside the home and that are accessible to members of the public. These spaces include both public *institutional* spaces, such as hospitals, schools, courts, and places of public administration, as well as *open* public spaces like streets, squares, parks, beaches (Miller, 2007). These spaces are public because, as Navickas (2019) makes clear, while 'there may be restrictions to the activities that are deemed acceptable in some of those public spaces', they are spaces 'that

everyone can use and access in principle, regardless of who owns or manages [them]'. It is therefore this common, open access that makes these spaces public.

This conceptualization of the public space corresponds to what has also been termed the 'public realm'. Indeed, the UK government describes the public realm as relating to:

> all those parts of the built environment where the public has free access. It encompasses: all streets, squares, and other rights of way, whether predominantly in residential, commercial or community/civic uses; the open spaces and parks; and the "public/private" spaces where public access is unrestricted. It includes the interfaces with key internal and private spaces to which the public normally has free access (Navickas, 2019).

This understanding of the public space differs from Aristotle's or Habermas's concept of the 'public sphere' because it places less emphasis on the communication and deliberation that takes place in these sites. Aristotle referred to the public sphere as a social space of public communication where citizens interact, discuss their concerns and form opinions (Koçan, 2008: 27), while Habermas (1989: 27) defined the public sphere as a space where 'private individuals come together to defend' their interests in the face of domination and authority from the state (Calhoun, 1992: 7), and as 'a domain of our social life in which such a thing as public opinion can be formed' (Seidman, 1989: 231).

The focus in this thesis is not on how people come together in these public spaces, how they interact and deliberate, how they organise, and how they press for change, and for this very reason the thesis uses the term ‘public space’ rather than ‘public sphere’. However, this does not mean that the public space is apolitical. In the first instance, these physical spaces have played, and continue to play, important roles in society because they are the primary site for significant national events such as celebrations, commemorations, and even revolutions. In that sense then, they have been spaces in which important changes in society have taken place. But more importantly, at least as far as this thesis is concerned, is that public spaces become political or politicised when access to all is no longer guaranteed.

Universal access to public spaces may be denied with reference to a number of criteria. It may be denied on the basis of race, as in Apartheid South Africa, or it may be denied on the basis of gender, as in some Islamic regimes. But it might also be restricted on the basis of religion. That is, access to public spaces might be refused to people who manifest their allegiance to religion, or to a certain religion, by displaying specific symbols or by wearing specific clothes. If that is the case, it becomes important to explore how decisions to exclude such people from the public space have been arrived at, who is behind these decisions, and why they have been made – i.e. on what grounds.

This last point on the reasons for why access to public spaces may be denied to those who manifest their religion highlights questions about the place of religion in different states and societies. Put simply, if there is an understanding that religion does or can have a place in the public space, then universal access will be much more likely. By contrast, if religion is

considered a private matter, then it is likely not to be accommodated in the public space. This might seem self-evident, but matters do become more complex when distinctions are made, for instance, between religious practice on the one hand and religious belief on the other, with some arguing that the first belongs in the public sphere and the second to the private one (Mahmood, 2016:9). Similarly, the boundaries between the public and the private space may vary according to the place that individuals occupy or the role that they fulfil in those spaces. For example, a person performing a public service – such as a teacher, a nurse, or a judge – may be considered to be in a different position than an individual who is in the very same space as a private person – e.g. a pupil, a patient, or a witness. The former may well be seen as embodying or representing a particular public space, while the latter may not (see Ferrari and Pastorelli, 2010).

The case study chapters in this thesis will examine the details of the regulations that exclude universal access to the public space and will explore the debates that have led to these regulations coming into being. Before that, however, it is important to also consider the historical traditions that inform how religion is accommodated in society. Historical and cultural legacies continue to play a significant role in shaping political choices linked to the recognition of religious symbols in the public space.

Approaches to accommodating religion in the public space

The extent to which, and the ways in which, religion is or has been accommodated in the public space differ from country to country. In some states, religion is accommodated quite widely and is considered a public matter, while in other states it is understood to be a private issue and is relegated to the private space. As Fetzer and Soper (2005: 146-7) explain, this variation, and hence the different policy responses to demands for accommodation of religious symbols, is in large part shaped by historical traditions, and in particular by different historical church-state relations and their institutional legacies.

The position of the church with respect to political authority determined whether it supported liberals or conservatives, and this would determine which side would dominate the political realm and, in the long run, shape liberal and democratic institutions (Gould, 1998: 36). If there was an alliance between the church and the ancient regime, the church did not support liberal reforms. If there was no such alliance, then the church allied with the liberals and compromised with them (Kuru, 2007). This political engagement on the part of the clergy shaped the development of liberal and democratic institutions.

In one of these instances – where there was an alliance between the monarchy and the dominant religion – strong anticlerical sentiments developed among republicans, and an ‘aggressive’ or ‘radical’ secularism emerged (Kuru 2007; Modood 2010). As Kuru explains, ‘the antagonistic relations between the republicans and the religious institutions underlay the historical dominance of assertive secularism’ (2007: 572) because hegemonic religion justified divine monarchic rule, and each reinforced the other (2007: 583-4). By contrast, in

the other instance, when religious groups did not try to maintain their hegemonic positions and secular groups did not oppose the public role of religion, then an agreement was reached, thereby leading to the development of ‘passive secularism’ (Kuru, 2007).

With reference to the two cases under investigation in this thesis, in England the Anglican church and the British monarchy did form an alliance, but given that the Anglican church had little or no authority over religious matters and that its status was mostly nominal (Esbeck, 2004: 1414), this did not constitute an attempt to cement a hegemonic position. Moreover, in England, the monarch did not depend on the Catholic Church for legitimacy, and so was able to break away from the powerful Vatican. This allowed the King to place himself as both the Head of the Church and Head of state. These conditions meant that secular groups were willing to tolerate the public role of religion and religious groups did not oppose state interference. Furthermore, pluralism of rival Protestant denominations led religious groups to consider negotiating with the state (Bellah, 2005: 50). Accordingly, Britain has chosen to accommodate multiculturalism and to interact with religion and support it (Modood, 2010: 5-8).

By contrast, in France, there was a marriage between the monarch and the church; the Catholic Church legitimized the King’s divine right. However, in the critical juncture that was the French Revolution, the old established ruling orders were overthrown, and this marriage was dissolved. The new state-building republican elites wanted to break away from the old establishment and were hostile to the church that had reinforced and legitimized the ancient regime.

These historical developments shaped different approaches to dealing with religious diversity in the public space. To fully explore these, and to contrast them, scholars have presented a number of models of religious diversity. In particular, Mancini (2009) proposes three different models, namely the plurality model, the dominant religion model, and the neutrality model.

The plurality model is inclusive of different religions and is characterized by a plural public space. It involves 'inclusive multiculturalism' (Mancini, 2009: 2642), which ensures that religion is accommodated in the public space 'in which cultural pluralism encourages ethnic minorities to practice their own faith' (Barnett, 2013: 8). This leads to a political culture that promotes accommodation of difference, and that supports religious freedom.

The dominant religion model reflects cases where a state favours one (traditional) religious denomination over others, and accommodates this dominant religion in the public space. It does so because society reflects the values of this dominant religion. This means that the will of the majority is prioritized over the rights of religious minorities. Indeed, Nussbaum (2008) criticizes this privileging of the established religion, arguing that it undermines equality because it necessarily subordinates and marginalizes those who do not belong to the dominant religion, and it thus renders them second class citizens.

Finally, the neutrality model is founded on secular principles and the strict, official separation of church and state. This sees the absence of religious involvement in government affairs, and the absence of governmental involvement in religious affairs. Moreover, in such a model there is no reasonable accommodation of religion. Instead,

religion must remain outside of the public space, and may exist only in private spaces. If there is a need to legislate to ensure this neutrality, then so be it, even if this means restricting religious freedoms. Any such policies have therefore been termed 'positively antireligious' (Stepan and Linz, 2013: 17).

Having sketched out the core features of each of the models, and the premise on which they are built, it is useful to explore how the two cases under consideration in this thesis fit the models, and how religious diversity is accommodated within each. As will become clear, with its emphasis on multiculturalism, England confirms fairly closely to the plurality model, while the core place of laïcité in France means that this case exemplifies the neutrality model.

Religious Plurality in England

In England there is an official denomination (the Church of England), and there is no separation between state and church. Moreover, the King or Queen is the Head of the Church of England and 'Defender of the Faith', and so has to belong to that church. The Church is also represented in the House of Lords by 26 Church of England bishops, known as the 'Lords Spiritual'. Despite these arrangements, however, the government fully respects the freedom of religion and secularism.

In the absence of a codified UK constitution, England does not constitutionally protect citizens' individual rights of religious expression. However, the country's common law

tradition does support religious pluralism and religious rights, and more recent legislation has provided further safeguards. The 1998 Human Rights Act gives statutory protection to religious freedoms and to religious minorities (Fetzer and Soper, 2005: 18), while the 2010 Equality Act prohibits discrimination on the basis of religion. The introduction of these two pieces of legislation marked a significant step towards the protection of religious minority rights, and together they safeguard the freedom of religion and the accommodation of different religions in the public sphere.

Given these traditions and this legislation, the law has often been drawn upon to uphold the accommodation of religion in the public space. For instance, in 1983 the House of Lords made the decision to allow the wearing of headscarves and turbans in schools in an effort to reduce racial discrimination. Similarly, where tensions have arisen over the right to wear religious dress versus the need to ensure safety, solutions have been found so as to accommodate religious diversity. As Bernatchez and Bourgeault (1999: 167) explain, ‘in the interest of freedom of religion – police officers, soldiers, motorcyclists and construction workers have all been permitted to wear religious headcoverings’. As they argue, the approach has been inclusive, and ‘ultimately, English authorities tend to adopt a flexible case-by-case approach rather than applying blanket rules’.

This approach has been informed by a general principle of multiculturalism that developed as British society became more and more diverse in the wake of significant immigration in 1950s and 1960s (Fetzer and Soper, 2005: 30; Joppke, 1999). To integrate these immigrants into British society, the state encouraged cultural groups to create their own organisations and to safeguard their customs and religious practices. Moreover, the state introduced

cultural awareness into the school system (Fetzer and Soper, 2005: 30), and from the 1960s the school curriculum started paying attention to religions other than Christianity (Rath et al., 2001: 236), and authorities increasingly recognized the need for pupils to be exposed to religious pluralism (Fetzer and Soper, 2005: 30). According to Favell (1998: 109), as a result of these trends, 'by the mid 1980s the consensus position had evolved towards a fairly open de facto acceptance of the reality of multicultural Britain on all sides'.

Despite the multiculturalist approach, religious minorities did not enjoy protection from discrimination for a long time (Barker, 1987). The state did make significant efforts to secure immigrants' basic civil rights by passing the 1976 Race Relations Act and by creating the Commission for Racial Equality to deal with race relations (Fetzer and Soper, 2005: 30). Yet, these protections rested on ethnicity and race; they did not concern religion. As Fetzer and Soper (2005: 30) explain, 'it was as if the state recognized that postwar immigration introduced into Britain racial pluralism to which the government had to respond, but the state somehow refused to acknowledge that many of these immigrants were also Muslims, Buddists, and Sikhs'.

The state's silence on the matter of religious discrimination may be explained by the lack of religious identification among immigrants. Ramadan (1999: 113) argues that first generation Muslim immigrants minimized features of their religious identity in order to avoid potential problems with the state. Likewise, Rath et al. (1999: 53) claim that Muslim immigrants concealed their religion in an attempt to fit into society. This changed as second and third generations of Muslims grew up, however. For these people, religious identity became increasingly important because Islam provided them with cultural identity. With time then,

the absence of statutory protection against religious discrimination became more and more important to Muslims (Fetzer and Soper, 2005: 31), particularly because, unlike Jews or Sikhs, Muslims were not considered a racial or ethnic group under the law (Vertovec, 2002: 25). As noted above, this was finally rectified with the introduction of the 2010 Equality Act.

France and the principle of laïcité

In France, the state adheres to a secular tradition of restricting the presence of religion in the public space, making for no reasonable accommodation of religion or of religious symbols (Barnett, 2013: 11-12). France thus exemplifies the neutrality approach to dealing with religious diversity.

While the French Revolution was the turning point in the overthrow of the aristocracy, it was the law of 1905 that established the principle of state secularism, or *laïcité*, in France. This law instituted the neutrality of the state in religious affairs and the removal of religion from the public space on the one hand, and the protection of freedom of conscience and of free exercise of religion on the other. The latter was set out in Article 1, while the state's neutrality was to be achieved by it refusing to recognize or support any denomination, as set out in Article 2 of the law which proclaimed that the state 'neither recognizes, nor pays the salaries of, nor subsidizes any religion' (Bowen, 2007: 26), and by Article 28 that prohibited the display of religious symbols 'on public monuments or in any public place whatsoever', with the exception of places of worship and burial sites. The principles of the 1905 law were later enshrined in the 1958 French Constitution, which, in Article 1, declares

that the state is secular, and guarantees equality and freedom of religion (French Constitution, 1958).

The 1905 law, and the principles that underpinned it, must be seen in context. The focus on freedom of conscience and the free exercise of religion is explained by the historical intrusion of the Catholic Church in public affairs in France, by its threat to republican ideals, and by the desire to protect the individual against such pressure (Adrian, 2009: 347; Weil, 2009: 2704-5). Thus, as Willaime and Hardyck (2008: 41) explain, the institutional and legal foundations of laïcité sought to protect 'the freedom of religion and of non-religion' and in so doing 'avoid any discrimination against people on the basis of their religious affiliation or lack thereof'. This is why Weil (2009: 2703) insists that the 1905 law was not hostile to religion. This protection would be achieved not only by abolishing the privileges enjoyed by the Church, but also by excluding religion from public life and moving it to the private sphere. In short then, citizens were guaranteed the right to exercise religious freedom and to form religious associations, but they would do so as private individuals, in the private sphere (Laborde, 2005: 305; Bowen, 2007: 27). It is for this reason that the distinction between the public space and the private sphere became, and remains, so important.

As Adrian (2009: 347) argues, the separation of church and state in France has never actually been as 'pure' as the original concept suggested, and some accommodation to the church by the state has taken place. More importantly, as time has gone by, the understanding of laïcité has changed. By the founding of the Fifth Republic, the threat to republican ideals no longer emanated from a strong Catholic church, and instead, particularly by the 1970s and 1980s, it began to come from growing immigration and from

the presence of an increasing diverse population. This, as Adrian (2009: 347) puts it, 'demanded a reevaluation of the concept' of laïcité (see also Gereluk, 2008: 20).

In this new context then, the principle of laïcité became less directed at ensuring that individuals were free from religious oppression, or free from discrimination based on their faith or non-faith. Instead, laïcité became used as a means to call for and then enforce 'the assimilation of immigrants into French cultural citizenship' (An-Na'im, 2008: 40). Reflecting the ideal of secular equality (Laborde 2012: 398), there would be no room for the 'possibilities of ethnic or cultural identity within a national framework of multi-culturalism like that which prevails in northern European countries' (An-Na'im, 2008: 40). Furthermore, it was no longer just a question of insisting there should be no expression of religion in the public space. Instead, the justification for the implementation of strict laïcité moved towards what Westerfield (2006: 639) has called 'fundamentalist secularism', and began to increasingly use the argument that manifestations of religious belief prevented the integration of minorities, and that this would divide rather than unite the populace, and thus threaten national cohesion (Laborde, 2012: 398). Given the importance that republican ideals attach to group or national interests over interests of the individual, this reasoning has been particularly persuasive (Gereluk, 2008: 18).

The case study chapters of this thesis (Chapters 4-7) will go on to explore, in detail, how religious symbols have been regulated in the public space in England and France, and how and why these regulations have come about. However, this chapter has laid the groundwork for that investigation. It has explained how the public space is conceptualized in this thesis, and it has discussed different approaches to accommodating religion in the public space. It

has laid out different ideal type approaches, and with reference to the two cases considered in this thesis, it has explored how different historical traditions inform different approaches, how legal foundations institutionalize these approaches, and how events and developments may alter them. All this provides a crucial understanding of the background to the regulations examined in the chapters to come. In one final step before the regulations are explored, it is now necessary to consider *how* to explore them. The next chapter does this by developing and presenting the thesis' analytical frameworks that will then be deployed in the case study chapters.

Chapter 3: Analytical Framework – Tools and Concepts

As the previous chapter suggested, historical and cultural contexts shape the ways in which different countries address the issue of the display of religious symbols in public spaces, with some favouring accommodation and others supporting a more restrictive approach. Fetzer and Soper (2005: 146-7) explain this variation in policy responses by focusing on historical church-state relations and inherited institutional legacies. Similarly, Kuru (2012) argues that the complex historical church-state struggles affect the type of secularism that a state will adopt.

However, the contemporary regulations of religious symbols in public spaces cannot be understood only by reference to historical processes and legacies, and institutional and cultural contexts. This is because, important as they are, these structural factors do not explain why new regulations concerning the display of religious symbols started to emerge in the countries under study from the late 1980s onwards. Rather, to fully explore this 'puzzle' of why and how the regulations developed in recent years, it is necessary to also focus on agency, and on the actors involved in the debates surrounding the issue, on their demands, their behaviour, and their discourse, and on their role in shaping the relevant policies pertaining to the display of religious symbols in public spaces.

The approach of examining issues and phenomena through the lens of structure and agency is well established in political science, and one its main proponents, Colin Hay (2006), describes structure-agency questions as central to the study of politics. The fundamental point that this approach seeks to explore is the extent to which actors – and their decisions

and actions – are shaped, constrained, or enabled by their environment and by external factors, versus the extent to which these actors have the ability to determine their own decisions and actions (McAnulla, 2002: 271-2).

Marsh (2018) explains that historically, structure and agency were most often considered as a dualism, and that approaches tended to either privilege structure and downplay the role of agency, or tended to privilege the role of agency and ignore that of structure. Yet, he goes on to underline that more recently, many scholars have recognized that structure and agency are actually dualities, which interact and feed into each other. As such, 'structures provide the context within which agents act, but agents interpret structures, and, in acting, change them, with these "new" structures becoming the context within which agents subsequently act' (Marsh, 2018: 200).

On top of this, for some scholars – most notably Hay (2006) – ideas also feed into the agency of actors and the structure within which they exist. More specifically, ideas provide a guide for agents' actions, and the ideas of one set of actors influence those of another set. Then, with time, ideas become established, and thus start to shape the ever-changing structure within which actors operate. And as a result, certain ideas develop more purchase than others.

The debate over how to conceptualize and analyse structure and agency is massive and complex, and scholars continue to adopt quite markedly different approaches and positions (see Marsh 2018 for a very useful overview). It is not the intention of this thesis to engage with the intricacies of these discussions, but the broad distinction and interdependence

between structure and agency are invoked here to draw attention to the importance of agency in explaining why it is that new regulations concerning the display of religious symbols in public spaces started to emerge in the last 30 years. Put differently, and as explained above, while the last chapter set out the historical and cultural structures of the two countries under study which contribute to the likelihood of regulations being introduced, this chapter and the case study ones that follow argue that to understand why the regulations were or were not eventually introduced, a focus on agency and actors is also needed, as is an understanding of the role of ideas and discourse.

In light of this, this chapter sets out the ways in which this thesis will explore the 'puzzle' of how and why the regulations pertaining to religious symbols in the public space have been introduced in England and France in the ways they have. To do this it proposes and develops two analytical frameworks. In the first instance – and before actors and agency are considered – it is necessary to undertake a mapping exercise to establish what regulations were introduced, when, where, and with reference to which symbols. The first framework advanced here does just this by making use of the concepts of scope, depth, and enforcement. Then, a second framework, which draws on the policy making literature is proposed that allows the thesis to explore which actors played key roles in the debates surrounding the regulation of religious symbols, what ideas they mobilized and what arguments they used, and which actors and arguments prevailed and why. The two frameworks are then deployed in the case study chapters to explore what regulations are in place in the two countries, and why ultimately, they are the way they are.

Mapping the regulations: Scope, depth, enforcement, and change

The first analytical framework advanced in this chapter allows for the regulations of religious symbols in the public space in the two countries under study to be mapped. It is a novel framework, developed here for the first time, for the precise purpose of examining the nature of the regulations. It proposes that the regulations of religious symbols can be explored by examining their scope and their depth, and by considering the degree to which they are enforced. In addition, it pays attention to whether and how scope, depth and enforcement may have changed over time.

Although they are absolutely central to the framework developed here, the concepts of scope, depth and enforcement have not previously been used to chart regulations in the way that this thesis uses them, and nor have they been clearly defined in existing academic studies. That said, there is some existing literature – mainly from the fields of management, international trade, finance, or theories of regulation and law – that offers a point of departure.

For instance, the work by Chen et al. (2011) work on Chinese firms is helpful. They suggest that the scope of a firm's contracting with external partners is 'defined as the range of external actors upon which a firm's innovative activities rely', that is, it 'focuses on the diversity of the external sources of innovation'. By contrast, they define the depth of a firm's external search as 'the extent to which firms draw on different external sources' (Chen et al., 2011: 365). Similarly, in a study on international outsourcing, Mol et al. (2004) make use

of the concepts of scope and depth. While scope ‘captures the degree of diversification of international outsourcing’, depth is treated as ‘an indicator of the economic penetration of international outsourcing’ (Mol et al., 2004: 289). Likewise, in research on the design of international trade agreements, Baccini et al (2012) define scope as the number of trade measures that are covered by an agreement. They argue that ‘a narrow agreement only deals with tariffs on goods, whereas a broad agreement may contain provisions on trade in services, intellectual property rights, public procurement and foreign direct investments’ (2012: 5). By contrast, for them, depth refers to the extent to which an agreement contributes to the liberalization of trade. In an article about the outreach capabilities of microfinance institutions (i.e. their ability to reach clients), Johnson (2017) also makes use of the concepts of scope and depth. She defines the scope of outreach as the diversity of products available to clients, while she uses depth of outreach to refer to the ability of a microfinance institution to reach poor clients.

Other works only make use of one of the concepts. For instance, in a study on the regulation of work health and safety, Bluff (2017: 623) speaks of the scope of industries. She uses this to simply outline whether individual industries are national, regional or transnational. Scope therefore relates to the spread of industries – i.e. the number of places where the industries are present. While exploring the promotion of the rule of law by transnational regulatory actors, Taylor also (2017) makes use of scope. She argues that ‘contemporary rule of law projects are now ambitious in scope [and] aim to do much more than just advance legislative frameworks’ (2017: 395). For example, they now aim to deliver ‘a fuller set of substantive and procedural justice norms’, human rights, access to justice and distributive

justice (2017: 396). Here, therefore, Taylor uses scope to refer to the objectives or goals of the projects.

These studies present some useful ideas and offer a starting point for how the concepts of scope and depth may be used in this thesis, even if it is obvious from this brief review that the concepts have been used in a variety of ways, and not always with much clarity. More specifically, the review shows that scope is either used to point to notions of 'range', 'diversity' or 'diversification' (as Chen et al. 2011, Mol et al. 2004, and Johnson 2017 do), or to denote the number of something – be it the number of locations in which industries are found (Bluff 2017), the number of objectives and goals of different projects (Taylor 2017), or the number of trade measures covered by an agreement (Baccini et al. 2012). As for depth, the concept is used not to refer to range or number, but rather it is employed to point to the 'extent' or 'degree' of something – e.g. the 'extent' to which firms draw on different sources (Chen et al. 2011), the degree of 'penetration' of outsourcing (Mol et al. 2004), the 'extent' to which an agreement liberalizes trade, or the extent to which microfinance institutions reach poor clients.

Informed by these insights, and very mindful of the need for clarity, the thesis now turns to explaining how the concepts of scope and depth, as well as enforcement, will be defined in this study, and how they can then be brought together in an analytical framework that will allow the thesis to document the nature of regulations that pertain to religious symbols in the public space.

Scope

The thesis proposes to define scope as how encompassing a state is in regulating different types of religious symbols in the public space. The scope of regulation is determined by the number and type of spaces that the regulations cover, as well as by the number and type of religious symbols that are affected by the regulations. Whether the scope is broad or narrow will depend on the range of the regulations states have in place. This definition of scope fits closely with understandings of the concept reviewed above, such as Baccini et al.'s (2012) and Taylor's (2017) emphasis on number, and Johnson's (2017) focus on diversity.

There are two main types of public places in which religious symbols are regulated: public institutional ones, and open public ones. Public institutional spaces consist of hospitals, schools, courts, libraries, museums, and public administration, government and other state buildings. Open public spaces include open-air spaces such as roads, streets, and squares, public parks and gardens, and beaches, as well as public transportation. These open public spaces are equally accessible to all, at least theoretically (Ferrari and Pastorelli, 2010: 9).

Religious symbols come in many different types, and those that have been, or could be, regulated include symbols within Islam such as burqas, niqabs, jilbabs, Kufi hats (skull caps), and the Hand of Fatima. In the Sikh tradition, regulation could be instituted against the kangha kara (an iron bracelet), the kirpan (an iron dagger), and the turban. Similarly, states could regulate against Jewish religious symbols such as the menorah, the Jewish star (Magen David), the tzitzit (fringes), and the kippah (skullcap). Regarding Christianity, the main symbol that could be regulated in the public space is the crucifix, although other

symbols like purity rings (see Chapter 4) might also attract attention. Clearly, not all these symbols have been regulated against, and equally the debate surrounding their regulation has been uneven. While heated debates have taken place around crucifixes, turbans, Islamic headscarves and full-face veils, other symbols have attracted less discussion.

The extent of the scope of regulation of religious symbols can and does vary. A large or wide scope will, in the first instance, involve regulations that exclude religious symbols from many places, including both public institutional spaces and open public spaces. Secondly, a wide scope will involve regulations that cover a large number of religious symbols. As such then, if regulations cover all forms of religious symbols in all public spaces, then the scope is very wide. By contrast, a narrow scope will consist of regulations applied only to some public spaces, and only to some religious symbols. Most often, where scope is narrow, the spaces concerned are likely to be public institutional ones rather than open public ones, and in the narrowest of cases regulations tend to be in place only in some public institutional spaces.

As will be explored in the case study chapters, the regulations on the display of religious symbols are also applied differently for different types of people. For instance, in England there are some regulations concerning the display of certain religious symbols in hospitals, but these only apply to staff. They do not affect patients. Likewise, the wearing of certain religious dress is prohibited in courts for witnesses testifying and for barristers arguing cases, but other people in the courtroom may dress as they wish. In a similar fashion, in France, restrictions on the display of religious symbols have been in place for a long time for civil servants working in the vast majority of public institutions, but regulations for users of

these institutions have only been introduced more recently. As such then, the scope of the regulations can and does vary according to who they pertain to.

Finally, the scope of the regulations can also vary in uniformity. Again, as will become clear in the case study chapters, in some instances, regulations are applied nationally across all relevant spaces. However, in other cases, decisions on whether and how to regulate the display of religious symbols are delegated to individual institutions such as hospitals or schools. When this happens, some institutions choose to prohibit the display of certain symbols, but others do not, and as a result, the scope of the regulations ends up being far from uniform.

Depth

While the scope of the regulations is defined by a combination of the number and types of places in which symbols are regulated, the number and types of symbols that are regulated against in those places, and the types of people that the regulations cover, the depth of the regulations can be defined as the severity or toughness of the regulations. This understanding reflects notions of depth alluded to in some of the studies discussed above, such as Mol et al.'s (2004) idea of 'penetration'. The depth of the regulations is reflected by the penalties attached to the breach of the rules. There are of course many different types of penalties, including warnings, fines, suspension from work or loss of work through dismissal, arrests, and even, in some rare cases, imprisonment. And just like scope, the depth of regulations can and does vary. As will be seen in the case study chapters, the depth

is far greater in France than it is in England. In France, there have been recorded cases of fines and arrests, while in England the penalties have mainly only involved warnings, or at the very worst, loss of work.

Before moving on, it is useful to note the possible relationships between scope and depth. At first sight it appears logical that a wide scope would give rise to a large depth. A wide scope means that many symbols are regulated against, and that regulation covers many public spaces, including both institutional ones and open ones. If this is the case, then the fact that regulation is occurring in so many places and concerns so many symbols suggests that the regulations are also likely to be strict. Given the wide scope, there will likely be a number of penalties, and their existence means that depth will be large. Yet, it might be the case that the relationship between scope and depth is actually less straightforward. On the one hand, it could be that wide scope is actually accompanied by little depth, or on the other, it could be that large depth might work alongside narrow scope. Wide scope will have little depth in instances where states regulate against many religious symbols in most or all public spaces, but where those regulations are not followed by tough penalties. By contrast, narrow scope will have large depth in cases where regulations pertain only to some spaces and/or to some symbols, but where very strict penalties exist when these regulations are infringed.

Enforcement

Depth is of course also tightly linked to enforcement. Enforcement refers to whether people are prosecuted for breaking the laws on the display of religious symbols in the public space, or whether these laws actually go unenforced. If laws are enforced, and if penalties are applied, then the depth of the regulation can be quite large. By contrast, if regulations are not enforced and/or accompanied by severe punishments then there is little depth. This will be the case even if, on paper, the regulations appear harsh and contain heavy penalties. If they are not enforced, then these laws have few teeth. This highlights the difference between *de jure* and *de facto* regulation. That is, the existence of *de jure* regulations does not necessarily imply *de facto* enforcement of these regulations and the reasons why some laws might not be enforced in practice suggest that policies could be symbolic. It could even be that a government may wish to pass an act, but from the very outset, has no intention of regulating it. But whatever the intention, it is clear that the mere existence of a policy does not automatically bring with it its enforcement. Thus, in order to observe whether there is de facto regulation of the display of religious symbols in the public space, the focus must be on the implementation and enforcement of the law.

Enforcement is also related to scope because regulations of religious symbols have not been enforced evenly. The laws regarding the display of some symbols have been enforced more strictly than those pertaining to the display of other symbols. Furthermore, the extent to which the laws have been enforced has varied across types of places. In general, regulations have been more firmly enforced in public institutional spaces such as schools and hospitals than they have been in open public spaces.

The extent to which regulations are enforced thus varies, just like scope and depth. As just noted, this depends on whether there is the political will to enforce different policies and laws, and to apply the relevant penalties. But enforcement also depends on what body is responsible for making the regulations and ensuring they are adhered to. As mentioned above, some regulations, particularly in France, are part of national policies and laws, and are devised by the state and applied nationally across all the public spaces they apply to. Yet in other instances, especially in England, the introduction and application of regulations are left to individual local authorities or institutions – such as individual hospitals or schools – and so in these cases, enforcement will not be uniform. There will be no enforcement in some institutions for the simple reason that regulations have not been introduced in them, but there may also be an absence of enforcement in institutions that have introduced regulations if these institutions decide not to enforce them.

This variation in which bodies are responsible for making and then enforcing the regulations also then affects how individuals caught breaking the rules may appeal their cases. As will be discussed in the case study chapters, some appeals are dealt with inside the individual institutions concerned, and/or in employment tribunals, while others are heard in national and even supranational courts.

Change

Of course, the regulation of religious symbols in English and French public spaces has not been static. Rather, changes to these regulations have occurred and will likely continue to do so. There may be changes to their scope, their depth, and/or their enforcement. That is, there may be changes to the number and types of places where regulations occur, and/or changes to the number and type of religious symbols that are regulated against. Regulations may also change in ways that make them either more or less severe, and likewise, the penalties attached to laws can be more regularly or less regularly enforced.

When considering any changes to regulations, it is also useful to observe the timing and speed of any adjustments. As the case study chapters will show, changes to regulations tend to take place after specific critical junctures, especially events such as terrorist attacks that have increased the sensitivity of the presence of religion in public spaces and heightened tensions in society over the matter, and that have then pressured or encouraged different actors to voice their opinions on the display of religious symbols in these spaces (Mancini, 2009: 2661).

The concepts of scope, depth, and enforcement, as well as changes to these, that have been discussed and defined over the last few pages together make up the first analytical framework to be used in this thesis. This novel framework, which will be deployed in Chapter 4 (on England) and Chapter 6 (on France), will allow for the regulations of religious symbols in the public space in the two countries to be thoroughly mapped, and for the nature of these regulations to be fully examined.

Explaining why the regulations of religious symbols are the way they are

Once the regulations pertaining to the display of religious symbols in the public space have been mapped, the task is to explore why they are the way they are. Moreover, the 'puzzle' is to understand why and how regulations started to emerge in the two countries under study in the last 30 years. As argued at the start of this chapter, historical processes and legacies and institutional and cultural contexts – i.e. structures – alone cannot explain these recent developments. Instead, for a fuller understanding, the focus needs to shift to agency.

This focus on agency first requires an examination of actors, and more specifically a discussion of how the different actors involved in policy making may be conceptualized. Thereafter, attention must move to what actors do, and to how they define issues and problems, how they frame their ideas and arguments, and how they attempt to get the issues they care so much about onto the issue agenda so that policy can be made or changed. It is these questions that this second part of the chapter explores, and it does so to present a second analytical framework with which the empirical chapters of the thesis may explore why the regulations of religious symbols in the two countries under study are the way they are.

Conceptualizations of actors

When examining which actors are responsible for making policy and implementing policy, studies have traditionally focused on the Core Executive. The concept, which is typically employed in a UK context, but which can also be applied to other countries, denotes the actors and institutions at the heart of the national political executive, including the Prime Minister and his or her office, the Cabinet, the key government departments, and the senior civil service (Smith, 1999: 1). As Rhodes (1995: 12) explains, the Core Executive encompasses:

> all those organisations and procedures which coordinate central government policies, and act as final arbiters of conflict between different parts of the government machine. In brief, the 'core executive' is the heart of the machine, covering the complex web of institutions, networks and practices surrounding the prime minister, cabinet, cabinet committees and their official counterparts, less formalised ministerial 'clubs' or meetings, bilateral negotiations and interdepartmental committees. It also includes coordinating departments, chiefly the Cabinet Office, the Treasury, the Foreign Office, the law officers, and the security and intelligence services.

The concept of the Core Executive is a helpful one to explore national legislation and policy making. However, it is not particularly well-suited to being deployed in this thesis because, as has been hinted at already, regulations pertaining to the display of religious symbols in public spaces have not, in the main, been initiated by central government – certainly not in England, and arguably not always in France. Instead, the debates over whether or not

regulations of religious symbols should be introduced have taken place amongst a much wider range of actors, most of whom are outside central government and the civil service, and many of whom are societal actors. As such then, the concept of the Core Executive does not take into account all the influential actors involved in shaping debates and policies on religious symbols in public spaces.

An alternative approach to examining what actors take part in policy making, and one that has been widely used throughout the literature, involves focusing on so-called 'entrepreneurs'. These actors have been given a variety of labels, including 'political entrepreneurs' (e.g. Roberts and King, 1991; François, 2003), 'public entrepreneurs' (Catney and Henneberry, 2015), and 'programme entrepreneurs' (e.g. Scnellenbach, 2007). However, the term that has perhaps been most commonly applied to them is 'policy entrepreneurs'.

Policy entrepreneurs may simply be individuals, or they may be several individuals working as a group, or they may be organisations (Catney and Henneberry, 2015: 1326). Regardless of their format, as Roberts and King (1991: 150) explain, they are actors who are involved in different stages of the policy-making process, from innovating and developing ideas, to implementing or institutionalizing them. Kingdon (1995: 204) sees them are agents 'willing to invest their resources in return for future policies they favor', and considers policy entrepreneurship as a form of policy advocacy. Ostrom (2005: 1), by contrast, views policy entrepreneurship as 'a particular form of leadership focused primarily on problem solving', and argues that the involvement and actions of such entrepreneurs can have crucial influences on institutional development, policy adoption and change. Mintrom (2019: 307)

similarly underlines the role of these actors in change, explaining that ‘policy entrepreneurs are energetic actors who engage in collaborative efforts in and around government to promote policy innovations’.

The focus on developing innovative policy ideas and on effecting policy change means that, typically, policy entrepreneurs adopt strategies that aim to disrupt the status quo. They may do this by engaging in diverse types of lobbying (Klein Woolthuis et al., 2013), or in various forms of brokerage with other organisations and/or levels of government (Bernier and Hafsi, 2007: 494; Catney and Henneberry, 2015: 1327-8), and/or by trying to change the ‘rules of the game’ by creating ‘new laws, administrative procedures, [or] informal norms’ (Klein et al., 2010). Above all, policy entrepreneurs need ‘strategic thinking, team building, evidence collection, making arguments, engaging multiple audiences, negotiating, and networking’ (Mintrom, 2019: 307).

The concept of policy entrepreneurs is certainly more useful for this study than that of the Core Executive because it goes beyond formal institutions (Bakir, 2009), and encompasses a wider set of actors than just those at the heart of national government. In particular, policy entrepreneurs include subnational actors and street-level bureaucrats (Keddie and Smith, 2009). Yet, for two main reasons this concept is still not that appropriate for exploring those actors involved in the regulations of religious symbols. Firstly, despite the fact that policy entrepreneurs include a wider range of actors than the Core Executive, the concept does not encompass grassroots and civil society actors, which, as will become clear in the case study chapters, play a large role in influencing the debates surrounding the place of religious symbols in the public space and hence in shaping eventual policies. Indeed, both the

concepts of the Core Executive and policy entrepreneurs can be accused of taking too much of a ‘top-down’ approach and of assuming that it is only those who ultimately make policy who are involved in shaping it. The charge then is that they tend to ‘neglect strategic initiatives coming from the private sector, from street level bureaucrats or local implementing officials, and from other policy subsystems’ (Sabatier, 1986: 30), as well as from interest groups, other civil society and grassroots organisations, and even the media. Indeed, as Knill and Tosun (2012: 113) observe, interest groups and the mass media are key actors in the agenda-setting processes. Secondly, because the focus of policy entrepreneurs is on innovation and on change, the concept does not lend itself very well to investigating those actors that wish to maintain the status quo.

Given the limitations of the concepts of the Core Executive and of policy entrepreneurs, this study will instead use the concepts of ‘expanders’ and ‘containers’ to explore the actors involved in the debates and policies concerning the display of religious symbols. These concepts, advanced chiefly by Rochefort and Cobb (1995) and Cobb and Coughlin (1998), refer to the two major groups of actors involved in an issue dispute. On the one hand, expanders publicize whatever the issue is, try to convince the public to engage with it, and ‘expand involvement [in the issue] by recruiting new participants to its support’ (Rochefort and Cobb, 1995: 5). As Cobb and Elder (1983) explain, to do this, expanders most often redefine the issue in a way that convinces people it is an issue of concern and one that requires necessary action from the government. The aim of doing all this is to capture the attention of officials and politicians, and in doing so, place the issue on the formal agenda. By contrast, containers strive to maintain the status quo. They attempt to limit the issue from attracting attention or try to counter the arguments of the expanders so as to prevent

the issue from making it on the agenda, and ultimately reduce the likelihood of legislation being passed (Cobb and Coughlin, 1998: 417).

As this explanation of expanders and containers makes clear, the aims of these actors are to attract or deflect attention for an issue, and in the case of expanders, to then convince decision-makers that the issue needs attention. This is quite different to what the Core Executive does, and to some extent to what policy entrepreneurs do, because the Core Executive and the entrepreneurs *are* the decision-makers; they are the actors that deal with the issues already placed on the issue agenda. As such then, the use of expanders and containers allows the thesis to examine earlier steps in the process, and to explore which issues are mobilized so that they may appear on the agenda, how they are mobilized, and by which actors. As Cobb and Coughlin put it, by using these concepts it is possible to trace issues, and the actors that mobilize them, 'as they move from anonymity to a setting in which decision makers discuss what [to] do about a problem' (Cobb and Coughlin, 1998: 417). This is crucial for this thesis because it seeks not only to explore what the regulations of religious symbols are, but it also aims to understand why these regulations are the way they are, and this latter goal involves understanding the debates and struggles over issues that shaped and preceded any regulations and laws which were eventually made.

All in all then, the concepts of expanders and containers have much to offer as a way of examining which actors have been involved in shaping the regulations pertaining to the display of religious symbols in the public space, what arguments they have put forward, and how successful they have been in their endeavours. As discussed, these concepts encompass a wide range of actors, including societal ones, and those who wish to maintain

the status quo; they allow for a bottom-up approach to examining how issues are mobilized to reach the issue agenda; and they enable the investigation to consider the debates and struggles over the issues that take place in the run-up to any new regulations or legislation being proposed and passed. These represent significant advantages over other concepts, and they strengthen this study's contribution.

Problem definition

If the concepts of expanders and containers enable the actors involved in the debates over the display of religious symbols in the public space to be identified, the next step is to explore how these actors make their arguments. This begins with investigating how these actors define issues such as those of religious symbols as a problem. Indeed, the public policy literature argues that the first step in the policy process is that of problem definition, and that this plays a key role in shaping policies. Stone (2012: 158) describes problem definitions as 'stories with a beginning, a middle, and an end, involving some change or transformation. They have heroes and villains and innocent victims, and they pit the forces of evil against the forces of good'. However, quite obviously, different actors have different attitudes towards different issues, and so while some define some issues as problems, others do not. Equally, even if there is agreement that an issue is a problem, different actors define these problems in different ways. As such then, problem definition is about perceptions and interpretations, and is essentially a social construction (Wildavsky, 1979; Knill and Tosun, 2012: 97).

In addition, defining an issue as a problem does not actually depend on the existence of a problem. Rather, a problem might exist only because people think that it exists. In particular, research has shown that there are often differences between whether and how the public perceives an issue as a problem, and how experts assess the same problem. This, as Knill and Tosun (2012: 99) explain, has serious implications for policy making, as public demand for a solution to the problem might initiate a policy-making process ‘despite the absence of a “genuine” social problem that needs to be solved’. And in such instances, policy makers may still decide to address the problem despite its absence because they fear they will be punished by the electorate for not doing so (Knill and Tosun, 2012: 100).

Issues become problems when people see conditions – or ‘things that exist that are bothersome but about which people and government cannot do anything’ (Birkland, 2007: 71) – as becoming amenable to human intervention and control (Stone, 1989: 281, 299). Until that point, these conditions are seen as being determined by nature, accident, and fate, but once they are perceived to be controllable, and once people start being convinced that something should be done about them (Kingdon, 2011: 109-11), then they become portrayed and defined as problems.

Then, to define issues as problems, actors construct causal stories that identify where the problems have come from, what their causes are, and what harms they create. Furthermore, since in their transformation from conditions to problems, problems are now mainly attributed to human behaviour rather than to accident or nature, actors also allocate blame for the problems and assign responsibility for solving them (Stone, 1989: 282-99). In addition, they underline the social significance of the problems, their meaning, their

implications, and their urgency (Rochefort and Cobb, 1995: 3). Different actors of course construct different stories, and in doing so they selectively place more or less emphasis on different factors, identify different causes and harms, assign blame and responsibility to different groups, and interpret the meaning, consequences, and urgency of problems in different ways. In short, in constructing their stories, different actors promote their own 'particular vision of reality' (Rochefort and Cobb, 1995: 11). An actor's vision of reality is obviously shaped by that actor's own attitudes and experiences, but it is also influenced by those of other actors, by scientific information and professional advice, and by cultural values (Rochefort and Cobb, 1995: 3-4; Cobb and Ross, 1997).

Through their stories, actors hope to shape public perception and gain support for their version of the story. Put differently, actors 'define or redefine the problem in such a way that a previously disinterested public becomes engaged in the discussion' (Cobb and Coughlin, 1998: 417), and with this support they then try to convince decision-makers to address the issue and to embrace their version of the proposed solution (Baumgartner and Jones, 1993). Thus, as Rochefort and Cobb (1995: 15) suggest, 'as political discourse, the function of problem definition is at once to explain, to describe, to recommend, and, above all, to persuade'. In this way, with widespread public attention, substantial demand for action, and a belief that government can tackle the problem, conditions become social problems, and then become political problems (Knill and Tosun, 2012: 119).

In this battle of stories, the first actors to define an issue as a problem regularly face a strategic advantage because it is often easier to define an issue as a problem than to redefine it as a problem. This is because redefining a problem will require more effort, as

the first definition will need to be discredited, and the alternative one will need to be equally, if not more, persuasive (Knill and Tosun, 2012: 99-100). That said, in some situations, new arguments can gain purchase (Riker, 1996), especially if old solutions have proved ineffective, or if new narratives have developed or events have occurred which have changed the perception of the problem.

It is interesting to also note that although the public policy literature presents problem definition as the first step in the policy process, policy development is most often not linear. That is, it does not automatically start with actors identifying issues as problems, and then going on to suggest solutions. Rather, as Wildavsky (1979) points out, in many instances it is solutions that bring a problem into existence in the first place. This is because decision-makers will most often not deal with a problem unless there is a proposed solution (Wildavsky, 1979: 42). In this way, possible solutions very much shape how problems are defined (Dery, 1984). Furthermore, the proposed solution often then creates new issues, or questions previously established understandings of problems, thereby creating a vicious circle and 'ensuring that no public problem ever really dies' (Rochefort and Cobb, 1995: 24).

Framing

Problem definition goes hand in hand with framing. That is, while problem definition is about how actors, with different beliefs, interests and experiences perceive issues to be problems, framing is about how these actors articulate their attitudes towards the problem, present their arguments, and propose solutions. In doing this, as just mentioned, actors

focus on and emphasize certain aspects of the problem and downplay other factors. Thus, as Entman (1993: 52) explains, 'to frame is to select some aspects of a perceived reality and make them more salient … in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation'.

In addition to choosing which aspects of the problem to highlight and which to disregard, actors also articulate their attitudes towards problems through the language they choose to use. In this sense then, framing is not only about selective emphasis, but it is also about language, rhetoric and narratives, and symbols and image making (Edelman, 1977; Rochefort and Cobb, 1995). Indeed, Lakoff (2004) argues that the way we say something often matters much more than what we say (Rathje, 2017).

In exploring how problems can be framed, Rochefort and Cobb (1995) suggest a number of different categories. In the first instance and picking up on the discussion above about how problems are defined, they argue that actors will identify what they perceive to be the cause of a problem, and they will assign blame to a certain group of actors who they believe to be responsible for the problem. Secondly, they may also emphasize how serious the problem is, at least in their opinion, and they may also choose to portray it as a crisis, that requires urgent attention. Next, actors may also present the problem as one that has 'proximity' – i.e. one that is relevant to many people, and that affects their individual interests. Likewise, they may point to the incidence of the problem, and argue that the problem is a frequently occurring one, and that its prevalence might be increasing. In addition, if a problem affects a certain group – such as the poor, the unemployed, the elderly, women, or certain minorities – then this 'target population' may well be portrayed

in a specific way, often as either deserving or as non-deserving. Finally, specific frames may also be adopted if the problem is a new one. In this case, actors may emphasize the novelty of the issue, and may underline its unprecedented nature.

The purpose of framing, and of deploying certain frames, is of course to present each group of actors' arguments and positions on specific problems, often in a simplified and digestible way, and to advance their versions of reality. Yet, it is also to counter the arguments of others, to move the issue from insignificance to significance, to persuade the public, and to attract the attention of decision-makers so that something is done about the problem (Cobb and Coughlin, 1998: 417). Clearly, the more an issue is framed as serious, the more attention it will likely attract from the public and the media, and the more likely it will be that decision-makers will begin to address it. Similarly, the more people can be convinced that a problem is likely to impact them, then the more likely it will be that support for tackling the problem can be mobilized. In this way then, frames are employed by actors in a strategic fashion, in an attempt to structure 'a conflict in such a way that they can win' (Tosun and Knill, 2012: 103).

The role of ideas

As has already become clear, the ways in which problems are defined and framed are shaped by ideas. Cairney (2012: 223) broadly defines ideas as 'beliefs, thoughts or opinions [that] are used to help us understand and give meaning to policy problems and help us frame what we believe to be the most appropriate solutions', while John (2003: 487) notes

that different scholars have described them as ‘policy proposals, new techniques or solutions, systems of ideas, or discourse and language’. Cairney (2012: 221) further explains that while some approaches treat ideas as the starting point, and that ideas therefore help explain how and why certain policies are produced or changed, others consider them as intervening variables, or as structures that constrain agents in their actions, and others see them as the outcome, or the dependent variable, such that ‘ideas are produced and promoted by political actors and considered by decision makers’.

The myriad of ways in which ideas are defined and the different ways in which they are treated and used can be confusing, but Cairney and Weible (2015: 86-7) argue that from all the various definitions and approaches, it is nonetheless possible to identify three main ways in which actors use ideas. Firstly, and recalling the discussion above about problem definition and framing, actors draw on ideas to advance and frame their arguments to persuade the public and decision-makers that the issue is a problem that needs to be addressed. Secondly and relatedly, actors make use of ideas to propose solutions to policy problems. And thirdly, actors engage with commonly shared and widely accepted ideas, or with dominant paradigms so that their arguments resonate, and their positions are seen as legitimate.

This last point suggests that there is a structural element to ideas. In other words, actors do not simply take ideas off the shelf and employ them. Rather, the arguments they present and the solutions they propose need to be seen as understandable and feasible within the specific context (Cairney and Weible, 2015: 86). This in turn raises the question of whether actors may advance radical arguments or propose fundamentally different or new solutions

to problems. If they must stick to widely shared and accepted ideas, then there is perhaps a limit to how much certain ideas may be mobilized, at least outside critical junctures or times of crisis (see below).

The most notable proponent of this argument is Hall (1993), who suggests that such policy paradigms limit the terms of discussion and action, and ultimately explain why policy innovation and change remain fairly limited. He first argues that through a process of ‘social learning’ policy makers generally resist demands for change coming from society and organised interests, and instead only engage in what he calls ‘first order’ policy change, which is merely incremental and based on lessons from past policy decisions (1993: 281). He maintains that, with more pressure, these policy makers might go on to engage in ‘second order’ change, which involves more adaptation and more involvement of societal actors, but that they will move to ‘third order’ change – characterized by more radical shifts in policies and changes in the policy’s overall goals – much less frequently. Secondly, Hall argues that, whatever the order of the policy change, politicians, officials, experts and societal actors all operate within ‘the terms of political discourse that are current in the nation at a given time [which] have a specific configuration that lends representative legitimacy to some social interests more than others, delineates the accepted boundaries of state action, associates contemporary political developments with particular interpretations of national history, and defines the context in which many issues will be understood’ (1993: 289).

As well as injecting a note of caution into how much policy innovation and change is likely, Hall’s account underlines how context-dependent and historically and culturally sensitive the arguments and influence of actors are likely to be. This very much ties in with the points

made in the last chapter of this thesis about the importance and impact of historical legacies and cultural contexts, and emphasizes that actors operate in specific historical, cultural, and discursive environments.

These structures are not the only constraints on the mobilization of ideas and on policy innovation and change, however. Even if actors work within these paradigms, they are not always successful in effecting change. This, according to Kingdon (1984, 1995) is because, regardless of how actors engage with any paradigm, certain conditions need to be in place before a policy is likely to be made or altered. More specifically, in his very influential ‘multiple streams' model, Kingdon (1984: 174) suggests that three separate conditions, or streams, must come together at the same time for a policy to be made or changed. Firstly, through the way it is defined and framed, a policy problem needs to attract public attention (the problem stream); secondly, a feasible solution to the problem must be available (the policy stream); and thirdly, policy makers need to have the opportunity and the motive to address the problem and adopt the solution (the politics stream).

One the one hand then, Kingdon underlines the importance of the supply of ideas in this process. Using his now famous phrase ‘an idea whose time has come', he argues that policy problems are most likely to be solved when ‘an irresistible movement … sweeps over our politics and our society, pushing aside everything that might stand in its path' (1984: 1). For this reason then, despite their slippery character, ideas are crucial to understanding public policy, and scholars increasingly see and treat them as an essential variable in shaping policy (Béland and Cox, 2011; Baumgartner, 2014; Swinkels 2020; Kamkhaji and Radaelli, 2022). Yet on the other hand, Kingdon also warns that this alone will not suffice, and that those

three conditions must be satisfied before policy innovation and change will happen. If the three streams come together simultaneously, then a ‘window of opportunity’ opens during which the ideas find receptivity (Kingdon, 1984: 174).

This approach to understanding when and why policies are initiated or changed underlines the contingency of the process, and in this regard events can play a particularly important role in policy making (Heikkila and Cairney, 2018: 303-4; Weible, 2018: 2). While many events are routine and anticipated and produce little change, others are unexpected and sudden and can lead to greater change, especially if they pose immediate dangers (Birkland, 1997). This is the case for terrorist attacks, natural or environmental catastrophes, or pandemics for example (Birkland, 1997). These ‘triggering events’ or ‘critical junctures’ are very likely to focus the attention of the public and the decision-makers on the issues that are seen as the cause of the event, or that failed to stop the event happening. While these issues might have already been on the agenda, the event propels them up the issue agenda, and they now become urgent (Cairney, 2012: 187). Events of this kind can thus provide opportunities for certain actors to gain support for the way they have defined a problem or framed an issue, and for the solution they propose, and can increase the likelihood that the issue will be addressed by decision-makers (Capoccia, 2015: 148-150).

Agenda-setting

This idea of receptivity can be explored by considering how actors, once they have defined and framed issues as a problem, can take the necessary steps to get issues onto the policy

agenda. According to Birkland (2007: 63), an agenda is 'a collection of problems, understandings of causes, symbols, solutions, and other elements of public problems' that draws the attention of the public and the government. An agenda can be seen a set of beliefs about a problem that should be addressed by the government, the private sector, or nonprofit organisations. In short, as Page (2006: 208) explains, an agenda is 'a notional list of topics that people involved in policy making are interested in, and which they seek to address through developing, [...] policies'.

There are many different agendas, and Green-Pedersen and Walgrave (2014: 12) explain that some of these are informal and without constitutional or legal basis, while others are located and embedded in formal institutions. In a clearer way, Cobb and Elder (1983) distinguish between systemic, or public, agendas which are perceived as deserving public attention, and institutional, or formal, agendas that are relevant to decision-makers. They explain (1983: 85) that 'the systemic agenda consists of all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority'. Then, if a problem on the systemic agenda is successful in moving forward, it passes onto the institutional agenda, with the aim of reaching the final decision agenda. The institutional agenda is 'that list of items explicitly up for the active and serious consideration of authoritative decision makers' (Cobb and Elder, 1983: 85-86). Due to limited resources, only a limited number of problems will reach the institutional agenda, and even fewer will reach the decision agenda.

The process of agenda-setting concerns which issues end up on the agenda, or as Green-

Pedersen and Walgrave (2014: 7) argue, the process in which political institutions turn social conditions into political problems. Crucially, not all political problems reach the agenda. What is more, even if issues do end up on the agenda, there will be prioritization, with some issues placed further up on the list, and others further down, and with issues moving up and down the list.

The likelihood of an issue ending up on the agenda and the position of that issue on the agenda depend on a number of conditions, including the amount of public and elite attention that the issue attracts (Birkland, 2007: 63; Knill and Tosun, 2012: 106). Yet, as Green-Pedersen and Walgrave (2014: 6-12) note, while 'agendas are locations of political attention', political attention is 'scarce and consequential'. Indeed, actors continuously face an endless stream of information pertaining to existing problems in the world, which they are supposed to address, and they must filter this incoming information and prioritize their attention, so as to avoid getting overwhelmed and because they only have limited time, energy, and resources. How actors process and filter this information is key to explaining which issues they devote attention to, and ultimately how policies are chosen, reified and revised (Baumgartner and Jones, 2005; Green-Pedersen and Walgrave, 2014).

In addition to being shaped by how actors deal with information, which issues are prioritized also depends on the preferences of political actors. In this sense, while some issues are technical and reach the agenda anyway (Knill and Tosun, 2012: 106-7), other issues will be selected by the different actors for attention and will be prioritized for very deliberate reasons. By addressing certain issues for ideological reasons, and ignoring others, actors can attend to issues that their supporters care about, and in so doing improve their position or

weaken that of their competitors (Green-Pedersen and Walgrave, 2014: 7-8). For these non-technical issues then, including those like the regulation of religious symbols, it is important to explore what attention they are given for them to reach the agenda, by whom, and why they are given the attention that they are.

A host of different actors are involved in the agenda-setting process, including politicians, from both the executive and the legislature, public officials and civil servants, the judiciary, political parties, interest groups, and the mass media (Knill and Tosun, 2012: 113). The process is essentially a battle for influence, and in this battle different actors concentrate their focus and energies in specific venues or on specific stages. For politicians, perhaps the most important fight for influence takes place between the executive and the legislature and is most often underpinned by ideological differences. As Knill and Tosun (2012: 113) argue, 'setting the agenda for parliament is the most significant institutional weapon for governments to shape policy results'. By contrast, the influence of bureaucracies on the agenda is exerted in a quieter way, most often at the stage of policy formulation and implementation (Hammond, 1986), while that of the judiciary is felt through judicial review or court rulings made in accordance with the constitution (Knill and Tosun, 2012: 114).

Political parties may exert influence on the agenda in executive and legislative venues, but both they and interest groups also make considerable use of the media to generate public awareness of, and attention towards, issues and problems, and to mobilize public support for these issues (Green-Pedersen and Stubager, 2010; Wasieleski, 2010). This, of course, is because of the media's huge influence in defining problems and framing issues, in increasing the public's concern about issues, and in shaping public opinion.

The influence that all these different actors have on setting the agenda varies according to the issue in question, the policy style adopted (Richardson et al. 1982), and the nature of the political system in which these battles are taking place. Cobb et al. (1976) suggest three different models of agenda-setting, each of which involve different constellations of actors. In the first – the 'outside initiative' model – it is predominantly individual actors outside of governmental structures who define and frame an issue as a problem and seek to place it on to the agenda. Agenda-setting in this instance therefore takes on a bottom-up character. By contrast, in the second 'mobilization' model, it is governmental decision-makers, often in consultation with experts, who place issues directly onto the institutional agenda, and societal actors and the public are only brought into the process in a second step at the implementation stage of policy. Lastly, in the third model – the 'inside initiative' one – not only is it governmental actors who place issues on the agenda, but there is no involvement of societal actors and the public, even at a second stage. In these last two instances then, and in the third one in particular, agenda-setting is top-down, and the number and type of actors involved in the process are limited.

Some political systems afford certain actors more influence in setting the agenda than others. In particular, executives have more agenda-setting powers in some countries than others. Rasch and Tsebelis (2011) argue that governments in the United Kingdom and France, for instance, find it easier to shape and set the agenda than those in other countries because there is partisan congruence between the executive and the legislature (except in instances of cohabitation in France), and because most often these governments can rely on sizeable parliamentary majorities, and in the case of the UK, high levels of party discipline.

The policy process in executive-dominated countries therefore takes on a hierarchical structure, and policy proposals are more likely to originate from the government than elsewhere, at least in comparison to other countries where there is a greater balance of power (Page, 2006: 209).

Other institutional factors or veto points (Rasch and Tsebelis, 2011) also play a role in influencing the ability of different actors to set the agenda. For instance, territorial decentralization offers actors more arenas in which to exert influence, and more agendas to set. Likewise, different systems of interest groups can affect how much impact such groups can have on setting the agenda, with those in corporatist systems having more sway with governments than those in pluralist systems (Lijphart, 2012). And at a less formal or institutional level, different media environments can also shape the ability of actors to influence the public agenda, and for issues to then move to the institutional one. Indeed, as will become clear in the country chapters, the tabloid press has played a particularly active role in framing issues, and in enabling them to make it onto the public and institutional agendas. In short then, as Green-Pedersen and Walgrave (2014: 8) underline, some political systems are more open than others in terms of the opportunities they present for actors to attract attention to their issues, and to shape and set agendas.

An actor-centred framework to explain the regulations

The discussions of actors, problem definition, framing, ideas, and agenda-setting in the second half of this chapter allow for the development of a roadmap, or analytical

framework, that will guide the investigations in the case study chapters that follow. More specifically, to examine why the regulations of religious symbols in the public space England and France are the way they are, Chapter 5 on England and Chapter 7 on France will explore the following themes:

1. Using the concepts of expanders and containers, who are the actors who have been involved in the debates on religious symbols in the two countries?
2. How have these actors defined religious symbols in the public space as a problem, how have they framed these issues, and what ideas have they advanced?
3. How successful have these actors been in mobilizing their ideas and getting them on to the issue agenda?
4. And what accounts for the level of success that the various actors have had in their endeavours?

Exploring these questions will first allow the thesis to shed light on the constellation of actors involved in the debates surrounding the regulations of religious symbols in the public space in the two countries. Not only will this involve examining who the actors are, but it will also include investigating how numerous they are, whether the expanders outnumber the containers, or vice versa, or whether there is a more even balance between the two sets of actors, and whether each camp is united or divided. Then, paying close attention to the arguments that the various actors advance will enable the thesis to explore whether certain ideas and certain frames are more likely to be mobilized and deployed than others, and whether this varies by type of actor, issue, setting, or time period. The next step is then to

consider the success of these arguments, and to explore how they resonate with the public and with decision-makers, and ultimately, whether they lead to policy change. By examining all these questions, the thesis will be able to reach meaningful conclusions about why religious symbols have been regulated in the public space in England and France in the way they have, and why the situation in the two countries is so different.

This chapter has set out the ways in which the thesis will explore the ‘puzzle’ of how and why the regulations pertaining to religious symbols in the public space have been introduced in England and France in the ways they have. It has presented the two analytical frameworks to be used in the chapters to come, with the first enabling the nature of regulations in existence in the two countries to be thoroughly mapped over time with the aid of the concepts of scope, depth, and enforcement, and the second shedding light on who the key actors in the debates have been, what ideas and arguments they have mobilized, and what success they have encountered in shaping the regulations on religious symbols. Having set out these analytical tools, the thesis now moves to the first of the case study chapters and considers the regulations in place in England.

Chapter 4: The Scope, Depth and Enforcement of the Regulation of Religious Symbols in England

This chapter examines the scope, depth and enforcement of the regulation of religious symbols in public spaces in England in the period from 2000 to 2017. It does this by engaging in an in-depth mapping of the regulation of religious symbols, detailing the scope of the regulations and how the scope has changed over the period under investigation. It then considers the depth of the regulations (i.e. the severity of the penalties imposed for breaches of the regulations) and explores whether and how they have been enforced. It also pays attention to whether depth and enforcement have changed over time.

In England, unlike in other countries, open public spaces like public squares or parks, or public transport, are not subject to regulation. Rather, in England, the regulations pertain only to institutional public spaces such as hospitals, schools and courts. Indeed, it is these institutions that embody the public space in England, and when debates about the right to display religious symbols in public arise, it is these institutions that are very much at the centre of them. It is also from incidents in these institutions that most court cases have arisen. Hence the focus in this chapter is on these public institutional spaces and those performing a public service in them or using them (e.g. school pupils).

The regulations pertaining to the display of religious symbols in the public space are interesting in and of themselves. However, it is important to also appreciate that they, and the debates that surround them, reflect wider issues of how states deal with issues of

multiculturalism and accommodation. In other words, how a state regulates religious symbols in the public space exposes wider values, traditions and approaches. Moreover, in some instances, it may even be that policies and regulations are formulated for symbolic reasons, to underline and uphold those values, traditions and approaches.

To explore the regulations of religious symbols in public spaces in England this chapter begins by offering an outline of the general situation and a discussion of the main reasons for it. Thereafter, it moves on to engage in a detailed mapping of the scope, depth and enforcement of regulations regarding the display of religious symbols in three public institutional spaces, namely hospitals, schools and courts. It considers each of these institutional spaces in turn. These are the focus of investigation because it is around these institutions that the debate on the regulation of religious symbols has centred.

Overview: narrow scope, limited depth and uneven but strict enforcement

In general, it can be argued that in England the scope of regulations relating to the display of religious symbols in the public space is narrow, that the depth of these regulations is limited, and that their enforcement is, at most, 'patchy'. However, there has been change, mainly in scope, due to the increase in regulations towards a limited number of religious symbols. The changes have been significant, even if limited.

It will be remembered that the scope of regulation refers to the number of spaces that the regulations cover, as well as to the number and type of religious symbols affected by the regulations. As such then, given that regulations in England only apply to institutional public spaces, the scope of regulation is necessarily narrow. Moreover, it is also narrow because not all religious symbols are subject to regulation. As will be seen, some religious symbols are no longer a subject of debate or legislation and can be worn in all institutions. In most cases, recent regulations have been aimed at full-face veils and crucifixes, whilst Islamic headscarves and turbans are not regulated against anymore.

This narrow scope has not, however, meant that there has been no change over the period under consideration. Rather, from a low starting point, there has been a gradual move towards increased regulation in England. In particular, as will be discussed in more detail below, there have been considerable changes to regulations pertaining to the display of religious symbols in institutional public spaces since 2000. And yet, this overall change in scope has been limited because it has only taken place in institutional public spaces. English open public spaces remain free of regulation and accessible to all.

As discussed in Chapter 3, scope and depth are closely linked. Narrow scope is bound to have an effect on depth. That is, the severity of the penalties for infringing the regulations (i.e. depth) is bound to be more limited when fewer spaces and/or fewer religious symbols are subjected to regulation. Thus, given the narrow scope of regulations in England, where only some religious symbols in only specific institutions are regulated against, penalties are limited. Moreover, they are neither large nor severe. Rather, in England, penalties for infringing regulations usually take the form of warnings or fines (for civil or criminal

offences). In some rare cases, they have led to loss of work through dismissal or suspension from school. But so far at least, infringement of the regulations has never resulted in imprisonment. Moreover, depth is limited in England because the application of penalties is often the last resort. Often, alternative options are pursued, and ways are found to accommodate certain religious symbols when the need arises.

Not only is depth limited in the English case because the regulations on the display of religious symbols only pertain to institutional public spaces such as hospitals, schools and courts and thus the penalties for infringement only relate to these spaces, but it is also characterised by a lack of uniformity. This is because the government only provides 'guidance' on policies, and pragmatically delegates the task of formulating and implementing policies on the display of religious symbols in the public space to the respective public institutions – i.e. to the individual hospitals or NHS trusts, schools or courts. This has led to the formulation of different policies, and the setting of different penalties for infringement, across different institutions.

The depth of regulations has not increased significantly in England over the time period under investigation. That is, the penalties for infringing the regulations have not got tougher as time has gone by. Rather, it is the reach of the penalties that has become wider as a result of the increased scope of the regulations. Put another way, the penalties now apply to more symbols in more places than they did but they have not become stricter. The penalties themselves remain limited in severity.

Not only is the formulation of different policies regarding the display of religious symbols, including the penalties attached to any infringement them, left to the relevant individual public institutions, but the enforcement of these policies and the imposition of the penalties is also left in the hands of these institutions. As such then, the extent to which these different policies are enforced also varies and depends on which body is enforcing them.

This situation means that it is sometimes rather difficult to track whether the regulations vis-à-vis the display of religious symbols are actually enforced. Moreover, the picture becomes more complicated because even if the individual institutions enforce the policies, the people affected – i.e. those prosecuted for breaking the laws – can of course contest the decision through appeal and, ultimately, by taking their case to tribunals or courts. This can and has happened first in local courts, and then in national ones, and in some instances, cases have eventually made their way to the European Court of Human Rights or the European Court of Justice.

In spite of the messiness of the situation, and the difficulties involved in following whether or not the regulations have been enforced, it is reasonable to argue that in England responsible institutions strictly enforce their regulations. The small changes in scope have subsequently led to more enforcement of the new regulations. Regulations are enforced by individual institutions that have formulated and passed the policies. Over time there has been more enforcement of the rules with more use of penalties.

This overview has outlined the general situation with regards to the regulations of religious symbols in the public space in England. To explore this in more detail, the chapter will now

concentrate on examining the regulations as they relate to three public institutional spaces: hospitals, schools and courts. It will examine each in turn and will map the scope, depth and enforcement of the regulations.

The regulation of religious symbols in hospitals

The scope of regulations in hospitals

The scope of regulations concerning the display of religious symbols in hospitals in England is not large, but it is the largest among the three institutions considered here. The reason for this is that the regulations have been formulated on the basis of health and safety concerns, and infection control and these concerns take precedence over religious and cultural obligations. Furthermore, the scope of regulations in hospitals has generally expanded over time, although since the regulations are left to individual hospitals or NHS trusts the picture is far from uniform.

There is no national policy on the display of religious symbol in hospitals. Instead there are only guidelines which are vague and/or general. These guidelines are to be implemented by individual hospitals or NHS trusts, thereby giving hospitals autonomy in whether to implement them and how to do so. This leads to policy variations across hospitals and NHS trusts as regards how the display of religious symbols is regulated.

At the start of the millennium, the English healthcare dress code policy did not regulate against religious symbols. This can be seen from the lack of state/official regulation as well as from statements made by a number of NHS trusts. For example, in 2001 the University Hospitals of North Midlands NHS Trust (UHNM) stated that cultural and religious practices needed to be respected and it therefore supported a dress code that met cultural or religious requirements (North Staffordshire Hospital NHS, 2001: 4). Similarly, in its guidelines (in force from 1998 to 2005), Cambridge University Hospitals NHS Foundation Trust required managers to be flexible and reasonable with regard to staff wearing items of jewellery that are traditional within some religions and also specifically permitted the wearing of Sikh turbans and Muslim headscarves (Cambridge University Hospitals NHS Foundation Trust, 1998-2005: 2, 8).

The first Department of Health guidelines date back to 2007. Yet, this document entitled *Uniforms and workwear: an evidence base for developing local policy* makes no reference to religion or religious symbols. Rather, religious symbols are only mentioned for the first time in the 2010 Department of Health guidance, which specifically references long sleeves and Sikh bracelets. In this document, the Department of Health (2010: 3) recognized that some uniforms were in conflict with specific religious or cultural dress codes (e.g. jewellery, head coverings, long sleeves etc.), and for this reason, it started taking significant measures to accommodate diversity and to balance health and safety and infection control with cultural sensitivities.

The Department of Health's Equality Impact Assessments of 2006 and 2010 also stressed the importance of 'flexibility in order to support staff in complying with both the needs of

the service, and the requirements of their religious dress codes' (Department of Health, Equality Impact Assessment, 2007: 9a). The 2010 Equality Impact Assessment (2010: 8a) stated that the Department of Health aimed to advise trusts in a way that would 'ensure patient safety without compromising religious or cultural beliefs' and urged trusts to be sensitive to the requirements of different religious groups (2010: 7a).

The Equality Impact Assessment guidance also highlighted that individual cases should be determined by local hospitals and emphasized that the Equality Impact Assessment was only to be treated as guidance and that individual trusts were expected to produce more focused policy (2007: 5a). The Equality Impact Assessment (2010: 1a) guidance stated that individual '[O]rganisations are required to take action to mitigate or eliminate the negative impacts and maximize the positive impacts or opportunities for promoting equality'. It underlined that while the guidance may help trusts make informed decisions and devise their own local policies on wearing uniforms, 'final resolutions will still be made locally' (2010: 3a).

The introduction of this guidance was clearly the result of an attempt to accommodate religious and cultural diversity. This is evident from the steps taken by the Department of Health which worked jointly with the Muslim Spiritual Care Provision and infection control experts to address concerns and to issue guidance on how local dress code policies may be developed so that religious obligations aligned with infection control responsibilities (Department of Health, Equality Impact Assessment 2010a). This guidance was adopted by some hospitals as can be seen in the following example:

> Any specific requirements arising from employees' religious, cultural or medical needs should always try to be accommodated within local arrangements, providing there is no negative impact on service delivery. Requests for variation to this procedure in order to meet specific requirements will be considered by service managers and reasonable adjustments will be made to ensure staff are not discriminated against (Leeds & York Partnership Foundation Trust, 2013: 10).

Many hospitals have followed these guidelines and passed local policies that align religious and cultural obligations with infection control responsibilities. However, not all hospitals have shown the same level of attention in accommodating diversity and nor have they needed to, precisely because the Department of Health provided only guidelines rather than set policies requiring implementation, and because these guidelines were rather general and could be interpreted in different ways. As a result, policies remain very different across NHS trusts.

Other guidance and advice on dress codes in hospitals has been offered by NHS Employers, a government agency that acts on behalf of NHS trusts in the National Health Service in England. It has issued practical advice to NHS employers, recommending that 'when devising or reviewing a dress code, employers must ask themselves whether the dress code will require employees to dress in a way that contravenes their religion or belief' (NHS Employers, 2018). It also urges employers in the NHS to 'be mindful of how certain combinations of characteristics such as religion and gender might mean greater impact on certain groups – for example some Sikh men or Muslim women' (2018). And it advises employers to 'consult with employees and potentially their representatives and unions,

particularly if there are a significant number of employees of a particular religion who may be affected by a dress code' (2018).

This guidance also advises caution when enforcing a dress code. It encourages employers to 'be sensitive in the approach to the enforcement of a code. If an individual feels that an employer is trying to compromise their religious beliefs by enforcing a dress code then it can be upsetting for that employee and a heavy handed approach is likely to exacerbate this' (NHS Employers, 2018).

The guidance clearly reflects a desire to accommodate diversity, but it is also issued with one eye on appeals against any dress code. Indeed, in advising employers to be sensitive in drawing up dress codes, NHS Employers also notes that any employer that has shown flexibility or understanding 'will undoubtedly be judged as more reasonable by a tribunal if they have made attempts to [be accommodating]' (2018).

Given these national guidelines, today, English hospitals regulate in some way against the wearing of jewellery (specifically necklaces with pendants, and hence crucifixes), the wearing of long sleeves, and the wearing of full-face veils. Other religious symbols are permitted, including headscarves, jilbabs, the Kirpan and turbans, and kippahs. The regulations only pertain to staff, and not to patients. Furthermore, in some instances the regulations vary according to whether the staff concerned are medical staff who are in contact with patients, or are office or research staff who do not have such contact with patients.

English hospitals have banned the wearing of jewellery due to health and safety risks and to prevent the spread of infections. In most hospitals, necklaces, chains, long or hoop earrings, rings, bracelets or ankle chains are banned, as are wrist watches. Some exceptions have been made for members of staff that wish to wear a bracelet for religious reasons. In these cases, staff should ensure that bracelets can be pushed up the arm and secured in place for hand washing and direct patient care activity. For example, the Devon Partnership NHS Trust (2012: 7) dress code policy states 'Where, for religious reasons, members of staff wish to wear a bracelet, e.g. the Sikh kara, they must ensure that the bracelet can be pushed up the arm, above the elbow, and secured in place whilst at work'. In addition, some hospitals have allowed staff to wear necklaces (including those with crucifixes) if they are hidden under the uniform.

Many hospitals have also banned long sleeves on the grounds that effective hand hygiene reduces the risk of infection and wearing long sleeves compromises its achievement. In what has become known as the 'bare below elbows' policy, they require staff to refrain from wearing clothing with long sleeves and stipulate that sleeves must be able to be pushed up the arm and secured in place for hand washing and direct patient care activity. This becomes a religious matter because some Muslim women believe that exposing their forearms is immodest.

The policy on long sleeves is not uniform across NHS trusts and hospitals, however. As explained above, there is no national state policy on dress codes and instead, individual health institutions are left to formulate and implement their own policies within the scope of the guidelines set out by the Department of Health. The issue of sleeves came to

prominence with the 2007 guidelines. These focused heavily on new measures to tackle hospital bugs, and included a dress code with 'short sleeves, no wrist watch, no jewellery and … the avoidance of ties when carrying out clinical activity'. The traditional doctor's white coat was also banned (National Archives, 2007). The guidance became widely known as the 'bare below the elbows' guidance even though the phrase never actually appeared in the text of the document, and it was subsequently widely adopted throughout the NHS.

As this policy was implemented, the Department of Health received a range of comments from Muslim staff criticizing it. In response, the Department did recognize that the policy was in apparent conflict with some religions and cultures, and that it presented difficulties for some Muslim female healthcare workers and students. As a result, the guidance was revised and updated in 2010. It now states that it is acceptable 'where, for religious reasons, members of staff wish to cover their forearms or wear a bracelet when not engaged in patient care'. Otherwise staff should 'ensure that sleeves or bracelets can be pushed up the arm and secured in place for hand washing and direct patient care activity' (Department of Health, 2010:6). Therefore, as of 2010, when they are not directly engaged in patient care, Muslim staff can wear uniforms with full-length sleeves as long as they are not loose-fitting and can be pulled back for hand washing (Smith, 2010).

Given the lack of uniformity in relation to the policy on long sleeves, a dozen hospitals were contacted in the course of this research to explore the different approaches taken on this issue, and responses showed that while ten hospitals do ban the wearing of long sleeves, two do not. Cambridge University Hospitals NHS Foundation Trust and Leicestershire Partnership NHS Trust permit the wearing of long sleeves to cover forearms for religious

reasons (Cambridge University Hospitals NHS Foundation Trust, 2016: 5; Leicestershire Partnership NHS Trust, 2017: 14). Moreover, these responses revealed that individual hospital policy on this issue has changed over time. In 2005 and 2007 Cambridge University Hospitals NHS Foundation Trust had a policy that staff must have ‘sleeves rolled up to above the elbow, or wear short sleeved shirts/blouses’ (2007: 2). However, in 2010, the hospital changed its policy. While the Trust still maintained that ‘health and safety of patients is of primary concern for the Trust and in accordance with equality legislation, health and safety overrides religious customs and beliefs in the workplace’, it went on to say that ‘revised DH Uniform and Workwear Guidance (March 2010b) states that where exposure of forearms is not acceptable for religious reasons “uniforms can have three-quarter length sleeves”’ (2010: 2-3b). The same regulation is applied in the Trust’s 2014 uniform code policy.

This highlights how individual NHS trusts have dealt with the issue, and how their approach has changed over time, here in a clear attempt to accommodate diversity. Such attempts to accommodate diversity were arguably made easier by new guidance issued by the Department of Health in 2010 which permits hospital staff to wear disposable sleeves (which are elasticated at the wrist and elbow) when in contact with patients (Department of Health, 2010b). Nonetheless, the ‘bare below elbows’ policy as well as the regulations pertaining to the wearing of jewellery (including crucifixes) highlight the tension between concerns over health and safety and hygiene control on the one hand, and the freedom of staff to manifest their religious belief on the other, and show that different hospital trusts have taken different views on the balance between these two competing concerns.

Some English hospitals ban the full-face veil, but the vast majority of hospitals do not mention the veil at all in their dress code. Again, the most likely reason for this variation is that there is no national guidance from the Department of Health concerning the wearing of face veils. Rather, it is left up to individual hospitals to decide how to proceed. This is in contrast to sleeves where there are clear guidelines to keep them short.

There appear to be four approaches to how hospitals deal with the wearing of the full-face veil by staff. At one extreme, some hospitals have made the decision to impose a complete ban, forbidding staff from wearing the full-face veil at any time while on duty. This approach has been adopted by more than a dozen hospitals across England (Donnelly and Williams, 2013). A second, less drastic approach has been to prohibit staff from wearing the full-face veil when in contact with patients, but to allow them to wear it when performing other duties. For example, Leicestershire Partnership NHS Trust (2017: 14) allows staff to wear the full-face veil in an office environment, but not in clinical practice.

In contrast, some hospitals allow the wearing of full-face veils in all circumstances. For example, Cambridge University Hospitals NHS Foundation Trust and Kent Community Health NHS Foundation Trust permit the wearing of all religious symbols including the full-face veil. Hospitals and trusts that take this approach are the exception rather than the norm, however. And the majority of hospitals and trusts actually take the fourth approach, which is not to mention the wearing of the full-face veil at all in their dress code. This is by far the most common approach, with the vast majority of the 160 NHS trusts in England making no reference to it in their policies.

Those hospitals and trusts that do ban the wearing of the full-face veil put forward two main reasons for doing so. First, they argue that they prohibit the wearing of the full-face veil on the grounds that it obstructs effective communication between healthcare staff and patients. Secondly, they ban its wearing so as to minimize infection risk. For example, Wrightington, Wigan and Leigh NHS Trust has policies in place outlining that face coverings should not be worn when delivering patient care so as to aid communication and minimise infection risks (NHS Employers, 2013). In July 2013, the Cheshire and Wirral Partnership (CWP) NHS Foundation Trust introduced a policy requiring staff who chose to wear a veil to uncover their face whilst engaged in patient care (2013: 6). Another example is the University Hospitals of North Midlands (UHNM) NHS Trust which issued a dress code policy in September 2016 forbidding full-face veils for staff when in contact with patients (Staffordshire and Stoke on Trent Partnership NHS Trust, 2016: 14). The Trust argues the policy is 'to ensure effective communication' (Staffordshire and Stoke on Trent Partnership NHS Trust, 2016: 14). Likewise, Bradford Teaching Hospitals NHS Foundation Trust:

> 'decided that, to ensure effective communication, clothing which covers the face (veil/niqab) would not be permitted for any staff in contact with patients, carers or visitors or for staff in other roles where clear face to face communication is essential, for example, training' (NHS Employers, 2013).

The scope of regulations in English hospitals has changed over time. More specifically it has expanded from the early 2000s to 2017, and dress codes have been altered as a result. However, this expansion in scope is explained by changes that pertain to specific religious

symbols only. As has been seen, hospitals have mainly taken measures to regulate against necklaces with crosses and against full-face veils. As discussed above, steps were first taken to discourage the wearing of necklaces in 2007 when they were specifically mentioned in the Department of Health guidelines as posing a possible health and safety risk. The 2010 guidance then expanded on this and stated that wearing any jewellery during direct patient care activity could harbour micro-organisms and would thus be considered an infection risk and poor practice (2010: 5). As for full-face veils, these were not covered in any guidelines or policies in the early 2000s. Rather, as mentioned above, it was only from 2010 that regulations started appearing in various hospital trusts banning the wearing of the full-face veil by staff who were engaged in direct patient care. And over time the number of hospital trusts banning the wearing of the full-face veil has gradually risen.

By contrast, the increase in the scope of the regulations is not the result of measures relating to the wearing of headscarves, jilbabs, turbans or Jewish Yarmulke skullcaps, or to the carrying of Kirpans. These have never been regulated against. Similarly, even though some earlier guidelines sought to discourage the wearing of Sikh bracelets and sought to prohibit staff from wearing long-sleeved garments, these measures have since been reversed. As has been seen, while long sleeves were banned following the Department of Health's 2007 guidelines– thereby temporarily adding to the expansion in the scope of regulations – changes were made to these policies for religious reasons in 2010 when disposable over-sleeves were introduced for those staff who wished to cover their forearms. Similarly, in 2010, regulations were altered so that those who wished to wear the Sikh bracelet could do so, as long as it was pushed up the arm and secured in place (Department of Health, 2010: 6).

As such then, it can be concluded that the scope of regulations pertaining to the display of religious symbols in English hospitals has increased over time, and that this expansion took place around 2007 and 2010. Furthermore, it can be concluded that this expansion is mainly down to policies relating to jewellery (specifically necklaces) and to the wearing of full-face veils. Yet it is also interesting to note that charting the ways in which and the extent to which the scope of regulations regarding the display of religious symbols by staff in English hospitals has changed over time is difficult for two reasons. First, as has been explained, there are no official state policies on the matter, and instead there are only general national guidelines which individual hospitals and NHS trusts are expected to interpret and follow as they best see fit given local contexts. The variation in the ways in which these guidelines have been followed by individual hospitals thus makes charting any changes over time rather difficult. Secondly, mapping any changes in the scope of regulations is also made difficult by the fact that information on the policies of individual hospital trusts is often not publicly available. In most cases, hospital dress code policies are not available on hospitals' websites. And when hospitals have been contacted on this issue, some have ignored Freedom of Information requests, or have stated that they do not have any set policies but have merely adopted the Department of Health's guidance.[1]

[1] Freedom of Information requests were made via email to 15 NHS Trusts. Replies were received from 12 hospitals: Oxford Health NHS Foundation Trust, North Staffordshire Hospital NHS (Staffordshire and Stoke on Trent Partnership NHS Trust), London North West Healthcare NHS Trust, Leeds & York Partnership Foundation Trust (LYPFT), Cambridge University Hospitals NHS Foundation Trust, Kent Community Health NHS Foundation Trust, Leicestershire Partnership NHS Trust, North Bristol NHS Trust, Queen Elizabeth (previously University Hospitals Birmingham Foundation Trust), Heartlands, Good Hope and Solihull (previously Heart of England Foundation Trust), Devon Partnership NHS Trust, and East Cheshire NHS Trust. Hospitals that did not reply to emails were Norfolk and Norwich, Brighton and Sussex, and Liverpool University Hospital NHS Trust. An additional 20 NHS hospital trusts were contacted directly through their hospital websites and FOI request forms were submitted online, but no replies were received from these.

The depth and enforcement of regulations in hospitals

Given that the scope of regulations in hospitals in England is fairly narrow, though admittedly increasing, and is also uneven across different institutions, it can be expected that the depth of regulations – that is, their severity – will also be reasonably limited, or shallow. And in general, this is the case.

There have been no recorded cases of infringements of the regulations in hospitals that have resulted in an employee's direct dismissal. Rather, the breaking of the rules has resulted in warnings of disciplinary action, leaving employees with the option of abiding by the regulations or leaving their post. In some cases, this has led to employees resigning from their posts. However, in other instances 'solutions' have been found by employees transferring to a desk job which involved no contact with patients, thereby allowing the employee to continue to wear the religious symbol that was prohibited in their previous patient-centred role.

In general hospitals have taken a firm approach with their employees, leaving little room for negotiation once regulations have been breached. Thus, while hospitals may differ in their policies towards all or some religious symbols, all have abided by their guidelines and have strictly enforced their policies.

The following paragraphs detail a series of court cases regarding the displaying of religious symbols in hospitals in contravention to the individual hospital's policies. These case studies help demonstrate the depth of the regulations pertaining to the display of religious symbols in English hospitals, as well as the degree of enforcement of these regulations. The cases concern different religious symbols, namely the wearing of a crucifix and the policy of having to have bare forearms. (To date, there have been no recorded legal cases pertaining to the wearing of full-face veils in hospitals). Together these cases show that hospitals are generally quite strict in enforcing their policies. However, they also reveal that strict enforcement is not necessarily linked to large depth. That is, while there may be strict enforcement of the regulations, the penalties for having broken the regulations are not that harsh, as alternative positions have been found for staff who do not wish to compromise their religious beliefs when issues of health and safety arise.

The Chaplin case

Shirley Chaplin was a geriatrics nurse who worked at the Royal Devon and Exeter hospital. In 2009, following the introduction of a new policy by the Royal Devon and Exeter NHS Trust (which was based on Department of Heath guidance), Chaplin was instructed to remove the crucifix that she wore around her neck on the grounds that it contravened uniform policy and posed a risk to health and safety (Wynne-Jones, 2009). Chaplin refused, and was subsequently threatened with formal disciplinary sanctions by the hospital. In a 'compromise' solution, she was removed from frontline duties on the ward and agreed to be redeployed to a desk job (Guardian, 2010).

In September 2010, having exhausted all efforts at UK Courts, Chaplin took her case to the European Court of Human Rights (BBC, 2013c; ECHR, 2019). Eventually, in 2013, the European Court of Human Rights held unanimously that there had been no violation of Article 9 of the Convention (Peroni, 2013) which protects personal freedom, including the freedom to manifest religious belief, and that the hospital was within its right to ask her to remove her cross on the grounds of safety (ECtHR, 2010, Application no.59842/10).

The Slatter case

The Slatter case was another case involving the wearing of a crucifix by a hospital staff member. Helen Slatter was a phlebotomist at the Gloucestershire Royal Hospital. In May 2009 she was instructed to remove her necklace and crucifix for health and safety reasons, on the grounds that it posed an infection risk and because it could be used as a weapon (Wardrop, 2009). She refused to remove the necklace, and was faced with disciplinary action. The hospital sought a 'solution' by letting her carry the crucifix in her pocket, but Slatter refused. After a period of leave from work with stress, she resigned from her job in protest (Woodward, 2009). In response to events, the Trust defended its decision by stating that the matter was not a religious issue. Rather, the Trust pointed to its uniform policy which stated that 'necklaces and chains present two problems – firstly they provide a surface that can harbour and spread infections, and secondly they present a health and safety issue whereby a patient could grab a necklace or chain and cause harm to a member of staff' (Woodward, 2009).

The bare below the elbows case

This case involved a woman, who wished to remain anonymous, who worked as a therapeutic radiographer at the Royal Berkshire Hospital in Reading. Events unfolded in 2008, in the wake of the NHS's introduction of the 'bare below the elbows' policy. As explained above, this policy was introduced to ensure effective hand hygiene, and stipulated that sleeves must be short or rolled securely up to the elbow. It was applied to all medical staff employed by or contracted to the Trust and who worked in or had to visit clinical areas, including nurses, doctors, other medical professionals, and administration staff.

The radiographer in question, a Muslim woman, refused to follow the policy on religious grounds, as she considered the exposure of forearms to be immodest. The hospital responded by telling her that she 'must either follow the national dress code designed to combat superbugs and roll her sleeves up, or leave' (Beckford, 2008). She continued to refuse to abide by this regulation, and in August 2008 she resigned from her job claiming that she was forced out by discrimination over her religious beliefs (Daily Mail, 2008).

This case clearly had some traction because, as discussed above, in March 2010, the Department of Health issued new guidance that allowed hospital staff to wear disposable sleeves, elasticated at the wrist and elbow, when in contact with patients, as a means to preserve modesty (Smith, 2010).

These cases shed light both on the depth of the regulations pertaining to the wearing of religious symbols in hospitals in England, and on the extent to, and the ways in which, these regulations are enforced. As regards depth – that is the severity of the regulations, as reflected in the penalties attached to a breach in the regulations – it can be concluded that the depth of the regulations is reasonably limited in that infringements of the regulations have not resulted in employees being directly dismissed. Rather, the main response to the breaking of the rules has been disciplinary action. Moreover, the depth of the regulations has remained limited due to the fact that hospitals have shown flexibility in how they have dealt with staff who have expressed a wish to continue wearing a religious symbol, or who have indicated that they do not wish to bare their forearms. As has been shown, in some instances, staff have been offered new positions in which they can wear their religious symbol, while on other occasions alternative solutions have been found, such as the introduction of disposable sleeves. Finally, it is also important to note once again that the depth of regulations in hospitals in England is not uniform because the task of regulating the display of religious symbols is left to individual NHS foundation trusts. Just as the scope of regulations varies across hospitals, so too does the depth of the regulations.

As regards enforcement, the cases show that hospitals do enforce their uniform policies, and are quick to take measures to enforce any new policies that are introduced. Thus, while a number of hospitals have sought alternative arrangements for staff (such as redeployment) to stop the regulations being infringed, when the rules are broken, they have taken steps to discipline the individual concerned. As the Chaplin case illustrates, this has not stopped some individuals from taking hospitals to court however, even in instances where hospitals have attempted to provide alternative arrangements. Yet, to date at least,

these individuals have not been successful. Rather, hospitals have won all of their lawsuits in the UK courts and at the European Court of Human Rights. The reasons for banning certain religious symbols in hospitals – namely health and safety concerns, the risk of infection, and the importance of face-to-face communication – have been deemed legitimate and lawful, even if debates around these matters continue.

In summary then, the situation with regards the regulation of religious symbols in hospitals in England can be described as one in which there is fairly limited, yet increasing, scope, where the depth of regulations is also reasonably limited but has not changed greatly over time, but where enforcement has been and remains reasonably strict. The picture is nuanced however, as the scope of regulations varies across hospitals because it is left to individual institutions to formulate their own uniform policies. Moreover, the depth of the regulations – and hence the extent to which policies need to be enforced – is mitigated by attempts by many hospitals to propose alternative arrangements for staff who wish to display a religious symbol or who wish to dress in a way that reflects their religious beliefs.

The regulation of religious symbols in schools

Educational institutions, including schools, are clearly part of the public sphere because the vast majority of them are run and managed by, or at least under oversight of, the state. As such, the display of religious symbols in schools is subject to regulation. Yet, the issue of regulating religious symbols and religious dress in schools has taken on a particular

character due to the role that schools are meant to play in society. Schools are institutions that are supposed to reflect and nurture a country's national identity. As Hunter-Henin (2013: 243) argues, 'state schools are both the bedrock of a nation's values and the means by which it helps to form good citizens'. Given this perceived role of schools in a nation's identity, the debate over the regulation of religious symbols and dress in schools has become particularly contentious and sensitive, and schools have sometimes become battlegrounds in the midst of disputes which have attracted considerable media attention. Schools are also considered to be spheres that should be protected from potentially harmful or undesirable external influence. Children can be vulnerable and/or impressionable and may require safeguarding by the state. For these reasons the state, through schools, has greater authority over how students should behave and dress than it does over adult citizens (Vogel, 2013: 744).

The following section will focus on the regulation of religious symbols and religious dress in schools. Like the previous section on hospitals, it will first examine the scope of the regulations of religious symbols in schools, and consider how this has changed in the period 2000 to 2017. Then, it will discuss the depth of the regulations and will investigate the extent to which the regulations have been enforced. In the same way as in the previous section, this will be explored by reference to a series of court cases pertaining to the wearing of religious symbols.

Throughout this section the focus will be on the regulation of religious symbols and religious dress in primary and secondary state schools in England. Private schools will not be considered because they are not in the public sphere, and so the regulations do not extend

to them. Furthermore, there is a lack of transparency as regards private schools and issues that may arise within them regarding religious symbols. In addition, all of the relevant court cases pertain to state schools; none have involved private schools because they do not fall under the same regulations.

The discussion below also does not include coverage of how religious symbols are dealt with in English universities. This is because English universities do not regulate the wearing of religious symbols. Rather, universities only require that people reveal their faces temporarily for the purpose of their photograph being taken for their student ID (University of Birmingham, 2018), or to verify student or staff ID cards, at which point the identification should be made by a female staff member in a private room (University of Manchester, 2018). These conditions apply to all English universities. These arrangements reflect the fact that university students, unlike school children, are adults who do not require safeguarding by the state.

The scope of regulations in schools

The scope of the regulations pertaining to the display of religious symbols in English primary and secondary schools can, in the main, be described as moderate. And in the period from 2000 to 2017, the scope can be seen to have increased slightly. As will become clear, to explore the scope of the regulations, and to discuss how the scope has changed in these

years, it is useful to focus on three periods, namely the early 2000s, the period from 2007 to 2013, and the period after 2013.

In the early 2000s there were no government policies regulating the wearing of religious symbols in schools. Indeed, throughout the period from 2000 to the present, the government has not issued any formal regulations on this matter. In the course of researching this thesis a Freedom of Information Act request was made to the Department for Education asking whether any such policy existed. The requested information was: (1) the Department's school dress code policy for students and staff published in 2000; (2) the Department's most recent dress code policy for schools in 2017; (3) information regarding regulations that pertain to religious symbols such as turbans, kippahs, Sikh bracelets, headscarves and full-face veils. The response was as follows:

> Following a search of the Department's paper and electronic records, I have established that the Department does not hold the information you requested. The Department did not publish any policies on school dress codes for teachers or pupils in 2017, and I have been unable to find any policy for school dress codes dating back to 2000 (Department for Education FOI: 2018-0029642 CRM:0249039).

In the early 2000 there was not even any guidance from the Department for Education on this matter. In many ways, this reflected the fact that the issue was a relatively non-contentious one. There was no significant public debate on the question, and at this time no

lawsuits had been filed against schools with regard to their policies on the display of religious symbols by students or staff.

However, the issue of the display of religious symbols in schools did start to become controversial from 2002 when some individual state schools, rather than the government, began to introduce policies regarding their school uniform that impacted on the wearing of religious dress. Although the debate began with the display of religious symbols among pupils, in 2006 the right of staff to manifest their belief through the wearing of religious dress or symbols also became a part of the controversy.

The first case arose in 2002 in a secondary school in Luton. It involved a female Muslim pupil, Shabina Begum, who asked whether she could attend school wearing the jilbab, a head-to-foot, loose-fitting garment. The headteacher, herself a Muslim woman, refused the request on the grounds that the jilbab was not part of the school's approved uniform policy, and the school's governors upheld this decision (Croner-i, 2006). The school had permitted the wearing of Islamic headscarves since 1993 when a request had been made to modify the uniform (Vakulenko, 2012: 25), and it also allowed the wearing of the shalwar kameez. In the opinion of the headteacher and the governors these measures were already sufficient to accommodate the requirements of Muslim pupils. Furthermore, the school considered that the jilbab constituted a health and safety risk (BBC, 2004). The school ordered Begum to stop wearing the jilbab and the pupil was sent home.

Another case soon followed, also in Luton and centred on Icknield High School. The issue came to prominence in early 2004 when the parents of a prospective pupil asked whether

their daughter would be allowed to wear a headscarf. The headteacher, Keith Ford, turned down the request on the grounds that it was against the school's uniform policy which banned religious headwear except turbans (Owen, 2004). This was considered to be the first headscarf ban in the UK (Vakulenko, 2012: 24).[2] In fact, this, according to *The Times*, made 'Icknield High … the only school in the country to have banned [hijabs]' (Owen, 2004).

Following the rejection of the request, the parent of the pupil reported the matter to the borough council and Luton Borough Council warned the school that its ban on headscarves could breach the Race Relations Act. The school was thus forced to review its uniform policy, and in March 2004, it lifted its ban (The Guardian, 2004).

Two years later, another case followed, in Buckinghamshire. In this instance a 12-year-old girl started attending school wearing a niqab. The pupil was told that the garment did not conform to school uniform policy because it impeded communication and learning (The Guardian, 2007a). As in the Begum case, the school told the girl that she was permitted to wear the Islamic headscarf, and that the school's uniform policy thereby already catered to the needs of Muslim students. The pupil refused to comply with the request not to wear the niqab and left the school.

These cases show that the scope of the regulations on the display of religious symbols in schools gradually increased, but that in the first few years this increase only concerned Islamic clothing. However, in 2007, this scope increased to include Christian symbols. In the first case, a 13-year-old Catholic pupil at a school in Kent was ordered to remove her

[2] Icknield High School did not respond to two Freedom of Information requests asking for details of the school's uniform policy dating from 2000, 2005, 2010 and 2017.

necklace on which hung a small crucifix. The school made the request on the basis that the necklace constituted a health and safety risk, as well as because it contravened the school's 'no jewellery' policy (KentOnline, 2007b). The pupil was asked to wear the crucifix on her lapel as a badge instead of around her neck. Later that same year, a 16-year-old pupil at a school in West Sussex was ordered to remove her 'purity ring' – a Christian symbol of chastity until marriage. Again, the reason for the request was that the item was against the school's 'no jewellery' policy (BBC, 2007b).

A further case that points to an increase in the scope of regulations on the display of religious symbols in schools concerned a member of staff, rather than a pupil. In this case, Aishah Azmi, a Muslim support worker employed by a school in Dewsbury, refused to remove her full-face veil at work if a man was present. The case had many twists and turns (which are discussed in the section on depth and enforcement below), but the eventual outcome was that Azmi was dismissed from her post.

In part as a result of the debates that these cases gave rise to, the situation with regard the regulation of religious symbols in schools began to change in 2007. First, in March, Alan Johnson, the then Education Secretary, defended proposed new policy guidance about to be put out for consultation that would allow headteachers to ban the wearing of the full-face veil on 'safety, security and teaching' grounds. He was reported as saying that he would 'defend the new policy guidance to schools on the grounds that safety, security and effective teaching must be paramount, coming ahead of the tolerance of religious and cultural beliefs of children' (Wintour, 2007). He also stated that it would be for headteachers to consult with parents before introducing the policy, and for them to also

judge whether ‘the ability to see a child's face is necessary for them to teach effectively and safely’ (Wintour, 2007).

Following the consultation, in October 2007 the Department for Children, Schools and Families issued its first guidance on the matter. Entitled ‘DCSF Guidance to Schools on School Uniform Related Policies’, this guidance very much delegated decisions on school uniform to individual schools. It stated (under Point 2) that ‘it is for the governing body of a school to decide whether there should be a school uniform and other rules relating to appearance, and if so what they should be’ (DCSF, 2007). Just like the guidelines on the wearing of religious symbols in hospitals that left it up to individual NHS trusts to decide how to proceed, these guidelines left it up to individual headteachers and school governors to make decisions. And just like the legislation in hospitals, this was non-statutory legislation.

Point 4 of the DCSF guidance also noted that schools ‘might decide that the needs of individual groups are outweighed’ by a number of factors. These include ‘health and safety’, security, which was outlined as the need for a school to ‘be able to identify individual pupils in order to maintain good order and identify intruders easily’, and ‘teaching and learning’ considerations. With regard to the latter, the document explained that ‘if a pupil’s face is obscured for any reason, the teacher may not be able to judge their engagement with learning, and to secure their participation in discussions and practical activities’. The guidance then went on (also under Point 4) to list two more factors that schools might decide ‘outweigh’ the needs of individual groups, namely the need to protect ‘young people from external pressure to wear clothing they would not otherwise choose to adopt’, and the

need to promote ‘a strong, cohesive, school identity … and a sense of identity among pupils’. It argued that ‘if some children look very different to their peers, this can inhibit integration, equality and cohesion’ (DCSF, 2007). The Annex to the document also contained some guidance on religious clothing. With regard to Islam it stated that ‘young women are appropriately modestly dressed if they are wearing salwar kammez or jilbaab with headscarf without the need to wear niqaab in school’ (DCSF, 2007).

While these guidelines of October 2007 stated that head teachers could prohibit the wearing of any religious dress that covers the pupil’s face, they did not make this a mandatory blanket ban. Rather, they left it to each school to set its own uniform policies, explaining that ‘each case will always depend on the circumstances of the particular school’, so ‘the judgments do mean that banning such religious dress will always be justified, nor [sic] that such religious dress cannot be worn in any school in England’ (Evening Standard, 2007b).

The guidance also underlined that a ‘school must have regard to its obligations under the Human Rights Act 1998 and anti-discrimination legislation’ and it recommended that schools consult widely on their uniform policy, including with current and prospective pupils and parents or carers and ‘representatives of different groups in the wider community, such as community leaders representing minority ethnic and religious groups, and groups representing pupils with special educational needs or disabilities’. It urged schools to reflect on how the uniform policy might affect different groups represented in the school, and to consider the concerns of any groups including ‘whether the proposed policy amounts to an interference with the right to manifest a religion or belief, and whether it is discriminatory’,

although it also noted that ‘it might not be practical to accommodate fully the concerns of all groups’ (DCSF, 2007).

This last point on the impracticality of accommodating the concerns of all groups was accompanied by further statements that underlined the Department for Education’s view that there was a balance to be struck between the right to manifest one’s religion or belief and other concerns, including health and safety (Department for Children, Schools and Families, 2007: 7).

This guidance was met with concern by a number of educationalists. Shepherd (2007) described the new guidelines and government policy as ‘at best ambiguous’, and argued that ‘at worst [they would] actually increase tensions between religious groups in the classroom’. Similarly, Gereluk (2008: 81) argued that the British state was sending ‘mixed messages’ on whether schools should allow religious symbols to be worn. On one hand, schools were urged to accommodate diversity, yet on the other, they were being given the leeway or even asked to restrict the freedom of pupils to manifest their religion. Moreover, Gereluk (2008: 86) maintained that the guidelines and the stances adopted by schools in England were inconsistent and biased, arguing that they were more lenient towards Christian-Judeo symbols than they were towards Muslim and secular ones. She also noted (2008: 95) that leniency towards religious symbols had waned since 9/11 and 7/7.

A second wave of regulations took place from 2013 when schools were issued with further guidance from the Department for Education on school uniform policy. Interestingly, the regulations continued to revolve around uniform policies for pupils without mentioning

regulations pertaining to staff. Like the previous guidance of 2007, this new guidance once again emphasized that it was for the governing body of the school to decide on the regulations relating to its own school uniform (Department for Education, 2013: 4).

In addition, the 2013 guidelines again insisted that schools should consult with the local community and 'take into account the views of parents and pupils on significant changes to school uniform policy' (Department for Education, 2013: 4). Moreover, in addition to these stakeholders, the government advised schools to listen to people who have special knowledge that can inform the school's approach, such as disability equality groups and other relevant special interest organisations (Department for Education, 2014: 35).

As well as following this new guidance, school leaders must also act within the framework of the Equality Act 2010 and the Human Rights Act 1998 when they come to formulate their school uniform policy. The Equality Act 2010 replaced nine major pieces of existing equality legislation and had the aim of making it easier for people to understand the law on discrimination. It set out that it is against the law to discriminate against or treat people less favourably on the grounds of particular characteristics, including race or ethnic origin, and religion or belief – characteristics that are known as 'protected characteristics'. And it defined a number of unlawful actions, including direct and indirect discrimination, harassment related to a protected characteristic, and victimisation of someone because they have made, or helped with, a complaint about discrimination (SecEd, 2013).

Since April 2011 schools have been bound by the Equality Act 2010 (Department for Education, 2014: 5). It is a legal requirement for them to consider how their policies and

practices impact on pupils and staff, and they are required to eliminate unlawful discrimination, harassment and victimisation. The guidelines issued by the Department for Education are there to help school leaders and governors understand how the Equality Act affects them and their schools, and to help them fulfil their duties and meet their obligations and legal responsibilities under the Act (SecEd, 2013), so that they do not carry out unlawful discriminatory actions or behaviour towards staff or students. The key points of the Act are that it ‘provides a single, consolidated source of discrimination law’ and the schools ‘cannot unlawfully discriminate against pupils because of their sex, race, disability, religion or belief or sexual orientation’ (Department for Education, 2014: 5).

In light of both these acts, the Department for Education reminded school leaders that, for example, ‘it would be race discrimination to refuse to let a Sikh child wear a turban because of a school policy requiring that caps be worn’ (Department for Education, 2014: 16). It also advised schools that they have a duty to consider ‘how the introduction of the proposed uniform policy might affect each group represented in the school’ (2013: 4). A response from the Department for Education to a Freedom of Information request sent in July 2018 underlined the Department’s message to school leaders about the importance of complying with the two acts. The Department stated that:

> School governing bodies and academy trusts will have to ensure that their employment practices, staff rules and school uniform policies are lawful with regard to the choice of clothing worn by school staff and pupils. There is no specific legislation that deals with school uniform or other aspects of appearance. However, all schools must ensure that any measures they take comply with the Equality Act

2010 and the Human Rights Act 1998, taking advice as necessary (Department for Education FOI: 2018-0029642 CRM:0249039).

As with the 2007 guidelines, in the eyes of the government, the 2013 guidance sought to strike a balance between being sensitive to student differences and needs, while also seeking to protect and promote school cohesion and taking on health and safety or security considerations. The Department for Education declared that, in formulating their school uniform policy, schools should consider requests to meet 'the needs of any individual pupil to accommodate their religion or belief, ethnicity, disability or other special considerations' (2013: 4), and that schools should therefore be able to meet religious requirements when formulating their uniform policies and accommodate these requirements through dialogue (Department for Education, 2013: 6).

Although the Department for Education school uniform guidance did not specifically mention whether staff have the right to manifest their religion or belief, individual schools still have regulations that pertain to staff. Based on the Equality Act 2010, non-teaching staff and teachers must not be treated unfavourably in any way because of their religion (Department for Education, 2014: 43). However, the Department for Education did not publish a specific policy for school dress codes pertaining to teachers, the only requirement is that school policies should promote good behaviour and discipline amongst the pupil body.

As had been discussed then, the scope of regulation of religious symbols in schools started changing from about 2002 when some individual schools started regulating the wearing of religious clothing and the displaying of religious symbols. The growing scope of the regulations continued until 2007 when the Department for Education issued its first guidance to schools and reminded them of their obligations under the Human Rights Act 1998 and anti-discrimination legislation. The debates about the right to wear religious symbols in schools persisted, thus prompting the Department for Education to issue new guidance recommending that schools consider reasonable requests to vary their policies so as to recognize the needs of any individual pupil to accommodate their religion or belief (Department for Education, 2013: 4). This message of accommodation was then repeated in the wake of the introduction of the Equality Act 2010, which enshrined pupils' right to manifest a religion or belief, albeit while also taking into account the school's health and safety, security, or cohesion considerations (Department for Education, 2013: 6).

Since the introduction of the Department for Education's guidelines of 2007 there has been no noticeable change in the scope of regulations. That is, things have remained more or less the same. However, debate has continued and there have been calls to regulate against the wearing of the full-face veils. Moreover, since individual schools are authorized to set their own uniform policies and may interpret the Department for Education's guidance as they see fit, the picture remains an uneven one, with some individual schools choosing to impose a ban on some symbols, including the full-face veil.

The depth and enforcement of regulations in schools

As was the case with the regulations concerning the display of religious symbols in hospitals, we might well expect that the depth of regulations in schools reflects the scope of the regulations. Thus, since the scope of regulations pertaining to the display religious symbols in schools can be described as moderate (having risen to this level from a very low base in the early years), we might expect the severity of the penalties for infringing the regulations (i.e. their depth) to also be moderate. However, unlike hospitals this is not really the case. Rather, the depth of regulations in schools is greater than it is in hospitals. That is, the penalties for breaking the policies around the display of religious symbols in schools are greater than they are in hospitals.

As will be discussed in the paragraphs that follow, the penalties imposed on students and staff for disobeying school uniform and dress code policies have been relatively severe. They have ranged from warnings to not come to school wearing certain religious symbols, to more severe decisions such as suspension and expulsion for students, and loss of work for teachers. As for enforcement, schools have adopted rather strict approaches towards ensuring their uniform and dress code policies are followed. In general, schools have been ready to make sure that their policies are followed and when these have been breached, schools have shown themselves prepared to sanction those who have infringed them.

As was the case in the section on hospitals, the depth of regulations concerning the display of religious symbols in schools, and the extent to which and ways in which these have been enforced will be examined below through a discussion of a series of cases, all of which

pertain to events that have taken place in primary and secondary state schools, and many of which have already been briefly mentioned. Many of these cases have ended up in the courts (Squelch, 2010:8) and have attracted considerable attention with schools coming under the spotlight for their decisions. The cases concern different religious symbols, including the crucifix, the purity ring, the Sikh bracelet, the jilbab, and the full-face veil or niqab. Interestingly, they also only involve religious symbols worn by women.

The Devine case and the Playfoot case

The first two cases concern the wearing of a crucifix, and the wearing of a purity ring. These are discussed together because, in both cases, the pupil in question ended up complying with the requirements to stop wearing the symbol. As such then, the depth of the regulations was relatively moderate because the pupils did not continue to infringe their school's uniform policy. Of course, there is no knowing how much more severe the penalties would have become had the pupils not complied with the regulations.

The first of these cases pertains to Samantha Devine, a 13-year-old Catholic pupil at the Robert Napier School in Gillingham, Kent. In January 2007, teachers at her school demanded that she remove the chain she was wearing, on which hung a small crucifix. They did this as they argued it constituted a health and safety hazard. They told her she could continue to wear the crucifix if she wanted, but on her lapel, as a badge, and not as a necklace (The Telegraph, 2007). The school governors reviewed this request and supported the decision of the headteacher, although the school also said it would review its jewellery policy the

following term. In reaction to this move, a spokesman for the Department for Education underlined that ‘uniforms and dress codes are a matter for individual schools’ (Evening Standard, 2007a).

Devine was very upset by the request and was initially defiant, saying that she would continue to wear the necklace (Evening Standard, 2007a). However, the school upheld its policy on jewellery. It also stated that Samantha’s parents would have been aware of the policy when their daughter joined the school (KentOnline, 2007a).

This case shows three notable things. Firstly, it illustrates that, as required by the Human Rights Act 1998, the school did seek to accommodate the religious needs of the student by allowing her to wear the crucifix as a badge. Secondly, it also shows that the decision was made at the level of the school, by the school leaders and governors. The decision was not the result of any national level policy handed down by the Department for Education. And thirdly, it demonstrates that the enforcement of the policy was strong. Once it had made its decision, the school set about enforcing it.

The same can be seen in the case of Lydia Playfoot, a 16-year-old pupil at Millais School in Horsham. Playfoot wore a Christian ‘purity ring’ as a symbol of chastity until marriage. However, in 2007 she was requested to remove it because it contravened her school’s uniform policy which prohibited the wearing of jewellery. If she did not, she would face expulsion (BBC, 2007a). Playfoot did stop wearing the ring, but she and her family took the case to the High Court, arguing that she was facing discrimination (Howard, 2009: 23). Playfoot and her family lost the case. In July 2007, the High Court ruled that she had not

suffered any discrimination and the judge ruled that ‘her rights to education and to express her religion had not been violated’ (BBC, 2007a).

There was no attempt to seek an accommodation in this case, as there was in the Devine one. That is, the school did not suggest Playfoot could display the ring in another fashion because its objection to the ring was not that it contravened health and safety regulations, but rather it was that the ring was an item of jewellery and that jewellery was simply not allowed under the school’s uniform policy. However, there are parallels with the Devine case in that the decision to require Playfoot to remove the ring was one that was taken at a local level, by the school and its governing body. In addition, as with the Devine case, the Playfoot case shows the school’s strict enforcement of its policies. The ring was not allowed, and that policy would be abided by. The outcome of the court case also suggests that the English courts are supporting both these things – i.e. the judgement backed the school and its headteacher in being able to formulate their own policies, and it supported them in being able to enforce them (MacLeod, 2007).

The Watkins-Singh case

While the Watkins-Singh case actually took place in south Wales, it is nonetheless relevant to this chapter (on England) because it served as a precedent for English courts in allowing the Kara – a slim steel bracelet, worn by Sikhs as a display of their faith – to be worn by pupils in schools.

The case concerned Sarika Watkins-Singh, a 14-year-old Sikh girl who was pupil at Aberdare girls' school. In April 2007 she was ordered to remove her Kara bangle as it contravened the school's no jewellery uniform policy. She refused, and immediately sought an exemption to the policy, arguing that the Kara was central to her ethnic identity and religious observance. The school took a long time to decide how to deal with the case, and as it deliberated it asked the pupil's mother to convince her daughter to stop wearing the bracelet to school and suggested that she instead carry it in her bag (Casemine, 2008). The mother responded by saying that she would leave this decision to her daughter, and the pupil refused to stop wearing the bracelet.

Eventually, the decision was made by the school that Watkins-Singh would not be able to continue attending school wearing the Kara. The family appealed against the decision, and while that appeal was considered Watkins-Singh returned to school for the next academic year. However, during this time, and for a full two months, the school placed the pupil in isolation, requiring her to work in a classroom on her own, barring her from the canteen and the playground, and forcing her to be accompanied by a teacher when she went to the toilet (Gillan, 2008). Watkins-Singh's request for an exemption was refused in the appeal, and when she returned to school following the half-term break in November 2007 still wearing her Kara, she was subjected to a number of exclusions. In early 2008 she started to attend a different school which allowed the wearing of the Kara.

Watkins-Singh and her family took her case to the courts, on the grounds that the decision of the school constituted race and religious discrimination (Casemine, 2008), and in July 2008 a High Court judge ruled that the school had indeed been guilty of indirect

discrimination under race relations and equality laws. The judge also refused the school permission to appeal (BBC, 2008). Following the verdict, Watkins-Singh returned to Aberdare girls' school, wearing her Kara.

This case is different from the Devine and Playfoot ones in that the pupil did not agree to the request by the school to remove the item of jewellery. What is more, in the end the school lost the legal battle, and the pupil's request for an exemption to the uniform policy was eventually upheld through the court's decision. Yet, in spite of these significant differences there are parallels between the Watkins-Sigh case and the two others discussed above. Firstly, as with the others, the decision to place Watkins-Sigh in isolation and to then exclude her from the school was taken at the local level, by the school's headteacher and its governors. While the school did consult with the Local Education Authority (Casemine, 2008), the final decision lay with the school. Secondly, even though they had to be reversed following the court case, the penalties imposed by the school on the pupil for breaching the uniform policy were severe, and like in the other cases, they were firmly enforced. In other words, the depth of regulation was considerable, and the level of enforcement was high.

The Begum case, the case of 'Pupil X', and the Azmi case

These three cases concern the wearing of Muslim garments by both pupils and staff. Again, they demonstrate how schools have reacted to pupils or staff contravening school policies, including how schools have sometimes attempted to accommodate the wishes of pupils and staff to wear this clothing, and they illustrate the penalties imposed on people for doing so.

They show that in all cases the depth of the penalties has been severe, and that enforcement has been strict.

The Begum case relates to Shabina Begum, a 15-year-old pupil at Denbigh High School in Luton. For two years Begum had attended the school and worn the shalwar kameez, which the school had allowed under its uniform policy. However, in September 2002, the pupil asked that she be allowed the wear the jilbab instead, as she and her family considered the shalwar kameez to be too tight-fitting and objected to its short sleeves. They argued that these characteristics of the shalwar kameez meant that it did not confirm to the requirements of Islamic dress as stated in Sharia law.

The headteacher, Yasmin Bevan, herself a Muslim, refused Begum's request on the grounds that the jilbab was not part of the school's uniform policy, and that the school had already devised a uniform policy that met the needs of Muslim pupils by including the shalwar kameez. The school also argued that the jilbab presented a health and safety risk (BBC, 2004). Begum was told that she could not attend school unless she chose an approved uniform, which did not include the jilbab. She refused to do so and was excluded. After a two-year interruption of her schooling, Begum eventually continued her education in another local school which permitted the wearing of the jilbab (Rozenberg, 2005).

Begum and her family immediately took the school to court, arguing that she had been unlawfully excluded from school (Croner-i, 2006). However, in June 2004 the High Court rejected her case and ruled that 'the school had a right to impose a "reasonable and balanced" uniform policy which stopped short of allowing the jilbab' (Milmo, 2004). Begum

appealed and in March 2005 the Court of Appeal overturned the High Court's decision (Aslam, 2005) and ruled that Begum had been denied the right to manifest her religion (Rozenberg, 2005). However, the case continued when the school appealed against the Court of Appeal's decision. In March 2006 the case was heard by the Judicial Committee of the House of Lords, which found in favour of the school (UKHL 15, 2006).

The Law Lords ruled that 'a person's right to hold a particular religious belief is absolute, but a person's right to manifest a particular religious belief is qualified' (McCartney, 2013). Moreover, Lord Bingham, who delivered the verdict, made two further important remarks. Firstly, he pointed to the steps the school had taken to accommodate the needs of Muslim students in regard to uniform (Guardian, 2006). Howard (2009:17) underlines this point too and argues that one of the main reasons for the House of Lords' decision was 'the trouble the school had gone to accommodate religious sensitivities in their school uniform policy'. She also points to the verdict being informed by 'the fact that there were alternative schools Shabina could have chosen' had she wanted to wear the jilbab. Secondly, Lord Bingham underlined that the decision on uniform policy rested with the individual school, saying 'it would, in my opinion, be irresponsible for any court, lacking the experience, background and detailed knowledge of the headteacher, staff and governors, to overrule their judgment on a matter as sensitive as this' (Guardian, 2006).

The case of 'Pupil X' refers to a 12-year-old girl who was a pupil at a Buckinghamshire school. Her identity, as well as that of the school, was protected by an anonymity order. In September 2006, the girl started attending school wearing the niqab, having made the decision to wear the clothing because she had reached the age of puberty. She was seen

standing in the lunch queue in early September by the headteacher (BBC, 2007c; BBC, 2007e) and was told that while the wearing of the hijab headscarf was perfectly acceptable, the wearing of the niqab was not, 'because teachers believed it would make communication and learning difficult' (Guardian, 2007a).

The girl was not expelled from the school but was simply told not to come wearing the niqab. As a result, she left the school and was offered a place at a different school that permitted the wearing of the niqab. She declined to take up the offer, however, and was taught at home for approximately four and a half months (Guardian, 2007a).

Upon her leaving the school, the girl and her family took the school to court, challenging it on the grounds that the ban on wearing the niqab had 'interfered with her right to freedom of religion' (Rozenberg, 2007), and that it was 'irrational' as the girl's elder sisters had been able to wear the niqab while at the same school (Guardian, 2007b; Glendinning, 2007).

At a ruling in February 2008, the High Court rejected 'Pupil X's' case that the school had interfered with her right to freedom of religion (Rainey, 2013), and the judge also dismissed the 'girl's argument that she had a "legitimate expectation" of being allowed to wear the niqab at school because her three elder sisters had done so' (Rozenberg, 2007). The judge argued that the ban '...pursued a legitimate aim and the means used were proportionate' (Howard, 2011: 149), and agreed with the school that the wearing of the niqab could 'jeopardise communication between teacher and pupil' (Glendinning, 2007). The court also heard that 'security concerns had heightened' since the girl's elder sisters had attended the school, most notably due to the London bombings of July 2005 (Glendinning, 2007).

The final case discussed here is a case that relates to Aishah Azmi, British Muslim teaching assistant, employed by Headfield Church of England junior school in Dewsbury. The case is similar to the last two in that it involves the wearing of Muslim clothing, yet it is different because it pertains to a member of staff, rather than a pupil.

Azmi was employed by the school as a bi-lingual support worker in 2005. Although she appeared without her face covered in her interview and on a training day, once she started working at the school, she requested to be able to wear the niqab on the grounds that she did not wish to show her face when male colleagues were present (Wainwright, 2006). At this point, the school's headteacher sought advice from the Local Education Authority on how to proceed. Pending the receipt of that advice, the headteacher allowed Azmi to continue to wear the veil when working with the children but also undertook an observation of Azmi's teaching to investigate whether her wearing of the full-face veil impeded her teaching. On the basis of this observation the headteacher concluded that there were communication issues when Azmi was teaching the children while wearing the veil and he requested that she remove the veil while teaching, but agreed that she could wear it in open areas while walking around the school (United Kingdom Employment Appeal Tribunal, 2007).

Despite repeated requests from the headteacher to remove her veil, Azmi continued to teach for about a month wearing the veil, until given an ultimatum to decide what to do, following the receipt of the Local Education Authority's advice. She insisted she could not comply with the request and was then signed off sick for a period of two weeks. Her sick

leave was extended until she eventually came back to work in February 2006. The request to remove her veil was still in place, but she still refused to comply by it. Three days after returning to work she was suspended.

The case went in front of an employment tribunal in October 2006. The Tribunal dismissed Azmi's claims that she had been subjected to direct discrimination on the grounds of religion or belief, and while it concluded that there had been potential for indirect discrimination on those grounds, it ruled that this was lawful as it was 'proportionate in support of a legitimate aim', namely teaching children. Hence her claim to indirect discrimination was also dismissed, as was her claim to harassment (United Kingdom Employment Appeal Tribunal, 2007). The Tribunal did award Azmi modest damages for victimization in the way the dispute was handled. The school subsequently offered to reinstate Azmi provided she removed her veil, but she refused and was subsequently dismissed (Independent, 2006). She then went on to appeal the court decision in March 2007, but lost.

The Azmi case once again points to the considerable depth of the regulations on the wearing of religious symbols in English schools. That is, the penalties in the case were severe: they eventually led to dismissal. Furthermore, despite the efforts made by both the school and the Local Education Authority in trying to accommodate Azmi's wishes, which were noted by the Employment Appeal Tribunal (Howard, 2009: 20), ultimately the policies were enforced strictly.

These cases illustrate that the depth of regulations on the wearing of religious clothing and the displaying of religious symbols in primary and secondary state schools in England is

considerable. In other words, the severity of the penalties for breaching the regulations is substantial, and certainly more significant than it was in hospitals. Where pupils or staff have not complied with the regulations, they have been told not to attend the school, have been excluded, or in the case of Azmi, have been dismissed.

However, the cases also show that, as was the case in hospitals, individual schools have often made attempts to accommodate requests to wear religious clothing or to display religious symbols, by suggesting alternative garments or by allowing pupils to display their religious symbols in other ways. In such cases, and where the pupil has accepted these alternative suggestions, the imposition of harsh penalties has been avoided. However, where these suggestions have been rejected, or where no such alternative suggestions have been made, severe penalties have ensued.

The depth of the regulations relating to religious clothes and symbols in schools in England is also uneven. As has been emphasized a number of times in this chapter, decisions regarding school uniform policies are left to individual school leaders and governors. Indeed, the national guidelines on the matter issued by the Department for Education underline the fact that it is up to individual schools, in consultation with parents and communities, to set uniform policies. This all makes the scope of the regulations uneven across the country, and it also allows schools to decide on the depth of the regulations – i.e. on the penalties associated with infringements to their policies. The cases above relate to schools that have instituted strict penalties for contraventions of their policies (i.e. cases with significant depth), but many other schools are likely to have much less severe penalties for infringements.

As regards changes in the depth of the regulations in schools, it can be concluded that, as the scope of the regulations increased in the early to mid-2000s, so did the depth. That is, as the regulations began to cover more religious symbols from about 2002 onwards, the penalties for infringing these regulations also grew in severity. Since the mid-2000s, when these cases came to light, the depth of regulations has not increased much more however, not least because the penalties imposed from that time were already quite considerable.

When it comes to enforcement, the cases show that schools strictly implement their uniform and dress code policies. Once policies are introduced, they are enforced. As has been discussed above, schools have in some instances attempted to make reasonable accommodations or provide alternative options for pupils, but where these have been rejected, firm enforcement of the penalties has followed. This has been the case even when schools have faced individual lawsuits for enforcing their policies. Indeed, the courts have enabled this strict level of enforcement: all the cases but one (Watkins-Singh) that have gone to trial have ended with the judge ruling in support of the school (Brown, 2013), and in doing so, they have reflected the content of the Department for Education's guidelines that discretion for dress codes in schools lies with individual schools and their governing bodies.

The reasons for why the rules have been so strictly enforced lie perhaps in the fact that schools are dealing with minors, who can be vulnerable or impressionable. In this sense, the reluctance of schools to accommodate some religious symbols may stem from the argument that schools have a protective role to play in society, and that, if some religious symbols,

such as full-face veils, are deemed inappropriate or even harmful, then banning them and strictly enforcing the ban is considered legitimate (Vogel, 2013).

In summary, therefore, the situation with regard the regulation of religious symbols in English primary and secondary state schools can be described as having moderate scope, considerable depth, and strict enforcement. Furthermore, the discussions above have shown that there was a slight increase in scope in the years from about 2002 to 2007, when more religious symbols were regulated against, but that this increase then ceased. Likewise, in reflection of this increase in scope, there was also a growth in the depth of the regulations, as penalties for infringement became more severe. Again, however, this increase levelled out in about 2007, not least because the penalties imposed by this stage were pretty severe. As for enforcement, it has remained strict throughout this time.

These are general trends however, and the regulations of religious clothing and symbols in schools in England have actually been rather uneven, as they have varied from school to school. Where some schools have banned the niqab, for instance, others allow it. Equally, there has been variation across schools with regard to the extent to which the schools have sought to accommodate the requirements of individual pupils. While some schools have devised uniform policies that seek to balance the needs of a diverse student body, and have offered alternative options for pupils, others have formulated less flexible policies and have not offered such alternatives. This is all because, as has been highlighted above, it is up to individual schools to formulate and implement their own uniform and dress code policies.

The regulation of religious symbols in courts

The court system in the United Kingdom is complicated because it has developed over 1,000 years. The UK does not have a unified court system that applies across the whole country. Rather, the 'courts structure covers England and Wales; the tribunals system covers England, Wales, and in some cases Northern Ireland and Scotland' (Courts and Tribunals Judiciary, 2020). Thus, with the exception of immigration law and employment law (which are handled at the UK and British level respectively), the administration of justice takes place at a sub-national level.

The Supreme Court was established under the Constitutional Reform Act 2005 (Legislation.Gov.UK, 2005) and came into being in 2009. It is the final court of appeal in the UK for civil cases, and the final court of appeal in England, Wales and Northern Ireland for criminal cases (The Supreme Court, 2020). The Supreme Court replaced the Appellate Committee of the House of Lords (The Supreme Court, 2020), thus creating an explicit separation of powers between the judiciary and the legislature. Below the Supreme Court, the Court of Appeal deals with appeals from the Crown Court (criminal cases) and the High Court (criminal, civil and family cases) as well as with appeals from tribunals. Subordinate to these courts are Magistrates' Courts where criminal, civil and family cases begin, County Courts which are only concerned with civil cases (The Supreme Court and the United Kingdom's legal system, 2020) and a number of specialist courts such as Employment Tribunals. Any appeals from these subordinate courts are heard by the Crown Court or the High Court, or, thereafter, the Court of Appeal. These English courts may only be defied, and

their judgements overruled, by the European Court of Justice or the European Court of Human Rights, if a plaintiff decides to bring a case before them.

The following paragraphs will explore how the display of religious symbols and the wearing of religious dress in courts have been regulated in England in the period 2000 to 2017. Like the other sections of this chapter, it will first examine the scope of the regulations. It will pay particular attention to the regulations for judges and advocates (barristers, solicitors and legal advisers), and witnesses who appear in court. Then, it will consider the depth of the regulations, and the extent to which these have been enforced.

The scope of regulations in courts

The scope of the regulations pertaining to the display of religious symbols in English courts can be described as very narrow and any changes in this scope in the period under study have been minor. Moreover, as was the case in hospitals and schools, there is unevenness in the scope of regulations of religious symbols in English courts because individual courts are responsible for their own dress policies.

The government has not issued any formal regulations pertaining to the wearing of religious symbols in courts in the period from 2000 to 2017 and nor has the Ministry of Justice issued any guidelines on the matter in the way that the Department of Health and the Department for Education did. In the course of this research, the Ministry of Justice was contacted, and a

Freedom of Information request was made regarding court dress code policy. More specifically, the request asked whether there was a dress code for judges, barristers and witnesses in courts in 2000 and in 2017, if there was, what this was, and if there were any specific regulations regarding the wearing of religious symbols such as turbans, kippahs, headscarves and full-face veils.

The response from the Ministry of Justice was as follows:

> 'The MoJ does not hold any information in the scope of your request. This is because we are not the appropriate authority to contact on this subject. You may wish to contact The Bar Council, as they may hold some of the information you have requested. Whilst they are not a 'public authority' and therefore not obliged under the FOIA to disclose any recorded data, they do aim to support government transparency, so do accept requests for information and will look to respond within the spirit of the act' (Ministry of Justice, Freedom of Information Act (FOIA) Request – 180808019).

Upon receiving this response, another Freedom of Information request was made to The Bar Council (the lead representative body for barristers in England and Wales) for the same information. However, the first response came from The Bar Standards Board and was as follows:

> 'The Bar Standards Board (the regulator of the Bar) does not currently have any dress requirements for barristers. However, courts themselves may have their own rules

> about what a barrister ought to wear. We did previously have rules on dress – the last reference to dress rules I can see in our Code of Conduct is in the Fourth Edition, which was replaced in 1990. The rule reads: "A barrister must dress in a manner which is appropriate for appearance in Court and which will be unobtrusive and compatible with the wearing of robes"' (Luke Kelly, The Bar Standards Board).

The query was then passed on to the Bar Council and the response was:

> 'I've been in touch with colleagues in the Bar Standards Board and they tell me they do not set rules relating to dress for barristers. They have pointed out, however, that the Chair of the Bar Council issued a document about this in 2009 – please see http://www.barcouncilethics.co.uk/documents/court-dress/. Unfortunately, this doesn't answer your question in relation to religious attire, but only concerns when barristers should wear [*sic*] gowns and when they should wear business suits. However, I am just checking with colleagues in the Ethics department to try and find out if there was anything issued prior to this, or whether this has been updated since. If you need information regarding what witnesses in court are allowed to wear, you need to contact HM Courts & Tribunal Service' (Hilary Pook, The Bar Council). [3]

These responses thus indicate that the Bar Standards Board (the body that regulates the Bar) does not presently dictate what barristers must wear in court. The Board did previously have a code of conduct for barristers which included a very general rule on dress, but this

[3] This information was provided via email so there is no FOIA code available.

was replaced in 1990. By contrast, the Bar Council, which represents barristers in England and Wales, does have some guidance (as set out in 2009 by the Chairman of the Bar Council) on what judges and barristers are expected to wear in different courts. However, this guidance does not make any reference to religious symbols or dress, and instead focuses on when Counsel should wear court dress and when it should wear business suits (Bar Council, 2009). At the same time, however, the Bar Standards Board advised that individual courts might have their own rules regarding what barristers should wear.

Court dress, worn by barristers and judges, is informed by tradition dating back to the 17th century, and includes wigs, gowns, wing collars, and bands or collarettes. This attire (particularly the wigs), and the fact that there are particular conventions regarding the details of the dress, could present a particular challenge to individuals of certain faiths. In light of this, allowances are made, and barristers and judges are freely allowed to wear the hijab, turban or kippah in English courts instead of the traditional Jacobean wig (The Times, 2016). Since the 1960s male members of the Sikh faith have been able to wear a white turban instead of the wig (Enright, 2003), and Muslim women may wear the headscarf (Hussain, 2020), usually in black, although some may choose to wear the headscarf under their wig. Given that there are thousands of barristers in England and Wales, these alternative practices are not uncommon. They have also included judges: in 1982 Sir Mota Singh became the first judge in the UK to wear a turban instead of a wig (Taneja, 2010) and more recently Raffia Arshad became the first Muslim judge to wear the hijab in court (Hall, 2020).

The question of whether female barristers, solicitors and other legal advisers may wear the full-face veil in court came to prominence in late 2006 when Shabnam Mughal, a legal adviser in a case before an immigration tribunal in Stoke-on-Trent, was asked to remove her veil by the judge as he said he could not hear her properly. She refused to do so, and the judge adjourned the case while he sought legal advice from the president of the Asylum and Immigration Tribunal. The advice offered by the President, Mr Justice Hodge, was that 'immigration judges must exercise discretion on a case-by-case basis where a representative wishes to wear a veil'. He clarified by adding that as long as she 'can be heard reasonably clearly by all parties to the proceedings, then the representative should be allowed to do so' but added that 'if a judge or other party to the proceedings is unable to hear the representative clearly then the interests of justice are not served and other arrangements will need to be made' (BBC, 2006m). In this specific case, the hearing went ahead with another judge presiding over it.

The 2006 interim guidance issued by Mr Justice Hodge that allowed representatives to wear full-face veils applied to all courts, but it was only temporary. In the meantime, the Lord Chief Justice, Lord Phillips of Worth Matravers, asked 'the equal treatment advisory committee of the Judicial Studies Board to develop detailed guidance on the use of veils by all people involved in court cases – including the parties, legal representatives, witnesses, jurors and magistrates' (BBC, 2006m).

Guidance was produced, but it remains very general and ambiguous. Indeed, in the 2018 *Equal Treatment Bench Book* published by the Judicial College (the successor to the Judicial Studies Board), the emphasis is placed on judicial discretion because the wearing of the veil

in court is a sensitive issue. The Book explains that ‘it remains very much a matter of judicial discretion unless and until an appellate court gives guidance. That discretion will, to some extent, be fact dependent and jurisdiction dependent and what may be appropriate in one situation may not be appropriate in another’ (Judicial College, 2020: 208). The Book also advises that adjustments should be made at the court’s discretion. It states that ‘the judge should have an awareness of the needs of court staff, professional representatives, jurors, law enforcement officers as well as ordinary citizens. Adjustments are likely to be made for all at one time or another’ (2020: 207). It also underlines that ‘serious consideration should be given to respond positively to requests to alter the date’ of hearings should these fall on religious days or during religious holidays (2020: 207). In relation to the wearing of the veil in criminal cases, it states that any issues ‘should be addressed, ideally, at a pre-trial directions hearing’ (2020: 209).

The whole question of whether full-face veils should be allowed to be worn in court has been a very sensitive one, particularly with regard Muslim barristers, and even the most senior judges have avoided answering direct questions on the matter. Lord Neuberger, the president of the Supreme Court from 2012 to 2017 admitted he ‘ducked’ a question about whether Muslims barristers should be allowed to wear full-face veils in court. He responded by saying ‘I think we would have to deal with that problem when it arose because there might be an argument about it. We would have to look at the arguments and decide it’. He added, ‘it is an interesting question and one that obviously we have thought about. It is a question any self-respecting journalist would ask, but I am afraid any self-respecting judge would have to duck it’ (Dassanayake, 2013). Likewise, his successor, Lady Hale, stated ‘it is not for me to give guidance to the courts of England and Wales as to the approach which

they should adopt. I can only decide the cases which come before me in the Supreme Court' (2019: 12).

As such then, there are no national regulations on the wearing of religious symbols in courts in England, and even though guidance does exist, it is vague. The Equal Treatment Bench Book is used by judges as a manual, but its message is very much that individual circumstances vary and that judges should exercise their discretion. 'The guidelines instruct that each situation should be considered individually in order to find the best solution in each case. The interests of justice are the paramount consideration, including the need to ensure effective participation and a fair hearing' (Contact Law, 2020). This latter point pertains particularly to issues around whether the advocate's face can be seen, or needs to be seen, and whether they can be heard clearly (Contact Law, 2020).

The regulations pertaining to those testifying in court – be they appellants, defendants or witnesses – are concerned only with the full-face veil and centre on the question of establishing the identity of the person, and on the process of giving evidence. Guidelines on these matters are also found in the *Equal Treatment Bench Book*.[4] Ensuring that witnesses are identified appropriately is obviously crucial and so, in instances in which a Muslim veil-wearing woman is called to give evidence, the guidelines state that arrangements can be put in place so that 'the identity of a witness or party can be established in private by a female member of staff without requiring the removal of the veil in the courtroom'. They

[4] Following the advice from The Bar Council (as contained in the response to the Freedom of Information request), another Freedom of Information request was made to HM Courts & Tribunal Service to enquire about any regulations pertaining to what witnesses in court are allowed to wear. No response was forthcoming. Another request was made two months later, but again, no response was received. No further attempts were made to contact the Information Commissioner's Office.

also advise that these matters should be addressed before the hearing begins (Judicial College, 2020: 209).

As for the giving of evidence on the stand, it is for the judge to decide whether it is necessary for any woman giving evidence to remove her veil, and the guidelines emphasize the sensitivity of the issue and underline the need for balance while at the same time noting that ‘the right to freedom … is not an absolute right’. With reference to non-criminal cases, the guidelines state that a ‘judge can ask anyone giving evidence to take off her veil whilst she gives that evidence’. Yet, they also state that a woman should be asked to remove her veil only ‘if a fair trial requires it’ and that this ‘should be done only if the judge reasonably believes it necessary in the interests of justice and only after reflection on whether, in the context, effective evidence could be given without removal’. For criminal cases the guidelines similarly recommend that judges carefully consider the situation. However, they also note that ‘judges should be particularly careful to point out that [the wearing of the veil] might impair the court’s ability to evaluate the reliability and credibility of the wearer’s evidence; jurors might assess what is said in ways that include looking at an individual’s face and demeanour’ (Judicial College, 2020: 209). In both types of cases the recommendation is to address the matter either before the trial begins, or at the outset of the hearing.

If the judge does ultimately decide that a woman should be requested to remove her veil, then he or she must ‘consider arrangements to minimise discomfort or concern’ including the use of screens or video-links, limiting the number of observers in the court, and prohibiting the creation and dissemination of drawings, sketches or any other image of the women as she appeared in the court (Judicial College, 2020: 209; Contact Law, 2020).

These arrangements have been established in large part due to one individual case which set a precedent for others. This was a case which took place at Blackfriars Crown Court in August 2013, and was presided over by Judge Peter Murphy. The defendant was a Muslim woman who wore the full-face veil. Judge Murphy told the court that the woman was free to wear the niqab during the trial but that she must remove it when giving evidence. He argued that 'the ability of the jury to see the defendant for the purposes of evaluating her evidence is crucial' (Huffington Post UK, 2013a). However, the defendant refused to comply with this request and remove her veil. In the end, as a compromise, Judge Murphy arranged for the defendant to 'give evidence behind a screen shielding her from public view but not from the view of the judge, jury and counsel (or by live video link). He also ruled that no drawing, sketch or other image of any kind while her face was uncovered could be made, disseminated or published outside court' (Lady Hale, President of the Supreme Court, 2019).

The compromise put in place allowed the case to proceed. However, Judge Murphy referred to the full-face face veil as 'the elephant in the courtroom' and added that he hoped Parliament, or a higher court would provide a definite answer to the issue (Judiciary UK, 2013). However, as discussed above, the guidance on the wearing of the face veil in courts remains vague and decisions are left to the discretion of the judge.

With regard to members of the jury, some concerns have been raised about the ability to appropriately identify jurors who wear the full-face veil and about the inability to see their facial expressions (Contact Law, 2020). However, there are no regulations on this matter

and the *Equal Treatment Bench Book* does not contain any guidelines pertaining to what jury members can and cannot wear. The same is the case for observers in court.

The above discussion has shown that there have been no significant changes to the scope of regulations pertaining to the display of religious symbols in courts in England. Courts have accommodated the wearing of a headscarf, turban and kippah for court staff, plaintiffs and witnesses. Furthermore, despite the issue coming to prominence in the mid-2000s, this accommodation also applies to full-face veils. Repeated editions of the *Equal Treatment Bench Book* have emphasized that decisions rest with judges, and that they should act sensitively and accommodate diversity in their court, be it with regard to advocates, representatives, appellants, defendants or witnesses, in order for justice to be served.

It can therefore be concluded that the scope of regulation of religious symbols in English courts is very narrow, and that it has not changed over time. What regulations do exist only apply to full-face veils; they do not apply to other religious symbols. Moreover, women who wish to wear full-face veils in court are not always requested to take these off. Rather, because asking women to remove their veil is such a sensitive matter, decisions are not governed by national policy but are instead left to the discretion of the individual judge, who can also order the use of ‘adjustments’ or ‘arrangements’, such as the use of screens or video-links, to alleviate concern for the women concerned. All this means that there is a lack of uniformity on how the display of religious symbols in courts is handled – different measures are taken in different courts, depending on the individual case and on the individual judge presiding over it. This lack of uniformity mirrors the situation in hospitals

and schools, though the scope of the regulations in courts in much narrower than it is in the other two institutions.

The depth and enforcement of regulations in courts

Given the very limited scope of the regulations pertaining to the display of religious symbols in courts, the depth of the regulations is also very limited. In fact, it is almost non-existent because it is difficult to argue that sanctions were even imposed in the two cases discussed above. In the one relating to the legal adviser in Stoke-on-Trent the hearing was simply adjourned and then resumed under a different judge. No penalties were ever imposed on the legal adviser, and in the end, she did not even have to remove her veil. The woman in the other case in Blackfriars did have to remove her veil, but because she did so (most likely due to the arrangements that were put in place to screen her from view), no sanctions followed. In short then, there have been no instances in which penalties have been imposed on people displaying religious symbols or wearing religious clothes in court, be they judges, barristers, or witnesses. Of course, it is conceivable that depth might increase in the future if any of these groups refuse to comply with the guidelines or with the judge’s decisions, but for now, it remains extremely shallow.

Since there have been no instances in which sanctions have been imposed on people for infringing the guidelines or the judge’s decision on dress, there have been no instances in which any such penalties have had to be enforced. In part the lack of the need for any

enforcement is likely explained by the fact that people rarely defy the judgements of courts or disobey judges, and are more likely to abide by the regulations in courts than in other institutions. However, the Blackfriars case possibly gives an insight into how enforcement might be handled in future. That is, in that case, the judge decided that the woman should be asked to remove her veil, and he moved swiftly to put arrangements in place to ensure she did so. Of course, it is impossible to say how things would have unfolded had she not agreed to these arrangements, but the case does suggest that the judge was keen to make sure that his decision was abided by.

To summarize then, the situation with respect to the regulations of religious symbols in courts in England can be described as one where the scope is very narrow, the depth is extremely limited, and enforcement has not been properly tested. There has been no significant change to this situation over time. This is all explained in part by the fact that there is no national policy that regulates the wearing of religious symbols in courts. Instead only guidelines exist and these only focus on one symbol – the full-face veil. Moreover, the central tenet of these guidelines is that it is up to individual courts and individual judges to decide on matters relating to women wearing full-face veils in court. This makes for considerable discretion, and it also leads to a lack of uniformity across courts.

Conclusion

Of the three public institutional spaces that have been considered in this chapter, it can be concluded that the scope of regulations pertaining to the display of religious symbols is moderate in both hospitals and schools, although very different in each of the two institutions, and narrowest in courts. By contrast the depth of regulations (i.e. the penalties imposed for breaching regulations) is largest in schools. It is more limited in hospitals and is very shallow in courts. As for enforcement, the discussion above has shown that the regulations are enforced strictly in hospitals and schools but that there have been no instances in which they have had to be enforced, through sanctions, in courts.

The discussion above has also shown that the scope of regulation of religious symbols has increased in both hospitals and schools in the period since 2000. This increase began in about 2002 in schools (with the Begum case) and a little later in hospitals with the introduction of the first Department of Health guidance in 2007. Interestingly, while the depth of regulations also increased in schools in this time period (and especially in the years 2002 to 2007), it did not increase notably in hospitals. Rather, the penalties for infringement of the regulations were relatively modest in hospitals and have remained so as time has gone by.

A range of religious symbols have been regulated against. They include crucifixes on chains, a Christian purity ring, the Sikh Kara bangle (though the banning of this item was overturned in the courts), and Muslim clothing – in particular clothing such as the niqab which includes a veil covering the face. The reasons for banning the display or wearing of such symbols and clothing have varied, but they have mainly focused on arguments that the items present a

health and safety risk, do not comply with existing uniform policies, and/or compromise communication and/or learning.

This chapter has also illustrated that there is a lack of national legislation on the issue of displaying religious symbols in public institutions, and that instead the state has simply issued guidelines, and only in some instances. These have often been drawn up as a result of institutions requesting more specific direction and advice on formulating and enforcing their policies, especially when they have been facing lawsuits. These guidelines have been helpful in some respects, in that they have underlined that public institutions must draw up policies and act in a way that satisfies anti-discrimination legislation, and that complies with the Human Rights Act 1998 and the Equality Act 2010. However, in other respects the guidelines have been of limited use because they are non-binding and have often been vague.

In addition, the coverage above has shown that the state relegates decisions on the display of religious symbols and clothing to individual institutions. Thus, hospitals, schools and courts formulate their own uniform or dress policies, and this has led to different approaches adopted by different institutions. This all means that policies are not uniform across the institutions and may differ greatly from one institution to another.

As a result of the lack of national legislation on the issue, and of the vague nature of the guidelines that have been issued, individual institutions have also sought to find compromise solutions to accommodate the display of symbols that relate to religious obligations. For example, hospitals have taken steps to accommodate diversity by modifying their ‘bare below elbows’ policy in a way that would allow certain minorities to cover their

elbows with medically approved disposable sleeves. Similarly, schools have provided headscarves with school colours and allowed crosses to be worn as badges. And courts, too, have made compromises by allowing women with full-face veils to undergo identification checks in private rooms by female employees, and to give testimony behind screens. These compromise solutions mean that the scope of regulations is not as wide as it could have been, and that the depth of regulations has remained lower than it could have been. Furthermore, when they have been accepted by individuals, these solutions have meant that penalties for infringing the regulations did not have to be imposed and enforced.

As has been seen, when penalties for infringing the regulations have been imposed and enforced, in many instances lawsuits have followed and, in the majority of cases, the courts have supported the actions of the hospitals and schools. This has been true of the domestic courts as well as the European Court of Human Rights. Indeed, when individual cases have been taken to Strasbourg, the ECtHR has tended to avoid challenging decisions made by national courts. Most often it has invoked the margin of appreciation (Greer, 2000: 5; Howard 2011: 149). Whether this will change in the future remains to be seen, but it seems unlikely.

This chapter has provided a detailed documentation or description of the regulations pertaining to the display of religious symbols and clothing in the public sphere in England, and how these have changed over time. The next chapter will now turn to explaining why the regulations are the way they are, including why some religious symbols have come to be seen as a problem.

Chapter 5: Explaining the Limited Nature of Regulations of Religious Symbols in England

While the previous chapter mapped the scope, depth and enforcement of the regulations of religious symbols in the English public space in the period 2000-2017, this chapter aims to

explain *why* these regulations have come about. To do this, the chapter draws on and deploys the second analytical framework developed in Chapter 3. That is, using the concepts of expanders and containers, it identifies which actors have been involved in the debates on religious symbols in England, and it explores how some of these – the expanders – came to define religious symbols in the public space as a problem, how they framed the issues, and what ideas they advanced and mobilized, and how others – the containers – sought to resist the introduction of (further) regulations. By doing this, the chapter discusses the tussle of ideas, and examines the relative success of the two groups of actors in bringing their ideas onto the policy agenda and ultimately shaping the regulations of religious symbols in the English public space.

As mentioned in Chapter 3, events frequently play an important role in policy making, and 'triggering events' or 'critical junctures' can often lead to the introduction of new policies or to existing ones being changed, especially if the events are unexpected and are viewed as posing some kind of danger. Capoccia (2015: 148) defines critical junctures as 'moments in which uncertainty as to the future of an institutional arrangement allows for political agency and choice to play a decisive causal role in setting an institution on a certain path of development, a path that then persists over a long period of time'. He claims that 'during moments of social and political fluidity such as critical junctures, the decisions and choices of key actors are freer and more influential in steering institutional development than during "settled" times' and he describes critical junctures as 'relatively short periods of time during which there is a substantially heightened probability that agents' choices will affect the outcome of interest' (2015: 150).

Critical junctures have had an important impact on the evolution of the regulations of religious symbols in the public space both in England and further afield, with a series of triggering events at the turn of the millennium and in the years that have followed leading to particular religious symbols being seen as a threat. For England, the 'moments of uncertainty' are those precipitated by the critical events of 9/11 (i.e., the terrorist attacks of September 11, 2001), and then those of 7/7 – i.e. the terror attacks on the London transport system of 7 July 2005. Both these events had a significant impact on political discourse, and as will be seen, they triggered the development of many legal proposals, some of which became national legislation. They also shaped public discourse. Moreover, these critical events had a particularly important influence on the discourse of political actors, on media coverage, and on public opinion regarding religious symbols and the banning of certain symbols. In short, these key triggering events provoked the development of legislation in many European states that allowed for tighter regulations of religious symbols in public spaces, including the banning of some symbols.

In view of the importance of the critical junctures of 9/11 and 7/7, this chapter will examine the debates surrounding the regulation of religious symbols over three waves: in the period before 9/11 2001, in the time between 9/11 2001 and July 2005, and in the period from 7/7 2005 to 2017. Each section will explore the level and nature of the debate on the display of religious symbols in the public sphere in the relevant time period, and will then focus on the different actors involved in the debate, and on how they defined religious symbols as a problem, framed their arguments and mobilized their ideas. These actors include a wide range of politicians, public figures and NGOs. In addition, as will become clear, the media – including both the conservative and the more liberal press – played an important role in the

debates over the display of religious symbols in England. Each section will then close by exploring whether and how the arguments made by these diverse actors influenced public opinion over the place of religious symbols in the public space. Taken together, these analyses will provide an extensive explanation of why the regulations pertaining to the display of religious symbols in the public space in England are the way they are, and why they have developed as they have.

The Period Before 9/11

As was shown in Chapter 4, in the period leading up to 9/11, England did not regulate against religious symbols in institutional public spaces such as hospitals, schools, and courts. In fact, there were no national policies or national guidelines in this period. The first national guidelines in hospitals and schools did not emerge until 2007.

The only religious symbol that had been a subject of any significant discussion was the Sikh turban. In 1982 Britain's highest court, the House of Lords, ruled that Sikhs were a distinct ethnic group and entitled to protection under the Race Relations Act (BBC On This Day, 2005). In the 20th century, there were requests by the Sikh community to accommodate the wearing of turbans in the workplace. This request led to the Employment Act 1989, Sections 11 and 12, which exempted Sikhs from requirements to wear safety helmets and protected them from racial discrimination in connection with these requirements. Some small exceptions did exist such as those for police offers taking part in armed operations. If

engaged in such operations, Sikh officers had to remove their turbans or wear the smaller patka head covering so that they could wear a helmet for protection. Or they could choose not to participate in such operations (BBC, 2010f). This law did not extend to workplaces in safer environments (i.e. workplaces that did not require the wearing of safety headwear) but the vast majority of public institutions, including hospitals, schools and courts, did not prohibit the wearing of turbans anyway. The law was finally amended in 2014 to formally enshrine the right of Sikhs to wear turbans in the workplace in all state institutions (Talwar, 2015).

During this period, there were no significant actors lobbying against the wearing of the turban. There was little debate that revolved around security risks for those choosing to wear a turban instead of a helmet in construction work. The Sikh Council UK was unhappy with the 1989 Employment Act because it created a paradox which allowed Sikhs to wear turbans, instead of safety helmets, in construction sites where there was a high risk of head injuries. Sikh groups continued to lobby for the right to wear a turban in safer workplace environments. The 2014 Deregulation Bill introduced an amendment in the Employment Act which permitted turbans in workplaces (Talwar, 2015).

Other than turbans, there were debates on religious symbols that involved headscarves in schools (AlSayyad and Castells, 2002: 12). But there was little media coverage and there was little public concern regarding this debate. Moreover, at this time the wearing of the veil was of little relevance. As Poole (2002) shows in her research, the veil was barely mentioned in the media before September 2001. Indeed, she found that in 1997 there was only one article in The Sun about the veil. Taira et al. (2012: 35) argue that prior to 9/11 and 7/7, the

British news media focused on cultural issues and differences, integration and the ‘Islamification’ of the UK when representing British Muslims in the media. They explain that this was because of a lack of terrorist activity by British Muslims at that time. Knott et al. (2013: 28) similarly observe that in the 1980s and 1990s, the representation of Islam in the media focused on the race and ethnicity of British Muslims rather than their religion. For all these reasons then, religious symbols associated with Islam did not receive wide coverage before 9/11.

A further reason why religious symbols were not on the agenda or discussed in the media in this period was that, during this period, there were no lawsuits in courts arguing for the right to wear a religious symbol in hospitals or schools.

The media reporting on Islam and Muslims being linked with violence and terrorism did not start until after the events of 9/11. That did not mean there was no negative portrayal of Muslims in the media, however. Rather, as Allen and Nielsen (2002: 51) argue, the media did have negative attitudes towards Muslims and Islam even before 9/11. Similarly, Poole (1997: 158) concluded, ‘Islamophobia is thus seen by Western media…to be unproblematic’.

One event in particular that fuelled this Islamophobia was the Salman Rushdie affair which took place in the late 1980s. Cesari argues that ‘[…] the Rushdie affair shed light on the tension between Islamic claims and European conceptions of secularism. In this ideological struggle, media and intellectuals play a major role’ (Cesari, 2010: 17). The whole affair politicized the place of British Muslims in society with debates focusing on the importance of integrating British Muslims and teaching them British values such as freedom of speech.

The discourse continued to revolve around ‘loyalty, democracy, threat and conformity’ until the late 1990s, after which they became overshadowed by terrorism in the aftermath of 9/11 (Poole, 2006: 101).

In spite of the Rushdie affair, the pre-9/11 period was still a time in which the idea of multiculturalism played a significant role in British society and politics (Holohan, 2006: 18; Baker et al., 2013: 20), and the existing debates revolved around integrating minorities and teaching them British values. There was very little debate on or media coverage of the right to wear religious symbols as they had not been placed on the agenda just yet, unlike in some other countries such as France. Alongside the importance of multiculturalism, historical and institutional factors may also explain this lack of attention to religious symbols in the UK. As discussed in Chapter 2, the fact that the British state recognizes an official religion engenders the toleration and accommodation of religion, including minority ones. Moreover, the established nature of the church means that religion and its manifestations – including the presence of religious symbols in the public space – are not perceived as a threat to the state.

From 9/11 to June 2005

Religious symbols began attracting much more attention from 2001, as a result of the September 11 2001 terrorist attacks by al-Qaeda against the United States. The 9/11 attacks were coordinated terrorist attacks on the World Trade Center, the Pentagon and the United

States Capitol. The United States responded to these attacks by launching the War on Terror. The 9/11 attacks were a key triggering event in relation to how religious symbols were perceived and framed.

This event changed how the debate on religious symbols was framed. As noted in Chapter 3, according to John Kingdon (1995), ‘windows of opportunity’ open by focusing events like terrorist attacks. Birkland (2004: 179, 198) sees evidence of policy change in United States in response to 9/11, which constitutes a historical focusing event that ‘changed everything’. While 9/11 may have been the focusing event for the US, its impact was felt elsewhere, including in Europe as the attacks were perceived to be on the Western way of life and its values. In this way, ‘it is since the events of September 11th that reporting on Islam and Muslims has become inextricably linked with themes of conflict, violence and terrorism’ (All Party Parliamentary Group, 2018: 22). These attacks prompted a general attitude of suspicion towards Islam which subsequently ignited a suspicion of religious symbols worn by Muslims, and the full-face veil in particular. Cesari (2018) argues that Islam was securitised in Europe, eventually leading to the wave of burqa bans. ‘When Muslims assert their religious affiliation through dress code and engagement in public religious activities, they become politically suspect. In fact, they are perceived not as believers but as promoters of a global ideology which from Europe to Iraq is seen as a threat to European nations’. She adds that for this reason, policy making is conducted through the lens of the War on Terror. ‘The burqa bans are therefore part of a shift in policies motivated by security concerns’ (Cesari, 2018). Another study by Lambert and Githens-Mazer (2011: 41) found that Tony Blair’s involvement in the War on Terror fuelled Islamophobia and anti-Muslim hate crime in the UK.

As regards how this rising Islamophobia was reflected in the media and indeed how the media influences public opinion, Richardson (2001: 148) supports the view that ‘social theories are (re)produced in the social worlds by the news media, influencing audience attitudes, values and beliefs’. To this end, it is relevant to mention the study conducted by Wilson and Gutierrez (1995: 45), which shows that ‘negative, one-sided or stereotypical media portrayals and news coverage do reinforce racist attitudes in those members of the audience who do have them and can channel mass actions against the group that is stereotypically portrayed’. In a similar fashion, Poole’s (2002: 23) research illustrates how the media shapes public opinion and how crucial its role is to the process:

> I use the term representation to mean the social process of combining signs to produce meanings. While it is evident that the media do reproduce the dominant ideologies of the society of which they are a part, I would argue that the also connect their own ‘meaning’ (norms and values) through signifying practices. [...] News, then, provides its audiences with interpretative frameworks, ways of seeing the world and defining reality. [. . .] [The task is] to extract the discursive constructions within the texts that are related to wider social processes.

Poole (2006: 102) explains that the dominance of the conservative press shifted the focus on how Muslims became represented in the media, and that the image of ‘Islamic terrorism’ began to dominate. She goes on to argue that this shift now ‘unifies coverage within the orientalist global construction of Islam’. Indeed, the media began to dedicate a

disproportionately large amount of coverage to extremist Muslim groups and British Muslims who were willing to join an Islamic war against the West (Allen and Nielsen, 2002: 29). What is more, the media reported that many of the individuals active in the extremist fringes of the UK Muslim community were in fact asylum seekers, and so issues relating to asylum seekers and those relating to the 9/11 attacks started to be identified as one. In other words, asylum seekers became labelled as potential terrorists who were capable of committing similar attacks in Europe (Allen and Nielsen, 2002: 40-41). This somehow then made hostility towards these people 'justified' and it became imperative to prevent them from undermining British values and taking advantage of the welfare system at the same time. As Yuval-Davis et al. (2005: 521) argue, this all went to show that 'in the post-11 September period there [was] a certain conflation of the criminal male, the Muslim and the fraudulent refugee and a growing legitimization of the suspension of their human rights'.

In the midst of this, moderate British Muslim voices – including those of the Muslim Council of Britain that represented the opinions of most British Muslims – were generally overlooked and marginalised in the media because they were less sensationalist (Allen and Nielsen, 2002: 29). Likewise, media coverage that discussed the negative effects of increased Muslim hostility, such as increased discrimination and damaging effects on race relations, was also overshadowed. Poole observes the contrast between the coverage of the conservative press and that of the liberal press. She notes that in 2003, 30% of articles in The Times that used the term 'Muslims' or 'Islam' focused on extremism, terrorism, and the cleric Abu Hamza, and one article further reinforced these dominant ideas by labelling British Muslims as 'the new enemy within' (Poole, 2006: 98). By contrast, she found that 24% of coverage on Muslims in The Guardian focused more on counter terrorism and on

increased discrimination that Muslims experienced post 9/11 (2006: 96, 102). The paper included 149 articles in 2003 with a positive framework on discrimination, race relations and the war in Iraq (Poole, 2006: 100). However, coverage of this latter type was largely drowned out by the former. As Poole (2006: 102) concludes, 'this oppositional interpretation has been marginalized by the dominance of the conservative interpretive framework'.

According to evidence reported in the Leveson Inquiry 'four of the five most common discourses used about Muslims in the British press associate Islam/Muslims with threats, problems or in opposition to dominant British values. Between 2000 and 2008, references in the press to radical Muslims outnumbered references to moderate Muslims by 17 to one' (Judicial College, 2018: 8/26-8/27).

In the context of this media coverage, a number of actors from across the political spectrum spoke out, linking Muslims and terrorism, and questioning British multiculturalism. Perhaps the most prominent was Margaret Thatcher, who on 3 October 2001, contributed to the debate by saying in the Times that 'the people who brought down those towers were Muslims and Muslims must stand up and say that is not the way of Islam. I have not heard enough condemnation from Muslim priests' (Allison, 2001). She also said that Muslims must speak out more against the threat of global terrorism (White and Dodd, 2001).

The Conservative Party leadership did not welcome this statement and responded by quickly distancing itself from Thatcher's comments. Michael Ancram, the party's deputy leader, told BBC Radio 4's Today programme that his own experience of Muslim reactions was very

different from hers, saying ‘this is not a fight about religion, it's a fight about terrorism’ (White and Dodd, 2001). Other senior Tories were harsher: Michael Heseltine, Thatcher's old rival, warned that she would stir the ‘strong racist tendency among a certain very small minority’, while another frontbencher, Gary Streeter, called the remarks ‘silly’ (White and Dodd, 2001).

Voices in the Labour Party did not directly link British Muslims with the terrorist attacks of 9/11. In fact, there is insufficient evidence to suggest that mainstream political parties and actors fuelled anti-Muslim sentiment in these years. Mainstream political actors were moderate, and they went to great lengths to distance themselves from anti-Muslim comments and from associating the Muslim community with the events of 9/11. It was only marginal actors such as Thatcher and the BNP, as well as the media, that linked Muslims to 9/11.

Indeed, the British National Party launched an explicitly Islamophobic campaign. ‘Drawing heavily on issues of the inability to co-exist with Islam, it reasserted Christianity as being under threat from Muslims in the UK’ (Allen and Nielsen, 2002: 29) and targeted ‘visibly perceived manifestations of Islam’ (Allen and Nielsen, 2002: 54). By contrast, at this point in time, the United Kingdom Independence Party (UKIP) had little to say on this matter. UKIP did not engage in fervent anti-immigrant rhetoric until a number of years later. At this time, the party was solely preoccupied with the UK leaving the European Union (Hanna and Busher, 2018: 6).

Even though the majority of actors sought to disassociate themselves from anti-Muslim comments and even though they avoided linking the Muslim community to the events of 9/11, the anti-Muslim nature of most media coverage appeared to feed into public opinion. This finding was later reflected in the British Social Attitudes survey of 2003 which reported that 48 per cent of the respondents polled thought that Britain would begin to lose its identity if more Muslims came to live in the country (Field, 2014).

These kinds of attitudes then appeared to translate into actions. In 2002 a survey conducted by the University of Leicester found an increase in the number of religious and racist attacks after 9/11, with many of these directed at Muslim women who were easily identifiable because of their headscarves (Casciani, 2002). Allen and Nielsen observed similar trends of Muslim minorities becoming targets of increased hostility. They argue (2002: 5) that 'a greater sense of fear among the general population has exacerbated already exiting prejudices and fuelled acts of aggression and harassment' and 'a significant rise in attacks on Muslims was reported across a range of media in the immediate aftermath of September 11 (2002: 29).

In this context of rising Islamophobia, driven in particular by sensationalist media coverage, the full-face veil began attracting increasing attention and the way in which it was viewed began to change. Donnell (2003) makes a comparison of how the veil was framed before and after 9/11. She argues that historically, the veil was seen from a colonial perspective. In the pre-9/11 period, the veil was often perceived as a sign of women's oppression and subjugation, and women who wear veils were viewed as victims (Khiabany and Williamson, 2008: 77). However, as Donnell (2003: 123) explains, in the aftermath of 9/11, the fantasy of

the veil was replaced ‘by the xenophobic, more specifically Islamophobic, gaze through which the veil, or headscarf, is seen as a highly visible sign of despised difference’. That difference no longer stopped at portraying women who wear the veil as oppressed or as subjugated. Instead, the veil was now also framed as anti-modern, anti-liberal and anti-Western, and also became linked to radicalism and terrorism. As Sreberny explains (2004: 176), now ‘the burqa was used as part of a Western propaganda campaign’ becoming the ‘synecdoche for fundamentalism, anti-modernism … suddenly a ruthless pursuit of the terror network behind the September 11 events was transformed into a war of liberation with women as the main victims’.

The key shift in the presentation of veiled Muslim women has therefore been from an image of an oppressed victim without agency who needs to be ‘saved’ by the West, to the image of an aggressor who has been granted too much agency by western liberalism. Whereas just over a decade ago the veiled woman was sympathetically constructed in the British media as the ‘victim’ of extremism, now Muslim women were becoming marked out as ungrateful subjects who not only have failed to ‘assimilate’ but who are deemed to threaten ‘our freedoms’ (Khiabany and Williamson, 2008: 77). A range of actors used these framings of the full-face veil in ways that meant it became, in Khiabany and Williamson’s words ‘new fodder for the war on terror’ and an image to justify western invasions and bombings of Iraq and Afghanistan (2008: 82).

In the language of issue framing, problem definition and agenda-setting, the veil was reframed in such a way that it increasingly became portrayed as a problem that needed solving. In addition, a group of people, namely the Muslim community and their faith, was

identified as being the source of the problem. This in turn enabled blame to be attributed, and the Muslim population was blamed for the problem. All this was made possible by the triggering event that was 9/11 and by the ensuing ‘war on terror’ which opened a ‘window of opportunity’, and that made for a crisis for which a group could be blamed.

As Kingdon (2011: 110) points out, ‘there are great political stakes in problem definition. Some are helped and others are hurt…’. Thus, the struggle over defining a problem has significant consequences. The media, as expanders, helped define the problem, assign blame, and expand the issue. Mainstream political actors were not as complicit, yet they showed little interest in this reframing and certainly did little to counter it. Rather, they simply continued to depict the problems surrounding the veil as issues of assimilation and integration.

This period therefore saw a rise in Islamophobia and increasing attention paid to the full-face veil, especially in the conservative media. The extent to which this affected the debate on the display of religious symbols in public institutional spaces in particular is less clear, however. Moreover, there is little evidence that this atmosphere contributed to a tightening of regulations pertaining to the display of religious symbols in these institutions. As the last chapter explained, the scope of regulations of religious symbols did not increase very much at all in this period. While there was some increase in the scope and depth of the regulations in schools from about 2002, this was not matched in hospitals or courts in this period. What is more, the regulations that were introduced were brought in because specific institutions required specific direction or advice on specific issues. In addition, these regulations were non-binding because they were based on guidelines only. No national

legislation was introduced. In short then, despite an increase in the number of reports and articles in the media on Muslims in general and on the full-face veil in particular, and despite the sensationalist nature of most media coverage, the debate at this time did not evolve into one about whether religious symbols should be regulated against in public institutional spaces. That was to come later, after the terrorist attacks on London in July 2005 and in the wake of comments that politician Jack Straw made in 2006. From then on, the debate did firm up, particularly on the wearing of the full-face veil, and more actors become involved in it.

From 7/7 2005 to 2017

On 7 July 2005 a terrorist attack occurred in London. A series of coordinated terrorist suicide bombings took place on the Underground and on a bus in central London, during the morning rush hour. Together, the four attacks claimed the lives of 52 people. Many of the victims were foreign nationals, and several of them were Muslim (BBC, 2015). This event – which became known as '7/7' – was another triggering event, significant in shaping the debate in England around the display of religious symbols, and the full-face veil in particular.

The reason why 7/7 can be seen as a key triggering event for England is that this was the first Islamic terrorist attack in the UK. Moreover, the four suicide bombers were British Muslims. The attacks were therefore carried out by 'the enemy within', not by foreign

attackers. These people were British citizens, raised and educated in England. Three of the four had been born in Yorkshire, and the fourth had come to the UK as a small child.

In the immediate aftermath of the events, the Muslim Council of Britain issued a statement saying it 'utterly condemn[ed] the perpetrators of what appear[ed] to be a series of co-ordinated attacks' (Herbert, 2005), and the Prime Minister, Tony Blair 'drew a clear distinction between the bombers and the Muslim community in general' (EUMC, 2005: 17). Meanwhile, Ken Livingstone, the then mayor of London, reacted on the very day of the attacks by reminding people that London is a cosmopolitan city, and that minorities were also victims of these attacks. The attacks, he said, were 'aimed at ordinary, working-class Londoners, black and white, Muslim and Christian, Hindu and Jew, young and old' (EUMC, 2005: 18).

Despite these statements, however, the media started reporting about a possible anti-Muslim backlash (EUMC, 2005: 16). For example, the Islamic Human Rights Commission issued advice to Muslims not to travel for fear of reprisals, and specifically warned that women in headscarves could be at risk as headscarves are visible aspects of Islam (Herbert, 2005). The government responded to these reactions with concern. The Home Secretary, Charles Clarke 'voiced concern about some of the language used in the media and called on the media not to fuel inter-community tensions' (EUMC, 2005: 17).

7/7 led many politicians to initiate debates about the 'proper' place of religion in society and public spaces. However, the focus of these debates was squarely on Islam, and on Islamic symbols, most notably the full-face veil. These debates did not include discussions on other

religions, or on symbols associated with them such as the turban, kippah or the crucifix. The headscarf and the turban no longer have the power to inflame national public debate, but the full-face veil does. The reason for this, as Howard (2009: 8) argues, is because 'Muslims are seen as putting religion and religious laws above ... liberal values and above "the law of the land"'. They are seen as a threat because they are considered to demand too much in terms of legal concessions in relation to their values, which are considered to clash with the values of the state'.

The increased focus on terrorism and on the 'war on terror' has shifted the political context from emphasising multiculturalism to focusing on integration and assimilation. Fekete (2006) suggests that European states are moving towards assimilation. Furthermore, she argues that multiculturalism is seen as a threat to European values. 'Anti-immigration, Islamophobic and extreme-Right parties have long been a feature of European politics. But, increasingly, the views and policies promulgated by such parties are being absorbed into a process of governmental policy and decision-making dictated by the "war on terror"' (Fekete, 2006: 1). The veil is an example of this and of the politically charged media hype that surrounds it. The veil debate is 'being exploited both by the far right and by radical religious extremists and there is evidence of this process occurring on both sides' (Tarlo, 2006: 25). In turn, Gökariksel and Secor (2009) argue that veiling is a political and religious response from Muslim citizens to increased Islamophobia.

Arguments for regulating religious symbols

In the post 7/7 period, Muslims were portrayed as a ‘threat’ for a number of reasons, and Islamic dress – the headscarf and the full-face veil in particular – became the symbol of this threat. Firstly, just like after 9/11, Muslims, and Muslim women wearing the full-face veil, were depicted as a threat to security. In addition, Muslims were seen as threat to European identity. And thirdly, the full-face veil was portrayed as a symbol of suppression of Muslim women. In this period, as Razack (2008: 5) suggest, ‘three stereotypical figures have come to represent the “war on terror” – the “dangerous” Muslim man, the “imperilled” Muslim woman, and the “civilized” European’.

Writing about the UK, Howard (2009) helpfully suggests that five arguments have been used by those wishing to introduce bans on the wearing of religious symbols. These five arguments have not only structured the debate on the wearing of religious dress in the public space, but they can also be applied to explore the general rise of Islamophobia in the post 7/7 period and the ways in which Muslims, and Muslim women in particular, came to be perceived as a threat. The first of these has already been mentioned, namely that Muslims pose a threat to safety and security because of their supposed link to terrorist activities. This argument has not simply informed views on Muslims, but as Cesari (2018) explains, it has also shaped policy making, which is ‘increasingly interpreted through the lens of the War on Terror’.

The second argument that Howard (2009) outlines is that Muslims, and women who wear the full-face veil in particular, are portrayed as showing a refusal to integrate or assimilate into European societies and to adopt Western values. By presenting Muslims as a

community unable to adjust culturally, this argument frames their culture 'as an alien culture in opposition to a "Western' life"' (Poole, 2002: 82). Thirdly, and very much flowing from the second argument, Howard (2009) explains that the perceived failure of Muslims to integrate, and the wearing of the full-face veil in particular, is seen as a barrier to effective communication.

The fourth argument that Howard (2009) highlights as being used to frame Muslims as a threat and to promote a ban on full-face veils is that headscarves and veils constitute an infringement on a woman's rights to equality and thus represent symbols of suppression and submissiveness. In other words, they have been subjugated and their rights have been violated. This is presented as being at odds with 'liberal', Western values. As Perry (2014: 83) explains, full-face veils are 'seen as the primary symbol of this presumed oppression' yet in this stereotyping, 'Muslim women are [also] punished for succumbing to patriarchal pressures to remain concealed'. She (2014: 83) further argues that the veil is therefore simultaneously portrayed as a sign of submissiveness and as a sign of Islamic aggression.

The last argument that Howard identifies as being used to make the case against the display of Muslim symbols in the public space is the one that contends that religious dress challenges 'secularism as a constitutional value' and threatens the separation between church and state (2009: 12). This argument is not deployed in England given the existence of an established church. It is thus more relevant in other countries such as France and Turkey, 'where the segregation between church and state is firmly laid down in the Constitution' (2009: 12).

Actors thus frame ‘Muslimness’ and the wearing of the veil in particular, in a range of ways, and in doing so they define the problem in a variety of ways that will enable them to place the problem on the agenda. The following paragraphs will pay more attention to these actors and their arguments, and will identify the individuals and groups who were particularly visible and vocal in the debates that have surrounded the full-face veil. This will include those who were the driving forces behind calls to legislate against the wearing of the burqa or niqab – i.e. the expanders. Then, those actors who sought to counter the expanders will be considered – i.e. the containers.

The different actors include politicians, as well as NGOs, human rights advocates and religious groups. As will become clear, interestingly, expanders and containers are not always found where one would expect. For a start, expanders and containers are found within the same political parties in England, meaning that, with the exception of those on the right-wing fringe, political parties are not unitary actors on this issue and have not developed an official party line. Secondly, expanders include a number of Muslim individuals and groups, perhaps contrary to initial expectations. The focus in the following paragraphs will remain on how Muslims and how the wearing of the veil has been framed. A later section will then examine how this context has influenced the specific debate on the regulation of religious symbols in hospitals, schools and courts.

Expanders: actors calling for the regulation of religious symbols

Actors who have objected to the wearing of the veil, and who have sometimes called for it to be banned include politicians from both main parties, as well as from the Liberal Democrats, and figures from more radical right parties such as UKIP and the BNP. Expanders also include secularist groups which have lobbied the state for greater restrictions on Muslim religious symbols in the public space. Expanders redefine the issue of the display of Muslim religious symbols in a number of ways, and draw on a variety of the arguments presented by Howard (2009), as discussed above.

In the post 7/7 period, the first influential actor who spoke out about the wearing of the full-face veil in public was Jack Straw MP, a senior Labour Party politician. At the time of these comments in October 2006 he was Leader of House of Commons, having served as Home Secretary from 1997 to 2001 and Foreign Secretary from 2001 to May 2006. Straw's comments were not only important for what he said, but they acted as a catalyst for other actors, from across party lines, to join the debate on the place of the veil in public.

Writing in October 2006 in his weekly column of the Lancashire Evening Telegraph, his local constituency newspaper, Straw said he was concerned 'that wearing the full veil was bound to make better, positive relations between the two communities more difficult' (Bartlett, 2006) because it is 'a visible statement of separation and difference' (Bunyan and Wilson, 2006). In terms of Howard's (2009) arguments then, Straw was focusing on the perceived failure of Muslims to integrate into society and the consequences of this for community cohesion. In addition, Straw clearly saw the full-face veil as a barrier to effective communication. He explained that 'I felt uneasy talking to someone I couldn't see' (Straw, 2006), and said he felt 'uncomfortable' interviewing constituents who wore veils (Claystone,

2014: 29) and talking to someone 'face-to-face who I could not see' (Bartlett, 2006). Therefore, he had asked women wearing the full-face veil to remove it when they visited his surgery because face-to-face conversations were of 'greater value' (Taylor and Dodd, 2006).

In his comments, Straw did not engage with arguments about full-face veils constituting an infringement on a women's rights (Howard, 2009). However, for some commentators, there was still an underlying gender angle to his discomfort at dealing with fully veiled women. Piela (2018), for example, argues that 'it is, curiously, almost always a man who starts a niqab row'.

Straw's comments resonated widely. They led to a blizzard of comments about the wearing of full-face veils and sparked widespread debate among politicians and others on the subject. As Simpson (2006) argued, 'thanks to politicians like Jack Straw, the wearing of the veil is now high on the British political agenda'.

Straw's arguments were picked up by his deputy Leader of the House of Commons, Nigel Griffiths, who accused Muslim women of being 'selfish' for refusing to stop wearing veils and thereby ignoring the feelings of others. He argued that, while Muslim women may feel comfortable wearing the veil, they were ignoring the fact that the veil makes others uncomfortable. He said veiled women are 'putting their feelings above those of the individuals they are meeting in their daily lives'. He added, 'not being able to see a face when you are talking to someone makes people feel very uncomfortable' (Walters and Oliver, 2006).

The comments by Straw and Griffiths caused others to enter the debate. Communities and Local Government minister Phil Woolas responded to Griffiths by calling for a calm and measured debate (New York Times, 2006). Woolas (Walters and Oliver, 2006) also said that he did not think that women who cover their faces were being selfish, and he argued that Muslim women have a right to wear the face veil. However, he went on to say that veiled women must nonetheless 'realize that people who don't understand their culture can find it frightening and intimidating' (New York Times, 2006). Furthermore, he also touched on the issue of women's rights when he added that 'it can be hard to tell whether women wear the veil as an expression of their faith or because they are compelled to do so' (New York Times, 2006). He concluded that all these factors can create fear among non-Muslims and can lead to discrimination against Muslims (New York Times, 2006).

The then Chancellor of the Exchequer, Gordon Brown, was also drawn into the debate when he was asked about the matter on BBC television. He responded by saying that he supported Straw, and said 'it would be better for Britain' if fewer women wore the veil. He continued by adding that 'I would emphasise the importance of what we do to integrate people into our country, including the language and history' (Fagge, 2006). Similarly, the Prime Minister, Tony Blair, showed support for Straw by saying that it was 'perfectly sensible' for his colleague to have raised the issue of the full-face veil (Fagge, 2006). He argued that, although the wearing of the veil was a personal choice, it nonetheless constituted 'a mark of separation' and made some outside Muslim communities 'feel uncomfortable' (BBC, 2006c; BBC, 2006d). He continued by saying: 'I think we need to confront this issue about how we integrate people properly into our society' (Cowell, 2006). Blair therefore took the

opportunity of reacting to Straw's comments to suggest that a wider debate was needed in Britain on how to strike a balance between integration and multiculturalism (Cowell, 2006).

Arguments that the full-face veil is symbolic of limited integration into British society were also made by Hilary Armstrong, who was Minister for Social Exclusion at the time. She agreed with Straw that the veil was a visible statement of separation and added that she thought it was difficult to participate in British society while wearing a face veil (BBC Question Time, 2006).

By contrast, Harriet Harman, who had recently announced her intention to run for the deputy leadership of the Labour Party, said 'because I want women to be fully included. If you want equality, you have to be in society, not hidden away from it' (Harman, 2006). As such then, Harman focused very much on Howard's (2009) fourth argument, namely that full-face veils constitute an infringement on women's rights to equality and are a symbol of subjugation which is at odds with British values.

Jack Straw's comments also provoked reaction within the Conservative Party. David Davis, the Conservative Shadow Home Secretary, expressed sympathy with Straw's comments (BBC, 2006i) but also argued that the debate over the wearing of full-face veils exposed a deeper problem of integration of Muslim communities. Davis argued that closed societies were being created in the UK (Richards, 2009). He further asserted that British Muslims risked 'voluntary apartheid' by displays of separateness like the full-face veil (Cowell, 2006). He concluded by arguing that the debate on veils needed to be expanded, and he criticised the government for shying away from taking action on such matters (Davis, 2008). He

accused the government of showing a 'confused, confusing and counterproductive' attitude towards the problem of integration (BBC, 2006i).

Before Straw made his comments, David Cameron, the Conservative Party leader, had already voiced concerns about the integration of Muslims. Speaking at the Conservative Party annual conference just days before Straw wrote his newspaper column, Cameron argued that 'Britain had made an error by allowing [Muslim] ghettos to develop' and said that 'it worries me that we have allowed communities to grow up which live "parallel lives"' (Evening Standard, 2006). He went on to call for better contact between different communities, and speaking about faith schools, he said that 'children should be taught "the core components of British identity – our history, our language, our institutions"' (Evening Standard, 2006).

However, in reaction to Straw's comments on the wearing of full-face veils a few days later, Cameron advised caution. Although he believed that Straw 'had raised the issue in a "calm, reasonable, moderate way"' (BBC, 2006e), he warned about the consequences of such comments. He said, 'I think there is a danger of politicians piling in to have their tenpence-worth and really they have to ask themselves whether this is having an overall good effect or not' (BBC, 2006e). Other senior Conservatives were similarly cautious, perhaps due to their libertarian leanings. For example, Oliver Letwin, the Conservative Party's policy director, argued that 'it would be a "dangerous doctrine" to start telling people how to dress' (Sturcke, 2006a).

After Straw's comments, and the attention and reaction that they brought, there was a period of relative calm around debates on the wearing of the full-face veil. However, the issue rose to prominence again in 2010 when a Conservative MP, Philip Hollobone, put forward a bill that proposed banning the wearing of the full-face veil in public places (BBC, 2010c).

Hollobone was one of 20 MPs selected in a ballot to propose a Private Members' Bill (BBC, 2010g), and in June 2010 he put forward the Face Coverings (Regulation) Bill. The Bill stated that 'a person wearing a garment or other object intended by the wearer as its primary purpose to obscure the face in a public place shall be guilty of an offence' (Cochrane, 2013). Hollobone described wearing a face veil as the religious equivalent of 'going round with a paper bag over your head' (BBC, 2010a). He argued that the burqa was 'offensive' and 'against the British way of life' and he refused to meet with burqa or niqab-wearing women in his constituency (BBC, 2010a; Dominiczak and Swinford, 2016). The Bill had its first reading in the Commons on 30 June 2010, but it then failed to progress any further (and gain a second reading) before the parliamentary session ended (Birmingham Mail, 2012).

However, in June 2013, Hollobone along with two other Conservative Party MPs, had another opportunity to pass this Bill when he proposed a package of laws including the Face Coverings (Regulation) Bill (Eaton, 2013). This proposed legislation was given space on the parliamentary timetable and was read on two occasions, the first in September 2013 and the second in February 2014 (UK Parliament, 2013b). On the Bill's second reading, there was considerable opposition from a number of Labour MPs (UK Parliament, 2014) as well as from two Conservative MPs (Amin 2014). Once again, however, the bill failed to complete its

passage through Parliament (UK Parliament, 2013a). After its second reading the debate was adjourned to May 2014, but to a date on which the House of Commons would not be sitting. In effect, this meant the bill was dead and the debate would not be resumed (Amin, 2014).

Despite this, the bill nonetheless garnered significant media attention. As Eaton (2013) explained, ‘there’s no prospect of any of the bills mentioned above becoming law but their political significance is that they further poison a Tory brand still in need of detoxification’. Media attention on the issue was further stoked at this time because of Birmingham Metropolitan College’s decision to reverse the full-face veil ban that been introduced at the college in September 2013. This attracted attention, and Hollobone himself reacted to this decision by saying that ‘the change of heart was a matter of “shame” and made the argument for legislation banning the niqab in public more urgent’ (Brown, 2013).

The Birmingham Metropolitan College decision opened up a divide in the Coalition government and one that also spilled over into the Liberal Democrats. Some in the Liberal Democrats also contributed to the negative discourse on religious symbols. The Home Office minister, Jeremy Browne, reacted to the Birmingham Metropolitan College decision and was the first senior Liberal Democrat to raise a concern about the presence of Muslim veils in the public space. In September 2013, the Telegraph reported that Browne was calling for a ‘national debate’ about banning Muslim girls from wearing veils in public (Swinford and Hope, 2013) and about whether the state should protect young women from having the veil imposed upon them (Guardian, 2013b). However, the Liberal Democrat leadership was not united behind Browne’s comments on the issue. Deputy Prime Minister and party leader

Nick Clegg expressed his 'unease' at the decision to implement a ban (Brown, 2013), and believed the bar would have to be set very high in order to justify any prohibition on wearing the veil (Guardian, 2013a).

However, Browne's remarks were shared by some Conservative Party politicians. David Cameron, by now Prime Minster, said he would support a full-face veil ban in his children's school, but he argued that such a decision should be that of the head teacher (Evening Standard, 2013b). Other Conservative Party MPs felt more strongly about the issue. For instance, Sarah Wollaston joined the debate by saying veils are 'deeply offensive' and are 'making women invisible' (Swinford and Hope, 2013) and she called for a full-face veil ban in schools and colleges (Evening Standard, 2013b). She argued that the burqa is a symbol of 'repression and segregation', and said it was time 'to stop delegating [the decision to regulate it] to individual institutions as a minor matter of dress code and instead set clear national guidance' (Cochrane, 2013).

The above discussion shows that there were conflicting views within the main British political parties on the subject of the full-face veil, with some actors favouring the introduction of restrictions but others being more reticent about imposing any bans. By contrast, the fringe parties on the right of the spectrum were clearer on their stances on the matter. Both the UK Independence Party (UKIP) and the British National Party (BNP) called for restrictions on the wearing of the full-face veils at this time, and both made a promise to ban the full-face veil in their 2010 manifestos (UKIP Manifesto, 2010: 14; BNP Manifesto, 2010: 5).

UKIP was the first British political party to call for a total ban on full-face veils. In early 2010, Nigel Farage said that full-face veils were symbol of an ‘increasingly divided Britain’ (BBC, 2010e). He called veiled women ‘oppressed’ and a security threat. He stated that his party was therefore seeking to ban full-face veils in public spaces and in public buildings (BBC, 2010e). This standpoint was repeated by Lord Pearson – the UKIP leader – a few months later, just days before the election. He argued that the full-face veil represented a security threat, and that people feared it (BBC, 2010h).

By 2013 both UKIP and Farage (who was now party leader again) had changed their tune, however. As deputy leader Paul Nuttall explained in September 2013, ‘what we wouldn’t do is go down the line of enforcing a blanket ban. We are a libertarian party’ (Moseley, 2013a). Farage added a few weeks later that a blanket ban would not be workable, and he instead argued that a ban should be introduced in specific settings, including schools, airports and banks. He explained that one of his biggest concerns for British society is to be integrated, not separated (Moseley, 2013b).

The issue of a burqa ban persisted within UKIP and a number of its members called for a full ban over the next few years. For instance, in August 2016, Lisa Duffy, a UKIP councillor who was standing for the party leadership, argued that women should not be allowed to wear an Islamic veil in public places. She maintained that a ban would help Muslims integrate and would promote women’s rights as she claimed that the veil was a ‘symbol of aggressive separatism that can only foster extremism’ (Agerholm, 2016).

The party then changed its policy again, or at least changed it back to what it had been. Now under the leadership of Paul Nuttall, UKIP reverted to proposing a full ban on the full-face veil in public spaces. The party's manifesto for the 2017 general elections stated that 'UKIP will ban wearing of the niqab and the burqa in public places. Face coverings such as these are barriers to integration. We will not accept these de-humanising symbols of segregation and oppression, nor the security risks they pose' (UKIP Manifesto, 2017: 37). Emphasising the theme of women's rights and oppression, the party further maintained that the niqab 'hides identity, puts up barriers to communication, limits employment opportunities, [and] hides evidence of domestic abuse' (2017: 37). The chair of LGBT in UKIP, Flo Lewis, argued that misogynistic attitudes should not be tolerated in the name of 'respecting cultural differences' (2017: 37). The party added to these arguments by even claiming that the wearing of the niqab 'prevents the intake of essential Vitamin D from sunlight' (2017: 37). UKIP's deputy leader, Peter Whittle, defended the party's proposed policies by saying that 'the burka is not something in the Koran, it's a cultural practice…' (Cowburn, 2017). He added that the burqa or niqab is 'an absolute symbol of the subjectification of women', that it is a barrier to integration, 'a potent symbol of female oppression' and a 'security risk' (BBC, 2017).

As for the BNP, in 2010, the party called for an outright ban on the full-face (BBC, 2010b). On its website, the BNP described the burqa as 'threatening and offensive' and argued that it 'has no place in our free British democracy' (BNP, n.d.). It maintained that 'it is a symbol of colonisation' and said wearing the burqa 'is a conscious refusal to integrate with Western culture'. It also argued that face veiling equates to Cultural Terrorism and breaches security measures. The party then urged people who wished to wear the burqa to 'go and live in a

Muslim country' (BNP, n.d.). These themes were also discussed in quite some detail in the party's 2010 manifesto. Here too the party emphasised the incompatibility of Islam with secular western democracies, and here too it talked of Islam colonising Britain and Europe (BNP, 2010: 5). The party also stressed the refusal of Muslim immigrants to integrate into British culture (2010: 32).

The message of the BNP at the next two general elections, in 2015 and 2017, remained the same even if the party was becoming increasingly electorally irrelevant (Bolton, 2015). The 2015 manifesto continued to call for a ban on the burqa, although in this election it also called for a ban on the hijab. The arguments made were the same: these garments were seen as 'threatening and offensive' and had 'no place in our free British society' (BNP, 2015: 2). The party also reiterated that Islam 'is incompatible with modern secular Western democracy' (BNP, 2015: 7). In 2017, the party kept up its vehement opposition to the burqa, and outlined reasons for a burqa ban, which included links between wearing the burqa and domestic violence, how the burqa has dehumanising effects and is a symbol of subjugation, and arguments that it presents a threat to public safety (BNP, 2017).

In addition to there being expanders within the main political parties and on the right-wing fringe, a number of Muslim non-governmental organisations (NGOs) and prominent Muslim individuals have called for restrictions on the full-face veil. These expanders include organisations such as the British Muslims for Secular Democracy and Quilliam. The British Muslims for Secular Democracy are a group of secular Muslims who advocate separation of state and faith, and equal and civil rights, and who promote civic engagement (British Muslims for Secular Democracy, n.d.). The group is chaired by well-known journalist Yasmin

Alibhai-Brown. The group supports restrictions on the full-face veil 'in certain settings, where security or child protection considerations are invoked' but it opposes a blanket ban on civil libertarian grounds (Kazi, 2016). Alibhai-Brown has further argued, in the wake of the introduction of the French 'burqa ban' in 2010, that the full-face veil 'makes women invisible, invalidates their participatory rights and confirms them as evil temptresses'. She also maintained that the burqa is an un-Islamic custom and that it 'makes women more, not less, conspicuous and that communication is unequal because one party hides all expression' (Alibhai-Brown, 2010).

Quilliam is a left-of-centre think tank that focuses on counter-extremism. It was founded in 2007 by three former members of Hizb ut-Tahrir, an international fundamentalist Islamic political organisation which aims to see the reestablishment of the Islamic Caliphate. The group's founding chairman, Maajid Nawaz, has written about his own views on the wearing of the burqa and niqab. Like Alibhai-Brown he favours restrictions around the wearing of full-face veils in certain settings, but also opposes a blanket ban (Nawaz, 2013a). However, for him, the reasons for regulations revolve around security, rather than women's equality as in the case of Alibhai-Brown. In response to the Birmingham Metropolitan College veil-ban affair, Nawaz insists that veils should be removed in identity-sensitive environments such as civil institutions, schools, hospitals, courts, banks, and airports for reasons of security, and argues that there should be a policy to ensure this happens (Nawaz, 2013a, b).

As has become clear over the course of the last few paragraphs, the various expanders have used a range of different arguments to explain why they do not like the wearing of the full-face veil, and why it should sometimes be regulated against. They have thus framed the

issue in a variety of ways, all of which pick up on Howard's (2009) themes. The politicians have used the arguments about separation, integration, and community cohesion most frequently, though they have also pointed to the arguments about effective communication, British identity, and women's rights. By contrast, the mainstream politicians have not really used the security argument. Rather, the claim that full-face veils represent a security threat is one that has been made by the right-wing fringe parties (UKIP and the BNP), as well as Quilliam. By using these arguments expanders have been able to publicize the issue, frame the veil as a problem, and attribute blame. Blame has been attributed to Muslim women who have chosen to wear the full-face veil or to their families that have forced these women to cover their faces. It has also often been assigned to conservative Muslim clerics or teachers who instruct Muslim women to cover their faces.

Containers: actors resisting calls for the regulation of religious symbols

In the political debates in England over whether or not the full-face veil should be regulated against, the arguments put forward by the expanders, as discussed above, have been met by counter arguments from containers. The actors involved in trying to contain this issue are found in all main three political parties, as well as in NGOs, religious groups and human

rights organisations. In addition, a number of public figures, such as writers, have spoken out against the arguments made by the expanders.

Howard (2009: 12-13) again provides a useful framework with which to examine the arguments that containers have used against banning religious symbols. She contends that four main counter arguments are made. The first, and the most frequently used one, is that banning religious symbols is against the right to freedom of religion and to manifest a person's religion as guaranteed by Article 9 of the ECHR, Article 18 of the Universal Declaration of Human Rights, and Article 18 of the International Covenant on Civil and Political Rights. Furthermore, in educational institutions such as schools and universities, there is an additional argument which is that a ban is in breach of the right to education as guaranteed by Article 2 of Protocol 1 to the ECHR. The second counter argument is that banning religious symbols entails curtailing women's right to choose what they want to wear, and thus constitutes a breach of the right to equality and protection against discrimination under Article 14 of the ECHR. The third counter argument centres on the contention made by expanders that a ban on religious symbols is necessary for reasons of safety, security, public order, social cohesion or integration. This claim is refuted by containers, who argue that 'there is no evidence that a ban is needed for safety or security reasons or to improve social cohesion and integration' (Howard, 2009: 13). Finally, the fourth argument put forward by Howard (2009: 13) is that a ban on displaying religious symbols is based on religious stereotypes. Arguments in favour of restrictions identify the veil as a security risk because these arguments link the veil to Islamic fundamentalism. Consequently, this then stereotypes all Muslims as terrorists. Or alternatively, arguments in favour of a ban stereotype Muslim women as subjugated. As Idriss (2006: 292) puts it:

'Muslim women are still perceived as falling into one of two categories: either as the "oppressed" woman or the "aggressive terrorist" by the media'.

Following the 7/7 attacks, and particularly in the wake of Jack's Straw's comments in October 2006, a number of politicians spoke out against any proposals to restrict the wearing of the full-face veil. Ken Livingstone, the former Labour Mayor of London, criticized Jack Straw's comments about the veil. He said that he had never asked a Muslim woman to take off her veil. He also said Straw's comments were insensitive, 'if you are a powerful man and a person comes to see you for help, I think the majority of people would not be able to refuse [a request to remove their veil]' (Sturcke, 2006b). He added, Straw's approach infringes women's rights, and changes should come from within Muslim communities rather than being imposed by white male politicians (The Scotsman, 2006). Livingstone had also previously condemned the 2004 French headscarf ban, and had said it 'is the most reactionary proposal to be considered by any parliament in Europe since the second world war' (Yafai, 2004).

Another container within the Labour Party at this time was the backbench but quite well-known MP Jon Cruddas. He expressed concern over the veil debate and warned his colleagues that Muslims may feel persecuted by it. He advised them that they should avoid focusing on religious symbols (Oliver, 2006). He said, 'politicians have played "fast and loose" with religious tensions during recent debate over full face veils' (BBC, 2006g).

George Galloway, who was a member of the Labour Party until 2003 but was now a Respect Party MP, also attacked Straw for his veil comments (BBC, 2006g). He called for Straw's

resignation (Morris, 2006) and said Straw was ‘effectively asking women “to wear less”’ (Sturcke, 2006a). He said ‘who does Jack Straw think he is to tell his female constituents that he would prefer they disrobe before they meet him’, and added ‘it is a male politician telling women to wear less’. He concluded by arguing that ‘it is not women choosing to wear what they want that is sowing division in our society. It is poverty, racism and the despicable competition between the Tory and New Labour frontbenches over who can grab the headlines as the hammer of the Muslims’ (Birmingham Mail, 2006).

This period also saw a number of containers within the Conservative Party. They included frontbenchers such as Oliver Letwin, Shadow Secretary of State for the Environment, Food and Rural Affairs as well as the party’s policy director, and backbenchers like Dominic Grieve. Both Letwin and Grieve put forward libertarian arguments for their objection to any bans. Letwin warned that it would be ‘“dangerous doctrine” to tell people how to dress’ (BBC, 2006h), while Grieve said ‘it is not for the State to prescribe how people dress’. In addition, in response to Griffiths’ remarks that Muslim women were being ‘selfish’ for refusing to stop wearing their full-face veils, Grieve argued ‘“selfish” is not a word I would use at all’ (Walters and Oliver, 2006).

Some in the Liberal Democrats reacted to Straw’s comments in a similar fashion. The party’s president, Simon Hughes MP, ‘questioned whether it was Mr Straw’s place to question the way that members of the public dressed’. He said ‘“I don’t think it’s the job for somebody who represents the whole community to say to somebody who comes through the door, ‘Do you mind if you dress differently in order to talk to me?’”’ (BBC, 2006a).

As explained above, after the fallout from Straw's comments, there was a period of relative calm in discussions surrounding the wearing of full-face veils, and the debate only arose again in about 2010, in response to Hollobone's bill, and in reaction to the French burqa ban. During this time, another Conservative politician, MEP Daniel Hannan, also expressed his views on the matter. In an article in the Telegraph in 2008, he compared the treatment of Catholics in the 17th and 18th century to the contemporary treatment of British Muslims, arguing that the habit of Catholic nuns was perceived at the time as a symbol of an alien religion, and saying that Muslims face the same hostility and suspicion today. He then continued his comparison by explaining that 'Catholics of that era understood that, unfair or not, the charge had to be answered courteously and patiently [and that they] made great play of their patriotism …. and "proved their loyalty"'. He said the same was true for British Muslims today, in their support for the armed forces and their feelings of loyalty to Britain (Hannan, 2008).

As the debate surrounding the full-face veil once again intensified in 2010, other political actors expressed their misgivings over any ban. Speaking in response to the French burqa ban, (Labour) Schools Secretary Ed Balls argued that such restrictions would not be appropriate in the UK, saying 'it was "not British" to tell people what to wear in the street' (Barford, 2010). Similarly, in response to the Hollobone's private members bill, the Conservative immigration minister Damian Green said that 'banning the wearing of the Islamic full veil would be "un-British" [and that] trying to pass such a law would be at odds with the UK's "tolerant and mutually respectful society"' (BBC, 2010c). His colleague

Caroline Spelman, the Environment Secretary, agreed, saying ‘I take a strong view on this, actually, that I don’t, living in this country, as a woman, want to be told what I can and can’t wear’ (BBC, 2010c). Spelman stressed the importance of the individual’s freedom of expression and argued that ‘one of the things we pride ourselves on in this country is being free – and being free to choose what you wear is a part of that’ (BBC, 2010c).

After another period of calm, the debate on full-face veils then heated up once again in summer 2013 when Hollobone’s bill came back to the House of Commons, and in the wake of the ruling at Blackfriars Crown Court, and after the affair at Birmingham Metropolitan College that saw the introduction of a ban on full-face veils, followed by its removal. Responding to Judge Murphy’s ruling at Blackfriars Crown Court, Theresa May, the (Conservative) Home Secretary, said that ‘I don't think the government should tell women what they should be wearing. I think it’s for women to make a choice about what clothes they wish to wear’ (Guardian, 2013d). However, she did go on to defend the discretion of public bodies in the matter, adding, ‘there will be some circumstances in which it’s right for public bodies … to say there is a practical necessity for asking somebody to remove a veil’. She then pointed to border force officials, schools and colleges and the judiciary as examples. But she concluded by saying ‘but in general women should be free to decide what to wear for themselves’ (Guardian, 2013d).

While May made arguments around freedom of expression and freedom of choice, others focused on different factors. Salma Yaqoob, the co-founder of the Respect Party, and a former Birmingham City councillor emphasised the consequences of any full-face veil ban on the women concerned. She reminded people that ‘the women who do wear the face veils

are a tiny minority within a minority' and she went on to add 'so the thought that they're any kind of threat to British society as a whole is beyond laughable' (Cochrane, 2013). She asked 'is this the biggest issue we face in the UK right now?' (Cochrane, 2013). She also added that 'such debates have a detrimental effect on Muslim women in general' and increase their vulnerability. She went on to argue that making women who wear the full-face veil feel vulnerable, and proposing a ban on the veil 'isn't conductive to integration, belonging and a positive atmosphere' and that any veiled women who are experiencing oppression would be more likely to suffer as a result since they would be confined to the home rather than reached and helped (Cochrane, 2013).

These actors continued to voice the same concerns in response to later developments. Speaking in reaction to the French decision to impose bans on burkinis in summer 2016, the Conservative chair of the Women and Equalities Committee, Maria Miller, stated: 'How each of us chooses to dress is a personal matter. In practice, the choices we make are usually driven by local cultural norms' (Payne, 2016). Similarly, in reaction to a ruling from the European Court of Justice in March 2017 that the Islamic veil, among other religious symbols, could now be banned in the workplace, Theresa May, now Prime Minster, argued 'it is not for government to tell women what they can and cannot wear and we want to continue that strong tradition of freedom of expression' (Flood, 2017). She noted that 'there will be times when it's right for a veil to be asked to be removed, such as border security or perhaps in court, and individual institutions can make their own policies', but 'it is the right of all women to choose how they dress and we don't intend to legislate on this issue' (Flood, 2017).

In addition to politicians, a number of NGOs, religious groups and human rights organisations have defended women's rights to wear the full-face veil, and can therefore be considered as containers. Their existence and views, alongside those of groups that are expanders (such the British Muslims for Secular Democracy, and Quilliam, as discussed above), show that the veil is controversial even within the Muslim community, and that this community is just as divided on the issue as are those in the political arena.

In autumn 2006, Massoud Shadjareh, chairman of the Islamic Human Rights Commission said it was 'astonishing' that Straw chose to 'selectively discriminate on the basis of religion' (BBC, 2006a). Rajnaara Akhtar, from the Assembly for the Protection of the Hijab, also spoke to the argument that the veil was a symbol of subjugation by arguing that it 'was a common misconception that Muslim women who wore the face-covering veil had been forced to do so'. She explained that 'in reality this was true for only a "tiny, tiny minority"' (BBC, 2006f).

Following the case at Blackfriars Crown Court and the overturning of a veil ban at Birmingham Metropolitan College in summer 2013, writer and feminist Talat Yaqoob argued that '"when a society dictates what a woman should wear, that's a reinforcement of patriarchy. A woman can wear as little as she likes, or as much as she likes, and it's not for society to assume she is being manipulated"' (Cochrane, 2013).

Similarly, at this time, the Muslim Council of Britain expressed concern over the controversy generated by the full-face veil debate. Talat Ahmed, chair of the Muslim Council of Britain's Social and Family Affairs Committee, responded to Browne's call for a national debate on the full-face veil by saying: 'we have been debating this for over ten years now — if not

more. And every time we discuss the niqab, it usually comes with a diet of bigoted commentary about our faith and the place of Islam in Britain' (Muslim Council of Britain, 2013).

Like the expanders, the containers have used a range of different arguments in their opposition to full-face veil bans. Drawing on Howard's (2009) list of arguments, containers have most frequently argued that banning religious symbols is against the right to freedom of religion and would curtail an individual's freedom of expression. Containers have also often made these points with reference to Howard's second argument, namely that banning the full-face veil infringes women's rights to choose to wear what they wish. The vast majority of politicians have made these arguments from a libertarian perspective, emphasising that it is not for the state or government to tell people, and women in particular, what to wear, and some have also added that it is 'un-British' to do so. By contrast, most NGOs have made these arguments from a discrimination angle, pointing out that any moves to ban the full-face veil would discriminate against a particular section of society.

With the exception of Cruddas, who cautioned that a ban would make Muslims feel more persecuted, and Salma Yaqoob who warned about the detrimental effects of a ban on integration and who also countered the argument that Muslim women pose a threat to society, few politicians engaged with Howard's (2009) third and fourth arguments. By contrast, a number of other actors and groups have frequently countered the expanders' claims by highlighting how these stereotype Muslim women. They have hit back by emphasising that Muslim women do not present a threat, and by underlining that women

who choose to wear face veils are not forced to do so. There are therefore some interesting differences between the arguments that politicians who are containers choose to make, and those that NGOs and other individuals present.

It is also noteworthy that containers have not responded to expanders by engaging in the same themes. The expanders, i.e. political actors, have most frequently used arguments about segregation, integration and community cohesion. Furthermore, far right politicians have also added arguments about security threats, but the mainstream political actors refrained from using this argument.

Debates on the regulation of religious symbols in hospitals, schools and courts

The general debates over the wearing of the full-face veil of course spilled over into the more specific debates on whether people should be able to display religious symbols or wear religious dress in public institutions, including hospitals, schools and courts. As with the general debate, the focus of the discussion about symbols and dress in these institutions very much focused on the full-face veil.

Hospitals

The earliest debates over the display of religious symbols in hospitals in the post 7/7 period concern those that arose after the bare below the elbows guidance, which was introduced

in 2007 by the Department of Health and adopted by January 2008 (Jones and Shanks, 2013: 271). However, as explained in Chapter 4, this guidance was not national policy, and it was not uniformly implemented. Rather, individual health institutions were left to formulate and implement their own policies within the scope of the guidelines. The guidance was also revised and updated in 2010, meaning that the debate over the issue continued for some years.

The debate on the bare below the elbows policy was mainly played out between health professionals. On the one side were actors who thought the policy was justified on the basis of infection control, and who had little time for those who felt they could not comply with it. These arguments were reported in various health professional publications, including The Nursing Times, and the British Medical Journal (BMJ). Commentaries in the Nursing Times included arguments that those who could not abide by the policy should leave the profession rather than seek a compromise. The Nursing Times news report on the Muslim radiographer who refused to comply with this policy and left her post portrayed Islamic belief as being in conflict with maintaining infection control standards (Jones and Shanks, 2013: 276). 'Commentators report that compromise ought not be offered to professionals who have religious beliefs which conflict with workwear guidance' (Jones and Shanks, 2013: 277). Indeed, Jones and Shanks report that religious intolerance was a norm for the Nursing Times corpus, where opinions expressed 'extended beyond comments about health care policy and practice into areas which could be deemed racist and anti-religious' (2013: 280). In other publications these kinds of opinions were not so widespread. For instance, the BMJ included comments that reflected different values and that were more rooted in empirical

evidence. This helped ‘to maintain a sense of professionalism and proportion’ (Jones and Shanks, 2013: 278).

Other healthcare professionals were not supportive of the bare below the elbows policy, however. Numerous doctors spoke out against the policy and called the new rules ‘meaningless’, arguing that ‘there is no proof that the policy of bare-below-the-elbows reduces the spread of infection’ (Pemberton, 2014). Other actors spoke out against the policy because it infringed people’s rights. This kind of criticism came from Muslim doctors and medical students, who argued that the policy went against Islamic dress codes (Beckford, 2008). A study by the British Islamic Medical Association found that over half of Muslim women reported that their covering of their arms was not respected by their NHS trust, and that nearly three-quarters felt unhappy with their trust’s bare below the elbows policy alternative (Malik et al., 2019).

The debate about the proper place of religious symbols in hospitals flared up once again in September 2013 when the Health Minister, Dan Poulter, launched a review into the wearing of full-face veils in hospitals and asked regulators to draft specific rules for the wearing of veils in hospitals. He did so because of the existence of rather vague uniform policies in some NHS trusts, and because, as discussed in Chapter 4, some allowed the wearing of the veil for religious purposes while others did not (Pemberton, 2013). In drawing up these new rules, it was made clear that communication with patients was to always be given priority over the right of a nurse or doctor to wear a veil (Dominiczak, 2013). Poulter argued that it was important that patients have ‘appropriate face to face contact’ because ‘a vital part of

good patient care is effective verbal and non-verbal [empathetic] communication' (The Huffington Post UK, 2013b; Martin, 2013).

The head of equality, diversity and human rights at NHS Employers, Carol Baxter, concurred and said that 'while "valuing diversity" is a core value of the NHS, "to ensure the highest level of care is delivered, it is paramount that there are no barriers to effective communication between staff and patients"' (Cooper, 2013). Similarly, Ziba Arif, a Muslim nurse from the All Pakistan Nurses Association, was of the opinion that nurses should not wear full-face veils at work because they represented a 'barrier to communication' (Nursing Standard, 2013). As a nurse, Arif said 'How on earth are you expected to reassure a patient if they cannot see your face or your expressions?' (Nursing Standard, 2013: 9).

Another actor in this debate was Health Secretary Jeremy Hunt who, on 18 September 2013, said he sympathised with patients who did not wish to be treated by a doctor or nurse with a covered face (Dominiczak, 2013). In fact, Hunt argued that patients should have the right to demand that medical staff remove their veils, as well as the right to request not to be treated by veiled staff (Martin, 2013). He maintained that it was important for patients that there was the right amount of face contact between medical staff and patients (Evening Standard, 2013a), and said that he himself would prefer to see the face of the nurse or doctor treating him. Nonetheless, Hunt argued that the decision to ban the full-face veil should be a professional matter for hospitals to decide on, and not a political matter for politicians (Dominiczak, 2013).

Writing some years later on the subject, journalist Yasmin Alibhai-Brown (2016) argued that headscarves and full-face veils should be banned in state institutions such as hospitals because they are a health hazard. Rather than argue for a specific ban on veils, she said she favoured 'an NHS-wide dress code which applies to everyone whatever background or religion they come from'. She continued by saying that in her opinion, 'state run institutions including hospitals in a liberal society should be free from doctrine imposed by one section of society, not (sic) matter how intimidating and vocal they are' (Alibhai-Brown, 2016).

Commenting on the matter, the Muslim Doctors Association conceded that 'wearing the niqab while working "could impact the doctor-patient relationship"' but it also highlighted the fact 'that the number of healthcare workers who did so was "very small"' (Cooper, 2013). Likewise, the Muslim Council of Britain stated that '"few, if any"' Muslim women working in hospitals wore the full-face veil. Moreover, the Council's deputy secretary general, himself 'a senior health professional, said that the Council had "never been made aware of any concerns or complaints raised about doctors, nurses or healthcare professionals wearing the niqab"'. He went on to add that '"it is our understanding that Muslim women who do wear the veil are prepared to be pragmatic and take off the veil when required"' [and] described the review as the "latest twist to the 'moral panic' about the niqab"' (Cooper, 2013).

The study mentioned above, carried out by the British Islamic Medical Association, also examined Muslim women's experiences of wearing head coverings. The study found that over half of Muslim female healthcare professionals had experienced problems trying to wear a headscarf in theatre, and the 'some women felt embarrassed, anxious and bullied

due to lack of clarity regarding NHS dress code policy' (5 Pillars, 2019). The default head garment for theatre work – a semi-transparent scrub cap – was clearly posing a challenge for some groups, including Muslim women, and the study found that a minority of female Muslim respondents reported that the policy, along with the bare below the elbows one, was having an impact on their career choice (5 Pillars, 2019). In response to the findings, the President of British Islamic Medical Association, Dr Sharif Al-Ghazal, said: 'this data from this important research suggests for the first time that dress code policies … contribute towards the indirect discrimination of faith groups (5 Pillars, 2019).

Schools

As regards the display of religious symbols in schools, the first case in this post 7/7 period which gave rise to significant debate was the one of Shabina Begum. As discussed in Chapter 4, in March 2005 Begum won her case in the Court of Appeal and was thus allowed to wear her jilbab in school. However, a year later, the House of Lords overturned the Court of Appeal's decision.

The case received major press coverage. Writing following the House of Lords' ruling in March 2006, Boris Johnson, a leading Conservative MP at the time, wrote that the Begum case had nothing to do with religion and modesty and argued that instead it was about how far militant Islam could bully the British state (Johnson, 2006). Johnson criticized the British appeal court judges and their lack of common sense in this case. He wrote, 'in rejecting Shabina's case, the Law Lords have provided a small but important victory for good sense,

for British cohesion, and for the right of teachers to run their own schools' (Johnson, 2006). Johnson thus focused on the themes of cohesion, integration and assimilation (cf. Howard, 2009), and argued that the behaviour by Muslims who are unable to assimilate threatened the cohesion of the British community and its values (Johnson, 2006).

In response to the Begum case, Lord Bingham, the Senior Law Lord, said the school was justified in the way it had acted because it had gone to great effort to devise an inclusive and unthreatening uniform policy which respected Muslim beliefs (Guardian, 2006a). He added the rules were '"as far from being mindless"' as they could be, and he argued that it would be irresponsible for any court to overrule the school's decision whilst '"lacking the experience, background and detailed knowledge of the headteacher, staff and governors"' (Guardian, 2006a). Agreeing with his colleague, Lord Hoffmann, another of the Law Lords, said that Shabina had the option of attending a different school, either a single-sex one where her religion would not require a jilbab, or a school where she was allowed to wear one (Guardian, 2006a).

The ruling was also welcomed in educational circles. John Dunford, the general secretary of the Association of School and College Leaders (ASCL), said he was pleased that the House of Lords had supported the school. He added that '"the school had carried out an extensive consultation with the local community before deciding on the uniform. The purpose of school uniform is to create a community ethos and no individual pupils should be able to go their own way"' (Guardian, 2006a). Likewise, Mick Brookes, the general secretary of the National Association of Head Teachers said: "'This is a good judgment for schools. It shows

that where a school is sensitive to local issues and has a good consultative process, its judgment will be upheld in law"' (Guardian, 2006a).

The debate on the wearing of the face veil in schools continued later that year, spurred on by the Aishah Azmi case (see Chapter 4). The case saw interventions by a number of high-profile figures. Phil Woolas, the (Labour) government's race minister, called for Azmi to be fired for 'denying the right of children to a full education' (BBC, 2006d). He also argued that 'her stand meant she could not "do her job" and insisted that barring men from working with her would amount to "sexual discrimination"' (Guardian, 2006b). Meanwhile, Shahid Malik, Azmi's local Labour MP, argued that 'the tribunal ruling was "quite clearly a victory for common sense" and urged her to drop her appeal against the tribunal's decision' (Guardian, 2006b).

Coming just weeks after Jack Straw's comments on the wearing of the full-face veil, this case sparked a wider debate on multiculturalism and integration, and the interventions by a number of politicians led to Prime Minister Tony Blair also commenting on the matter. Blair supported Kirklees Council for suspending Azmi (BBC, 2006d), and argued that 'the veil row was part of a necessary debate about the way the Muslim community integrates into British society'. He went on to say that 'the veil was a "mark of separation" which makes people of other ethnic backgrounds feel uncomfortable' (Guardian, 2006b).

Conservative Party leader, David Cameron also showed support for the school's decision in the Azmi case. In his comments, he particularly emphasised the argument that the wearing

of the full-face veil constituted a barrier to communication. He said, ‘in terms of teaching, communication is vitally important’ (BBC, 2006e).

The debate around the Azmi case was therefore heavily dominated by expanders. However, some containers did hit back. For instance, Massoud Shadjareh, of the Islamic Human Rights Commission, said that ‘the recent weeks have seen a victimisation of not just Ms Azmi but Muslims across the UK by politicians and media alike’ (Mirror, 2006). He added, ‘the tribunal’s finding that teaching assistant Azmi was victimised is much welcomed. However, we note that this victimisation was supported by ministers of the state, MPs and even the Prime Minister’ (Herbert, 2011).

As explained in Chapter 4, these cases and the debates that accompanied them led to the government introducing the first set of national guidelines on uniforms in schools in October 2007. Full-face veils were not to be banned outright, and instead decisions on school uniform policy were to rest with individual schools. While attempting to strike a balance and allow compromise, the guidelines were not welcomed by all. Indeed, speaking about a case in his constituency that involved a 12-year-old girl (Pupil ‘X’) who was told that she could not wear the niqab at school, Conservative MP Paul Goodman argued that the guidance from the Department for Children, Schools and Families ‘looks to confuse headteachers, schools and governors’ (Evening Standard, 2007b). He also pointed to a tension between the guidance and the provisions in the Human Rights Act, which provides for ‘the right to education and to manifest religious beliefs’ (Evening Standard, 2007b).

It was not only full-face veils that attracted attention in this period. Debates also emerged in 2007 surrounding the wearing of Christian religious symbols. As outlined in Chapter 4, in a first case a pupil – Samantha Devine – came to school wearing a crucifix on a necklace. The school asked Devine to remove the item because it contravened the 'no jewellery' policy and was also deemed to raise health and safety concerns, and instead permitted the pupil to wear the crucifix on her lapel instead, as a badge. In another case in another school, another pupil – Lydia Playfoot – was asked to remove the 'purity ring' that she was wearing as a symbol of chastity until marriage. Again, the request was made because the ring contravened the school's uniform policy.

These two cases were significant because while they were met with support from some actors, a number of other individuals and organisations raised questions about them. Perhaps rather unsurprisingly, educationalists supported the decision of the schools. Speaking about the Playfoot case, the general secretary of the Association of School and College Leaders, John Dunford, said 'once again, a judge has supported a school in a case where a parent has challenged school uniform'. He added, 'such cases waste a lot of time and resources for schools and I hope that today's judgment will send a strong signal to parents and pupils that schools have every right to set a uniform and that pupils should abide by it' (MacLeod, 2007).

Those who were uneasy about the decisions included the human right group Liberty, which, with reference to the Devine case, questioned whether there were actual health and safety implications over pupils wearing religious jewellery during classes (BBC, 2007d). In addition, a number of actors raised concerns about secular organisations making decisions about

religious matters, and expressed doubts over whether expressions of the Christian faith were being treated in the same way as expressions of other faiths. Paul Diamond, the human rights barrister who represented Playfoot, told the High Court the school's action was 'forbidden' by law, and added that 'secular authorities and institutions cannot be arbiters of religious faith' (BBC, 2007b). Speaking about both the Devine and Playfoot cases, the public policy director of the LCF, Andrea Minichiello Williams, said 'we have had numerous examples recently of where the rights of some faith groups are tolerated but the rights of others, generally Christians, are not. This guidance seems to be advising all schools to operate along the same lines' (Henry, 2007).

The (Conservative) shadow education secretary, David Willetts, expressed similar, if more guarded, concerns. He said 'I don't think the people who write these reports understand how much resentment they generate by their clumsy attempts to respect every religion other than Christianity' (Henry, 2007). Longstanding Conservative MP, Ann Widdecombe, herself a devout Christian who wears a cross, agreed and described the report as 'religious discrimination' (Flanagan, 2007). She had also previously criticised Devine's school for being 'heavy handed' in its actions (Gurran, 2007), and had also sent messages of support to Playfoot as had former Conservative Party chairman Lord Tebbit (BBC, 2007b).

As was discussed in Chapter 4, the Begum case, the Azmi case and the other cases meant that debates over the right to wear religious symbols in schools persisted. This prompted the Department for Education to issue new guidance in 2013 recommending that schools consider reasonable requests from individual pupils to accommodate their religion or belief and adjust their uniform policies accordingly. The guidance came just days after a decision

was made by Birmingham Metropolitan College (BMC) to reverse the ban that it had introduced, a few days earlier, on the wearing of the full-face veil by pupils. The BMC case sparked more debate around the display of religious symbols in schools, including interventions from senior politicians.

Home Office minister, Jeremy Browne, was the first to make a statement in an interview to the Daily Telegraph on 15 September 2013, saying he thought Britain needed a national debate on whether or not Muslim girls should be banned from wearing the full-face veil. Browne stated that there ‘may be a case to act to protect girls who were too young to decide for themselves whether they wished to wear the veil or not’ (Guardian, 2013b). The next day, Nick Clegg, the then Deputy Prime Minister and the leader of Browne’s party (the Liberal Democrats), suggested he would support a face veil ban in classrooms on the grounds that the veil posed a barrier of face-to-face communication (Dominiczak and Swinford, 2013). But he also said that while he believed ‘the wearing of full veils was “not appropriate” in the classroom, [he] would not support a “state ban” on doing so’ (BBC, 2013b).

Conservative Party politicians also joined the debate. MP Sarah Wollaston called for the full-face veil to be banned in schools and colleges, and argued that veils were ‘deeply offensive’ and were ‘making women invisible’ (Guardian, 2013b). A few days later, the mayor of London, Boris Johnson also voiced his opposition to the face veil becoming part of the school uniform (Holehouse, 2013). His arguments, like Clegg’s, centred on communication. He said, ‘schools should have the right to force pupils to show their faces to teachers. […] I think that the face veil is a very difficult thing to make work in a school’ (Shipman, 2013).

Meanwhile, party leader and Prime Minister David Cameron appeared to waver on the issue. In the immediate wake of the BMC decision, Cameron had said ‘he believed educational institutions should be able to “set and enforce their own school uniform policies”’ (Guardian, 2013a). However, two weeks later, it was reported in the Telegraph that he would support bans in schools and courts, but not a national ban in all public spaces (Kirkup, 2013).

Other actors disagreed. The Labour MP for Birmingham Ladywood, Shabana Mahmood, welcomed the decision to reverse the full-face veil ban at BMC. She said, ‘this change in policy is enormously welcome. The college has made a wise decision to rethink its policy on banning veils for a group of women who would have potentially been excluded from education’ (Guardian, 2013a). Similarly, chair of the Muslim Women's Network UK, Shaista Gohir, said: ‘the complete ban of the face veil on campus by the Birmingham Metropolitan College was a disproportionate response because female students who wear the veil are not only very small in number but were also willing to show their face when required so their identity could be verified’ (Meikle, 2013).

In the years that followed this flashpoint, the government continued to hold its line on the issue. In early 2016 both David Cameron and the Education Secretary, Nicky Morgan, made comments that indicated they remained of the view that ‘individual public organisations should be free to put in place sensible rules on the issue of face coverings’ (Ofsted, 2016). This stance was favourably received in educational circles, including by Sir Michael Wilshaw, the Chief Inspector of Schools in England who said that ‘the Prime Minister and Secretary of State are right to give their backing to schools and other institutions which insist on

removing face coverings when it makes sense to do so' (Ofsted, 2016). Wilshaw continued by expressing his concern that some headteachers who were trying to restrict the wearing of the full-face veil were coming under pressure to relax their policies, and that the wearing of the veil hindered communication and effective teaching (Ofsted, 2016).

Courts

The debate over the display of religious symbols in courts only really flared up in August 2013, when during a case being heard at Blackfriars Crown Court, the judge, Judge Peter Murphy, told a woman who wore the niqab that she was free to wear it during the trial but that she must remove it when giving evidence. As explained in Chapter 4, when the woman refused to comply with this request, in a compromise move, Judge Murphy arranged for her to give evidence from behind a screen which shielded her from public view. The event and the compromise solution drew criticism from a number of quarters. It also promoted calls for clearer guidelines on the wearing of veils in courtrooms.

Judge Murphy allowed the woman to stand trial while wearing a full-face veil but added that 'the niqab has become the elephant in the court room' (Yorkshire Post, 2013). He said there was widespread anxiety among judges over how to tackle the issue. He added he hoped 'Parliament or a higher court will provide a definite answer to the issue soon' because he feared that 'if judges in different cases in different places took differing approaches [to the niqab] the result would be judicial anarchy' (BBC, 2013a).

This approach was welcomed by some actors. The director of Liberty, Shami Chakrabarti, said ‘credit to Judge Murphy for seeking to balance the freedom of conscience of the defendant with the effective administration of justice’ (Bowcott, 2013). Interestingly, given his previous comments on the wearing of veils, Jack Straw also welcomed the approach and the sensitivity that the judge showed in this case. Straw – who had now retired to the backbenches – also agreed with Judge Murphy’s statement urging Parliament or a higher court to provide guidance on the wearing of veils in court, and concurred that it was unfair to expect judges to have to deal with the issue on a case-by-case basis (Camber, 2013). The view that Parliament or another body should issue guidance on the matter was not shared across the political spectrum, however. When asked about the matter, Theresa May, the (Conservative) Home Secretary, agreed that there might be circumstances in which public bodies, including the judiciary, would have ‘a practical necessity for asking somebody to remove a veil’ but she argued that these bodies should make a judgment in relation to each case (Guardian, 2013d).

May’s view was not shared by all in her party, however. Sarah Wollaston MP disagreed with her senior colleague, and argued that ‘it is time for politicians to stop delegating this to individual institutions as a minor matter of dress code and instead set clear national guidance’ (Wollaston, 2013). Philip Hollobone MP also reacted to Judge Murphy’s decision, in rather strong terms. Accusing Murphy of pandering to the defendant, Hollobone said he was disgusted that the judge was bending over backwards to accommodate the woman (Camber, 2013).

Media and public opinion

In this post-7/7 period the media continued to play an important role in the framing of debates on the place of religious symbols in society and on whether or not they should be regulated against. In fact, the media arguably assumed an even greater role in shaping the debates and in influencing public opinion on the subject.

In a study that explores the interplay between religion and the media, Hjarvard (2011) argues that the mainstream media in Western countries is secular by nature. He maintains that the media does 'not have any intention or obligation to propagate any particular religious views' and explains that 'on the contrary, mainstream media normally adhere to a secular worldview and are anxious not to give preferential treatment to any specific religious movement or belief' (2011: 126). Moreover, he argues that in the course of the last few decades, the media has become a more independent institution, no longer at the service of other institutions or interests (2011: 122). This growing independence, together with the increasingly pervasive reach of the media, has meant that the media has become increasingly important as a player that frames and produces narratives, meanings and understandings of issues, including those related to religion. In short then, the media exerts a growing influence over how people see and interact with religion, and given that it adopts a secular worldview, the media has played a role in exacerbating the already existing trend of secularisation in many European countries, which is characterised by a decline in the authority and relevance of religious institutions and by religion being important to fewer and fewer people.

Increasing secularisation within society, as well as the mainly secular nature of journalism generally favour expanders. In addition, however, there are particular features of the English media that have allowed the arguments of the expanders in the debates on the display of religious symbols to dominate those of the containers. For a start, the expanders' arguments have received greater coverage than those advanced by the containers. And secondly, the English media has framed these arguments in a particular way. Taken together, this has expanded the scope of conflict.

The comments and opinions of expanders, particularly on the wearing of the full-face veil, have often reached the front pages of national news outlets. One reason for this is that there is a close link between the media and politicians – a sort of unspoken alliance. Khiabany and Williamson (2008: 73) argue that a large number of senior politicians write for newspapers, and so their views receive broad coverage by the British press.

In addition to giving many politicians easy coverage, the British press has often been sympathetic to the views of these politicians on issues surrounding the display of religious symbols. For instance, the Mirror stated that Straw's comments deserved attention because they were 'well meaning' and his message should be taken into account because he was 'respected' (Mirror, 2006). Similarly, both the Daily Mail (2006) and the Daily Telegraph (2006) argued that Straw was right to raise the issue (Meer et al. 2010: 105).

As well as being forthcoming and sympathetic to expanders, the coverage has often been sensationalist. Speaking about Straw's 2006 comments, Tarlo (2006: 24) notes that 'overnight Straw's hesitant and context-specific reflections were transformed by every

paper from the Guardian to the Sun into the generalized command "Take off the Veil!"'. This kind of coverage very much reflects the British media's preference for 'controversy, conflict and celebrity' (Knott et al., 2013: 184).

This sensationalism has also shaped the way Muslims have been portrayed, and has fed into a 'us versus them' narrative. Tarlo (2006: 250) argues that the coverage stifled 'reflection on an issue of public concern by simply feeding the current national appetite for sensationalist polemics about Muslims and Islam'. She goes on to point out that in the aftermath of Straw's comments, the press framed the debate 'as a sensationalist polemic between "us" (the reasonable Brits) and "them" ("trouble-making Muslims" or "victimized Muslims")' (2006: 24).

This did two things. Firstly, it resulted in the Muslim community being portrayed in the media as homogenous (Wilson, 2007: 31). Secondly, Muslims became widely framed as a 'problem' or as a 'threat' (Werbner, 2007: 179), and growing public 'concerns' were whipped up (Khiabany and Williamson, 2008: 70). Tarlo observes that 'some papers framed the issue in the format of a "Muslim problem page" in which a diverse range of stories involving Muslims were cobbled together and where even violent anti-Muslim attacks somehow featured as further evidence that "they" were causing trouble' (2006: 24).

As has been discussed above, a number of themes have been drawn on by expanders to make arguments about the banning of religious symbols in the public space (cf. Howard, 2009), but the media – and the press more specifically – focused on two in particular. On the one hand, a number of newspapers, including the Daily Mail and Daily Telegraph in

particular, presented accounts of Britishness that were exclusive, and that certainly were not multicultural (Meer et al., 2010: 105). Multiculturalism was portrayed as an 'Achilles' heel' (Fekete, 2006: 10), responsible for allowing Muslim difference and the rise of parallel communities at the expense of national cohesion (Meer et al. 2010: 95). Following Straw's comments, the full-face veil was seen as the most obvious symbol of this difference and problem, and something that should no longer be accepted by the excessively tolerant British (Khiabany and Williamson, 2008: 71). As Tarlo notes, 'suddenly the small minority practice of face veiling had become a carrier for the nation's ills' (2006: 24).

On the other hand, Muslims, and women who wore full-face veils in particular, became increasingly portrayed as representing a security threat. For a start, the number of stories in the press related to full-face veils rapidly increased after Straw made his comments in 2006. Indeed, Poole (2002) reports that in 2005 there were only six articles about the full-face veil, but that following Straw's comments this rose to over 150. In addition, these articles presented a particular narrative. As Meer et al. (2010: 105) explain,

> the niqab represented an obstacle to interpersonal communication, that interpersonal communication is an integral part of interaction between different communities, and that some communities need more interaction than others because their separatism gives rise to radicalism (which in turn gives rise to terrorism).

The increased focus on terrorism was especially evident, as was the emphasis on difference. Indeed, Moore et al. (2008: 20-21) conclude from their analysis of representations of British Muslims in the British press from 2000 to 2008 that ‘the bulk of coverage of British Muslims focuses on Muslims as a threat (in relation to terrorism), a problem (in terms of differences in values) or both (Muslim extremism in general)’. Similarly, Knott et al. (2013: 82) identify terrorism as the main theme of newspaper coverage in 2008. They also note that the press emphasised the ‘Muslimness’ of any individuals implicated in terrorist attacks, but downplayed this identity in positive stories, such as those about sporting achievements (Knott et al., 2013: 90). Veiled Muslim women also attracted particular attention of the tabloid press and became what Khiabany and Williamson (2008: 85) describe as a ‘new figure of “dangerous extremism”’. They explain that ‘the media oscillate between constructing the veil as a symbol of refusal of “our way of life” or as a sign of resistance to western “values”, in which the veil becomes linked to the “terrorist threat”’ (2008: 83).

Clearly, these portrayals and narratives are most likely to have an impact on public opinion. As Poole (2006: 102) argues, the longer this framework of portraying Muslims as the global aggressor persists, the more likely the danger that the perception may become fixed. This includes shaping perceptions about what it means to be a Muslim, as well as influencing opinions surrounding how Muslims should be ‘managed’. In such a context then, and despite the fact that Muslims only constitute 4.8 per cent of the British population (Knott et al., 2013: 182), it is not surprising that there has been growing support among the public for tightening the regulations around the display of religious symbols in public spaces.

The increased support that the media has generated for strengthening regulations around the display of religious symbols in public spaces can be observed from opinion polls. In November 2006, ICM surveyed 1,004 people for the BBC and asked whether veils should be banned in public spaces. 33% of respondents said they would approve of such a ban while 56% said they would not, and just under 10% reported being undecided. The poll then asked further questions about whether the veil should be banned in specific places. Results showed that 61% of respondents said they thought it should be prohibited in airports and at passport control; 53% of people agreed that it should be banned in courtrooms; and 53% said it should be prohibited in schools (BBC, 2006f). In April 2011, YouGov conducted a similar poll for The Sun newspaper. The results showed that 66% of the British public would support a general ban on full-face veils, whereas 27% would not (Jordan, 2013). A follow-up poll in September 2013 showed only a small change in views. Slightly fewer people (61 %) now supported a ban, while more (32%) were against one. A second follow-up survey was then conducted in August 2016, and this showed that the number of people supporting a general ban had once again fallen slightly, to 57%, even if the percentage of respondents rejecting a ban had also fallen, to 25% (Smith, 2016).

Interestingly, the 2013 and 2016 surveys also revealed that there was considerable variation in opinions according to which political party respondents supported. In the 2013 poll 93% of people who reported that they intended to vote for UKIP at the next election supported a ban, while only 47% of Liberal Democrat supporters were in favour of a ban. The figures for Conservative and Labour supporters were 71% and 55% respectively. The poll also demonstrated a sizeable generational divide on the issue. 69% of respondents aged 40 and over supported the ban, while those under 40 were fairly evenly split on the issue (Jordan,

2013). In 2016, the patterns were broadly similar with regard to political party, with 84% of UKIP-supporting respondents being in favour of a ban, 66% of Conservatives supporting a ban, 48% of Labour voters favouring a ban, and only 42% of Liberal Democrat respondents backing a ban. The generational divide was also still apparent. In 2016 78% of those polled who were aged 65 and over supported a ban, while 18–24-year-olds were most likely to oppose one. Working class respondents were also more likely to support a ban than middle class ones (61% vs. 54%) (Smith, 2016).

These polls clearly indicate that public opinion on the wearing of full-face veils changed quite substantially in the late 2000s – as reflected in the results of the 2006 poll compared to those of the later surveys. In those years public support for banning the full-face veil in public spaces increased considerably. The precise drivers of this increase are hard to identify, of course, but it seems reasonable to argue that the public mood was significantly influenced by events, by the comments of influential actors (most notably Straw), and by the way narratives around the veil and around Muslims were constructed by the media. Interestingly, however, the data also suggests that there was a limit to the increases in support for bans on veils. That is, support for bans plateaued by the early 2010s, and in fact decreased slightly between 2011 and 2016, even if the number of people opposing a ban did not increase.

This section of this chapter has examined the period between 2005 and 2017 and has discussed the debates that have surrounded the display of religious symbols in public spaces. Like the preceding period, the 2005 period started off with an important triggering event, namely the 7/7 terrorist attacks in London. And like in that preceding period, there

was increasing suspicion of Muslims, and rising Islamophobia in the media. However, there was significant differences too. In particular, in the period after 9/11 2001, mainstream political actors had gone to great lengths to distance themselves from anti-Muslim comments. After 7/7 this was no longer the case. Starting with Jack Straw, many more national politicians and influential commentators began speaking out about Muslims, Islam, and the wearing of the full-face veil. The level of the debate therefore increased considerably, and the number of actors involved in the debate also grew substantially.

In the post 7/7 period the expanders mobilized a range of ideas, and defined religious symbols as a problem in various ways. They drew on arguments that revolved around the need to ensure communication, those that touched on issues of integration and community cohesion, those that related to conceptions of ‘Britishness’, those that linked the wearing of the veil to the subjugation of women, and finally those that made a link between the display of Muslim symbols and radicalism, extremism and terrorism. These arguments resonated in different ways, and with different effects, but some were picked up more than others by the media. In particular the media fanned the flames of the debate on religious symbols – especially Muslim ones – by its sensationalist coverage and by constructing and perpetuating a narrative that Muslims were problems in and threats to society for their failure to integrate and their propensity to become radicalised. And not surprisingly, such framing appeared to influence public views about the wearing of the veil in public spaces.

At the same time, however, there were also a number of containers taking part in these debates, from across different political parties and civil society. Like their counterparts, these actors drew on a range of arguments, including that a ban on religious symbols

constitutes a violation of the right to freedom of religion and would curtail an individual's freedom of expression, and that prohibiting the wearing of the full-face veil infringes women's rights. Many also emphasized libertarian points of view, arguing that it is not for the state to tell people what they can wear.

Conclusion

This chapter has discussed the debates that have surrounded the regulations of religious symbols in the public space in England in the period since 2000. It has examined the events that took place in this period and that therefore set the background for these debates, and it has explored which actors contributed to the debates, how they defined religious symbols as a problem and how they framed and mobilized their ideas, all in a bid to place these issues on the agenda. It has also considered the role of the media in framing narratives on religious symbols, and the effect that this, and the various actors' views, have had on public opinion.

The chapter has shown that before 11 September 2001, there was little debate on regulating religious symbols in the public space in England. Very few actors were interested in the issue, and the media provided very little coverage of it. There was nonetheless some noticeable hostility towards Muslims at this time, aired in the media in particular, and Muslims were portrayed as a problem, mainly for their lack of integration or their lack of loyalty to the nation. However, in the main, during this period, the idea of multiculturalism

still played a significant role in society and in politics, and was still viewed as something positive. And in this context, as was outlined in Chapter 4, there were no or few regulations of religious symbols in English institutional public spaces such as hospitals, schools and courts.

The 9/11 attacks changed things in that following that event there was a significant rise in Islamophobia. This was fed by sensationalist media coverage which emphasised a link between Islam and terrorism, and this in turn started to fuel the debate on the place of religious symbols in public spaces. Veils started garnering attention in particular, and were often labelled a security threat. However, the general rise in anti-Muslim sentiment and the media coverage did not result in mainstream political actors speaking out about the place of religious symbols in the public sphere or making arguments for the restriction of such symbols. Rather, in this period, debates around religious symbols continued to remain limited.

The 7 July 2005 London bombings, which were carried out by British Muslims rather than by foreign individuals, changed the tone and the scope of the debate quite considerably. In the immediate wake of the attacks the mainstream political elite tried hard to quell any backlash against Muslims, and went to great lengths not to vilify British Muslims. However, their efforts were hampered by the media, which reported on the event and its aftermath with sensationalist headlines and anti-Muslim rhetoric. Moreover, as time went by, other actors began to intervene and to comment on the place of Muslims in society, and on the display of religious symbols. As a result, and especially after Jack Straw's comments in

October 2006, there was a rise in debates on regulating religious symbols, and the focus was particularly on the full-face veil.

As the chapter has shown, a variety of ideas were mobilized to make the case for restricting the display of religious symbols, including ones that focus on the veil being a barrier to communication, a sign of a lack of integration, or even a security threat. More specific arguments have been made with regard to the display of religious symbols in particular public institutions. The justification for regulating the wearing of the veil or other symbols or clothing in hospitals has revolved around health and safety, and infection control. By contrast, in schools, calls for regulating the display of religious symbols have drawn on debates over the role of schools in society and in reflecting and nurturing national identity, on arguments around safeguarding and the need to protect children from being 'forced' to wear particularly clothing, and on ensuring effective learning and communication with teachers. In courts, the arguments have been more practical, and have focused on the need to see the faces and expressions of defendants or witnesses.

While the expanders in these debates have generally been more vocal, as is to perhaps be expected especially given the media narratives, the debate has actually been fairly balanced. As such, while perhaps by definition it has been the expanders who have initiated and led discussions on the regulations of religious symbols, containers have responded and have presented their own arguments, and in the end, there have been as many expanders as containers in the debates around religious symbols in England. In short, it has certainly not been one-sided.

With reference to the second analytical framework set out in Chapter 3, two other points are noteworthy as concerns the constellation of actors in these debates. Firstly, not only were there as many expanders and containers overall, but expanders and containers were found within the same mainstream political parties. That is, the main political parties did not adopt a unified approach to the issue of the display of religious symbols, and there was no 'party line' that individual politicians had to toe on the matter. Rather, as the chapter has shown, there has been a broad spectrum of views within each party. This is actually not that unusual in British political parties when it comes to issues that may be described as 'moral' ones or as 'matters of conscience'.

Secondly, the debates on the regulations of religious symbols in England were mainly led by politicians. Even though public figures, professional associations and civil society organisations did contribute to discussions, most of the interventions came from politicians, including party leaders, (shadow) cabinet members, and backbench MPs. As such then, the debates in England assumed very much a top-down character, rather than a bottom-up one in which members of the public, unions, professional associations, or community groups initiated discussions.

All these factors explain why, despite the increasing level of debate on religious symbols particularly since 2005, there has not been any significant change in the legislation governing the display of religious symbols in the public space in England. The regulations in England remain limited and weak, especially in comparison to other countries. What is more, the gradual tightening of regulations that has occurred over time in fact began before the debate on the display of religious symbols really intensified. Indeed, as was seen in

Chapter 4, the increase in the scope and depth of the regulations concerning the display of religious symbols in English schools started in 2002 with the Begum case. In hospitals this was later, with the introduction of the first Department of Health guidelines in 2007, and although this obviously came after the attacks of 7/7 and after Straw made his comments, it was still relatively early in the cycle of debates. In other words, it is just not credible to conclude that the tightening of regulations concerning the display of religious symbols in schools and in hospitals was a result of the increased debates.

The fact that regulations relating to the display of religious symbols have not become significantly stricter in England is also explained by the British tradition of policy making. As has been repeatedly shown in this chapter and the last, the practice in England has been to issue guidelines rather than nationally binding laws, to delegate decisions and responsibilities to local institutions – be they individual hospital trusts, schools, or courts or judges – and to seek accommodative solutions to cases as they arise. These approaches very much reflect a British tradition of limiting the reach of the state and of avoiding the imposition of national laws. Moreover, it is wholly consistent with the British practice of practical, pragmatic and ad-hoc policy making, often described as one of incrementalism or 'muddling through' (Lindblom, 1959; Parsons, 2002).

Finally, the absence of strict regulations surrounding the display of religious symbols in the public space in England, in spite of growing debate on the matter, is also explained by the themes discussed in Chapter 2, namely the nature of the church in England, and the British tradition of multiculturalism. That is, in contrast to other countries where there is a distinct separation between church and state, the established nature of the Church of England

means that religion (and its manifestations) is not seen as a threat to the state. Therefore, there is no need to challenge the presence of religious symbols in public spaces. Moreover, the existence of an official religion makes for the toleration of minority religions – i.e. because the majority religion is accommodated, minority ones tend to be too. This approach is then reinforced by the tradition of multiculturalism that exists. Despite recent challenges to the idea and application of multiculturalism, law and policy in Britain continue to be formulated against a background in which minority cultures are recognized, behaviours different from the majority are tolerated, and minority groups are afforded distinctive rights (Ashcroft and Bevir, 2018). In practice this means consulting with minorities on legislation and guidelines, including those on dress codes, findings ways of accommodating specific needs, and often asking local institutions to find the most appropriate solutions.

The balanced nature of the debates around religious symbols, and the constellation of actors involved in these discussions, as well as the incrementalist approach to policy making in Britain, the particular nature of the established church, and the longstanding tradition of multiculturalism have all shaped the ways in which religious diversity has been accommodated in England, and all contribute to explaining why, despite the increase in debates on the matter in recent years, the regulations around the display of religious symbols in the public space remain so limited and weak. This is a rather unique set of factors, and a situation that is not found in many other states. The following chapter will consider a drastically different case, and a dramatically different approach to regulating religious symbols in both institutional and open public spaces.

Chapter 6: The Scope, Depth and Enforcement of the Regulation of Religious Symbols in France

This chapter examines the scope, depth and enforcement of the regulation of religious symbols in the public space in France from 1989 to 2017. It does this by looking in detail at the scope of the regulations of religious symbols and how the scope has changed over the period under study. It then considers the depth of the regulations of religious symbols (i.e., the severity of the penalties imposed for breaches of the regulations), and it explores whether and how they have been enforced. It also examines whether depth and enforcement have changed over time.

As will become clear, the regulations pertaining to the display of religious symbols in the public space in France cover a large number of spaces. Importantly, these not only include public institutions, but they also encompass open public spaces. Public institutions are understood under French law to include hospitals, schools, and courts (as was the case in England), as well as the premises of national, regional and local government institutions, including town halls and other administrative offices, public services buildings such as family benefit offices, health insurance offices and job centres, and post offices, libraries, museums, and universities. Open public spaces include streets and roads, public parks and gardens, promenades, and beaches, as well as places that are accessible to everyone where goods or services are exchanged for payment, such as cinemas, theatres, shops, cafés, restaurants, banks, train or bus stations, airports, and public transport (Légifrance, 2011).

To take account of this, and to also reflect the fact that, in France, the vast majority of regulations are imposed across all spaces in a uniform manner by the central government rather than being delegated to individual public institutions as is the case in England, this chapter is structured in a slightly different way to the England chapter (Chapter 4). Like the England chapter, this chapter begins with an overview of the scope, depth and enforcement of regulations on the display of religious symbols in the public space in France. Then, it focuses on public institutional spaces because it is in these spaces that legislation was first introduced. It first pays attention to the regulations that pertain to public servants, and then examines the ones that relate to the 'users' of these public services, including patients, and pupils. In discussing the depth and enforcement of the regulations in public institutional spaces, the chapter explores a number of cases, notably in hospitals and schools, that have arisen as a result of regulations being breached. Then, the chapter turns its attention to the regulations of religious symbols in open public spaces. It investigates the scope of regulations in these spaces, as well as changes in the scope, and it then examines the depth of the regulations and the extent to which they have been enforced. This once again includes a discussion of relevant cases that have come to light when the regulations have been infringed, including cases that relate to the display of religious symbols in town halls, and on public streets. The chapter closes with a conclusion that summarises the situation in France.

Overview: wide scope, large depth and strict enforcement

In general, it can be argued that in France the scope of regulations relating to the display of religious symbols in the public space is wide, that the depth of these regulations is considerable, and that their enforcement is strict. Furthermore, there has been significant change, mainly in scope and depth, due to the increase in regulations towards religious symbols in the 21st century.

It should be remembered that the scope of regulation refers to the number of spaces as well as the number and type of religious symbols that the regulations cover. Therefore, given that regulations in France apply to all institutional public spaces as well as open public spaces, the scope of regulation is by definition wide. As will be explored, however, not all religious symbols face the same level of regulation. Rather, the regulations cover some religious symbols but not others.

Moreover, the scope of regulations in France has expanded in the years 2000 to 2017. A first wave of regulations began in 2004, particularly in schools, while a second wave took place in 2010 and concerned the display of religious symbols in open public spaces. And again, not all religious symbols were affected equally. Rather, the more recent legislation, particularly that concerning open public spaces, has primarily involved the regulation of Islamic symbols, most notably the full-face veil.

As has been discussed before, the scope of regulations is also likely to influence the depth of the regulations – that is, the penalties associated with breaches of the regulations. If the

regulations cover more spaces and more symbols, then the penalties will apply to more spaces and more symbols. However, the severity of the penalties is a separate matter, as these could, in theory, remain light even though they cover more spaces and symbols, or they could be severe. As will be explored, in France, the depth of regulations is large in that the penalties for breaching the rules are relatively severe. These have taken various forms, from warnings and fines to expulsion from school or loss of work. In some rare instances, infringement of the regulations has even led to arrests.

The depth of regulations has increased significantly in France over the time period under investigation. However, this is because the reach of the penalties has become greater as a result of the increased scope of the regulations. The penalties for infringing the regulations have not themselves become tougher as time has gone by. Rather, the fines for infringing regulations remain the same as they were on the day they were introduced. Hence, the increase in depth is solely because scope has increased.

The penalties for breaching the regulations are strictly enforced in France. As noted above, all the policies regarding the display of religious symbols in French institutional spaces and the vast majority of those pertaining to open public spaces are formulated by the central government, and it is the central government that enforces these policies through its agencies. Unlike in England, therefore, enforcement is not delegated to individual public institutions. Enforcement of the penalties has also increased over time, not least because the scope of the regulations has increased. Put differently, as the regulations have expanded to cover more spaces and more symbols, there are more instances in which to enforce these regulations. Theoretically a situation could exist in which scope increases (i.e., more spaces

and more symbols are regulated) but enforcement does not change (i.e., if the regulations are not enforced). But in France this is not the case: the regulations have been enforced, and as these regulations have grown to cover more spaces and more symbols, this strong enforcement has continued. Enforcement has thus increased over time.

Having provided a brief overview of the regulations pertaining to the display of religious symbols in both institutional public spaces and open public spaces in France, and of how these have changed over time, the chapter now turns to exploring matters in more detail. It first examines the regulations in public institutional spaces, charting their scope, their depth, and the extent to which they have been enforced. It starts by considering the regulations that apply to public servants working in these institutional spaces.

The regulation of religious symbols in public institutional spaces

The scope of regulations in public institutional spaces

As mentioned above, the scope of regulations pertaining to the display of religious symbols in public institutions is wide in France. Moreover, unlike in England, these regulations are imposed in a uniform manner across all public institutions. This means that it is not helpful to examine the scope of regulations in different public institutions like was the case in England. Instead, all public institutions can be explored at once. However, it is important to distinguish between the regulations that affect those people who provide the services on

the one hand, and those people who use or receive these services on the other. This is because in France there are specific regulations that apply to civil servants, be they doctors, nurses and other hospital staff, teachers and school staff, judges, lawyers and court personnel, or administrators working in town halls and regional government, or tax or benefit offices. Given this distinction, the following section of the chapter focuses first on the scope of regulations for civil servants, and then turns to examining the scope of regulations for users of public services.

The scope of regulations that pertain to civil servants

French law states that civil servants across the vast majority of public institutions are prohibited from wearing any religious clothing or displaying any religious signs. These laws are founded on the principle of secularism and religious neutrality (laïcité), derived from the 1905 law, as discussed in Chapter 2. As Weil (2009: 2705) notes, it is within the sphere of the *state* that the separation of church and state exists, and so it is to employees of the state (i.e., civil servants) that these stringent laws apply. Indeed, Weil (2009: 2705) continues by emphasising that under laïcité, 'the neutrality towards any religious belief is not imposed upon individuals in the public sphere as it is often and wrongly believed by publicists and academics, but in the State and to its servants, in the political arena'.

All civil servants are governed by the law based on articles 6, 25 and 32 of Law No. 83-634 of 13 July 1983 on the rights and duties of civil servants. This law reaffirms the principle of

secularism and neutrality to which all civil servants must adhere, and states that civil servants must perform their duties in accordance with the principle of laïcité. It mentions the wearing of religious signs and clothing, and states that the wearing of such signs or clothing would be a violation of the duty of civil servants because these people must remain neutral, and it underlines that civil servants must refrain from manifesting their religious affiliation when performing their duties (Ministère de la fonction publique, 2017). Individual departments are responsible for ensuring that these principles are respected (Legifrance, 1983). This, under article 28 of the Law, involves state administrations, local authorities and public establishments appointing a so-called 'secularism officer' (*referent laïcité*) who is responsible for providing guidance on how to respect the principle of laïcité to any official or head of department who consults them. They are also responsible for organising a laïcité day on 9 December every year. A decree from the Conseil d'Etat (France's highest court of administrative justice) determines the task of these secularism officers as well as the way in which and the criteria by which they are chosen (Legifrance, 1983).

On 3 May 2000, the Conseil d'Etat issued a recommendation (or '*circulaire*') to prohibit all religious symbols among state employees. This was not a law *per se* but an 'Avis du Conseil d'Etat', a decree stating the importance of secular neutrality at work. In this circulaire, the Conseil d'Etat stated that although civil servants cannot be discriminated against based on their religion, the principle of laïcité means they cannot show their religious beliefs when at work and the wearing religious symbols would be a violation of their duties (Légifrance, 2000). With specific reference to teachers and other school employees – a matter that the Conseil had been pressed on by judges in lower-level courts (Armand, 2000: 443) – the Conseil asserted that teachers are employed by the state, and this meant that they are

bound by the same rules as civil servants. It did acknowledge that teachers have individual rights even when performing their public function but emphasised that ‘the principle of laicism sets an obstacle to those disposing of the freedom of manifesting their religious beliefs within the framework of public service’ (Richter, 2007: 210). It concluded that ‘the fact that a teacher of a public school manifests his or her religious beliefs in duty, namely by wearing a sign which aims at showing adherence to a religion, constitutes a failure in fulfilling ones duties’ (Richter, 2007: 211).

In February 2005, the Department of Health issued another *circulaire*, this time regarding public hospitals. It stated that all hospital staff had to abide by the principle of neutrality and should refrain from showing their religion. Furthermore, it declared that patients may choose their doctor but not on grounds of faith (Ministère des solidarités, de la santé et de la famille, 2005). This decree was issued after tensions arose over religion in hospitals. Male doctors, particularly in maternity wards, said they were subject to insults or attacks usually by men opposed to physical contact with their wives and daughters. Dominique de Villepin, who served as Prime Minister of France at the time, asked the High Council on Integration to prepare recommendations to ensure secularism in public institutions (New York Times, 2007). It did so, and in its report, it stated that ‘there was no need to legislate on the issue, but stressed that respect for the functioning of the hospital was vital. It suggested a charter laying out the constitutionally guaranteed principle of secularism be adopted and that pertinent sections be posted at the relevant institutions’ (New York Times, 2007).

In 2007, de Villepin, issued a charter explaining what laïcité in public services meant. The charter did not specifically mention religious symbols/clothing, but it outlined civil servants’

obligations. It stated that civil servants must remain neutral, treat everyone equally and respect people's freedom of conscience. It emphasised that showing one's religious beliefs in the execution of one's duties was a violation of one's duties. It maintained that while the freedom of conscience of civil servants is guaranteed, they should nonetheless adhere to the principle of laïcité. Employees in public services such as health and social centres, hospitals and prisons may take time off to take part in a religious festival as long as it does not interfere with their work (Le Premier Ministre, Dominique de Villepin, 2007).

A new law of 2016, entitled 'loi n° 2016-483 du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires' was the first piece of legislation that defined the rights and duties of civil servants since the 1983 law. Between 1983 and 2016 only *circulaires* had been issued. This 2016 law did not mention religious symbols or clothing but reiterated that civil servants must adhere to the principle of laïcité and must refrain from showing their religious convictions while executing their duties (Légifrance, 2016). In addition, this law included new ethics procedures that enshrined in law the Republican values of public service, and that stated that public servants must be exemplary in the exercise of their responsibilities. It decreed that the head of every department was responsible for enforcing this law and ensuring respect for the new ethical rules. This law also created the position of 'ethics officer' whose function is to provide fellow civil servants with any advice on how best to respect ethical principles (Légifrance, 2016).

The 2016 law was followed by a further *circulaire* in March 2017 that specified how previous laws should be enforced. Based on articles 6, 25 and 32 of law No.83-634 of 13 July 1983 on the rights and duties of civil servants, this once again reiterated the principle of secularism

and neutrality that all civil servants must adhere to. It stated that employees in the public sector are required to remain neutral and not show religious affiliation while conducting their duties, and emphasised that the wearing of religious signs and clothing would violate the duty of civil servants to remain neutral (Ministère de la fonction publique, 2017).

These laws, *circulaires* and charters all illustrate that the scope of regulations relating to the display of religious symbols for civil servants is wide. In short, France has banned the display of all religious symbols and the wearing of all religious clothing for civil servants since 1983. These rules have been reiterated over time, with individual *circulaires* bringing attention to particular types of civil servants, be they teachers or public healthcare employees, and emphasising that all must adhere to the principles of laïcité and neutrality.

The scope of regulations that pertain to users of public services

While civil servants in institutional public spaces in France are subject to clear, strong and uniform regulations on displaying religious symbols and clothing, the same has not always been the case for the users of public services (i.e. the general public). Rather, until a new law was passed in October 2010, users of most public services did not face any regulations pertaining to the display of religious symbols or dress. The big exception, however, were schools, where, from the late 1980s, pupils did face restrictions on their dress. As such then, until the 2010 law, there was considerable variation in the scope of regulations in public institutions as they pertained to users. With the introduction of the 2010 law, which banned

people from concealing their face in all public institutions, the scope of regulations increased, and became less varied across different public institutions.

The following paragraphs will chart the scope of regulations in institutional public spaces as they apply to users, in chronological order. They will therefore focus first on the regulations affecting pupils in schools, before turning to the regulations that affect members of the public in other institutional public spaces. While the focus of this thesis has been on the regulations of religious symbols in the period from 2000, in this instance it is useful to wind the clock slightly further back and consider the issue in schools from the late 1980s. This is because the regulations introduced at this time, and the debates surrounding individual cases, shaped the regulations that were then introduced in the 2000s.

The regulations affecting pupils in primary and secondary schools in France started to expand in 1989. In October 1989, three girls at a secondary school in Creil, were suspended for wearing a headscarf. While there were no national government policies regulating the wearing of religious symbols or clothing in place at this time, headteachers had discretion over dress codes in their schools. The headmaster of the school in question, Collège Gabriel Havez, took the decision that the wearing of headscarves constituted an infringement of the principle of secularism in state education, and suspended the girls (Jones, 2009: 49). The school had decided at the beginning of the school year that headscarves were not to be worn to class. Students were free to wear them on school grounds, but they were supposed to drop them to their shoulders when they entered the classroom (Thomas, 2012: 162).

The school principal had exercised his discretion and made his decision in a bid to restore order in his school, which was based in a challenging area, and which had seen students of different origins missing school for religious reasons (Thomas, 2000; Beriss, 1990), as well as on the basis of his commitment to upholding the principle of religious neutrality as laid out in the Ferry laws of the 1880s that mandated laïcité in public schools, and regulations dating from the 1930s ‘banning any religious or political insignia and forbidding proselytising’ (Beriss, 1990: 4; L.A. Times, 1989).

As the next chapter of this thesis explains, the case attracted considerable public debate, with many different actors voicing their opinions, but in the short term no new laws or guidelines were introduced. Instead, a month after the girls’ suspension, following a request by the Minister of Education, Lionel Jospin, to consider the matter, the Conseil d’Etat ruled that the wearing of religious dress or symbols in French public schools was not incompatible with the secular nature of those schools (Westerfield, 2006: 641). The body ‘asserted that the doctrine of laïcité, as well as the 1958 Constitution and French obligations under international law, require respect for the freedom of conscience of students, including the right to express their beliefs in schools by wearing religious clothing’ (Gunn, 2004: 455). In addition, the Conseil once again emphasised that it was the responsibility of individual schools to decide matters relating to dress on a case-by-case basis (Jones, 2009: 53), and as Benhabib (2006: 55) argues, the task of trying to balance laïcité and freedom of religion ‘left the proper interpretation of the meaning of wearing of these signs up to the judgment of the school authorities’.

This state of affairs was deemed unsatisfactory by many actors, and the debate over whether or not pupils should be allowed to wear headscarves in schools continued to be vigorous for a number of years. By 2003, amidst a national media frenzy over the issue (Gunn, 2004: 458), the then Prime Minister, Jean Pierre Raffarin, called for the prohibition of headscarves in public schools, and was supported in his stance by senior members of the opposition Socialist Party. Two committees were subsequently set up – one by the French parliament and a second by the then President Jacques Chirac – to examine the issue (Bowen, 2007; Weil, 2009: 2700), and on the basis of the recommendations of the two committees a law was passed that banned conspicuous religious symbols in state schools. This new law was passed with large majorities in both the National Assembly and the Senate and came into effect in September 2004.

The 2004 law centred on the display of conspicuous religious symbols in state schools. Its first article states that 'in public primary, secondary, and high schools, the wearing of signs or dress with which the students manifest ostentatiously a religious affiliation is prohibited' (Kuru, 2009: 104). The law also specifies that, before taking any disciplinary action, a dialogue with the pupil must be established (Légifrance, 2004). This law therefore prohibited pupils from wearing Islamic veils, kippahs, and Sikh turbans, as well as from displaying 'sizeable' crosses. Given that the focus was on conspicuousness, the wearing of discreet or unobtrusive religious symbols such as pendants remained permitted.

On the surface, the 2004 law was framed in a neutral language, and in theory it affected all religious symbols including kippahs, turbans and crucifixes. However, as Bowen (2007) notes, 'everyone understood the law to be aimed at keeping Muslim girls from wearing

headscarves in school'. Due to the very principle of laïcité, the state was not able to pass a law targeting just one religion, so in order for it to pass a law on the wearing of headscarves, the state had to legislate against all religious symbols in state schools (Willaime and Hardyck, 2008: 48). As Gunn (2005: 92) therefore puts it, the new headscarf law 'applies about as equally to all religions as the law that prohibits all people from sleeping under bridges applies to the homeless and the wealthy'. Thus, the law might well concern all religions, but it 'has been and is effectively still seen as the "law on the Muslim headscarf" in schools and in public institutions' (Willaime and Hardyck, 2008: 48). It has been described as being 'driven by irrational fear of the Muslim alien' (An-Na'im, 2008: 41), and is perceived as 'singling out and stigmatising some of [Islam's] followers' (Willaime and Hardyck, 2008: 48) and as being one among many signs of rising Islamophobia in France (Nanwani, 2011: 1446).

As mentioned above, until 2010, the scope of regulations for users of public institutions was much wider in schools than it was in other institutional public spaces. Indeed, until 2010, there were no regulations pertaining to the display of religious symbols for members of the public using hospitals or other healthcare services or for people appearing in court. This is not surprising. After all, schools fulfil a specific role in society. They are supposed to reflect, cultivate, and develop a country's national identity and a country's national values. As Gunn (2004: 458) argues, 'public schools are entrusted to teach the nation's values and histories to their youth', and this, as Walzer (1997: 71) emphasises, applies to 'all of [the nation's] children, whatever their group memberships'. This is perhaps all the more so in France, where, as Weber (1976: 332) maintains, traditionally, the 'greatest function' of school was not academic training but teaching patriotism. Zeldin (1977: 17) concurs, observing that in France, 'the teaching of civic and moral duties was an important part of the school

curriculum' and noting 'how love for the nation was preached as something expected of the child, in the same way as love for his mother'. Given such traditions, it is not surprising that schools became the battleground for debates over national values, the role of the state, and freedom of religion (Gunn, 2004: 453).

A further reason why regulations are greater in schools than in other public institutions is that schools are institutions that concern children, not adults. Not only are children minors, from a legal perspective, but they are also deemed to be more vulnerable or impressionable than adults, and schools have a duty of care to protect them from potentially harmful or undesirable external influence. For this safeguarding reason, it is publicly accepted that the state may well have greater authority over children than over adult citizens (Vogel, 2013: 744). Indeed, the difference between how children and adults should be dealt with is reflected in the differences in the regulations between schools and universities. While, as has been seen, the regulations are strict with regard to what school children can wear, the 2004 law does not apply to universities, and nor has there been much discussion about banning ostentatious religious symbols in universities, not least because students are adults, and 'adults have means of defense that children do not'[5] (Weil, 2009: 2709).

As already mentioned, with regard to other institutional public spaces, such as hospitals or courts, prior to 2010, there were no regulations on the display of religious symbols or clothing that applied to the general public (i.e. to users of these institutions). Indeed, a 2005 *circulaire* issued by the Department of Health reminded health workers in hospital settings

[5] Having said this, in 2013 the High Council for Integration – a 'government agency responsible for maintaining the country's secular values … recommended banning university students from wearing religious symbols such as crucifixes, Jewish skullcaps and Muslim headscarves' (France 24, 2013).

that previous laws should be enforced, including those that stated that patients must be treated equally regardless of their faith (Ministère des solidarités, de la santé et de la famille, 2005). That all changed with the introduction of the law of 11 October 2010, however. This law (loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public) had big ramifications for the display of religious symbols in open public spaces, but it also had consequences for the display of these symbols in institutional public spaces. In other words, this law greatly increased the scope of the regulations, not only by including open public spaces, but also by introducing restrictions for members of the public displaying religious symbols in institutional public spaces.

A *circulaire* issued by the French government on 2 March 2011 specified how the law of 11 October 2010 should be enforced (Légifrance, 2011). It started by stipulating that the law applies to the whole territory of the French Republic, including metropolitan France and France's overseas departments and territories, and then went on to detail what garments were to be banned from what settings. As the name of the law suggests, the clothing to be prohibited is any that hides a person's face and makes identification of that person not possible. This includes balaclavas, full-face veils (e.g. burqa, niqab), masks or any accessories or clothing fully concealing the face. Some exceptions to this were then identified, for example, clothing that may be authorised or imposed by law such as motorcycle helmets (Légifrance, 2011). The *circulaire* then went on to specify where the law was to be applied. It would be applied in 'places open to the public' such as on streets and roads, on pavements and promenades, in parks and public gardens, and on beaches, as well as on public transport and in bus and train stations and airports, and in shops and banks, cafés, restaurants, cinemas and theatres. Crucially, it would also be applied in 'places assigned to a

public service', such as government premises like town halls and other administrative offices (including tax offices, benefit offices, and health insurance office), job centres, post offices, hospitals, courts, schools and universities, and libraries and public museums. The law would come into effect on 11 April 2011 (Légifrance, 2011).

Like the 2004 law, the 2010 law was framed in a neutral language, but it was once again clearly aimed at certain religious symbols, namely full-face veils and less so at other religious symbols or items of clothing. It specifically targeted women who wear full-face veils, and had the consequence of banning them from accessing institutional public spaces. This constituted a significant increase in the scope of the regulations for users in institutional public spaces.

Overall then, the scope of regulations regarding the display of religious symbols in institutional public spaces in France is wide. It is particularly wide for those who work in these public institutions – i.e., civil servants – since the regulations prevent civil servants in all public institutions from displaying their religious affiliation in the workplace, and since these regulations apply to all religious symbols. There has been no change in the scope of these regulations in the time period considered by the thesis, however. That is, the scope of regulations for civil servants has been wide since 1983. By contrast, the scope of regulations that apply to users of public services, be they pupils, patients, or members of the public in courts of law, is arguably less wide, has been more varied, and has also changed over time. Before 2010, relatively strict regulations on religious symbols were only found in schools (where they formally applied to all symbols, but in practice targeted Islamic headscarves in particular); they did not apply to members of the public in other institutional settings.

However, after 2010 this changed, and regulations were introduced for users of all public institutions, though again, these targeted Islamic symbols and dress in particular.

The depth and enforcement of regulations in public institutions

Given that the scope of regulations on the display of religious symbols in public institutions in France is quite wide, and particularly wide for those working in those institutions (i.e., for civil servants), it is reasonable to expect that the depth of regulations – that is, the severity of punishment for infringing them – will be large, and that the regulations will be strictly enforced. The following section of this chapter will examine this, and like the last, it will focus first on civil servants, and then on the users of public services, and on pupils in particular. Just like the England chapter (Chapter 4), the depth of the regulations and the extent to which they have been enforced will be explored by reference to a series of court cases that concern individuals who have been sanctioned in various ways for displaying religious symbols in public institutions.

The depth and enforcement of regulations that apply to civil servants

The Ebrahimian case

A first case of a civil servant to be punished for contravening the regulations on the display of religious symbols in the workplace is that of Christiane Ebrahimian. Ebrahimian was a social worker employed in the psychiatric department of a public hospital in Nanterre. She was on a fixed-term contract and in December 2000 her contract came up for renewal. At this point the human resources department informed her that her contract would not be renewed due to her refusal to remove her headscarf after complaints from patients (Shankar, 2015). In a letter to Ebrahimian informing her of the decision, the director of human resources referred to the Opinion issued by the Conseil d'État on 3 May 2000, which stated that 'the principle of freedom of conscience, the principle of state secularism and the principle that all public services must be neutral prevent[s] employees in the public sector from enjoying the right to manifest their religious beliefs'. It went on to point out that 'the wearing of a symbol intended to indicate their religious affiliation constitute[s] a breach by employees of their obligations' (ECtHR, 2015).

In 2011, after her unsuccessful appeals in the French national courts, Ebrahimian filed a lawsuit against France at the ECtHR, arguing that the decision not to renew her contract had violated Article 9 of the ECHR Convention, namely her right to free expression of religion. In 2016, the ECtHR ruled against Ebrahimian, stating that the hospital's decision was in accordance with the principles of secularism and neutrality of public services (FRA, 2016). It regarded the decision not to renew her contract as 'proportionate', and 'necessary in a

democratic society' (ECtHR, 2015: 29) and it ruled that there had been no violation of Article 9. As such, the Court gave priority to the requirement of state neutrality (ECtHR, 2015: 28).

<u>The Mohamed A. case</u>

A second case relating to a healthcare worker was that of Mohamed A., an Egyptian medical student from the Egyptian University of Menoufia, who was an intern in the department of general, visceral and digestive surgery at the Saint-Denis Hospital in Paris. In 2014, he was asked repeatedly by the hospital to trim or shave his beard as he was warned that his beard was 'perceived by staff members as a sign of religious affiliation' (RT, 2018), and that patients might also see it as a religious symbol (Natividad, 2018). Mohamed A. did not deny that his beard was likely to indicate a religious conviction (Natividad, 2018), but he refused to comply with the requests. In February 2014 he was sacked from his post. Somewhat surprisingly, after his sacking, Mohamed A. was given permission to transfer to the Paul Brousse Hospital, another hospital in Paris, where he completed his internship with no objections to his beard (Natividad, 2018).

<u>The Nadjet ben Abdallah case</u>

In 2003, Nadjet ben Abdallah, an employment inspector, was suspended from work for wearing a headscarf. She had been ordered to remove it but had repeatedly refused to comply with these requests (ECtHR, 2016: 12). She took her case to a tribunal in Lyon

(Marlowe, 2003) but in July of that year, the judge presiding at the tribunal declared that her wearing of the headscarf was contrary to the principle of state secularism. The conclusion was that wearing a headscarf at work was a sign displaying her religious affiliation and that ‘constituted a breach to her professional obligations as professional negligence’ (Wagner, 2011: 41).

The above discussion has shown that there have only been a few cases of civil servants contravening the regulations on religious dress and symbols in institutional public spaces. However, even from this limited evidence, it can be seen that the depth of the regulations has been relatively large. That is, the penalties for infringing the regulations have been quite severe. Moreover, these penalties have been strictly enforced. While the three individuals in question were warned of the consequences of not abiding by the regulations before any action was taken, when they refused to comply, they lost their positions.

The depth and enforcement of regulations that apply to users of public services

As discussed above, regulations on the display of religious symbols only applied to users in schools (i.e., to pupils) until the 2010 law was introduced. Before that date, users of other public services – such as patients, or people making use of local government services – did not face any regulations. With the introduction of the law of October 2010, however, the scope was considerably extended, and users of all public institutions now became subject to regulations. Given this, any examination of depth and enforcement of the regulations as

they apply to users by definition focuses only on school pupils in the period before 2010. After 2010 the depth and enforcement of regulations can be explored for users of other public services.

The paragraphs that follow explore a number of instances in which school pupils contravened the regulations pertaining to the display of religious symbols or the wearing of religious dress. They explain the background of the cases – what the pupils wore, where – and they discuss the penalties imposed on the pupils for disobeying the rules, and the extent to which these sanctions were enforced. This section does not provide coverage of all the cases that relate to the display of religious symbols in schools, for the simple reason that there were dozens of these in the period since 1989. Rather it focuses on the first ones that sparked the famous 'headscarf affair', and the most famous ones, which drew widespread media attention. In this way, it provides an illustration of what happened when school pupils contravened the regulations.

As will become clear, the penalties have ranged from suspension to expulsion, and schools have adopted rather strict approaches to ensuring that their uniform and dress code policies are enforced. This has led to many of the cases ending up in the courts, and attracting considerable attention. It is headscarves worn by Muslim female pupils that have been at the centre of the majority of these cases, though other cases have involved the wearing of the Sikh keski.

The 1989 Gabriel Havez Collège School case

As mentioned above, one of the first cases of school pupils being sanctioned for displaying religious dress occurred in a secondary school (Collège Gabriel Havez) in Creil in 1989. During the previous school year, three girls had worn headscarves to school, and their school principal, Ernest Chenière, had attempted to persuade them to remove the garments (Jones, 2009: 49). In September 1989, Chenière tightened his stance: he requested that the girls remove their headscarves and denied them the right to attend class until they had done so. The girls refused to comply with this request, and seeing their refusal as an attack on secularism in state education, Chenière suspended the girls from school (Jones, 2009: 49).

Following this, in October 1989, negotiations took place between the parents of the girls and the school. An agreement was reached that the girls could wear their headscarves on school grounds, but they would have to lower them to their shoulders in classrooms. The girls thus returned to school. However, upon return, they breached the agreement and began wearing their headscarves in class again (Gereluk, 2008: 21). As a result, they were suspended from class again and were sent to the school library (Jones, 2009: 50-51).

The events in Creil attracted considerable media attention and controversy, and in the wake of this, the school principal and his staff wrote to the Minster of Education, Lionel Jospin, to ask him ‘to express a clear opinion’ on the matter (Jones, 2009: 52). Jospin then sought the opinion of the Conseil d’État, and as explained above, on 28 November 1989, the Conseil d’Etat ruled that in the interests of respecting the pupils’ freedom of conscience, the girls could wear their headscarves, as long as doing so did not cause disruption. In this ruling, the

Council also underlined that the decision was one for the individual school to judge on a case-by-case basis (L.A. Times, 1989).

Shortly after this, in December 1989, two of the three girls, sisters Leila and Fatima, returned to school with their headscarves but agreed to lower them to their shoulders when in the classroom. They said they would bow to the request by their principal and take off their headscarves but gave no explanation for their decision (L.A. Times, 1989). However, it seems that their decision to comply with the school's request might well have been influenced by an intervention by King Hassan of Morocco, who had asked the sisters and their father, who was of Moroccan origin, to a meeting in the consulate in Paris, at which the sisters were asked to stop wearing the headscarf (Jones, 2009: 53). The third girl, Samira, whose family was Tunisian, initially refused to comply with the request, but then did eventually return to school in late January 1990 without her headscarf (Jones, 2009: 53).

The 1994 Goussainville case

Five years later similar events took place at a secondary school, Lycée Romain Rolland, in Goussainville. In the 1993-1994 school year, the school principal had tried to reach a compromise with Muslim female students over their wearing of the headscarf. However, in the wake of some violent protests, in June 1994, just before the school holidays, the school's governing body decided to amend its dress rules and banned the wearing of any form of headdress, including headscarves (Jones, 2009: 54).

In September 1994, four Muslim girls came to school wearing headscarves and long tunics, thereby contravening the new school policy. The principal held several discussions with the girls to attempt to persuade them to remove their headscarves, but these dialogues failed. As a result, the principal then enforced the new school regulations, and expelled the girls (Jones, 2009: 55). This led to further student demonstrations and strikes, both in support of the girls, and in support of the school's actions (Jones, 2009: 55). There is no record of these girls appealing the decision of the school, or taking their case to a higher court.

The Dogru and Kervanci cases

In 1999 another headscarf case arose in a secondary school in Flers, in Normandy. In January 1999, two Muslim girls, Belgin Dogru and Esma-Nur Kervanci, attended physical education classes wearing headscarves despite teachers repeatedly asking them to remove them on the grounds that headscarves were incompatible with physical education. The girls refused and so effectively they could not take part in the sports classes. A month later, the school's discipline committee decided to expel the pupils. The decision was made on the basis that the girls had breached 'the duty of assiduity by failing to participate actively in physical education and sports classes' and because the wearing of the headscarves in these classes were against the school's health and safety rules (ECtHR, 2008). The next month, the Director of Education for Caen upheld the school's decision (ECtHR, 2008). Then, the applicants' parents submitted their case to the Conseil d'Etat but the Conseil declared this appeal as 'inadmissible … on points of law' (ECtHR, 2008).

After their unsuccessful appeals in the French national courts, both of these cases were later taken to the ECtHR (ECtHR, 2008). In December 2008, the Court ruled against the applicants, noting that the headscarf is incompatible with sports classes due to health and safety reasons (Centre for Law and Religion, 2008). The girls eventually decided to continue their schooling by correspondence classes.

The Lila and Alma Levy case

Another similar case occurred in autumn 2003 and concerned two sisters Alma (16) and Lila (18) Levy who were pupils at the Henri Wallon Lycée in Paris. The girls had developed an interest in Islam about two years before, and has been covering their heads for the past year (Schofield, 2003). At the start of the 2003-2004 school year the school decided that this was no longer acceptable, and on 24 September it sent the girls a letter telling them that their head-coverings were '"ostentatious" and incompatible with physical education lessons' and that they were forbidden to enter the premises wearing their headscarves (Schofield, 2003). The girls were suspended from school, pending a decision by the local education authority's disciplinary board.

During their suspension, the local deputy chief education officer attempted to mediate in the case by suggesting that the girls wear 'light headscarves' that did not cover the roots of their hair, their ears and or their necks (Ternisien, 2003). However, the sisters refused (Winter, 2008: 253). Following a vote taken at a meeting of the school's disciplinary board on 10 October, the girls were expelled (BBC, 2003). They continued their studies at home,

and Lila was planning to apply to university where the headscarf ban does not apply (Al Jazeera, 2003). They did not appeal the school's decision, or submit applications to higher courts.

As discussed above, the scope of the regulations in schools expanded considerably in the months following the Levy case, with the introduction of a new national law in 2004 which prohibited the wearing of dress or the displaying of symbols which are deemed a conspicuous manifestation of a person's religious affiliation. The law had two effects: firstly, it was a national, uniformly applied law so it marked the end of individual schools applying their individual discretion; and secondly, it applied to all religious symbols, and so not only to Islamic headscarves. This meant that from 2004 onwards, there were more cases of pupils being sanctioned for displaying religious symbols other than the headscarf.

The Bikramjit Singh, Jasvir Singh and Ranjit Singh cases

Three Sikh boys, Bikramjit Singh (18), Jasvir Singh (14), and Ranjit Singh (17), were students at the Lycée Louise Michel in Bobigny (Majors Motion Pictures, 2004; Grosz, 2008). Despite all sharing the same surname, the three boys were not related to each other. The case arose when the boys returned to school in September 2004 (that is, following the introduction of the new law), wearing keskis. 'A keski is a small light piece of material, often used as a mini-turban, covering the long uncut hair considered sacred in the Sikh religion' (Dellatorre and Ferschtman, 2013). The principal asked them to remove their keskis, but the boys declined and so the principal refused to let them enter the classroom (Grosz, 2008; Humar Rights

Library, 2013). A few weeks later, the boys were allowed to enter the school but were sent to study alone and separately from each other in the canteen, without instruction (Purdue, 2013). This continued for three weeks.

On 18 October, Bikramjit Singh applied to a local administrative court for interim measures to enable him to return to class to study normally, or at least to appear before a disciplinary board. The court ordered the principal to convene such a board. A disciplinary board then met and ruled that the student be instantly and permanently expelled for breaching the Education Code[6] based on the 2004 law. Singh then went on to appeal against this decision, and took his case to the local education authority and to administrative courts but his appeals were rejected. He then filed an appeal before the Conseil d'Etat, but this too was rejected. During this time Singh continued his studies via a correspondence course (Human Rights Library, 2013).

Jasvir and Ranjit Singh appealed to education authorities in Seine-Saint-Denis to find a solution. On 5 November these authorities issued a statement supporting the school's decision to expel the boys on the basis that they had failed to comply with the 2004 law. Then on 10 December the academic rector in Creteil confirmed this decision. In February of the next year, the two boys appealed to the administrative courts, but their appeals were dismissed. Finally, the boys lodged an appeal before the Conseil d'Etat but in a judgment of 5 December 2007, the Conseil dismissed their appeal (ECtHR, 2009b, 2009c). It argued that the Sikh keski, even though it was smaller than the traditional turban and dark in colour,

[6] Article L.141-5-1 in the Education Code states: 'In public primary schools, secondary schools and lycées, the wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner is forbidden. Under the rules of procedure, disciplinary procedures shall be preceded by a dialogue with the pupil' (Human Rights Library, 2013).

could not be described as a ‘discreet’ symbol. It found that the two Sikh boys, by choosing to wear that headwear, had displayed their religious affiliation in a conspicuously manner, in breach of the statutory ban (ECtHR, 2009b, 2009c). The boys ended up enrolling in a Catholic school, Lycée Fenelon, to finish their schooling (ECtHR, 2009b, 2009c).

Even though they had completed their schooling by this time, in 2008, Jasvir and Ranjit lodged applications with the ECtHR. They were unsuccessful however, and the Court rejected the applications on the basis that the authorities’ interference in the pupils’ freedom to manifest their religion was justified and proportionate to the aim of the 2004 law (ECtHR, 2009a, 2009b, 2009c).

Bikramjit Singh, by contrast, took his case before the UN Human Rights Committee, also in 2008. This committee found a violation of the right to freedom of religion, and it requested that France reconsider its legislation (Chaib, 2013). The Bikramjit Singh case clearly emphasised the clash of national and international jurisdiction, but France defended its actions by referring to the aims of the 2004 law and the Education Code that was based upon it. It argued that ‘the Act and Code were introduced following a national debate and as a means to quell the tensions and incidents sparked by religious symbols in public schools and “to safeguard the neutrality of public education, in the interests of pluralism and freedom of others”’ (Purdue, 2013). Furthermore, France also argued that the measures were proportionate to the aim because they applied only to state schools (Purdue, 2013).

Aktas, Bayrak, Gamaleddyn and Ghazal cases

With the introduction of the 2004 law, the beginning of the 2004-2005 school year also saw a number of Muslim girls expelled from school as a result of wearing headscarves. This happened in schools across France when Muslim girls turned up to school in September wearing headscarves. In all cases they were asked to remove their headscarves and they refused.

A first case is that of Tuba Aktas, a 16-year-old Muslim pupil who attended the Lycée Lavoisier in Mulhouse. In September 2004, she turned up to school wearing a headscarf. She was asked to remove it by the school principal who deemed it to contravene the 2004 law, but she refused. Hence, she was banned from classes and placed in a study room alone. The principal then engaged in a dialogue with both the pupil and her father, during which Aktas proposed that she wear a bonnet instead of a headscarf. However, that suggestion was not accepted by the school since it would still constitute a head-covering and would therefore still fall foul of the law. On 14 September the principal decided to end the dialogue and start a disciplinary procedure against Aktas. A few weeks later, following an appearance before a disciplinary committee, Aktas was expelled from school on the basis of contravening the 2004 law (Doctrine, 2009; ECtHR, 2009d). Aktas appealed the decision, but on 25 November 2004, the rector of the Strasbourg academy, confirmed the school’s decision. Then, in March 2008, Aktas’ father lodged an appeal at the Conseil d’Etat, but his daughter’s case was once again rejected (ECtHR, 2009d).

The case of Hatice Bayrak took more or less the same course. This pupil attended the Collège Jean Monnet in Flers – the same school that Dogru and Kervanci had attended. On 3 September 2004, Bayrak came to school wearing a headscarf, whereupon the principal asked her to remove it as, by wearing it, she was in violation of the 2004 law. She refused, and as a result she was denied access to the classroom (ECtHR, 2009e). On 10 September 2004, the principal engaged in a dialogue with Bayrak and they came to an agreement that the pupil would replace her headscarf with a bonnet which she would remove in class. However, Bayrak repeatedly refused to remove the bonnet. On 21 October 2004 the school committee took the decision to expel her. In February 2005, the pupil's father appealed this decision at the Conseil d'Etat, but in April 2007 the appeal was rejected. During all this time, Bayrak continued her studies by correspondence course (ECtHR, 2009e).

A similar turn of events concerned Miss Gamaleddyn, a 13-year-old Muslim girl who attended the Collège Georges Brassens in Decines-Charpieu in Lyon. On 2 September 2004, Gamaleddyn came to school wearing a headscarf, and under it, a bonnet. The principal asked the pupil to remove her head-covering, but she refused. The principal then banned Gamaleddyn from attending class and informed the girl's parents that while the school would allow the pupil on its premises, it would not allow her into the classroom wearing a head-covering. Communications continued between the school and the parents for a couple of weeks but then broke down. The school considered that the girl's continued refusal to remove her head-covering was a deliberate contravention of the 2004 law, and on 22 September the principal started disciplinary proceedings against the pupil (ECtHR, 2009f). On 17 November the school committee ruled that the pupil be excluded from school. A month later, the rector of the academy in Lyon confirmed the school's decision (ECtHR,

2009f). As these events unfolded Gamaleddyn’s parents enrolled their daughter in a private school. Despite this, they nonetheless continued to fight the school decision in French national courts. After losing their appeals in national courts, they appealed to the Conseil d’Etat, but again, in October 2007, their case was rejected (ECtHR, 2009f).

The case of Sara Ghazal was very similar. This Muslim pupil was 11 years old and attended the Collège Guillaume Apollinaire in Le Tholy. On 3 September 2004, Ghazal arrived at school wearing a headscarf. She was asked to remove it by the principal on the grounds that it constituted an ostentatious display of religion and was thus in breach of the new 2004 law. The girl refused the principal’s request, and was banned from class and placed in a study room. That same day, the principal met with the pupil and her parents to open a dialogue (ECtHR, 2009g). However, no solution to the issue was reached. On 22 November the committee made the decision to expel the pupil, a decision that was then upheld by the rector of the academy in Nancy (ECtHR, 2009g). Like in the other cases, the pupil’s parents unsuccessfully appealed this decision in the French national courts. Finally, they lodged an appeal at the Conseil d’Etat, but like with the other cases, in December 2007, the Conseil d’Etat dismissed their appeal (ECtHR, 2009g).

All the girls were expelled for not complying with Article L. 141-5-1 of the Education Code (ECtHR, 2009a). Between March and September 2008, the girls lodged applications with the European Court of Human Rights. The Court rejected their applications as ill-founded and found expulsion to be justified and proportionate to the aim as the pupils could have continued their education by correspondence course (ECtHR, 2009a).

All these cases shed light on the depth and enforcement of the regulations of religious symbols in schools in France. As regards the depth of regulations, it can be concluded that penalties have been severe since infringements of the regulations have resulted in numerous student expulsions. Schools have not shown flexibility in how they have dealt with students and have not made attempts to make reasonable accommodations or to provide alternative options for students, in the way that some schools in England did.

Moreover, the discussion above has shown that individual schools took the initiative in regulating religious symbols even before any laws were enacted that made this compulsory from 2004 onwards, and in doing this they went against the advisory opinion that the Conseil d'État issued in 1989 arguing that the wearing of headscarves was not incompatible with the secular nature of schools. As such, the depth of the regulations in France as they pertain to pupils in schools was large from the late 1980s onwards. The above coverage has also shown that the enforcement of the regulations in schools has been strict. In the period before 2004, schools enforced their internal policies with little compromise, and in the period after 2004, the new national law was enforced rigorously, and the various courts upheld the decisions of schools.

As explained above, the scope of regulations increased significantly in 2010, with the introduction of the new law that prohibited people from concealing their faces in public spaces. This not only affected people displaying religious symbols or wearing religious dress in open public spaces – as discussed below – but it also applied to institutional public spaces. As such then, from 2010 onwards, it was not just school pupils who were subject to regulations, but other people who used public institutional services too.

The 2010 law included details of the punishment for breaking the regulations. Specifically, Section 3 of the law stated that ‘any breach of the prohibition of face concealment in public places is punishable by a fine, at the rate applying to second-class petty offences (150 euros maximum)’. In addition to the fine, or instead of it, the community courts imposing the penalties could also demand that a person undertake a citizenship course (ECtHR, 2014: 13).

The Ahmas and Naitali case

A prominent case of the 2010 law being broken in an institutional public space took place in May 2011 and involved 32-year-old Hind Ahmas and 36-year-old Najate Naitali. The women, both wearing full-face veils, had brought a birthday cake to the mayor of the town of Meaux. The mayor in question was Jean-François Copé, who was also the leader of President Sarkozy’s ruling right-wing UMP party, and an architect of the 2010 law (Chrisafis, 2011). The cake was a symbolic and ironic one, made of almonds, intended as a play on the word ‘“almond” in French – amande, which sounds the same as the word “fine” – amende’ (Chrisafis, 2011). The women were delivering the cake in protest against the 2010 law, which they argued discriminated against them. Ahmas described the law as violating her ‘individual freedom, my freedom of thought, of religious expression and practice’ (Spiegel, 2011), and the two women explained that ‘they wanted to expose the absurdity of a law that discriminated against Muslims and made a mockery of the justice system’ (Chrisafis, 2011). The women never entered Meaux town hall to deliver the cake and were instead

arrested outside the building for breaking the 2010 law by wearing their full-face veils in a public space.

By the time the two women received their punishments, more than 90 other women had been stopped by police for wearing full-face veils in public (Chrisafis, 2011). However, the vast majority of these women had accepted verbal warnings, while others had agreed to attend citizenship classes (Lichfield, 2011) and one had paid an on-the-spot fine (Mevel, 2011). None had appeared before a court of law, and Ahmas explained that she and Naitali had deliberately sought conviction in order to challenge the law at the ECtHR (Lichfield, 2011). At the court in Meaux, in September 2011, the two women were handed down fines. Ahmas received a fine of 120 euros, while Naitali was fined 80 euros in absentia. Naitali had been denied entry to the court because she refused to remove her niqab (Spiegel, 2011). Speaking after the court hearing, Ahmas said to reporters: ‘Finally, we’ll be able to launch the necessary appeals to bring this before the European Court and obtain the cancellation of this law, which is in any case an illegal law’ (Channel 4, 2011). However, there is no record of her filing a complaint with the ECtHR.

This whole section of the chapter has shown that the depth of the regulations pertaining to the display of religious symbols in institutional public spaces in France is large, and that the penalties for breaching the regulations have been strictly enforced. This is particularly so for civil servants, who have faced severe sanctions for infringing the regulations that prohibit the display of religious symbols in the workplace. For users of public services, the depth has varied. School pupils have faced strict penalties for contravening rules and laws, and where they have done so, they have most often ended up being expelled. For other users of public

services, the story is different in that there were no sanctions before 2010 for the simple reason that until then there were no regulations governing the display of religious symbols or the wearing of religious clothing by members of the public in public institutions. Yet this changed with the introduction of the 2010 law, meaning that at this point the depth of regulations increased. The regulations and the sanctions were specifically targeted though: because the new law was all based on prohibiting people from concealing their faces, it had a specific effect on Muslim women who wear the full-face veil; those displaying other religious symbols or wearing other religious dress were unaffected.

The regulation of religious symbols in open public spaces

As mentioned at the outset of this chapter, in France, regulations pertaining to the display of religious symbols apply not only to institutional public spaces but also to open public spaces. It is therefore important to examine the scope of these regulations in open spaces, as well as their depth and enforcement, and how things have changed over time.

The scope of regulations in open spaces

Prior to 2010 there were no national policies that regulated the wearing of religious symbols in open public spaces. However, this changed with the introduction of the law of 2010 (loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public),

which came into effect in April 2011. As explained above, this law banned the wearing of any clothing that hides a person's face and makes the identification of that person not possible (Légifrance, 2011). This includes garments such as balaclavas and masks, as well as full-face veils such as the burqa or the niqab (Légifrance, 2011). A few exceptions do exist including clothing that covers the face that is worn for health reasons, for professional reasons, when playing sports, when celebrating feasts, or when taking part in artistic or traditional events (Légifrance, 2010). The law applies not only in 'places assigned to a public service' such as town halls and other administrative institutional public spaces as discussed above, but also to 'places open to the public' such as on streets and roads, pavements and promenades, parks and public gardens, and beaches. It also applies on public transport and in bus and train stations and airports, and in shops and banks, cafés, restaurants, cinemas and theatres (Légifrance, 2011).

The long list of places where the 2010 law applies suggests that the scope of the regulations is wide. At the same time, however, the regulations do not apply to all religious symbols or dress. Instead, because the focus of the law is on covering the face, the law only prohibits certain religious symbols, namely ones worn by Muslim women. In this sense then, the scope of these regulations is both wide when it comes to the number of places where the regulations apply, and still comparatively narrow when it comes to the number of religious symbols that are regulated against.

As Nanwani argues (2011: 1431), on the face of it, the October 2010 law 'refrains from mentioning any specific religion or community, and its main concerns are the promotion of gender equality and women's rights, and the protection of national security'. Indeed,

proponents of the law emphasised that it was a 'symbolic defense of French values such as women's rights and secularism' (Souchard, 2010). However, as Nanwani (2011: 1432) continues, it was 'common knowledge' that the law was aimed specifically at banning full-face veils (burqas and niqabs), with the objective of removing them from open public spaces in France even though only about 2,000 women were estimated to wear the full-face veil in the country. As Gunn puts it (2004: 487-8), 'legislators…carefully draft[ed] a statute so that it appears to be neutral, but in fact it unfairly targets a particular religious group'. Even President Sarkozy was unable to keep up the pretence that it was a neutral law as when he was calling for Parliament to pass the law, he referred to it as a 'burqa ban' (BBC, 2010i).

The constitutionality of the 2010 law was subsequently challenged, including by a 24-year-old French veil-wearing woman of Pakistani origin who filed a complaint against France at the ECtHR on the very first day the 2010 law came into force (Willsher, 2014). Her argument to the Court was that the ban is 'inhumane and degrading, against the right of respect for family and private life, freedom of thought, conscience and religion, freedom of speech and discriminatory' (Willsher, 2014). Her case was unsuccessful, however. The French government asked the ECtHR to throw it out, claiming that the law was not aimed at full-face veils but rather at any face covering in a public space, and the ECtHR judges ultimately ruled in favour of France, stating that 'the preservation of a certain idea of "living together" was the "legitimate aim" of the French authorities' (Willsher, 2014).

The display of religious symbols in open public spaces in France took a new turn in summer 2016, when mayors of over 30 French towns decided to ban the wearing of burkinis on public beaches, and sparked the so-called 'burkini affair'. Burkinis are swimwear worn by

Muslim women that cover the entire body and head. The mayors of these towns introduced the ban in the wake of the Nice terrorist attacks, asserting that burkinis were ‘unhygienic, a uniform of Islamic extremism, and a symbol of women’s oppression’ (Evolvi, 2019: 469). For instance, the centre-right mayor of Cannes – the first town to introduce the measures (Foster, 2016) – argued that the ban was to ‘prohibit “beachwear ostentatiously showing a religious affiliation while France and places of religious significance are the target or terror attacks”’ (Cockburn, 2016a). The ban in Cannes stated that “‘access to beaches and for swimming is banned to anyone who does not have (swim wear) which respects good customs and secularism’” (Cockburn, 2016a), and only clothing that ‘“is respectful to morality and secular principles, and in compliance with hygiene and safety rules” can be worn on the beach’ (Agerholm, 2016). Failure to conform to this law was to be met with a €38 fine and a request to leave the beach.

The introduction of these bans by individual municipalities sparked considerable uproar from anti-racism groups and human rights organisations, and the measures were also attacked by France’s Socialist Party (ABC News, 2016a). A number of women, supported by the Collective Against Islamophobia in France quickly challenged the Cannes decision in court (ABC News, 2016b), but the Nice Administrative Court rejected their case, with the judge ruling that ‘the wearing of distinctive clothing, other than that usually worn for swimming, can indeed only be interpreted in this context as a straightforward symbol of religiosity’ (Agerholm, 2016).

This situation did not last for long, however, as the Collective Against Islamophobia in France along with the Human Rights League challenged the decision of the Nice court by

appealing to the Conseil d'Etat to overturn the ban in the town of Villeneuve-Loubet, near Nice. On 26 August 2016, the Conseil d'Etat ruled that the burkini ban 'seriously, and clearly illegally, breached the fundamental freedoms to come and go, the freedom of belief and individual freedom' (Senna, 2016).

The Conseil d'Etat's ruling only concerned the ban in Villeneuve-Loubet, but it was expected that the binding decision would set a legal precedent for other towns that had introduced simar bans (Senna, 2016). However, on hearing the outcome, several mayors in other towns, including Cannes, remained defiant and said they would not lift the ban and would continue to fine women wearing burkinis (Foster, 2016). Mayors of other towns did agree to lift the ban, including the Socialist mayor of Oye-Plages, near Calais, and the centrist mayor of Eze, on the French Riviera (Foster, 2016).

Bans have thus remained in place in certain municipalities since 2016 despite the Conseil d'Etat's ruling, and to date no national law exists on the wearing of burkinis in open public places. The situation regarding the wearing of burkinis is therefore messy, and the scope of regulations is uneven. Many have called for this state of affairs to end. Not only are there strong feelings that these bans should be ended, but even in towns that have a ban on burkinis, there are demands for clarification from the French state. For instance, in the wake of a series of protests by Muslim women at swimming pools, the mayor of Grenoble, called on the state to take a more active role and to set clear rules (Rosman, 2019) and then later wrote to the Prime Minster to ask 'the government to decide at the national level whether or not to ban burkinis' (Euronews, 2021).

All in all, the scope of regulations pertaining to the display of religious symbols or the wearing of religious clothing in open public spaces in France is today relatively wide, at least in the context of Western democracies. And it has increased in the period under investigation in this thesis for the simple reason that there were no regulations governing the display of religious symbols in open public spaces prior to 2010. The national law of 2010 changed this, and the local laws introduced by a number of towns in 2016 around the wearing of burkinis extended this further, if unevenly. However, this increase in scope has effectively only been directed at two religious garments – the full-face veil and the burkini – and has thus only affected Muslim women. Therefore, though it is wide, the scope is rather uneven.

The depth and enforcement of regulations in open spaces

Since there were no regulations on displaying religious symbols or wearing religious dress in the open public space before 2010, there are no sanctions or penalties to discuss in this period. However, the new law of 2010 that introduced regulations in open spaces also established penalties for breaking these regulations. As explained above, Section 3 of the law specified that 'any breach of the prohibition of face concealment in public places is punishable by a fine, at the rate applying to second-class petty offences (150 euros maximum)'. In addition to the fine, or instead of it, the community courts imposing the penalties could also demand that a person undertake a citizenship course (ECtHR, 2014: 13). The law also included a further sanction for instances in which an individual is forced by

another person to cover his or her face. In such a situation the fine to be imposed is of 30,000 euros (ECtHR, 2014: 13).

As for burkinis, as explained above, local-level laws stipulated that women caught wearing these garments would be issued with an on-the-spot fine of €38 and would be asked to leave the beach or swimming pool (Agerholm, 2016).

These penalties can be described as rather strict, and so the depth of the regulations on the display of religious symbols in open spaces in France in the post-2010 period can be described as relatively large. The fines set out by the 2010 law are not negligible, and undertaking a citizenship course is relatively demanding. The sanctions for the wearing of burkinis also took on a particularly punitive character. The fines are not large in financial terms, but the fact that they were to be issued on the spot by the police, and in a public and often crowded space, brought attention, embarrassment, and controversy.

Enforcement of the penalties has also been strict. When the regulations have been broken, penalties have been imposed (mainly in the form of fines) and these have been firmly enforced. In the period from 2011 to 2016, there were 1,623 instances in which 1,546 punishments were given out to people contravening the regulations of the 2010 law in open public spaces, and several of the fines were handed out to repeat offenders (Cigainero, 2016). Similarly, although precise figures have not been reported, as discussed below, it is clear that many women have been fined for wearing burkinis or other religious attire on French beaches or at swimming pools (Boutlelis, 2016; Chrisafis, 2016; Cockburn, 2016b).

As in other sections of this chapter, the next few paragraphs detail a number of cases that illustrate how the relevant laws have been enforced, and that shed light on the ways in which individuals have attempted to appeal against the sanctions imposed on them. The cases below focus on some of the first cases that emerged following the enactment of the 2010 law, and include some in which individuals later lodged applications to higher courts such as the European Court of Human Rights and the UN Human Rights Committee.

A first case concerns Hind Ahmas, the very same woman who was involved in the almond birthday cake affair at the Meaux townhall in May 2011, as discussed above. A month prior to the events involving the cake, and on the very first day on which full-face veils were outlawed in open public spaces in France (11 April 2011), Ahmas was stopped by police outside the Elysée presidential palace in central Paris for wearing a niqab. She was asked by the police to uncover her face, but refused, and was then promptly arrested (France 24, 2011).

In the following December Ahmas's case went to court in Meaux. She never appeared in front of the judge, however, as she was denied entry to the court for refusing to remove her veil. She was therefore sentenced in absentia. She was sentenced to a 15-day 'citizenship course' and fined 150 euros, and in receiving these punishments, she became the first woman in France to be handed a sentence for defying the 2010 law. However, Ahmas refused to accept the legitimacy of the court, refused to pay the fine, and refused to undertake the citizenship course (Khan, 2011). As a result, she faced a possible two-year prison sentence and fine of £27,000 (MuslimMatters, 2011) but declared that she intended to take her case to the ECtHR (Khan, 2011). There is no record of her imprisonment,

however. After the initial court case of 12 December 2011 at the Community Court, Ahmas appealed to the Court of Cassation. The Court of Cassation found that 'whilst the Community Court was wrong to disregard the religious reasons for the impugned demonstration, the judgment should not be overruled' because the law prohibiting face coverings in public places 'seeks to protect public order and safety by requiring everyone who enters a public place to show their face' (ECtHR, 2014: 16).

Another woman who was stopped in the street while wearing a full-face veil was Sonia Yaker. She was stopped for an identity check in Nantes on 6 October 2011 and refused to remove her veil. She was then prosecuted and convicted for concealing her face in an open public space. She turned up to her court hearing on 21 November 2011 but was denied entry to the building as she was again wearing her full-face veil, and again, she refused to remove it. She was thus sentenced in absentia and was ordered to pay a fine of 140 euros. Her refusal to remove her full-face veil on this occasion led to her receiving a second sentence, which was handed down on 26 March 2012 by the same judge, who fined her 150 euros. She again refused to attend the hearing (UNHRC, 2018b). After losing her appeals in French national courts, Yaker lodged applications at the ECtHR but her application was deemed inadmissible on the grounds that she had not exhausted all domestic remedies (UNHRC, 2018b). In 2016 Yaker then took her case to the UN Human Rights Committee. This Committee found in her favour, ruling that the 2010 law had violated articles 18 and 26 of the International Covenant on Civil and Political Rights, namely the right to freedom of thought, conscience and religion, and the right to equality before the law (Berry, 2019).

A third woman who was stopped and fined on the street for wearing a full-face veil was Miriana Hebbadj. Like Yaker, she was stopped for an identity check on the street in Nantes, this time on 21 November 2011 (UNHRC, 2018a: 2). In March 2012 she was prosecuted and convicted in the Nantes community court, and ordered to pay a fine of 150 euros, the maximum penalty for wearing a full-face veil in public. Again, like Yaker, Hebbadj did not attend her hearing (UNHRC, 2018a: 2-6).

Her case unfolded in exactly the same way as Yaker's. That is, Hebbadj filed applications to the national courts but was unsuccessful. She then submitted an application to the ECtHR in 2013, the same day that Yaker submitted hers, and with the same legal team. The outcome was the same: it was deemed inadmissible on the basis that she had not exhausted all domestic remedies (UNHRC, 2018a). In 2016, Hebbadj then lodged an application to the UN Human Rights Committee. Like in Yaker's case, this Committee found that Hebbadj's rights to freedom of thought, conscience and religion, and to equality before the law had been violated (Center for Civil and Political Rights, 2018).

The so-called 'burkini bans' have also been strongly enforced in those towns that introduced them. On three separate occasions in the middle of August 2016, women who were swimming off the beach in Cannes wearing swimwear that only left their face, hands and feet uncovered were stopped by police and fined 38 euros, and six other women were warned about their attire (Boutlelis, 2016). This was the first time that fines were issued for the wearing of burkinis. Some days later fines were issued to other women, and this time not for the wearing of burkinis but for wearing headscarves on the beach. Indeed, it is worth remembering that despite these bans being commonly referred to as 'burkini' ones, as

explained above, the laws were actually framed in vaguer terms, stating that beachgoers and swimmers should wear garments that respect ‘good customs and secularism’ (Cockburn, 2016b), and are ‘respectful to morality and secular principles’ (Agerholm, 2016). It is in this context that on 23 August 2016 a woman sitting on the beach in Cannes with her family was approached by three police officers and told to tie her headscarf round her head like a bandana or leave the beach. She was then fined, and the note on her ticket stated that ‘her clothing did not confirm with “good manners” or French secularism (Chrisafis, 2016). Similarly, two days later a woman on a beach in Nice, wearing leggings, a long-sleeved tunic and a headscarf was approached by four armed police officers. After a conversation with the officers, the woman was seen removing her long-sleeved top. She was then issued with a fine and warned about the new dress code on the beach (Cockburn, 2016b). In all these instances, local politicians underlined that they supported the actions of the police in enforcing the bans (Chrisafis, 2016).

All these cases illustrate that the sanctions for breaching the regulations on the wearing of religious clothing and the displaying of religious symbols in open public spaces in France have been strictly enforced since these regulations were introduced. Where women have not complied with the regulations and have worn face veils in open public spaces, or have worn garments on beaches or swimming pools deemed to be ‘disrespectful’ to ‘morality and secular principles’, they have been stopped by the police, prosecuted and convicted.

Conclusion

This chapter has explored the regulations that govern the display of religious symbols or the wearing of religious clothing in public spaces in France. It has considered the regulations in both institutional public spaces, and in open public spaces, and it has explored how the regulations vary according to who is displaying the symbols or wearing the clothing, where this is happening, and what type of symbol or clothing is being displayed or worn.

The discussions above have shown that the scope of regulations relating to the display of religious symbols in the public space in France is wide. It is particularly wide in public institutional spaces, and especially so for those who work there. Indeed, civil servants working in all public institutions may not display any religious affiliation whatsoever. For users of these public institutions the scope is less wide, but it is still quite considerable. Pupils in public schools have been forbidden from displaying their religious affiliation for some time. Bans on the wearing of Islamic headscarves were introduced in individual schools from the late 1980s onwards, and a national ban on the display of all and any symbols or clothing deemed to 'conspicuously' manifest a religion came into force in 2004. From 2010, users of other public institutional spaces also had to contend with a new law that forbade people from concealing their face in any public setting.

This 2010 law also explains why the scope of regulations concerning the display of religious symbols in open public spaces is relatively wide, at least compared to other Western democracies. This relatively large scope in open public spaces is a result of just how many spaces are covered by the 2010 law, however, rather than the number of symbols to which it applies. Put differently, the regulations apply in a great number of places to the Islamic

full-face veil, while other symbols remain unaffected in open public spaces. This situation has also been exacerbated by the introduction of local level ‘burkini bans’ from 2016.

All this has meant that there has been an increase in the scope of the regulations in the time period under investigation in this thesis. The first increase was witnessed in 2004 with the law pertaining to the display of religious symbols in schools, and the second increase came about with the introduction of the 2010 law.

The depth of the regulations can also be described as large. This is particularly the case for civil servants working in public institutions and for pupils in public (i.e. state) schools. Civil servants have faced dismissal for breaching the regulations, while pupils have been expelled from school for doing so. For others, be they other users of public institutions, or people breaking the rules in open public spaces, the penalties have been less severe, and have generally involved fines.

The depth of the regulations has changed over time, but only because the scope of the regulations has increased. In other words, the penalties for infringing the rules have increased, but only because these penalties now apply in more spaces. The sanctions themselves have not become tougher – i.e., fines for the same offence have not increased over time, and harsher punishments have not replaced more lenient ones.

The regulations have been strictly enforced at all stages. Public institutions have punished civil servants who have violated the rules, schools have disciplined pupils, and the police has issued fines to others who have contravened the laws. Furthermore, the French courts have

upheld original decisions in all instances, and people falling foul of the regulations and the law have found little mileage in taking their cases to the European Court of Human Rights.

The picture regarding the regulations of religious symbols in public spaces in France is therefore quite stark, and also quite different to that in England. The question that then arises is: how and why is this situation the way it is? It is this topic that the next chapter explores.

Chapter 7: Explaining the Nature of Regulations of Religious Symbols in France

Like Chapter 5 did for the English case, this chapter will explain why the regulations pertaining to religious symbols in the public space in France have come about in the period from 1989 to 2017. The previous chapter has mapped the scope, depth and enforcement of these regulations, and now the task is to explore the reasons for *why* the regulations are the way they are.

To do this, the chapter will again draw on the second analytical framework presented in Chapter 3. Using the concepts of expanders and containers, it will explore the actors involved in the debates around the presence of religious symbols in the public space, and will examine how some of these actors came to define religious symbols as a problem, how they framed their arguments and how they mobilized their ideas, and how they ultimately tried to place these issues on the policy agenda. Like Chapter 5, this chapter will also discuss the role of the media in reporting on and framing these issues, and the impact of the debates on public opinion.

Just like Chapter 5 on England, the analysis in this chapter will be divided into three time periods, each defined by critical junctures. These three periods are different to the English ones however, as they are specific to the French case. The first period in this chapter covers the years up until 1989 when the first controversial 'Islamic headscarf affair' erupted as a result of a number of students being suspended from school for refusing to remove their

veils. The second period then runs from 1989 to 2004 and ends with the introduction of nationwide laws banning the wearing of conspicuous religious symbols in schools. The third period then starts in 2005 and sees the introduction of further regulations both in schools, and in other areas of the public space. This third period culminates in the controversial 'burqa ban' in public spaces and in attempts to ban burkinis on public beaches.

The chapter is divided into three sections to reflect these three time periods. Each section will begin by examining the context of the debate and by discussing what themes were most prominent in the debates in the relevant time period. Then, the sections will focus on the actors involved in the debates, concentrating first on those who perceived some religious symbols to be a problem – i.e. on the expanders – and then on those who opposed the arguments for further regulations – i.e. the containers. The sections will explore the arguments and ideas that each group mobilized, the ways in which they framed their points, and ultimately how they sought to advance their cause. These actors include politicians, public servants, state institutions, intellectuals and public figures, and civil society organisations. In fact, as will be seen, the range of actors involved in the debates is perhaps greater in France than it was in England. Furthermore, as will also become evident, the debates in France have been much more one-sided than in England, with expanders dominating containers to a large degree. Each section will then close by considering how the debates over religious symbols were portrayed in the media in each time period, and what the overall impact of the debates was on public opinion.

Before proceeding, it is useful to remember that policies pertaining to religious freedom in France very much reflect the country's unique history, and in particular its separation of

church and state and the importance of the concept of laïcité. As discussed in Chapter 2, the separation of church and state was meant to secure the loyalty of the citizens to the Republic and to the nation, and this meant relegating religion to the private sphere (Scott, 2007: 91). As for laïcité, it is a central value of the Republic, and is enshrined in Article 1 of the French Constitution. In this sense then, historical and cultural factors play an important role in maintaining the principle of neutrality in public spaces, and the principle of laïcité very much contributes to a culture in which banning religious symbols is possible (Nanwani, 2011: 1443).

The period before 1989

As was explained in Chapter 6, before 1989 only civil servants were subject to regulations on the display of religious symbols in public spaces. The regulations are based on the law of 13 July 1983 on the rights and duties of civil servants, and were further reaffirmed by several *circulaires* including the 3 May 2000 Avis du Conseil d'Etat which states that the principle of laïcité forbids civil servants from showing their religious beliefs when at work, and that the display of religious symbols would be a violation of their duties (Légifrance, 2000).

This law pertains to all religious symbols and clothing, and applies to all civil servants in all public venues. Its very nature therefore strongly reflects the republican, secular ideals of the French state. That is, it is universal, seemingly 'religion blind' in that it applies to all religions, and concerns the very people who embody the French state, namely civil servants. And

perhaps for these reasons, its introduction did not give rise to any significant national debate. Rather, it was largely accepted without any great public objection to it.

The lack of any public outcry over this law of 1983 is also explained by the fact that, as Hennette-Vauchez (2017: 286) explains, 'for most of the twentieth century, *laïcité* as a legal principle had essentially been understood to generate obligations for public authorities only —and, conversely, rights for private individuals'. She continues by emphasizing that 'this understanding translated into legal rules requiring public authorities to stick to strict religious neutrality, whereas private individuals were guaranteed freedom of conscience as well as freedom of religion'. This changed in the 2000s however, when laïcité 'increasingly [became] interpreted as generating obligations of religious neutrality for *individuals*' and when it began to increasingly serve as a legal reason for curtailing religious freedom (Hennette-Vauchez, 2017: 287).

In spite of this twentieth century understanding of laïcité as including freedom of religion for individuals, and in spite of the 1905 law that established state secularism in France supposedly including the equal respect of all faiths and beliefs (Weil, 2009: 2704), there has long been significant distrust of and hostility towards religious minorities in France. While anti-Semitism declined in the closing decades of the twentieth century (Mayer, 2004), Islamophobia has remained prevalent. Scott (2007: 45) maintains that historically, French attitudes towards Muslims have been racist, with 'Muslims/Arabs … marked as a lesser people, incapable of improvement and so impossible to assimilate to French ways of life'. She goes on to explain that, at different times, different traits have been used to highlight this inferiority, including religious practices or items of clothing such as the fez for men and

the headscarf for women. She points to historical studies that stressed the 'undercivilized nature of the Arabs' in French colonies and their hidden 'mores, customs, and ideas', and that described Algerians as having 'limited intelligence', and she argues that these beliefs were reflected in how the state sought to treat Muslims, for instance in the 1919 law that extended naturalization only to those Arabs who were willing to give up following Islamic law (Scott, 2007: 49).

Islamophobia in France increased further in the 1960s, in the wake of the Algerian War and the process of decolonization which led to a surge in immigration from North and West Africa (Hollifield, 2014: 183). This influx was met by a nationalist response which stressed the need for new arrivals to assimilate (Brubaker, 1992: 143) and which cast doubts on Muslim immigrants' ability to do so, at least compared to earlier Catholic and Jewish immigrants. Indeed, parties from across the political spectrum argued that there was an incompatibility between Islam and western political and legal culture, and that this wave of immigration posed particular difficulties for assimilation (Brubaker, 1992: 149).

Later, the Iranian Revolution of 1978-79 also significantly affected the perception of the Muslim immigrant population in France as it strengthened the conversation around Islam being 'a dangerous presence on French soil' (Scott, 2007: 69). As such then, by the early 1980s, there was an atmosphere of crisis in French politics over immigration, and the justification for curbing immigration was no longer economic, but instead centred on integration and national identity (Hollifield, 2014: 171). The crisis was also not confined to the fringes of French politics. Rather, it polarized the political system, with the mainstream right and the far right appealing to people's xenophobic fears, and the left attempting 'to

depoliticize the whole issue and defuse the national identity crisis' by trying to limit immigration and better integrate immigrants already in the country (Hollifield, 2014: 170).

For instance, in October 1985, France's Figaro Magazine – a conservative publication with a wide circulation – published a special issue with a veiled Marianne (the symbol of the Republic) on the cover which asked the question 'Will We Still Be French in Thirty Years?' (Scott, 2007: 71). The provocative article cited rising immigration, declining birth rates among the native population, and the spread of Islamic religious institutions as reasons to explain why French national identity was experiencing a crisis (Laxer, 2019: 3). Those on the far right, including the leader of the Front National, Jean-Marie Le Pen, took things further and argued that 'the French nation was being destroyed by an influx of unassimilable African immigrants' and claimed that 'Muslims could never be good citizens of the republic because of their refusal to accept the secular principle of laïcité and to keep their private, religious views separate from their public life' (Hollifield, 2014: 183-84). These arguments resonated, and were quickly adopted by the mainstream right. Indeed in 1988, the new Minister of the Interior, Charles Pasqua explicitly reassured supporters of both his party (the mainstream RPR) and those of the Front National that he shared their concerns about the impact of immigration on French national identity.

This whole context clearly shaped how Muslim religious symbols were perceived, and this underlines that hostility towards such symbols and towards the veil in particular in France is not a new phenomenon stemming from 9/11 or from more recent Islamic terrorism. Rather it has a longer history. As Scott (2007: 61) explains, it was during the Algerian war that the headscarf acquired its political significance. While some – including President De Gaulle –

argued that Algeria would never be liberated from Muslim traditionalism and that France should give up on its colony, others insisted that Algeria should remain French and should be liberated and modernised, and in this quest, the veil attracted particular attention as 'getting rid of the veil was a sign of progress' (Scott, 2007: 62). Thus, Scott argues that for the French, after the Algerian war, the veil had multiple meanings. It represented Algerian backwardness, but it was also a sign of frustration and humiliation of France. 'It was the piece of cloth that represented the antithesis of the *tricolore*, and the failure of the civilizing mission' (Scott, 2007: 66).

Laxer (2019) concurs with Scott about the symbolism of the veil in the aftermath of the Algerian war. She argues that 'the 1962 Algerian war for independence played a key role in rendering the veil a symbol of the "stranger" in France' (Laxer, 2019: 3). Moreover, she emphasizes that the colonial dimension is crucial in understanding the debate on religious symbols in France. She claims that colonial systems of meaning and power relations 'inform the racialized and gendered dimensions of these debates' in which 'Western' feminists subjugate the 'Third World Women' to delegitimize practices which they deem against women's emancipation such as the full-face veil (Laxer, 2019: 9). In turn, this subjugation of women has allowed the construction of a false universalizing narrative in which Western women are superior, liberated and have greater agency over their lives. Therefore, '"unveiling" the female colonial subject is essential to this universalizing project and to the national boundary-drawing projects that it upholds' (Laxer, 2019: 9). Campaigns to limit the wearing of religious symbols in public spaces are 'important sites in which state and civil society actors delineate the boundaries of national belonging, particularly in postcolonial settings like France' (Laxer, 2019: 9).

As will be seen below, debates about limiting the wearing of religious symbols in the period after 1989 would increasingly draw on these themes of the subjugation of women, and of the superiority of western ideals. Already by the 1980s, the veil had become ‘an impenetrable membrane, the final barrier to political subjugation’ (Scott, 2007: 67); it ‘connoted envelopment or incorporation in a double sense: women were said to be coerced into wearing it by domineering men, and it was an ominous sign of a threatened takeover of France by Islamists’ (Scott, 2007: 71). This context very much set the scene for the debates on the place of (certain) religious symbols in the French public space which were to come in the period from 1989 onwards.

From 1989 to 2004

As Chapter 6 explained, the debate surrounding the regulation of religious symbols flared up in 1989 in the wake of the first so-called ‘headscarf affair’. This centred around the suspension of three teenage girls from a school in Creil, for wearing a headscarf to school. Although this was not the first instance of tensions arising from religious issues in schools, up until this time the wearing of religious dress and the display of religious symbols in schools had been generally tolerated and/or managed in individual schools. But the Creil case marked a change, and as Beriss (1990: 1) notes, it caused an ‘explosion of controversy’ and led to heated debates among political actors, the media and beyond. By mid-October

1989, the headscarf had made national front-page news and had become the subject of debate in the National Assembly.

On one level the debate of course focused on schools, and on the role of laïcité and republican values in schools. Since the Jules Ferry laws of the 1880s, French schools have been firmly based on secular principles (Gereluk, 2008), and on the idea that they are agents of assimilation. In this vision, the role of the school system is to instil a common republican political identity in children from different backgrounds, and the educational process should produce a shared language, culture, and ideology. As such, schools are seen as instruments for nation-building (Scott, 2007: 99), and as the cradle of laïcité where republican values are nurtured and inculcated (Scott, 2007: 22).

Proponents of this vision therefore argued that the headscarf had no place in schools because it was incompatible with France's secular principles. By contrast, those on the other side of the debate supported the Creil girls' right to go to school in spite of them wearing the headscarf, and emphasised that the doctrine of laïcité as well as the 1958 Constitution required respect for the pupils' freedom of conscience and their right to express their beliefs (Gunn, 2004: 455). Despite these arguments, however, it soon became very noticeable that the debates over the headscarf affair were becoming unbalanced, with the advocates of the secularist position clearly winning the day.

In addition, it became quickly evident that the disputes over the Creil case and subsequent ones were giving way to debates over wider issues including the place of Islam in France,

women's rights, the integration of immigrants, ethnic diversity, citizenship, and the whole question of French national identity (Beriss, 1990: 1; Feldblum, 1999: 256-86). And in these debates, the headscarf became a symbol of all that was wrong. As Bowen (2007: 4) argues, 'these bits of cloth came to stand for certain fears and threats' and 'public figures seemed to blame the headscarves for a surprising range of France's problems, including anti-Semitism, Islamic fundamentalism, growing ghettoization in the poor suburbs, and the breakdown of order in the classroom' (2007: 1). The media also added to 'the extraordinary symbolic weight given to a scarf worn on the head by a small number of schoolgirls' by playing 'to popular fears' of what the veil supposedly represented, including fundamentalism and communalism – a very French concept which refers to prioritizing group identity over national identity (Bowen, 2007: 7).

The 1989 headscarf affair therefore became a key moment in the politicization of ethnic identity in France (Feldblum, 1999: 256-86). It also produced momentum in that each subsequent controversy 'reinforced a neo-republican agenda, which sees a strong form of secularism as central to French national identity' (Peace and Chabal, 2019). Moreover, all this must be seen against the backdrop of the 1989 celebrations of the bicentennial of the French Revolution, which extoled the Republic and insisted that universalism was key to national unity. In this context tolerating headscarves was presented as something that would lead France down the disastrous American path of multiculturalism (Scott, 2007: 23).

In the years that followed 1989, the debate continued to widen as a result of political factors. After the right-wing government assumed office in 1993, the narrative moved from

centring on the defence of secularism in schools to focusing on the place of Muslims in society. Citing one media source, Jones (2009: 54) notes that ‘this electoral victory marked the point at which “the official attitude toward Muslims [...] changed”’. She explains that after this, ‘illegal immigrants increasingly became targeted in police “round-ups” and Algerians and other North Africans suspected of being or sympathising with fundamentalist militants were detained, sometimes without charge’.

The next decade saw this trend continue. By 2002, various political actors, intellectuals and journalists had linked the problem of headscarves in schools not simply to defending the principle of secularism, but to three wider problems related to Islam, namely communalism which they argued threatened social integration, Islamism, and sexism (Bowen, 2007: 5). Indeed, as Gunn (2004: 457) explains in reference to the 2002-03 period, there was a deeper unease about Islam in France, particularly about ‘active or organised Islam’ which some saw as representing ‘a concerted effort to subvert republican values’. He notes that ‘the reverberations of the headscarf (*voile*) issue in the media and in the political debate reveals a particularly French sensibility to Islam, which is not expressed in other major European countries with the same intensity’ (Gunn, 2004: 457). Bouteldja (2005) observes that the public debate about conspicuous religious symbols in schools ‘focused exclusively on the Muslim hijab rather than Christian or Jewish items’, and further argues that each new headscarf affair in a school brought hysteria that cannot be explained by secular ideas alone.

The arguments that the various actors made about the ‘dangers’ of headscarves in schools can be further examined by making use of Howard’s (2009) framework. As will be recalled from Chapter 5 on England, Howard suggested that a number of different themes have been

used by expanders wishing to regulate the display of religious symbols in the public space, namely that religious symbols and dress should be banned because (1) they are signs of the threat that Muslims pose to safety and security through their supposed link to terrorism; (2) they are symbols of Muslims' refusal to integrate or assimilate into European society and to adopt Western values; (3) they constitute a barrier to effective communication in public spaces; (4) they infringe woman's rights and are symbols of suppression and submissiveness; and (5) they challenge the constitutional value of secularism and threaten the separation of church and state.

The following section of this chapter will examine how the debates on the regulation of religious symbols in the French public space progressed in the period from 1989 to 2004 by focusing on who the actors were who were calling for regulations, and on what arguments they made, what ideas they mobilized, and how they framed their points. As will become clear, these expanders included politicians from all parties, public servants (particularly school staff), state institutions, intellectuals and public figures, and some civil society organisations. Then, much like the England chapter, the chapter will turn to exploring the counter arguments – that is, it will examine who the containers in the debate were and how these actors responded to the claims of the expanders.

Expanders: actors calling for the regulation of religious symbols

In October 1989, in the wake of the huge debate that followed the suspension of the three girls in Creil, the headteacher of that school wrote to the Minister for National Education, Lionel Jospin, asking him to 'express a clear opinion on a question which has gone national in order to restore calm to the school' (Jones, 2009: 52). Jospin in turn requested a legal opinion from France's highest administrative court, the Conseil d'Etat, on the constitutional legitimacy of wearing religious symbols in schools. While the Conseil d'Etat issued an advisory opinion that the headscarf was not incompatible with secularism in state schools, and while this body may therefore be considered a temporary container in this debate (see below), it nonetheless emphasised that it was the responsibility of individual schools to decide matters relating to dress on a case-by-case basis (Jones, 2009: 52-53).

The Conseil d'Etat decision was unpopular in many circles. Numerous politicians, intellectuals, and journalists argued that it would be necessary to change the law if the Conseil refused to heed public opinion (Gunn, 2004: 456), and maintained that a law on banning headscarves was a necessary response to the dangers facing France (Bowen, 2007: 99). In reflection of this public sentiment, the point about individual school responsibility was quickly seized upon by Jospin, who issued a *circulaire* in December 1989 recommending that school officials should dissuade girls from wearing headscarves when problems arose in schools (Gunn, 2004: 455-56) and reminding school staff that sanctions were available if the obligations of secularism and student participation were not met (Jones, 2009: 54).

The support for sanctions were welcomed by a number of educators, even if they wished for more unilateral regulations. As such, one group of expanders was made up of headteachers

and school staff who failed to be convinced by the Conseil d'Etat's advisory opinion that the wearing of religious symbols in schools was compatible with the secular nature of schools (Westerfield, 2006: 641). And chief among these was Ernest Chenière, the headmaster of the school in Creil, who was also an aspiring politician, later going on to head a right-wing ticket in Creil's local elections and then becoming a centre right RPR MP (Thomas, 2012: 169). He argued that there were educational and practical reasons for demanding that the girls remove their headscarves and for then suspending them. He claimed that part of the problem concerned the way in which the girls were wearing their headscarves and said that 'there was "a provocation in the comportment of these students". They were flaunting a challenge to the school's authority' (Thomas, 2012: 166). Another teacher at the school made a similar point, asking 'without stricter enforcement of a regular attendance policy, how could the school hope to improve the educational performance of its disadvantaged students?' (Thomas, 2012: 166). Yet, Chenière also strongly drew on the principle of laïcité and argued that 'school was the cradle of laïcité, the place where the values of the French republic were nurtured and inculcated' and where 'France has to hold the line against what [he] later termed "the insidious jihad"' (Scott, 2007: 22).

Although Chenière's choice of words was perhaps not widely shared, many school leaders and teachers were similarly displeased with the Conseil d'Etat's ruling, complaining that it left them 'without clear instructions against what they perceived as an offense against the neutrality of public schools' (Maurin and Navarrete, 2019: 6). Moreover, many educators argued that headscarves were a threat to the liberating mission of schools (Abdelgadir and Fouka, 2020: 710). These teachers saw schools as being a place of shared universal values of freedom, equality, and fraternity and, by contrast, saw veiling as something that infringed

pupils' liberty of conscience and that represented a victory for proponents of communitarianism over social mixing (Bowen 2007: 96). In the years that followed, many headteachers bypassed the 1989 ruling, and justified suspending or expelling Muslim girls who refused to remove their headscarves in school by arguing that the headscarf was an 'ostentatious' religious symbol that 'constitute[s] an act of pressure, provocation, proselytism or propaganda' (Henley, 2003a).

This group of expanders – teachers and school leaders – therefore drew most heavily on the argument that religious symbols or religious dress should be banned in the public space because they constitute a serious infringement of the principle of laïcité. In other words, these actors very much invoked Howard's (2009) fifth argument, and framed their position as one that protected the founding values of the republic, and of the place of schools within it. In addition, they also pointed to Howard's second argument, namely that allowing religious symbols or dress in schools would have adverse consequences for the assimilation and integration of minorities.

Numerous political actors from across the spectrum invoked similar arguments in the months and years that followed the Creil case, and also pointed to other reasons for why the display of religious symbols should be restricted in the public space, and in schools in particular. As Thomas (2012: 171) explains, for right-wing politicians, the headscarf presented a danger because 'a common national culture embodied in specific social mores and customs was the necessary basis for national unity, integration, and even social order'. Indeed, in October 1989, the president of the centre-right Union for French Democracy (UDF) group in the National Assembly, Charles Millon, argued that the headscarf affair was a

potential disaster. He called for an emergency debate on the issue, claiming that 'the national community is going to shatter into fragments' and that France was in danger of 'Balkanization' and 'tribalization' (Thomas, 2012: 172). Hervé de Charette, another leading UDF politician, similarly emphasised that social integration required a shared national culture. In the same month, he argued that 'the task of education is to instil recognition of the other, but also to promote the integration of different cultures thanks to a unification of personal conduct' (Thomas, 2012: 173). Alongside these concerns about national unity and integration, others in the party, including the party founder and former President of the Republic, Valéry Giscard d'Estaing, pointed to the principle of laïcité in schools, and argued that headscarves should be forbidden in schools because it had been decided a century before 'that the school stood outside religious debate' (Thomas, 2012: 173).

The other main French right-wing party – the Rally for the Republic (Rassemblement pour la République or RPR) – adopted similar arguments. RPR representatives were consistent in opposing the wearing of headscarves in schools in the name of secularism and the historical role of state schools. Moreover, the party stressed the integration theme. For instance, in November 1989, Jacques Chirac, the party's founder and leader, and former Prime Minister, argued that the role of schools was one of integration '"to bring together children from all horizons"' and RPR politicians very much saw the task as being one that would 'make students look and behave similarly' (Thomas, 2012: 175).

Therefore, for the parties of the mainstream right, the display of religious symbols in the public space, and the wearing of headscarves in particular, were problems because they posed a threat to the secular values of France, to the secular foundations of the school

system, and because they presented a barrier to integration. As Thomas (2012: 175) explains, these positions 'undergirded the positions of members of all parties on the right' and 'implied that citizenship, belonging in the French nation, depended on cultural assimilation. For Muslim children of immigrant families to become bona fide French citizens, they would therefore have to quit wearing headscarves in school'.

The same themes were picked up by the far right, but were framed in a more dramatic and xenophobic fashion. The Front National (FN) president, Jean-Marie Le Pen, portrayed the problem 'as nothing less than the "the implantation of foreign colonies" in France, and thus foreign annexation of French territory' (Thomas, 2012: 171). He argued that, by refusing to conform to French mores, the girls in Creil 'did not recognize or respect France as "the place of" the French' and instead 'claimed it as their own'. For him, 'incomplete assimilation was tantamount to invasion' and he argued that those who did not respect French mores should return to their countries of origin (Thomas, 2012: 171).

The Socialist Party (PS) was divided on the matter of the headscarf in the wake of the Creil case. While the vast majority of politicians favoured its ban in schools, there were broadly two camps within the party in this debate. On the one hand, there were what Thomas (2012) calls the 'militant secularists', perhaps best represented by Jean-Pierre Chevènement, the minister of defence and formerly minister of national education. This group saw headscarves as a threat to national identity, but unlike for parties on the right, for Chevènement this identity was not based on the idea of a French 'people' who commanded 'the respect of immigrant guests' and 'nor did he argue that Muslims were foreigners and must therefore follow French rules if social order and equity were to be

preserved' (Thomas, 2012: 176-7). Rather, for this group and for Chevènement, national identity was based on republican idealism and a shared republican mission of a united national community (Thomas, 2012: 177).

Others within the PS, including Jospin, understood integration differently and adopted a more pragmatic position. For them, social integration and a cohesive national community would not come from shared customs or traditions as the right suggested, or from a pursuit of ideals such as liberty and secularism as the left-wing militant secularists argued, but instead would be derived from equality, both in the educational system and in employment (Thomas, 2012: 178). This group therefore did not champion diversity of minority cultural rights, or adopt a multi-culturalist position, but instead focused on more concrete socio-economic matters in the pursuit of integration (Thomas, 2012: 178).

Actors within the PS therefore drew heavily on Howard's second and fifth themes, namely that headscarves were symbolic of Muslims' refusal to integrate into French society and adopt French values, and that their wearing challenged the secular values upon which the French republic was founded. However, there were considerable differences within the party over how integration was understood and how it should be pursued, and there were therefore also discrepancies over how republican ideals should be upheld.

In addition, a small number of actors within the PS pointed to Howard's fourth theme: that headscarves infringe woman's rights and are symbols of suppression and submissiveness. For example, a leading feminist PS politician, Yvette Roudy, who was an MP and had also been minster for women's rights argued that 'the foulard is the sign of subservience,

whether consensual or imposed, in fundamentalist Muslim society', and she went on to claim that 'to accept wearing the voile is tantamount to saying "yes" to women's inequality in French Muslim society' (Bowen, 2008).

By contrast, the French Communist Party (PCF) chose not to engage in the headscarf debate. In November 1989, André Lajoinie, the president of the Communist group in the National Assembly, said in a radio interview that it was 'ridiculous' that the headscarf affair had ever become a national issue. He blamed Jospin's initial lack of clarity on the status of the headscarf in schools which he said allowed the issue to become politicized, and which then, in his view, led to both fundamentalism and electoral gains for the FN (Thomas, 2012: 175-6).

The decision of the PCF to not engage in the debate in any meaningful way was a reflection that the party 'had nothing to gain and everything to lose by getting involved in the issue' (Thomas, 2012: 176). The PCF relied heavily on votes from working-class voters, both of the 'native' variety and 'immigrant' ones but, as immigration was becoming increasingly politicized, the party was steadily losing support to the FN. For the PCF then, even greater politicization of the immigration issue and of questions of national identity and security was best avoided.

As argued above, by the early 1990s the narrative around the issue of headscarves in schools had changed from focusing mainly on the defence of secularism in schools to questioning the place of Muslims in French society more generally, and this was exacerbated by the arrival of a new right-wing government in 1993. Moreover, at this time,

teachers once again contributed significantly to the debate. After four girls refused to remove their headscarves during physical education classes in a school in Nantua in October 1993 most teachers in the school went on strike. In a statement delivered to the school management, the teachers framed the headscarf as a symbol that was discriminatory towards girls, and as something that was segregationist and that threatened the integration of students into French society (Winter, 2008: 17).

In October 1993, in the immediate wake of the Nantua case, and following a number of headscarf issues in other schools, François Bayrou, the Minister of Education in the right-wing government led by Prime Minister Edouard Balladur, issued a circulaire on 'respect for secularism'. In this, he reminded headteachers of the principles of secularism, which were to unite young French people, and he underlined that the role of school was integration and not division. He wrote that 'from the outset, the Republic has passed on its values through schooling. Freedom and secularism naturally appear among these values. Principals must rank respect for this heritage first among their concerns' (Winter, 2008: 171). In his circulaire, Bayrou also stressed the importance of dialogue with students and parents, and of taking action in cases where students' behaviour constituted 'an act of pressure, provocation, proselytism or propaganda, [or] disturb[ed] order in the establishment or the normal functioning of a public service' (Winter, 2008: 171).

To some extent, this circulaire of 1993 reiterated the 1989 Conseil d'Etat opinion that decisions over dress should be left to individual schools (Winter, 2008: 178). However, Bayrou was soon to adopt a more strident view on the matter. In September of the next year he announced in a magazine interview that he intended to ban headscarves altogether

in state schools (Jones, 2009: 55). Then two weeks later, on 29 September 1994, he issued another circulaire that proclaimed that ‘the wearing by students of discreet signs manifesting their personal commitment to beliefs, notably religious beliefs, is permitted in schools. But ostentatious signs, which constitute in themselves elements of proselytism or discrimination, are forbidden’ (Jones, 2009: 56). He urged schools to change their regulations appropriately, even providing a draft that could be used as a model by headteachers to do so (Jones, 2009: 55).

The hardening of Bayrou's position between 1993 and 1994 is explained to some extent by political context, and by the change in attitude towards immigrants and minorities under the right-wing government that assumed office in March 1993. Of particular influence was the hard-line Minister for the Interior, Charles Pasqua who had introduced a set of immigration laws in 1993 which included tightening the law around citizenship for second generation immigrants, and who had launched a security crackdown in poor, immigrant neighbourhoods in the summer of 1994 (Bowen, 2007: 90). According to Winter (2008: 179), Bayrou was likely influenced by Pasqua on the matter of headscarves in schools. Moreover, by 1994, a number of newly elected right-wing MPs had started lobbying for the restriction of headscarves in schools, one of these being the former Creil school headmaster, Ernest Chenière (Maurin and Navarrete, 2019: 6).

Despite its hardened stance, the new circulaire of 1994 was not overwhelmingly effective. The major teachers’ unions welcomed the directive (Bowen, 2007: 89), and some schools were quick to adopt Bayrou’s recommendations and immediately adopted his suggested wording and incorporated it into their regulations. Yet elsewhere the instructions added to

the confusion of how to deal with headscarves not least because the circulaire was not legally binding (Weil, 2009: 2700). In response, Bayrou set up a ministerial office to mediate between schools and pupils in headscarf cases (Abdelgadir and Fouka, 2020: 709). However, teachers continued to express their frustrations and criticized Bayrou's attempt to solve the headscarf issue, arguing that the circulaire was a 'half-measure [that] doesn't solve anything … it lights the fire but doesn't provide the means to extinguish it' (Winter, 2008: 180). The ineffectiveness of Bayrou's circulaire was confirmed when, in July 1995, the Conseil d'Etat ruled that the circulaire did not have the force of the law and that decisions on how to deal with girls wearing headscarves in schools would be left to school leaders (Freedman, 2004: 16).

As explained above, over the next decade, the debate over headscarves – in general and in schools – evolved, and became increasingly linked with concerns over the place of Islam in France. As Gunn (2004: 457) notes, some saw organised Islam as presenting 'a concerted effort to subvert republican values'. Others related Islam to the growth in communalism and hence to a threat to social cohesion, to security concerns, and to women's rights (Bowen, 2007: 5).

Politicians had already linked Muslims to security concerns in the mid-1990s in the wake of the killings of French citizens during a period of civil and political unrest in Algeria, and following a series of Islamic terrorist bombings in Paris and Lyon in the summer of 1995. Moreover, the media had also linked Muslims, and the wearing of headscarves, to terrorism during these years (see below). However, for Bowen (2007: 98), things really changed in the debate over headscarves when Nicolas Sarkozy, the right-wing Minster for the Interior, gave

a speech in April 2003. While a number of political actors had already been calling for a ban on headscarves in schools prior to this speech – for instance, Jack Lang, the Socialist former Minister of Education proposed a ban in January 2003 (see below), and in February 2003, Prime Minster Jean-Pierre Raffarin had asked MP and National Assembly vice-president François Baroin to draft an unofficial report on the issue – Sarkozy's speech sparked a turning point in the debate, and ultimately paved the way for the 2004 law that introduced a ban on headscarves in schools.

In the run-up to his speech, Sarkozy had been working with Muslim organisations to create a new representative body for Muslims in France and in April 2003 he attended the annual meeting of one of these organisations. He began his speech by praising the organisation for joining the new representation council, and then made a number of points about the need for Muslims to integrate into French society. For instance, he proclaimed that "for Islam to be completely integrated into the Republic, its major representatives should themselves be perfectly integrated into the Republic" and he then talked about the need for equal treatment of all religions (Bowen, 2007: 102). However, he then changed his tone, and spoke about the issue of identity cards in France and emphasized that 'all residents must have their pictures taken for identity cards with their heads uncovered' and added '"nothing would justify women of the Muslim confession enjoying a different law"' (Bowen, 2007: 102).

In the hall the remarks were met with boos, but it was outside of the meeting that Sarkozy's comments reverberated. While he had talked of identity cards, and while he had not mentioned schools in his speech at all and in fact had said that he was against banning

religious symbols from the public space (Korteweg and Yurdakul, 2014: 15), his comments were widely interpreted both in the media and by politicians of all kinds as an attack on headscarves in schools. As one newspaper put it, with his speech, Sarkozy had 'launched a "new headscarf war"' (Bowen, 2007: 103-4).

Five days after Sarkozy's speech, Luc Ferry, the Minster for Education, announced that he intended to propose a law in parliament banning religious symbols from public schools (Korteweg and Yurdakul, 2014: 25-26). This represented a change of heart on the part of Ferry who had previously resisted a ban on the basis that it would increase the stigmatization of Muslims (Korteweg and Yurdakul, 2014: 26), and who in fact changed his mind once again later on (Bowen, 2007: 106), but it reflected the changing nature and the urgency of the debate. And in this debate, politicians generally took one of three positions: either they supported such a law (i.e. they were expanders), or they favoured something less legally binding such as a code, or they were against any change (Bowen, 2007: 104).

Alongside Ferry, an early expander in this debate was François Fillon, the Minister of Social Affairs. A hard-line supporter of Republican individualism, Fillon argued that a new law banning headscarves in schools was needed 'on the grounds that it would state clearly the Republic's position on laïcité' (Bowen, 2007: 105). Likewise, at the end of April, Alain Juppé, the president of the UMP governing party and a former Prime Minster, argued that a new law could be inevitable (Bowen, 2007: 261 n61) and stated in a newspaper article that 'there must be legislation to prevent the Islamic headscarf being worn' in schools (Boulangé, 2004).

Others political heavyweights on the right took different stances at this time (April-May 2003). Prime Minster Raffarin 'adopted a middle position, urging new measures … but stopping short of advocating a new law' (Bowen, 2007: 105), while Sarkozy favoured the continuation of the existing practice of dealing with school disputes on an individual basis and reiterated his opposition to a new law (Bowen, 2007: 119). Crucially, however, as the months went by, many of these politicians who had reservations about the introduction of a new law, and who could therefore be seen as containers, or at least partial containers, in the early weeks and months, changed their minds and joined the expanders.

Indeed, Bowen (2007: 106) claims that by the end of May 2003, 'the tide had begun to turn on the Right' and that both Jacques Chirac, the French President, and Raffarin at this point favoured a new law. Both spoke out against the wearing of ostentatious religious symbols in schools, the civil service, and in state institutions. Chirac emphasized that the role of schools was 'integration' and this, for him, meant making students look and behave more similarly (Thomas, 2012: 175), and he then went on to say that most French people saw 'something aggressive' in the veil and that the French secular state could not tolerate 'ostentatious signs of religious proselytism' (Henley, 2003b). As for Raffarin, in May he received Baroin's unofficial report on the issue of headscarves which recommended a 'laïcité code' that would ban them in schools (Bowen, 2007: 106) and also spoke of the link between headscarves and communalism (Bowen, 2007: 165).

The tide was also turning in the Socialist Party, with many representatives gradually shifting their positions on the new law banning headscarves in schools. For instance, the former Education Minister, Jack Lang, had been a proponent of the 'right to a difference' and a

supporter of the right to wear headscarves in schools during the Mitterrand presidency, but by spring 2003 he was advocating for the new law (Weil, 2009: 2700). Likewise, former Prime Minister Laurent Fabius supported the ban on headscarves in schools by May 2003. Addressing the party congress, he argued that religious signs have no place in public schools, and he maintained that a new law would enable the strict application of the principle of laïcité (Bowen, 2007: 107).

In light of these debates and of the high media coverage of the issue, the French parliament decided to set up a commission to examine the place of headscarves in schools. Assembled in early June 2003, and entitled the 'Parliamentary Information Mission on Religious Signs', the committee was chaired by the president of the National Assembly, Jean-Louis Debré, and became more commonly known as the 'Debré Commission'. It was bipartisan in nature, and also consulted with Muslim community leaders (Louati, 2015: 100). Then in early July, President Chirac set up a second commission to focus on the headscarf in schools and to also report on wider issues associated with laïcité. This committee, called 'the Independent Commission of Reflection on the Application of the Principle of Laïcité in the Republic', became widely known as the 'Stasi Commission', after its president Bernard Stasi who was the Ombudsman of the Republic. This body, made up of 19 members including MPs, lawyers, civil servants, educators, and academics (Weil, 2009: 2701), went on to conduct over 140 interviews with a range of actors, including politicians, schoolteachers, representatives of religious and social groups and NGOs, and intellectuals.

As the two commissions undertook their work in the autumn of 2003, a great number of politicians from both sides of the spectrum started to declare their support for a new law

(Bowen, 2007: 124). For instance, in November 2003, Philippe Douste-Blazy, the ruling UMP party's general secretary, said that a law banning all visible signs of religions belief (crosses, kippahs or headscarves) in schools would 'help all those millions of Muslims in France who are genuine republicans, who believe in an Islam in France, rather than an Islamic France' (Henley, 2003a). Others in the UMP backed a new law mainly for political reasons, to both try to neutralize Jean-Marie Le Pen and to portray the Left as weak. Some even backed it for internal party reasons, hoping that supporting a new law would hurt Sarkozy (Bowen, 2007: 106).

The Debré Commission delivered its recommendations in November 2003, while the Stasi Commission reported in December 2003. The former 'advocated banning all visible religious and political signs from public schools' (Bowen, 2007: 261), while the latter made recommendations on a wide range of issues that centred around both laïcité and social inclusion. For instance, it made proposals on better teaching of laïcité, on the training of imams, as well as on improving conditions in disadvantaged neighbourhoods, fighting employment discrimination, and breaking up of ghettos (Bowen, 2007: 113, 123). In fact, the Stasi Commission only made one proposal on the issue of clothing. Yet that one recommendation ended up being the crunch one, namely that '"in schools … appearances and signs displaying a religious or political affiliation be forbidden, conditional on respecting the freedom of conscience"'. It then went on to detail that this would apply to 'ostentatious signs', such as large crosses, headscarves, or kippas, and added that 'discreet signs' such as medallions, small crosses, Stars of David, hands of Fatima, or small Qur'ans were not regarded as signs that displayed a religious affiliation (Bowen, 2007: 123-4).

The strict and unequivocal recommendations made by the two commissions mask the lack of support for a new law amongst members of the two bodies at the time they began their work. With regard to the Debré Commission, Bowen (2007: 121) notes that the deputies ‘had begun divided on the issue and all had modified their initial stands’. Similarly he remarks that the majority of members of the Stasi Commission were not in favour of a new law when they set out (2007: 113). However, in the course of the five months in which both commissions had heard testimony from the various actors, opinions clearly changed considerably, and commission members who might have been described as containers gradually shifted to becoming expanders on the issue of headscarves in schools. Indeed, in the end, 16 of the 19 members of the Stasi Commission voted in favour of the recommendations, and only one abstained – the other two were absent on the day of the vote. For some it was ‘that things had got terribly out of hand in some of France’s schools’ (Bowen, 2007: 113). As one member, the academic Patrick Weil, explained after the report was published, ‘we felt that [the school system] had been overtaken, that it was no longer in control of the situation. That incited us to act’ (Thomas, 2012: 190). For others it was that they felt pressured to support a new law (Bowen, 2007: 124). Furthermore, the widespread support for the report from the commission’s members might also have been a result of the fact that the testimonies heard came very much from one side of the argument. Indeed, the Stasi Commission’s rapporteur, Rémy Schwartz, was accused of organising interviews that resulted in the Commission hearing very one-sided views, often with people who held strong anti-headscarf views (Louati, 2015: 100).

As noted above, the Stasi Commission had included intellectuals and academics. Other public figures and NGOs also supported the introduction of a new law. These included ‘self-

styled “secular Muslims” (*Musulmans laïcs*) such as the businessman Yazid Sabeg’ (Bowen, 2007: 107), as well as the activist Malek Boutih, the former long-time leader of the civil rights organisation SOS-Racisme. Boutih, a Muslim, was a strong supporter of laïcité and rejected positive discrimination and separatism, and under his leadership SOS-Racisme had become a major force in the movement to ban the headscarf (Peace and Chabal, 2019). The group’s main argument in the debate was that the headscarf was a symbol of women’s oppression (Bowen, 2007: 112).

Further calls from Muslim groups and individuals to back a new law banning headscarves in schools came from the Union of French Islamic Organisations (UOIF) in the wake of the Lévy girls’ expulsion from school in October 2003. This was particularly important as the UOIF ‘is the most visible organisation of Muslims in France’ (Bowen, 2007: 52). The organisation made it known that it would support the ban on headscarves in schools on the basis that Muslims had an obligation to obey the civil laws of a country, even if these contradicted religious principles (Bowen, 2007: 112).

Arguments that headscarves were a symbol of women’s oppression and a ‘declaration of women’s inferior status’ (Thomas, 2012: 183) were also made by a number of feminist organisations and public figures at this time. One of the most prominent groups in this regard was the immigrant organisation *Ni Putes*, *Ni Soumises* (Neither Whores Nor Submissives; NPNS). Founded to address violence against women and girls in socially disadvantaged suburbs, this group saw traditional Islam as condoning violence and subjecting many young women to sexist and community pressures (Thomas, 2012: 194). NPNS ‘argued that girls wore the headscarf to protect themselves from sexual violence’ and

rejected the accommodation of the headscarf in the name of respecting difference (Korteweg and Yurdakul, 2014: 35). The group was influential and attracted considerable media attention, first mobilizing between 10,000 to 30,000 people in demonstrations for its cause across France in early 2003, and then meeting with Prime Minster Raffarin in March. Later, in the autumn of that year, representatives of the NPNS also testified in front of the Stasi Commission (Thomas, 2012: 194).

Other prominent feminists also argued strongly for a headscarf ban. Gisele Halimi, a prominent writer, lawyer and feminist called the headscarf '"a terrible symbol of women's inferiorization" (Korteweg and Yurdakul, 2014: 35), while feminist scholars Anne Vigerie and Anne Zelensky emphasized that the veil was a sign of submission and oppression (Korteweg and Yurdakul, 2014: 34). In December 2003, these actors and others attracted further attention by penning an open letter published in *Elle* magazine calling on President Chirac to ban the headscarf (Thomas, 2012: 194).

Interestingly, the Conseil d'Etat also drew on these kinds of arguments when it expressed support for the new law in early 2004, in marked contrast to what it had done in 1989. And as Thomas (2012: 193) notes, in 'explaining this change, Council members characterized sexually inegalitarian community pressures on girls as a factor marking a significant change from the situation in 1989'.

In the closing weeks of 2003, all the main political players declared their support for the new law, thereby paving the way for its inevitable introduction. Following the publication of the Debré Commission's report in mid-November 2003, the ruling UMP's national council

declared that it would support the Commission's proposals to ban all visible religious and political signs in schools (Bowen, 2007: 261). The Socialist Party followed suit, even though many had doubts about the new law (Bowen, 2007: 124). Then, after the publication of the Stasi Report in mid-December, and having already intensified his attacks on the headscarf in the previous months, President Chirac explicitly announced his support for the new law in a televised speech in which he urged the parliament to pass legislation to ban headscarves in schools for the September 2004 school year (Aldred, 2003). As for Sarkozy, it had already become clear by September that he would have to support the law, and by November he had rallied behind UMP colleagues to do so (Bowen, 2007: 108, 262 n61). Despite a number of demonstrations against it, the new law was debated in parliament in February and March 2004, and passed with a very large majority in both chambers.[7] President Chirac then signed the bill into law on 15 March, and it came into effect on 2 September 2004, in time for the new school year.

Containers: actors resisting calls for the regulation of religious symbols

As explained above, as time went on the number of containers in the debate on the regulation of religious symbols gradually decreased because a number of actors changed their minds and eventually became expanders. However, there were some containers in this debate, even if their numbers were small and their influence limited.

[7] The National Assembly adopted the law on 10 February 2004, with 494 parliamentarians voting for it and 36 voting against it. The Senate approved it on 3 March 2004. 276 Senators voted in favour of the law, and only 20 voted against it (Kilinc, 2020: 79).

In the immediate aftermath of the Creil case in 1989, the most prominent container was the Conseil d'Etat. As discussed above, after the suspension of the three girls in Creil, Jospin, the Minster for Education, had requested a legal opinion from the Conseil on the constitutional legitimacy of wearing religious signs at school, and the Conseil had responded by issuing an advisory opinion that the headscarf was not incompatible with secularism in state schools. More specifically, the Conseil stated that:

> the principle of laïcité in state education…requires that teaching be conducted with respect for the principle of neutrality by the teachers and their programs on the one hand, and with respect for the freedom of conscience of the students on the other… Such freedom for the students includes the right to express and to manifest their religious beliefs inside the schools, while respecting pluralism and the freedoms of others… The wearing of signs by students in which they wish to express their membership in a religion is not by itself incompatible with the principle of laïcité (Gunn, 2004: 455).

However, the Conseil's ruling did continue by saying that:

> this liberty does not permit students to exhibit signs of religious belonging which, by their nature … or by their ostentatious or combative character, would constitute an act of pressure, provocation, proselytizing or propaganda (Benhabib, 2006: 54-55).

Some legal experts described the Conseil d'Etat decision as 'nuanced and protective of individual rights' (Gunn, 2004: 457), and others sought to explain the ruling with reference to the membership of the Conseil. Indeed, as Weil (2009: 2709) explains, in 1989, the Conseil was mainly composed of multiculturalists, individualist liberals who wanted individuals to be free from institutional pressure or influence, and pro-religion pluralists who wanted to increase the role of religion in French society. The bottom line, however, was that there was clearly ambiguity around the ruling. Moreover, the Conseil also emphasised that it was the responsibility of individual schools to decide matters relating to dress on a case-by-case basis (Jones, 2009: 52-53). As such then, and given too that this was an advisory opinion rather than a legally binding ruling, the Conseil can hardly be considered a strong and influential container in the debate over headscarves at this time. What is more, the body would very much become an expander in the debate by 2004.

In these early years, and indeed over the whole of the next 30 years, there were no real containers in any of the major political parties. While a few members of the right-wing parties called for less discussion and dramatization of the debate over the headscarves after the Creil case, and appealed to the 'common sense' of parents and schools to resolve the issue (Thomas, 2012: 172-3), and others questioned what laïcité really meant in the wake of the Conseil d'Etat's ruling, none stood up for the toleration of the wearing of the headscarf in schools. Similarly, while the Socialist Party did show some divisions on the issue with some representatives adopting a militant secularist position and others being seemingly ready to tolerate some limited wearing of headscarves as a last resort if it would aid further

integration (Thomas, 2012: 178-9), no one in the party adopted a view that could be described as multiculturalist and as pro-headscarf.

In the years that followed, and particularly during the headscarf cases of 1994, such as that of Goussainville (see Chapter 6), a number of extreme left groups, considered to be breakaways from the Revolutionary Communist League (LCR), lent their support to suspended or expelled students. Likewise, the Young People against Racism in Europe (JRE) joined the demonstrations at school gates (Winter, 2008: 181-182). While these groups were clearly supporting the students, and opposing the words and actions of the government and other expanders, including Pasqua's nationality laws, Bayrou's circular, and wider policing practices and discrimination, they never managed to be successful or influential containers in as much as they were never able to prevent expanders from pushing the debate on and from placing the issues of the agenda. Moreover, the demonstrations in which these groups were taking part were also frequented by hard-line Islamic agitators who were sometimes seen to be pressurising or intimidating the girls (Winter, 2008: 182-4), and this played straight into the hands of the expanders who would use these examples as reasons for why the headscarf should indeed be banned from schools.

In the few years that followed these demonstrations there was a semi hiatus in the debates surrounding the wearing of headscarves in schools and what Winter (2008: 197) describes as 'some softening of the tone', even if the issue did not go away. In March 1996, the Senate Commission for Cultural Affairs publicly expressed its opposition to passing a law that would ban headscarves in schools. It considered the 1989 Conseil d'Etat ruling to be sufficient, and

saw the headscarf phenomenon was a marginal one. Moreover, there was concern that a new law would be unconstitutional (Winter, 2008: 198).

Shortly afterwards, some teaching union representatives also declared their opposition to any new law. In December 1996, Hervé Baro, general secretary of Fédération de l'Éducation Nationale, and Jean-Michel Boullier, of the Socialist-affiliated Confédération Française Démocratique du Travail, both opposed a law prohibiting headscarves in schools on the grounds that it would block dialogue with the Muslim community (Winter, 2008: 198).

The debate rumbled on at a lower level until 2003 when Sarkozy ignited feelings again with his speech. Yet, as discussed above, the debates that followed the speech were overwhelmingly dominated by expanders. Indeed, in 2003 the only notable containers were intellectuals and religious leaders. No mainstream politicians made a strong or serious case for opposing a new law at this stage. While the Education Minister, Luc Ferry, did say in April 2003 that a new law would be unconstitutional, and while some UMP deputies agreed, he quickly changed his mind by the next month, saying it ‘would clarify the rules for the schools’. He then changed his mind again by October 2003 (Bowen, 2007: 106). Such flip-flopping did little to aid the anti-law case, and it did nothing for Ferry’s career either, as he was soon removed from the cabinet.

By contrast, at this time several public figures argued against passing a new law on the wearing of headscarves in schools and published a letter on 20 May 2003 in Libération to make their case. They included philosophers Etienne Balibar and Pierre Tevanian, and the sociologists Said Bouamama, Catherine Levy, and Françoise Gaspard. Interestingly, they took

no stand on the appropriateness of the headscarf, but instead argued that school was an instrument of 'emancipation and not expulsion' and that it could therefore 'free' young girls from any oppression they might be facing. They also objected to the way girls had been blamed for a range of social problems, and to the racist and sexist insults they had received (Bowen, 2007: 107).

The opposition to any new law from intellectuals and public figures was not widespread, however, and a number of academics and other commentators who were members of the Stasi Commission changed their positions over time. While in mid-2003 they had objected to the introduction of a new law, by the time the Commission completed its report at the end of the year, the majority of its members recommended brining in new legislation. In fact, only one member of the Commission, Jean Bauberot, a leading French expert on laïcité, refused to endorse its recommendations (Thomas, 2012: 188).

Representatives of Jewish and Christian religious organisations also spoke out against a new law at this time. In May 2003, France's chief rabbi, Joseph Sitruk, publicly opposed any new law, stating that he worried that a tightening up on laïcité would lead to the kippah being banned along with the headscarf (Bowen, 2007: 108). Likewise, two weeks later, in his opening speech to the national church council, the president of the Reformed Church of France (i.e. the main Protestant church in France) declared his opposition to a new headscarf law, and in September 2003, Cardinal Lustiger, the Archbishop of Paris, also expressed his concerns, warning President Chirac that a new law would open 'Pandora's box' (Bowen, 2007: 108). These statements were followed in December 2003, by a joint

letter from the leaders of Catholic, Protestant and Orthodox churches to Chirac, opposing a new law (Bowen, 2007: 109; Thomas, 2012: 191).

All in all then, in the 1989 to 2004 period, there were few containers, and their numbers decreased as time went by as many changed their minds and joined the ranks of the expanders. While the Conseil d'Etat had made the argument in 1989 that a ban on headscarves in schools would violate students' right to freedom of religion – the first argument that Howard (2009) points to in the repertoire of containers – by 2004 the body had changed its stance. This change of position by the Conseil in turn quashed concerns over whether such a law would be unconstitutional. Similarly, while some in the Socialist Party had claimed in 1989 that banning headscarves in schools would hinder the integration of minorities, and while that same point had been made by teaching unions in 1996, that argument was gradually dropped as time went by. Likewise, intellectuals and public figures also changed their minds over time, with most eventually aligning themselves with proponents of the new law.

The fact that the balance in the debate swung heavily in favour of the expanders was not just down to the small and decreasing number of containers, but it was also explained by the type of actors involved and the nature of the arguments they put forward. Crucially, during this whole period, no influential actors from the mainstream parties put forward a clear and strong pro-headscarf, anti-law position. Rather, the containers mainly came from civil society, from religious groups, or from the fringes of the political spectrum. Furthermore, the arguments that these people and groups put forward never proved convincing to other actors, or never really challenged the points made by the expanders.

The expanders' claims that integration could best be achieved through laïcité rather than through any toleration of difference, that women's rights could be best protected by banning the headscarf altogether in schools rather than permitting girls to choose their attire, and that religious freedom could still be enjoyed in the private sphere all ultimately won the day.

Media and Public Opinion in the 1989 to 2004 Period

The media in France played a very significant role in shaping the headscarf debate in the years between 1989 and 2004. This began immediately in the wake of the Creil case in 1989. As Bowen (2007: 84) explains, while there had been nearly no mention at all in the media of headscarves in French society over the preceding years, 'the mass media jumped on the incident' in Creil. Some newspapers initially remained fairly factual or even downplayed the issue. For instance, on 4 October 1989, left-wing Libération described the Creil incident as 'Wearing of the veil conflicts with the Creil college's secularism', while the next day the communist daily L'Humanité described the behaviour of Ernest Chenière, the school headmaster, as one of 'quiet paranoia' (Winter, 2008: 130-1). By contrast, other publications were far more sensationalist. On 5 October, the left-wing Nouvel Observateur ran a cover story with the title '"Fanaticism: The Religious Menace" and depicted a girl in a full, black chador' (Bowen, 2007: 84), and a few days later, the right-wing Le Figaro followed suit and referred to 'chadors of discord' (Winter, 2008: 131). Then, a couple of weeks later, the weekly L'Express ran a feature story with the title 'The Secular School in Danger: The

Strategy of Fundamentalists', and the weekly newsmagazine Le Point published an issue with the headline 'Fundamentalists: The Limits of Tolerance' with a picture of a woman dressed in a chador (Bowen, 2007: 84).

The following month, some publications also took a pop at the politicians who were meant to be sorting out the 'issue'. For instance, *Le Point* was highly critical of Lionel Jospin, the Minister of Education, for requesting a legal opinion from the Conseil d'État on the constitutional legitimacy of wearing religious symbols in schools. *Le Point* argued that 'by turning the matter over to the Council of State, Mr. Jospin abdicated the government's responsibility to protect public schools from religious influence and effectively allowed Islamists to continue "demolishing the secular public school system"' (Cue, 1994).

In this early period then, while the political expanders had used arguments that centred on what laïcité meant, and on how best to improve the integration of French Muslims, the media went much further. Coverage did include issues of integration and the appropriate interpretation of secularism, but the media also framed the affair in downright racist terms, evoking fears of religious fundamentalism and societal breakdown (Winter, 2008: 184).

This tone continued in the following years, especially in the right-wing media. In September 1991, just as it had done in 1985, the Figaro Magazine published an issue with the figure of Marianne shrouded in a headscarf on the cover. Inside, an article with the title 'Immigration or Invasion?' advocated strict curbs on immigration and drew on the link 'often made between immigration-related concerns and the perception of an Islamic threat to French nationhood' (Laxer, 2019: 3). Similarly, in October 1994, following the demonstrations

outside schools and the issuing of the Bayrou circulaire, Le Figaro published articles entitled 'When the veil becomes a weapon' and 'Foulard islamique: la manipulaiton' (Muslim headscarf: manipulation), and the next month L'Express published an issue with an image of a woman wearing an Iranian chador on the cover, with the headline 'Headscarf: the conspiracy. How the Islamists are infiltrating us' (Winter, 2008: 186). Interestingly, Libération later exposed the image as being a set-up – the woman was a model and the photo had been taken specifically for the publication – and a scandal about media manipulation then followed (Winter, 2008: 186).

While the issue of Islamism was prevalent in the right-leaning media, the left-leaning press focused more on the Bayrou circulaire and its (in)effectiveness, most likely in an attempt to distance itself from and lay blame on the right-wing government (Winter, 2008: 173). For instance, Libération criticized Bayrou for 'flirting' with the teachers' unions which were largely in favour of a headscarf ban (Winter, 2008: 186). The paper also published an issue in September 1994 with the headline focused on 'Bayrou's anti-headscarf crusade' (Winter, 2008: 178), thereby suggesting the Minster for Education was perhaps waging a religious war. The leftist daily, Le Monde, just seemed fed up with the issue, characterising what it called the 'headscarf saga' as a 'national psychodrama' (Winter, 2008: 130).

As the headscarf debate intensified again in 2002 and 2003, especially following Sarkozy's speech, the number of newspaper and magazine articles on the issue also increased. While Wing and Smith (2006: 755) counted about 1,000 articles on headscarves between the years of 1989 and 1998, Ezekiel (2006: 257) counted almost the same number in just the 2003-

2004 period. Winter (2008: 252) also points to the increase in the number of books published after 2002 with the words 'voile' or 'foulard', or 'Islam' and 'femme' in their titles.

In these years much of media coverage continued to 'conflat[e] Islam with global fundamentalism and terrorism' (Abdelgadir and Fouka, 2020: 709). Moreover, Islam was increasingly described in the media as 'retrograded' and 'backward'. For instance, an edition of L'Express in late April 2003 'smugly congratulated [Jack] Lang for joining them in the fight against the veil, ironically referring to themselves as "those Cassandras who since 1989 have opposed, in vain, the judicial consecration of this negation of the equality of the sexes in the very place where that principle ought to be taught"' (Bowen, 2007: 107). Then, in October 2003, the editorial writer for Le Point, Claude Imbert, openly stated that he was an Islamophobe and that Islam was 'backward-looking and unhealthy' and that it degraded women (Boulangé, 2004).

The sheer scale of the media coverage reflects the size of the market there was for such stories and imagery, even if some criticised the media for rekindling the debate (Winter, 2008: 251). But it was also the kind of coverage that mattered. The media stoked popular fears of what the veil represents, be it the menace of Islamism, the dangers of communalism, or the threat to women's rights, and this very much helped explain the widespread support for the introduction of the new law in 2004 banning the wearing of headscarves in schools. As Bowen (2007: 155) argues, this 'degree of popular and intellectual support for the law – including support among Muslims – [can be understood] only if we appreciate the ways in which television, radio, and print media played up these broad social dangers said to be posed, or represented, by the voile'. Moreover, Bowen

emphasises the importance of the wider philosophical and social issues raised in the debate, and the ways in which these dimensions informed the media coverage. As he explains, ‘perhaps in no other country does applied philosophy intertwine with media campaigns to the extent it does in France’ (2007: 155).

Support for a ban on headscarves in schools among the public has always been high, which to some extent is unsurprising given the strength of anti-immigrant feeling in France. Thomas (2012: 102) notes that in the mid-1980s over two thirds of survey respondents regarded immigration as a threat to national identity. Moreover, following the events in Creil in 1989, polls ‘indicated that 60 to 75 percent of those surveyed associated Islam with violence, regression, intolerance, and oppression of women’ (Winter, 2008: 145). In this context then, it is no surprise to learn that in 1989 the majority of people opposed the wearing of headscarves in schools (Bowen, 2007: 85).

Opposition to headscarves in schools rose further in the coming years, after the Bayrou circulaire of 1993 and the demonstrations outside schools that followed. A poll conducted by Sofres in June 1994 for Le Figaro showed that as many as 86% of respondents were in favour of banning headscarves in schools (Winter, 2008: 186). This might have been a high-water mark, however, as over the next decade levels of opposition did decline, even if they rose again in the run-up to the introduction of the 2004 law.

A poll taken in April 2003 in the wake of Sarkozy’s speech found that people were ‘evenly divided about a ban on headscarves in schools’, with just under half supporting a ban. Moreover, the survey revealed that there was more concern amongst these people about

the status of women than about the presence of religion in the public space (Bowen, 2007: 104). However, by the end of the year, support for a ban had increased quite markedly. In November 2003 a first poll showed 57% of respondents in favour of a new law (Winter, 2008: 214), and a second one reported 65% of people did so (Bowen, 2007: 125). Then, in early December a new survey indicated that 72% of those polled favoured a ban on headscarves in schools (Bowen, 2007: 124). Later that same month, another poll showed that 69% of the French public supported President Chirac's move to introduce a new law (Bowen, 2007: 128).

As one might expect, support for a new law was particularly high among teachers. A survey in February 2004 reported that three-quarters of teachers favoured the new law (Thomas, 2012: 190). However, perhaps more surprising was that there were also relatively high levels of support for the new law among the Muslim community. In late November 2003, a survey of Muslim women living in France found that 49% were in favour of a new law, while only 43% were against it (Bowen, 2007: 125; Thomas, 2012: 185). These views also chimed with those reported in a 2004 poll that suggested 68% of French Muslims considered the separation of religion and state to be 'important', and 93% felt that republican values were 'important' (Astier, 2005).

In the end, despite all the controversies, and the sometimes ugly, discriminatory and even racist tone of some parts of the debate, and in spite too of criticism from foreign observers (Thomas, 2012: 198), there was widespread support for the new law of 2004 banning the wearing of headscarves in schools, from all parts of the mainstream political spectrum, from intellectuals and other parts of civil society, and from the public. As Thomas (2012: 196)

argues, the support for the new law did not stem from ‘a concerted French effort to crack down on potential terrorists’ in the wake of 9/11, as some US reports maintained. Rather, on one level, the debates that had led up to the introduction of the new law had spoken to the importance of, and respect for, Republican values, and of laïcité in particular, as well as a certain understanding of gender equality and women’s rights. This had been aided by the decline in the influence of pro-religious pluralist actors and of multiculturalists in the period since 1989, and the greater weight of secular anti-religious voices during these years (Weil, 2009). But on another level, as both Bowen (2007: 2) and Thomas (2012: 198) note, the broad support for the 2004 law was also explained by hopes that this new piece of legislation would solve practical, social problems. Put differently, as Adrian (2009: 345) argues, the law would both ‘help the country understand itself in the light of increasing religious and ethnic diversification’ and would also encourage greater social integration. And this time, unlike with the 1989 advisory opinion of the Conseil d’Etat or the Bayrou circulaire of 1993, a law, not a code or a directive, was needed, reflecting what Bowen (2007: 243) calls ‘a particularly French passion for seeking statutory solutions to social ills’.

From 2005 to 2017

As was explained in Chapter 6, in 2010 France introduced a law that banned the wearing of face coverings in public spaces. This included institutional public spaces, such as town halls and other administrative buildings, hospitals, courts, libraries and museums, as well as

‘places open to the public’ such as shops, banks, cafés and restaurants, and open public spaces like streets, parks, and beaches. The new law’s scope was therefore very wide. However, it was clearly aimed at one religious symbol in particular, namely the full-face veil. Then, in the summer of 2016, a number of French towns also decided to ban the wearing of burkinis on public beaches. Those decisions were never supported by national legislation, however, and indeed the Conseil d’Etat ruled the burkini bans illegal. Some local mayors nonetheless attempted to defy this ruling and said they would continue to fine women for wearing burkinis.

This section of the chapter will examine the events and debates that led up to the introduction of 2010 law. Then, like the previous section did, it will explore who the expanders in the debate were, what arguments they made, and how they framed their points. It will then continue by considering the containers in these debates. After this, the section will briefly examine the burkini affair of 2016, again paying attention to who the various actors in this debate were, and what arguments they put forward. The section will then finish by investigating how the media covered the events and debates within this period, and how this coverage and the overall political debate shaped public opinion in these years.

In late October 2005, not long after the 2004 law banning the wearing of ostentatious religious symbols in schools came into effect, massive riots broke out in the suburbs of several French cities. The unrest started in a Paris suburb, but it quickly spread to other parts of the country, and it lasted for three weeks. The trigger for the unrest was a police chase that ended with the death of two young men, but the riots that followed ignited

tensions about wider issues. As well as police harassment, the rioters were ‘frustrated by racial and economic discrimination’ (Bremner, 2005; Chrisafis, 2013a), felt alienated from society, and were protesting about poor social and employment conditions (Astier, 2005). A large number of those rioting were young Muslims of North African and African origin (Pew Research Center, 2006; Weil, 2009: 2702).

In an early response to the riots, Nicolas Sarkozy, then Interior Minister, announced a policy of ‘zero tolerance’ and promptly sent a large number of riot police to the Parisian suburb where the tensions had begun (Henley, 2005). He also described those taking part as *racaille* or scum, and said he would clean the streets of them. This aggressive stance and these inflammatory words, along with hard-line police tactics only increased the anger of the rioters (Hussey, 2014), and the disturbances continued. This response was also met by criticism from political opponents. For instance, former Socialist prime minister, Laurent Fabius said ‘This isn't how we resolve these problems [...]. We need to act at the same time on prevention, education, housing, jobs ... and not play the cowboy’ (Henley, 2005). As the riots continued, President Chirac declared a state of emergency which was later extended to the start of 2006. Sarkozy also announced the expulsion of foreigners involved in the unrest, and a few weeks later the government also introduced new tighter controls on immigration and greater requirements for integration.

The riots were not about religious symbols. Rather, the unrest was about wider issues. In addition to being driven by significant social and economic problems and by discrimination, the riots also exposed the long-existing conflict between French republican values (including the principle of laïcité and the emphasis on universalism) on the one hand, and the rights

and identity of Muslim minorities on the other. Yet, as Hussey (2014) explains, in this battle the latter have little weight as in France '"difference" is seen as a form of sectarianism and a threat to the republic'. The overriding narrative is that 'if Muslims want to be "French", they must learn to be citizens of the republic first and Muslims second'.

As Korteweg and Yurdakul (2014: 38) note, 'the public headscarf debate died down once the [2004] law was adopted', and the social unrest of 2005 did not immediately reignite it. However, a series of events from 2008 showed that it was far from over. The incident that rekindled it concerned the application for French citizenship of a Moroccan women, known as Faiza M. She was married to a French citizen and had been living in France for years, but she also happened to be a woman who wore the full-face veil. She had applied for citizenship in 2005 but had had her application turned down, and had subsequently appealed the decision. In June 2008, the Conseil d'Etat upheld that rejection and denied her citizenship. The Conseil argued that Faiza M.'s decision 'to wear the burka [was] evidence of her failure to assimilate to French norms' and that this practice was 'incompatible with essential values of the French community, namely, the principle of the equality of sexes' (Korteweg and Yurdakul, 2014: 38-9). According to Korteweg and Yurdakul (2014: 44), this decision 'set the stage for arguments that the burka was an intentional social disruption, enacted as a political challenge to the French body politic'.

Other incidents then followed. In July 2008 a female driver was fined for wearing a full-face veil. Then in June 2009 a local mayor refused to marry a couple because the bride would not reveal her face, which meant that her identity could not be verified (Ismail, 2010). As these types of incidents became more numerous, more and more actors joined the debate about

the place of the full-face veil in the public space. The issue of the display of religious symbols, and the question of the wearing of the full-face veil, were thus firmly back on the agenda, and more and more regulations were proposed.

Expanders in the debates leading to the 2010 law

As the debate over the wearing of the full-face veil in the public space reignited in the summer of 2008, expanders outnumbered containers by some margin. Furthermore, these expanders were found in all corners of the political spectrum, and came from many areas of civil society. These actors drew on a number of different arguments to put their case forward and to call for greater restrictions and regulations.

In the wake of the Conseil d'Etat's ruling on the case of Faiza M.'s citizenship application, one of the first expanders to push for greater regulations was Jacques Myard, an MP from the ruling right-wing UMP party. On 23 September 2008, Myard presented a bill to parliament that would ban the full-face veil in public in the interests of fighting 'against attacks on women's dignity from certain religious practices' (Ismail, 2010). In introducing the bill, Myard referred to the March 2004 ban on conspicuous religious symbols in schools, and argued that its application had not created any 'major incident' (Ismail, 2010). Interestingly, however, the bill itself made no mention of the full-face veil or of Islam, even though the full-face veil was referenced in the explanatory memorandum introducing the bill. Instead, the bill referred only to the 'concealment of the face' (Ismail, 2010). Myard's suggested bill

proposed a €15,000 fine and two months imprisonment for anyone concealing their face in public or encouraging others to do so.

Myard's bill failed to attract public attention, most likely because uppermost in people's minds at this time was the impact of the global financial crisis (Ismail, 2010). Moreover, it was not reviewed by the National Assembly because it had not been vetted by the Law Commission and its constitutionality had therefore not been examined (Ismail, 2010). However, it was nonetheless important because it marked the start of a chain of events that paved the way for the passage of the 2010 law that banned the wearing of the full-face veil in the public space. Moreover, Myard was not the only person in the UMP who felt strongly about the wearing of the full-face veil in the public space. Many of his colleagues had similar reservations. For instance, following the Conseil d'Etat's ruling on the Faiza M. case, Fadela Amara, the then Minister of Urban Affairs and an advocate for women's rights, stated that the full-face veil 'is not a religious insignia but the insignia of a totalitarian political project that advocates inequality between the sexes and which is totally devoid of democracy' (Kim, 2012: 293).

Some eight months after Myard's proposed bill, another expander entered the debate. In early June 2009 André Gerin, a Communist MP and mayor of a heavily immigrant suburb of Lyon that had experienced significant controversy surrounding the issue of headscarves in schools (Kortewg and Yurdakul, 2014: 39), wrote an open letter to the Prime Minster François Fillon voicing his concerns about the wearing of full-face veils. Then, on 9 June, Gerin, along with 80 other MPs of all political persuasions proposed a resolution in the National Assembly to set up a parliamentary 'commission of inquiry on the practice of

waring the burqa or niqab on the national territory' (Ismail, 2010). The text of this resolution included the content of Myard's 2008 proposed bill (Ismail, 2010), and spoke of French laïcité being threatened. It went on to describe the niqab and burqa as '"virtual, itinerant prisons" putting women who wore them "in a situation of imprisonment, and unbearable exclusion and humiliation"' (Ismail, 2010), and it argued that these women's 'very existence is denied' (Korteweg and Yurdakul, 2014: 46).

The resolution received widespread support in parliament, not only from UMP members, but also from some Socialists, Communists and members of the Nouveau Centre party (Laxer, 2019: 14). On 23 June the commission, made up of some 30 MPs and chaired by Gerin himself, was created (Ismail, 2010). Over the next six months it set to work by gathering testimonies from dozens of individuals from various organisations and groups (including leading members of the Muslim community and Muslim public figures), hearing from all political parties represented in the National Assembly and the Senate, and interviewing diplomats and other political figures (Laxer, 2019: 14). Yet, as Korteweg and Yurdakul (2014: 39, italics in original) argue, 'unlike in the headscarf debate, the investigation was centred not on *whether* to ban, but *where* to ban'. While many of the themes that had characterised the debate leading up to the 2004 law on the prohibition of ostentatious religious symbols in schools were revisited, the mood was different this time and 'there was no need even to entertain the possibility that these garments could be compatible with the French narrative of belonging' (Korteweg and Yurdakul, 2014: 39). In short, given the commission's widespread support and its starting point, it looked almost inevitable that it would recommend a ban on the full-face veil in public spaces.

Between the ratification of the Gerin Commission by MPs and its formal creation, Sarkozy, now President of France, addressed both houses of parliament. In his speech he expressed support for the establishment of the commission, and argued that the full-face veil was 'a sign of subservience'. He maintained that France 'cannot accept that women be prisoners behind a screen, cut off from all social life, deprived of all identity' and he insisted that the full-face veil 'will not be welcome on the territory of the French Republic' (CBS News, 2009; NBC, 2009).

In advance of the publication of the Gerin report a number of politicians attempted to make political gains by exploiting the debate on the full-face veil. Eric Besson, who was Minster for Immigration, Integration, and Identity in the UMP government, underlined that, in his view, the full-face veil was 'contrary to the values of national identity' and in October 2009 he declared the launch of a '"great debate" with "the country's working population", aiming to "reaffirm the values of national identity, and pride in being French"' (Korteweg and Yurdakul, 2014: 39). Then, just before Christmas 2009, Jean-François Copé, the president of the UMP group in the National Assembly, 'announced that his party would push for a law entirely banning the burka and niqab in France (not just in governmental spaces … but everywhere, including on the street)' (Korteweg and Yurdakul, 2014: 40). This move angered many MPs who had been waiting for the outcome of the Gerin commission, and it also clearly undermined the authority of President Sarkozy (Korteweg and Yurdakul, 2014: 40).

These moves also prompted the Socialist Party to declare in early January 2010 that it was against a ban on the wearing of the full-face veil. While the party was at pains to emphasise that it was adamantly opposed to the wearing of the full-face veil, it considered a law like

the one Copé proposed as ‘an inconsistent “ad hoc law”’ (France 24, 2010a). Many politicians also worried about the constitutionality of such legislation, and the likelihood that it would face a challenge in the European Court of Human Rights (CBS News, 2009).

The Gerin Commission delivered its conclusions on 26 January 2010 in the form of a 650-page report. In its introduction, the report claimed that the veil infringed the principles of liberty, equality and fraternity, and argued that it represented ‘an intolerable infringement on the freedom and the dignity of women’, a ‘denial of gender equality and of a mixed society’, and ‘the will to exclude women from social life and the rejection of our common will to live together’ (Nanwani, 2011: 1457-8). The report went on to speak about the full-face veil being ‘the symbol of subservience, the ambulatory expression of a denial of liberty that touches a specific category of the population: women' (Nanwani, 2011: 1433 n16). It concluded by characterising ‘the full veil as “contrary to the values of the Republic”’ [and recommending] that parliament adopt a resolution describing the full veil as such and a “law prohibiting [it] as well as any other clothing entirely covering the face in public spaces, based upon the notion of public order”’ (Nanwani, 2011: 1441).

The conclusions of the report reflected agreement between the members of the Commission about the need for legislation (Ismail, 2010). However, despite the strong wording of the report, there had nonetheless been some differences of opinion between members about where the ban should apply, with some favouring a ban in all public spaces and others only supporting one in institutional public spaces. In the end, because of these disagreements, the report recommended only a partial ban on the full-face veil, to be

applied in institutional public spaces only, or as Korteweg and Yurdakul (2014: 40) put it, in civic institutions.

In the weeks following the publication of the Gerin Commission's report, there was significant discussion about how to proceed with any new legislation. On the one hand, there was wide support amongst parliamentarians for a new law, but on the other, there was anxiety about the legality and constitutionality of any such legislation. There was also concern, even if perhaps insincere, about the possible stigmatisation of any new proposals. Indeed, Prime Minster Fillon emphasised that avenues should be pursued 'without harming our Muslim compatriots' (Korteweg and Yurdakul, 2014: 41).

To explore how far any ban on the full-face veil could go, and to respond to concerns about the constitutionality of any new legislation, Fillon tasked the Conseil d'Etat with examining the options and with investigating the most widespread ban that would be legally possible. The Conseil reported at the end of March 2010 and as Nanwani (2011: 1441) explains, it stated that there was '"no incontestable legal basis [that could] be relied upon to support a ban on wearing the full veil"'. It went on to advise that a '"prohibition of the full veil would violate various fundamental rights and freedoms'". As such, as its report stated, 'secularism could not provide the basis for a general restriction on the expression of religious convictions in the public space … and could therefore not be a ground for imposing a total ban on the full veil throughout the public space' (Council of State Report, 2010). However, crucially, the Conseil d'Etat then added that it was nonetheless '"possible" to envision ways of banning face-concealing clothing' if such a ban was based '"on the need for public security"' (Nanwani, 2011: 1441).

This ruling by the Conseil d'Etat proved fundamental to how matters progressed. It offered the government a route to wide-ranging legislation concerning the wearing of the full-face veil. Yet it also indicated that the grounds on which this could be achieved would have to be specific. By ruling that a wide ban would only be possible on the basis of security concerns, the recommendations of the Conseil d'Etat changed the narrative of the debate, away from arguments about Republican values, laïcité and women's rights, and towards matters of security and the dangers of people concealing their faces. For instance, while a study published by the National Assembly in May 2010 continued to characterise the full-face veil as detrimental to social relations, it also emphasised the negative consequences of covering one's face, arguing that this was '"a source of threats to public order"' (Ismail, 2010).

Similarly, in an op-ed in The New York Times also in May 2010, Jean-François Copé, the majority leader in the National Assembly, not only promoted the ban on the grounds that it would defend 'the dignity of women', but also argued that being able to see a person's face was a public safety requirement, essential for security and a condition for living together (Copé, 2010). In short then, as Ismail (2010) explains, the Conseil d'Etat's recommendations 'convinced the government to change the legal basis used to ban the niqab and burqa from the principles of secularism, gender equality, and other principles of a liberal democracy to the more politically correct and less contentious justification of maintaining public order'.

In April 2010, following the Conseil d'Etat's ruling, and having also seen his UMP party lose out to the National Front in the regional elections the previous month (Korteweg and Yurdakul, 2014: 40), Prime Minster Fillon announced that the government would fast-track

legislation on the wearing of the full-face veil in public spaces. Very much aware of the widespread support for new legislation, but also conscious of the potential legal obstacles, he declared that 'we are ready to take legal risks because we think that the stakes are worth it'. He continued by saying 'we cannot encumber ourselves with prudence in relation to legislation that is unsuited to today's society… If we have to shift the jurisprudence of the [French] Constitutional Council and that of the European Court of Human Rights, we think that it is our public duty to do so' (Lerougetel, 2010).

On 19 May 2010 the National Assembly issued a draft bill banning full-face veils in all French public spaces. On 13 July, the bill made its passage through the lower house by a vote of 336 to 1. The Senate then approved it on 14 September, by a vote of 246 to 1 (Nanwani, 2011: 1442). The bill was then sent to the Constitutional Council, and on 7 October 2010, despite previous warnings about the constitutionality of any new legislation, this body endorsed it, arguing that the ban did conform to the French Constitution because it did 'not impose disproportionate punishments or prevent the free exercise of religion in a place of worship' (Nanwani, 2011: 1442; Souchard, 2010). The law came into effect on 11 April 2011, with the period between its endorsement and its enforcement acting as an '"education period" during which no charges would be laid for wearing an Islamic face covering' and during which a number of civil society organisations would 'be responsible for "educating" women not to wear the burka or niqab' (Korteweg and Yurdakul, 2014: 42).

The bill passed in large part because of the unanimous support for it among UMP deputies, in both houses of parliament. While some twenty or so left-wing deputies – including Manuel Valls who by this time had declared his intention to run in the Socialist Party's

primaries for the 2012 presidential elections, and André Gerin the Communist MP who had headed up the commission that bore his name – supported the bill (Erlanger, 2010), the majority of Socialist deputies abstained on the instruction of their party (Laxer, 2018: 953). However, the Socialist Party could hardly be described as a container in this instance because not only did it not prevent the passage of the bill – after all, most of its members abstained rather than voting against the bill – but it also certainly did not support the wearing of the full-face veil in the public space. Indeed, as explained above, the PS had supported the establishment of the Gerin Commission and a number of its members had gone on to play a significant role in it (Laxer, 2018: 953). In addition, as also noted above, the party had made it clear through the second half of 2009 and into 2010 that, just like the government, it was strongly opposed to women wearing the full-face veil in public (Lerougetel, 2010). For instance in January 2010, Benoît Hamon, a senior MP at the time and a future candidate for President, had emphasised that the party was 'totally opposed to the burqa', calling it 'a prison for women' and stating that it had 'no place in the French Republic' (France 24, 2010a). And even after the vote in the National Assembly, in which the majority of PS MPs abstained, the Socialist Senator Bariza Khiari underlined that 'not a single PS member supports the wearing of the full veil' (France 24, 2010b).

The decision to abstain in the votes on the bill in July and September 2010 was not based on fundamental differences of opinion with the UMP over the place of full-face veils, therefore. Rather, the reasons were political. In the first instance, as Laxer (2018: 953) explains, some party members were not happy with the UMP's framing of the full-face veil as a threat to national identity because such a portrayal 'produced an image of immigrants as "suspect" or "dangerous"' which the party was not prepared to accept. Secondly, there was anger within

the PS that the government appeared to have already made its mind up about the bill even before the Gerin Commission had produced its report. There was then further resentment within the party after the publication of the Commission's report, with some feeling that the differing opinions of Commission members has been concealed in the name of presenting a 'republican "consensus"' (Laxer, 2018: 954). And thirdly, some in the PS continued to be concerned over the constitutionality of the bill, and the ability for it to be challenged in the ECtHR (Ismail, 2010; France 24, 2010b).

In reflection of these concerns, the PS had actually submitted its own bill, just one day after the government had submitted its bill in May 2010. The PS's rival bill cited the concerns that the Conseil d'Etat had expressed two months earlier and also referred to the European Court of Human's Right's warning that forbidding people to wear certain clothes could well fall foul of Article 9 of the Convention that protects personal freedoms, including the freedom to manifest religious belief. In effect, this rival bill reflected the recommendations of the Gerin Commission and proposed that a ban should not apply in all public spaces, but should instead be confined to places of public service only. Open 'public spaces (parks, shops, streets) were to be excluded except in cases where chiefs of police invoked public safety concerns as a justification for prohibiting face concealment' (Ismail, 2010).

Despite most of its deputies abstaining in the vote on the 2010 bill, when the Socialist Party won both the presidential and the parliamentary elections of 2012, it upheld the 2010 law banning people from coving their face in the public space. Indeed, since the run up to the 2010 bill, the party had been very aware of the UMP's attempts to discredit it and to present it as disloyal to French republican values, and it had begun to try to reassert its

ownership of laïcité (Laxer, 2018: 951-2). These efforts were helped by the appointment of Manuel Valls, first as Minster for the Interior in May 2012, and then as prime Minister in March 2014. As noted above, Valls had not abstained in the 2010 vote but had instead supported the UMP's bill, and he was generally seen as taking a tough stance on radical Islam (Laxer, 2018: 952), and as being a strong defender of republican values, including laïcité. In 2013, reflecting on the 2010 law, he described it as '"an emancipatory law"' and went on to argue that 'the ban "fostered women's liberation" as well as "equality between women and men"'. He then insisted 'that "secularism is the law and the Republic is shared"' (Laxer, 2019: 4).

The above discussions have shown that in the period since 2008, when religious symbols once again began attracting attention following a number of incidents involving Muslim women wearing full-face veils, the debate over the place of religious symbols in the public space, and the place of the full-face veil in particular, drastically increased, and ultimately culminated in the introduction of the 2010 law. However, what the paragraphs above have also explained is that the debates took a number of twists and turns. More specifically, the political expanders – i.e. the politicians – changed the focus of their arguments as time went by. In 2008 and 2009 these expanders centred their arguments on the supposed threat that the full-face veil posed to republican values, and to the principle of laïcité in particular, and on the consequences it had for women's rights and gender equality. Yet by spring 2010 the expanders' narrative had changed quite considerably, following the Conseil d'Etat's recommendation that, to be constitutional, any new legislation banning face-concealing clothing would most likely have to be put forward on the basis that such clothing presented a public security threat. From then on, while they still continued to make their earlier points,

expanders also started invoking arguments about the security threat posed by the wearing of the veil.

On the one hand, therefore, politicians persisted in arguing that the wearing of the veil was contrary to French values, and posed a threat to integration. For instance, in early July 2010, Michèle Alliot-Marie, the then Minister for Justice and Freedoms, said the bill that was being debated protected the 'values of equality between men and women, against those who push for inequality and injustice' (Erlanger, 2010), and argued that what was at stake were 'the foundations of the Republic and of living together', adding that 'the Republic rejects communalism, and concealing one's face [and] refusing to belong to society is the foundation of communalism' (Korteweg and Yurdakul, 2014: 45). She argued that, in short, the full-face veil 'calls into question the French model of integration' (Davies, 2010). On the other hand, however, expanders were careful to underline the security concerns associated with the wearing of the full-face veil. As noted above, in May 2010 the National Assembly emphasised that the full-face veil was '"a source of threats to public order"' (Ismail, 2010), and the UMP leader in the chamber, Copé, similarly argued that being able to see a person's face was a public safety requirement (Copé, 2010). These points were incorporated into the bill, which described the full-face veil as causing 'a disturbance to "the public order"' (Ismail, 2010).

In the period from summer 2008 to summer 2010 when the new bill was passed in parliament, a number of other expanders, from outside the political parties, also contributed to the debates about the wearing of the full-face veil. These included members of civil society and community organisations, as well as public figures.

A first group of such expanders came from Muslim organisations. For instance, when interviewed by the Gerin Commission in October 2009, Mohammed Moussaoui, President of the French Council of the Muslim Faith, described the wearing of the full-face veil as 'an extreme practice that does not permit living a normal social life' and he argued that 'we do not want it to become established on the national territory' (Korteweg and Yurdakul, 2014: 44). Similarly, also testifying to the Gerin Commission, Anwar Kbibech of the Gathering of the Muslims of France, maintained that 'the full veil is incompatible with the French context and living together' (Korteweg and Yurdakul, 2014: 44). The argument that the wearing of the full-face veil was irreconcilable with French values was also later picked up by Dalil Boubakeur, the grand mufti of the Paris Mosque, who insisted that French Muslims must accept a French law (Erlanger, 2010). Just like many political actors, therefore, a number of 'representatives of Muslim organisations rejected the "full veil" as a communalist political statement counter to republican values' (Korteweg and Yurdakul, 2014: 44).

Hassen Chalghoumi, an imam, made a similar point when he said that the full-face veil 'has no place in France'. But he made a number of wider arguments too, linking the wearing of the full-face veil to women's rights and to radical Islam. For him, the evidence that the garment had no place in France was that France is 'a country where women have been voting since 1945', and he went on to argue that 'the burqa is a prison for women, a tool of sexist domination and Islamist indoctrination' (Taylor, 2010). The Muslim writer Abdelwahab Meddeb made similar arguments. In December 2009 he claimed that '"the niqab or burka … is a fabric that transforms women into a prison or a mobile coffin'", and added that the garments are 'an affront to human dignity and have nothing to do with

Islam' (Korteweg and Yurdakul, 2014: 46). For these actors, the full-face veil not only threated the rights of women, but was also 'a sectarian cult practice, which undermined any arguments for its protection on the grounds of religious freedom or freedom of conscience' (Korteweg and Yurdakul, 2014: 44).

A number of feminist public figures and organisations echoed some of these points. In a short film released in May 2010, which discussed different attitudes towards the wearing of the full-face veil, Sihem Habchi, the head of the organisation *Ni Putes*, *Ni Soumises*, described the full-face veil as 'a coffin', saying it was 'the ultimate oppression' and a symbol of 'inhumanity'. She argued that, most often, Muslim women are forced by men to wear the full-face veil, and that it reduced women to nothing (Journeyman Pictures, 2019). As the bill cleared the National Assembly in July 2010, Habchi, along with Naïma Charaï, a councillor for the Aquitaine region, 'forcefully argued for the ban, citing women's freedom of expression' as one of the main reasons the new law should be introduced (Korteweg and Yurdakul, 2014: 47). They maintained that '"today, in our country, many women and young girls are not free: free to choose their life, free to enjoy the same rights as their brothers, free to dress as they want. The pressures they face lead them too often to feel ashamed of their femininity, to camouflage it, sometimes even to deny it"' (Korteweg and Yurdakul, 2014: 47).

These expanders therefore drew on many of the same themes that the politicians had long pointed to. They emphasised the incompatibility of the full-face veil with French republican secular values, they underlined how the full-face veil subjugated women, and, in talking about the need to 'live together', they inferred that the garment hindered integration.

Interestingly, however, while they did also claim that the full-face veil represented an extremist variety of Islam and a form of indoctrination, they did not make the argument that the full-face veil should be banned on the basis of concerns about security and public safety. That point was left to the politicians to make.

Containers in the debates leading to the 2010 law

Quite simply, there were very few containers in the debates over the wearing of the full-face veil in France at this time. What is more, some of the actors who appeared like potential containers in the early stages of the debates altered their positions, and ended up either joining the expanders, even if they only became weak expanders, or remained on the fence.

There were nearly no containers within the ranks of the ruling UMP. Only one UMP deputy in the National Assembly, Daniel Garrrigue, voted against the bill in July 2010. He explained his actions by saying that by supporting a ban 'we risk slipping toward a totalitarian society' (Erlanger, 2010). More opposition was found on the left, though here too it was far from widespread.

Indeed, as discussed above, the majority of the deputies from the Socialist Party abstained in the votes in the National Assembly and Senate; they did not oppose the bill. Moreover, twenty or so Socialist members did vote for the bill. In addition, as also noted above, the

party proposed a rival bill which, though less draconian than the government's, did still propose that the full-face veil be banned in public institutional spaces. However, some members of the party did speak out against the law of 2010 even if they did not back up their words with actions. For instance, Sandrine Mazetier, who was an MP and also a member of the Gerin Commission questioned the motivations of those who had supported the law. She said that these seemed 'instrumental' and that 'the law merely provided [its supporters] "with an alibi for their racism and Islamo-paranoia"', and she went on to suggest that the law was rooted 'in racist colonial attitudes to France's North African population' (Laxer, 2018: 957). In addition, she argued that the law would do nothing to remedy problems of integration, saying the ban 'does not in any way resolve the problem of affirming the republican pact and values of the republic' and concluding that 'the adopted approach merely causes tensions' (Laxer, 2018: 958). A fellow Socialist MP, Danièle Hoffman-Rispal, who was also on the Gerin Commission, made similar points. She argued that a ban on the full-face veil in all public spaces 'would only exacerbate the marginalizing effects of prior governments' failure to meaningfully engage immigrants in the republican project' (Laxer, 2018: 958). Yet, despite these arguments, neither Mazetier nor Hoffman-Rispal voted against the bill. Like most other Socialist deputies they abstained, and when asked why, Hoffman-Rispal said that the Socialist group in the National Assembly 'had convinced me not to' vote against the law, and that she 'did not want to draw attention' to herself (Laxer, 2018: 958).

More opposition to the bill was found in the Communist Party. While the PCF was divided over the law, with André Gerin strongly supporting it, other deputies had stronger reservations. The party leader, Marie-George Buffet expressed concern that the ban would

result in Muslim women being isolated even further. Her view was that ‘we should not create a stigmatizing law’ and that it was time to ‘stop pointing fingers at these women’. She went on to argue that this ‘runs the risk of pushing them into even greater conditions of reclusion’ (Korteweg and Yurdakul, 2014: 48). Others in the party pointed to other negative consequences of the bill. For instance, the MP Alain Bocquet ‘warned that a ban [would] lead France to “division”’. He also ‘denounced the measure as a ploy to woo the far-right’ (France 24, 2010d).

There was similar concern within the Green Party about the bill. Indeed, the only Green Party member of the Gerin Commission, the MP François de Rugy, ‘considered boycotting the commission altogether, claiming he knew “very well that, from the outset, Gerin and Raoult [the commission’s rapporteur] were pushing a hostile, restrictive agenda”’ (Laxer, 2018: 957-8). His reservations continued, and in advance of the vote in parliament, de Rugy warned that the government was ‘throwing oil on the fire’ and that it was ‘revising tensions to win votes’ (The Scotsman, 2010).

Crucially however, despite all these concerns and warnings, just like their Socialist counterparts, both the Communist members of the National Assembly and Senate, and their Green colleagues abstained in the final votes; they did not oppose the bill.

There was a similar situation regarding some religious organisations. That is, while they expressed some concerns over the consequences of a new law banning the full-face veil in public spaces, they nonetheless also criticised the wearing of the garment. For instance, Mohammed Moussaoui, the head of the French Council of the Muslim Faith, ‘warned that

the veil ban [would risk] leaving many Muslims feeling like outcasts' (France 24, 2010d). Yet, as noted above, Moussaoui had also previously described the full-face veil as 'an extreme practice' (Korteweg and Yurdakul, 2014: 44), and had called on Muslim women to refrain from wearing it (Erlanger, 2010).

Opposition to the 2010 law was also voiced by a number of legal experts. For example, appearing before the Gerin Commission, Rémy Schwartz, a senior lawyer with longstanding experience of the legalities of prohibiting the display of religious symbols in the public space, including as rapporteur of the Stasi Commission in 2003, cautioned against banning the full-face veil on the grounds that it posed a threat to public order. He argued that 'we can't impose a state of permanent control on citizens. That would mean everyone should be identifiable at all times, which would make public space into a vast zone of video surveillance (Heneghan, 2009). Denys de Béchillon, a law professor who has also presented evidence to the Gerin Commission, agreed. While he said he personally did not like the full-face veil, even saying 'it disgusts me', he nonetheless argued that the legal tools to prohibit the wearing of the full-face veil were not available (Joppke, 2015: 62). He also questioned Gerin's argument that full-face veils broke French law because they violated women's rights and dignity, saying that 'isn't the heart of a woman's dignity found in the exercise of her free choice and her freedom, even if that includes wearing a burqa if she wants to?' (Heneghan, 2009). In the end, however, these legal opinions – given in autumn 2009 – were eclipsed by the ruling by the Conseil d'Etat in March 2010 that a ban on full-face veils would be possible, if based on concerns over public safety, and if framed as a ban on face coverings rather than one on the full-face veil in particular.

Both in the run up to the law, and indeed after it was passed, a number of international NGOs voiced their concerns. In June 2009, as the Gerin Commission was being created, Human Rights Watch warned that a ban on full-face veils in public would violate religious freedom. The director of the organisation's Paris office, Jean-Marie Fardeau, argued that 'prohibiting the burqa will not give women freedom but only stigmatise and marginalise women who wear it' (DW, 2009). Likewise, Amnesty International condemned the new law. As the bill was presented to the National Assembly in May 2010, John Dalhuisen, the organisation's expert on discrimination in Europe, said that 'a complete ban on the covering of the face would violate the rights to freedom of expression and religion of those women who wear the burqa or the niqab as an expression of their identity or beliefs' (Amnesty International, 2010). The Open Society Foundations, a large funder of independent groups working on issues of justice, democratic governance, and human rights, founded by George Soros, also raised criticisms of the law. In May 2012, a year after it had come into force, the organisation argued that the ban had done nothing to protect gender equality and help maintain public order (Irving, 2012).

International organisations also raised their concerns about the ban. In June 2010, the Council of Europe's Parliamentary Assembly passed a resolution that noted that although legal restrictions to the right of individuals to choose their clothing 'may be justified where necessary … in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen, … a general prohibition of wearing the *burqa* and the *niqab* would deny women who freely desire to do so their right to cover their face' (Council of Europe, 2010, italics in original). The resolution went on to also warn about the increased social isolation of women who chose to wear the

full-face veil. The UN Human Rights Committee raised similar points in its rulings on cases brought before it. In one such case in October 2018, it concluded that while there were ‘some circumstances’ in which it was reasonable to demand individuals to show their faces, such as ‘where public security was at stake, or for formal identification purposes’, France had ‘not demonstrated how the full veil presents a threat in itself for public security to justify [the] absolute ban’. It further warned that ‘rather than protecting fully veiled women, [the ban] could have the effect of confining them to their homes, impeding their access to public services and marginalizing them’. And it also argued that ‘a general criminal ban did not allow for a reasonable balance between public interests and individual rights’ (UN News, 2018).

The discussion above has shown that from 2008, when the issue of religious symbols in the public space resurfaced, until 2011 when the new law banning face-coverings in public came into force, there were few containers. What is more, those actors that have been loosely described as containers were hardly strong ones. The politicians who did raise concerns about the negative consequences of a new law did not end up opposing it. Rather they abstained in the crucial votes. They might therefore perhaps better be described as ‘fence-sitters’. Similarly, while some Muslim organisations did warn that a ban on wearing the full-face veil in public would marginalise the women concerned, they had also stated that, in their view, the full-face veil had no place in France. The opposition to the proposed law that some legal experts had voiced was also dismissed once the Conseil d’Etat had issued its report in March 2010, stating that a ban could be legally possible if the emphasis was placed on public security and public order and if the law applied to a wide range of face-coverings. In short then, domestic opposition to the law appeared half-hearted and was easy to ignore.

By contrast, international opposition to the law, both from NGOs and from organisations such as the Council of Europe and the United Nations, was more robust. Yet, the bottom line was that this disapproval did not matter much. These organisations could comment all they liked, but they had little to no influence on national law. As was discussed in Chapter 6, even when cases were brought to the ECtHR or to the UN Human Rights Committee, France was able to defend its actions the vast majority of the time.

The debates in this period were instead dominated by the expanders, who were numerous and who came from across the political spectrum and from all corners of public life. They were also vocal, and drew on multiple themes to make their arguments, including the protection of French republican values, most notably laïcité, the safeguarding of women's rights, the importance of promoting social integration, and the need to ensure public safety and public order. In short, these expanders drew on all of the arguments to which Howard (2009) refers, and in doing so their points resonated widely both in the media and among the public, convincing the vast majority of people that a ban was reasonable and was needed. What was more, this debate had gone on for a long time. While discussions on the full-face veil had only really resurfaced from the summer of 2008, the wider issue of religious symbols in public spaces had been on the agenda since 1989. Therefore, as Ismail (2010) argues, the 2010 law was not a 'hasty outcome'. Instead, it 'was the result of much longer and more deliberative discussions on the legal, cultural, religious, political, and social aspects of legislating a ban'.

<u>Expanders and containers in the 2016 'burkini affair'</u>

Before the chapter turns its attention to how the media and the public responded to the debates over the banning of the full-face veil in 2010, it is worth spending a little time considering the so-called ‘burkini affair’ of 2016, and examining how this came about, how it developed, and who the actors involved in it were. As was discussed in Chapter 6, the debate over the display of religious symbols in the public space took a new turn in the summer of 2016 when mayors in some 30 French seaside towns instituted a ban on the wearing of burkinis.

As is the case with all regulations, to better understand how and why this ban was introduced, it is important to appreciate the context at the time. On a general level, social unrest had remained high in deprived immigrant communities since the passing of the 2010 law, and relations with the police were particularly strained, as was reflected, for example, by riots that took place in the Parisian suburb of Trappes in summer 2013 (Chrisafis, 2013b). Yet what was more important and relevant in explaining the introduction of the burkini ban at this time was the wave of terrorist attacks that rocked France in 2015 and 2016, all of which were carried out by individuals who identified as Muslims. The first of these was the attack on the offices of the *Charlie Hebdo* magazine in January 2015. This was then followed in November 2015 with a series of attacks in Paris, including at the Bataclan theatre where 90 people were killed. Then, in July 2016 a further 86 people were killed in Nice when a truck was deliberately driven into crowds celebrating Bastille Day. These events led to President François Hollande and his government introducing swift and strong measures to promote national security (Cohen-Almagor, 2022: 4). Yet they also led to growing tensions between French and Muslim communities (PBS NewsHour, 2015), increased levels of

Islamophobia, and rising numbers of hate crimes aimed at Muslims. For example, Guerin and Fourel (2022) reported that in the week that followed the *Charlie Hebdo* attack 54 anti-Muslim incidents were registered.

It is in this context that the local mayors – the main expanders in this debate – introduced the ban on the wearing of burkinis in August 2016, just one month after the Nice attacks (Dearden, 2016). They could not use the 2010 law to impose their bans because although burkinis cover the head, they do not cover the face. Yet, they could draw on the same arguments that had been made during the debate on the 2010 law, and since they were banning a type of swimwear, they also pointed to hygiene reasons. David Lisnard, the right-wing mayor of Cannes – the first town to bring in the ban – described the burkini as a 'uniform of extremist Islamism' (France 24, 2016), and the head of the municipal services directly linked the garment to terrorism by stating that it was '"ostentatious clothing which refers to an allegiance to terrorist movements which are at war with us"' (Cockburn, 2016a). In addition, the ruling in Cannes clearly accused burkini-wearers of undermining the principle of secularism. It stated that '"access to beaches and for swimming is banned to anyone who does not have [swimwear] which respects good customs and secularism"' (Cockburn, 2016a), and it went on to say that only clothing that 'is "respectful to morality and secular principles" … can be worn on the beach' (Agerholm, 2016). On top of this, the ban was justified on the grounds that it would ensure people conform to 'hygiene rules' (Evolvi, 2019: 469), thereby implying that the burkini did not.

The local mayors found support for their ban from a number of senior politicians. Indeed, Manuel Valls, the Prime Minster, declared that he backed the bans, arguing that the burkini

was ‘not compatible with French values’ and that it was a symbol of oppression, ‘based on the “enslavement of women”’. He stopped short at proposing a national law on the matter, however (Osborne and Sims, 2016). By contrast, Nicolas Sarkozy, the former President, who was planning to run again for the post, said he would enact a national ban on burkinis if he was re-elected (Bittermann et al., 2016). Likewise, Marine le Pen, the leader of the Front National, favoured a ban, and she drew on anti-Muslim arguments and claims that the burkini is a sign of subjugation to make her point, saying that ‘France does not lock away a woman’s body, France does not hide half of its population under the fallacious and hateful pretext that the other half fears it will be tempted’ (Dearden, 2016).

By contrast, the actions of the mayors were criticised by the Socialist Party. In Cannes, the PS said that the ban ‘was an attempt at grabbing headlines which would “play into the hands of religious fundamentalists”’ (ABC News, 2016a). A number of Muslim organisations also condemned the bans, saying that women should have the freedom to dress how they wish, and that the new rules could worsen feelings of alienation and fuel extremist propaganda (Osborne and Sims, 2016). For instance, the Collective Against Islamophobia in France (CCIF) called the ban ‘discriminatory’ and it also questioned its legality, suggesting that it could well be ‘unconstitutional’ (BBC, 2016). A spokeswoman for the Fédération des Musulmans du Sud, a Muslim association in southern France, also argued that the ban was ‘just a way for politicians to hide their inability to handle security in the face of terrorism’ (Breeden and Blaise, 2016).

Containers in this debate also included a number of NGOs. The French Human Rights League registered its opposition to the ban, describing the rules as constituting a ‘serious and illegal

attack on numerous fundamental rights' and an abuse of France's secular principles (Dearden, 2016), and its leader, Hervé Lavisse said, 'it is time for politicians in this region to calm their discriminatory ardour and defend the spirit of the Republic' (BBC, 2016). Amnesty International characterised the ban in a similar way. Its Europe Director, John Dalhuisen said it was 'fuelled by and is fuelling prejudice and intolerance' (Bittermann et al., 2016).

As was explained in Chapter 6, the CCIF and the Human Rights League challenged the ban by appealing to the Conseil d'Etat to overturn it, and within a few days the Conseil d'Etat ruled that the ban did indeed breach a number of fundamental freedoms. The ruling actually only concerned one French town, Villeneuve-Loubet, but it was expected that it would set a legal precedent for the ban to be lifted in other towns (Senna, 2016). To some extent it did, as a number of local mayors did lift the ban in their towns. However, others, including the mayor of Cannes, remained defiant and kept the burkini ban in place (Foster, 2016).

The burkini affair of 2016 was a rather strange affair, especially to observers outside of France. Yet, it once again reflected the tensions and debates surrounding the display of religious symbols in the public space in France, particularly ones associated with Islam. Moreover, despite the ruling of the Conseil d'Etat, the affair showed that the expanders continued to have the upper hand in the debates. These actors deployed the range of now-common arguments to make their case, and their points resonated fairly widely.

Media and Public Opinion in the 2005 to 2017 Period

French news coverage in this period very much reflected the debate that was going on in political circles. The coverage was noticeably uniform in its content, contained very few dissenting voices or alternative angles, and focused on many of the same arguments that the political expanders had been making. Indeed, it rarely challenged or contradicted the position of the politicians (Friedman and Merle, 2013: 776).

In their examination of news coverage from 2004 until October 2010, when the law on face-coverings was finally approved, Friedman and Merle (2013: 776) found that very few newspapers offered perspectives that challenged the prevailing narrative, or that 'criticized the basis of the law, its constitutionality, or its implications for women's status'. This was particularly the case as time went on, as newspapers 'progressively exclude[ed] alternative views' from their coverage. Friedman and Merle also observed that the media very rarely interviewed or quoted Muslim women who would be directly affected by the new law (2013: 776).

As the debate on the place of religious symbols ramped up, the media, very much like the politicians, focused its attention on republican values and secularism, and on the threats posed by communitarianism. For instance, in July 2009, following the creation of the Gerin Commission, Le Monde published an editorial that claimed that '"for years, our secular Republic has endured the assaults of the most radical Muslims, whose provocations have no other goal but to test our resistance and our capacity to defend our republican values"'. It went on to argue that it was '"time to face up to the rise of communalism and to affirm our attachment to republican egalitarianism and laïcité, the non-negotiable foundation of our

society"' (Korteweg and Yurdakul, 2014: 44). This one piece was reflective of wider coverage and of the understanding in the media that the role of the Gerin Commission was to investigate 'the burka's place in France … to "limit this communalist deviation contrary to the principle of laïcité, to our values of freedom, equality and human dignity"' (Korteweg and Yurdakul, 2014: 44). As Friedman and Merle (2013: 776) argue, 'France's identity as a secular nation that respects religious freedom but controls its public expression was reinforced in unifying coverage that invoked republican values, legacy societal principles, and legislative approval'.

The media also linked the wearing of the full-face veil to women's oppression or subjugation. In this, the press sometimes leant on the rulings of the Constitutional Council, and explained to their readers that the Council had '"found that women hiding their faces, voluntarily or not, are in a situation of exclusion and inferiority that is manifestly incompatible with the constitutional principles of freedom and equality"' (Friedman and Merle, 2013: 776).

The scale of the media coverage ebbed and flowed in the same way that the political debates increased and waned. Coverage intensified in summer 2009 first in the wake of President Sarkozy's comments on the wearing of veils and headscarves by young girls – when he argued that the garments were problematic if girls were forced to wear them (Friedman and Merle, 2013: 775) – and then following the creation of the Gerin Commission. Then, after a lull, coverage again grew in spring and summer 2010 when the bill outlining the 2010 law was announced and made its way through parliament. Therefore,

there was a further increase in coverage as the law was approved by the Constitutional Council in October 2010.

As events unfolded, with the Gerin Commission doing its work and then publishing its report, and the Conseil d'Etat then delivering its ruling on the legality of the proposed law, the focus of the media coverage also changed. In 2009 and early 2010 attention was firmly on republican values and the various interpretations of laïcité, not least since these were the 'central argument[s] that led to the formulation of the law' (Friedman and Merle, 2013: 775). However, once the bill was presented to parliament, the media's focus shifted first to the legislative text, and then to the societal implications of the law, including to the 2,000 Muslim women who would potentially be affected by the new full-face veil ban (Friedman and Merle, 2013: 775).

Media coverage of the 2016 burkini affair was somewhat different, even if some similarities did remain. The familiar theme of women's oppression was used in that burkinis were portrayed as a symbol of subjugation (Media Diversity Institute, 2016), but the affair was also reported in a way that reflected the events that had preceded it. More specifically, the media much more readily made the link between the burkini and Islamic terrorism, for example discussing the garment in the same breath as providing information about the truck driver who had killed over 80 people in Nice (Media Diversity Institute, 2016). At the same time though, a number of outlets questioned the legality of the ban and its effect on individual freedoms. For instance, Le Monde pointed out that there was no law that banned the wearing of the burkini and that the only law that did exist prohibited people covering their faces, while franceinfo argued that the mayor of Cannes' claim that the burkini ran the

risk of disturbing public order seemed rather tenuous. The channel's resident lawyer commented that '"the basic freedom to come and go dressed as you please seems to me to be infringed in a way that is disproportionate to the risks"' (BBC, 2016). In addition, Libération, the left-leaning newspaper, argued that the mayor of Cannes was not responding to a particular issue, but was instead engaged in blatant political point-scoring (BBC, 2016).

As has been seen throughout this section of the chapter, the debate on the display of religious symbols in the period from 2005 to 2017, and on the wearing of the full-face veil in particular, was very much one-sided, dominated by numerous expanders, and supported by media coverage that was in tune with the political actors. Crucially, it also unfolded against the backdrop of favourable public opinion.

Data shows that, from the very start of this period, the French public was negatively disposed to the wearing of headscarves and full-face veils. A Pew Global Attitudes Project survey conducted in 2005 found that a large majority (78%) of people surveyed in France favoured a ban on headscarves in public spaces. This level of support was considerably higher than it was in other West European countries (Morin and Horowitz, 2006). The survey also observed that unlike in other countries, support for a ban was high both among respondents who held negative attitudes towards Muslims (86%) and people who had favourable views of Muslims (74%) (Morin and Horowitz, 2006).

This last figure is especially interesting. Data at this time suggests that attitudes in France were favourable towards Muslims, with the overwhelming majority of respondents in a 2006 Pew survey saying that they thought it was perfectly possible to be a Muslim and to

live in modern French society, and with high numbers also reporting, in a 2007 Financial Times poll, that they had one or several Muslim friends (Weil 2009, 2703). The fact that support for a ban on headscarves and full-face veils was so high even in the context of such favourable attitudes towards Muslims, therefore may well suggest a particular French understanding of what being a Muslim in France entails, and a particular French acceptance of using legislation to enforce that understanding and uphold republican principles and traditions. This interpretation is supported by the fact that few Muslim women in France actually wear a head covering on a daily basis. Indeed, another Pew survey conducted in 2006 found that only 13% of Muslim women in France did so, as compared to 53% in Britain, and a large majority of Muslim women in France (73%) said 'they "never" wear the religiously prescribed head covering' (Morin and Horowitz, 2006).

The high levels of support for a ban on headscarves and full-face veils increased yet further in the next years. Indeed, another Pew Global Attitudes Project survey found that in 2010, levels of support in France for a ban had grown to 82%. This was still higher than in other countries surveyed, though interestingly, the gap had closed, compared to 2005 (Pew Research Center, 2010). This survey also found few differences in opinion across ideological persuasions. While 87% of those on the political right in France approved of a full veil ban, so did 83% of centrist respondents and 75% of left-wing ones (Pew Research Center, 2010). Less surprisingly, there were differences in attitudes between older respondents and younger ones, although again, large majorities in all age groups favoured a ban, including 72% of respondents aged 18 to 34 (Pew Research Center, 2010).

A significant change occurred at this time regarding attitudes towards the Muslim community in France. While, as noted above, in 2006 nearly three quarters of those surveyed felt that there was no conflict between being a Muslim and living in modern French society (Weil, 2009: 2703), a study found that in 2016 as many as 47% of respondents thought that the presence of a Muslim community in France was a threat to the French identity in the country. 63% also were of the opinion that the influence and visibility of Islam in France was too great. In addition, in this survey only 32% of respondents believed that Muslims were well-integrated into French society, and over two thirds thought that the failure to integrate was primarily down to Muslims' own refusal to do so (Purbrick-Thompson, 2018: 31). Reflecting these changes in attitudes towards Muslims, the study also found that from 2008 to 2013, laïcité overtook universal suffrage as the most important national value (Purbrick-Thompson, 2018: 28).

Public attitudes in France were therefore very much predisposed to the introduction of the 2010 law, with strong support for a ban on the wearing of full-face veils in the public space existing from as early as 2005. Moreover, although Islamophobia was not at particularly high levels in the years that preceded the law, the public was becoming more and more attached to, and defensive of, laïcité, and a law that promised to protect this principle was therefore looked upon favourably.

Conclusion

This chapter has examined the events and discussed the debates that have cumulatively led to the regulation of religious symbols in public spaces in France in the period since the 1980s to 2017. In doing so, it has drawn on the second analytical framework developed in Chapter 3 and has explored which actors have been crucial in defining religious symbols as a problem, and how they have framed their arguments and mobilized their ideas so as to place the issue of the display of religious symbols on the agenda. It has also paid attention to the few actors who tried to counter the arguments of the expanders and resist or halt the passage of new regulations and laws. As well as discussing the role of these actors, the chapter has also explored the role of the media in framing the narratives on religious symbols and the effect that the media's coverage, and the wider political debates, have had on shaping public opinion. In doing all this, the chapter has sought to explain why the regulations of religious symbols in French public spaces are the way they are.

The chapter started by arguing that before 1989, when only civil servants were subject to regulations prohibiting the display of religious symbols in public spaces, there was little debate or controversy on the matter. However, this all changed in 1989 when the first 'headscarf affair' arose as a result of the events in the school in Creil. From then on, debates flared, political actors intervened, recommendations to sanction symbols were made, and finally laws were passed. All this first concerned religious symbols in schools, but from 2008 onwards, the focus shifted to wider public spaces, including other institutional public spaces and open public spaces.

The expanders involved in the debates on the display of religious symbols in French public spaces drew on several arguments throughout the period under investigation. In the first

instance, they made strong and frequent arguments about the need to uphold and/or protect republican values, including the principle of laïcité. This theme was used repeatedly in the debates in the post-1989 headscarf affair period in particular because of the central role of laïcité in the French public school system, and because of the specific role that schools are considered to play in French society. In this context headscarves were seen as violating laïcité and hampering the development of children into 'proper' French citizens.

Expanders also drew heavily on the argument that regulations were necessary to improve social integration. But it must be remembered that unlike in England, social integration in France means assimilation with republican values, including laïcité, and that in this understanding, there is no room for minority or ethnic identity or loyalty, or what the French call communitarianism. Given this, the expanders portrayed headscarves and full-face veils as signs of communitarianism, and the girls and women who wore them as not embracing an acceptable form of national identity. Regulations were thus presented as a way to fight communitarianism, uphold universalism, and protect French national identity.

The expanders also added women's rights to their platform of arguments in the post 1989 period. This theme was used particularly frequently in the 2003-2004 years, and again in the period preceding the introduction of the 2010 law. In deploying this argument, the headscarf and the full-face veil were first framed as symbols of subjugation and suppression. The logic then entailed that, to achieve equality, the wearing of these religious garments needed to be eradicated or at least confined to the private space, hence the need for regulations.

Finally, expanders also drew on arguments that the headscarf and full-face veil represented a threat to society's security. These claims rested on the premise that these garments are symbols linked to fundamentalism, and so regulating them was a step to defeating extremism. This theme became prevalent only from about 2003 onwards, and particularly so in the run up to the 2010 given the Conseil d'Etat's ruling on how that law would have to be framed to be constitutional. The argument was then used again in the burkini crisis of 2016, which came in the wake of a number of terrorist attacks throughout France.

By and large, all these arguments were met with little opposition. Throughout all this period, the expanders outnumbered the containers by a huge margin, and some containers ended up becoming expanders as time went by. The expanders also came from all across the political spectrum and from all corners of public life. By contrast, the few containers that did exist were found in a small number of civil society organisations or were individual public figures. No mainstream political party could be counted among the containers, and even the left-wing smaller parties remained 'fence-sitters' or joined the expanders. As a result, the containers were weak, and were easily drowned out by the expanders. In this sense, unlike in England, the debates were far from balanced. What is more, not only did the expanders dominate the containers numerically, but they were also united in their arguments and demands. By drawing on the same themes and making the same points time and time again, their arguments became hard to challenge and assumed a 'truth-like' character that became widely accepted.

As well as the balance of the debates being markedly different in France as compared to England, the constellation of the actors involved in the debates was also different. While in

England the debates were primarily led by political elites, as Chapter 5 showed, in France there was greater involvement from professional organisations, unions, journalists, and intellectuals, alongside politicians. As has been discussed, this was particularly the case in the debates over the wearing of religious symbols in schools, where educationalists – headteachers but also 'regular' school staff – contributed to the debates, and often pressed for the introduction of new regulations. In this sense then, the debates in France over the presence of religious symbols in the public space can be described as much more 'bottom-up' in nature than they were in England.

The media also played an important role in these debates. It did not challenge the expanders' arguments, and instead it engaged with all of the expanders' themes in its coverage. It emphasised the need to protect French republican values, uphold the principle of laïcité, and promote women's rights, and it underlined that to do this, communitarianism had to be rooted out. Moreover, the media arguably expressed stronger anti-Muslim sentiment than the political expanders had done, and made more of the supposed link between the full-face veil and Islamic fundamentalism than politicians had been prepared to do. All in all, through the sheer volume of coverage, and through the tone of its coverage, the media assisted the expanders in their successful pursuit of regulations against Islamic religious symbols and garments.

Helped along by such media coverage, public opinion was receptive to the expanders' arguments and to the idea that further regulations against Islamic religious symbols were needed. Although general attitudes towards the Muslim community in France were not that hostile in the 1990s and early 2000s, there was considerable concern about the threat of

international Islamic fundamentalism in these years. Furthermore, even from early on, there was strong support among the public for an approach that kept religion and its manifestations to the private space. In other words, the general sentiment was that Muslims could be French citizens and could be part of French society, but only if they engaged fully with the republican, secular ideal. And in this, any outward manifestations of Islamic faith, including the wearing of the headscarf or the full-face veil, were not acceptable. If further regulations were needed to ensure this, then, for the vast majority of people, that was reasonable. That sentiment became all the stronger as time went by and so the support for regulations also grew.

Numerous scholars have condemned both the 2004 law that banned the display of 'ostentatious' religious symbols in public schools and the 2010 law that banned the wearing of the full-face veil in all public spaces. For instance, both Carens (2005) and Bowen (2007) labelled the 2004 law as 'illiberal' (Weil, 2009: 2701-2), while Cohen-Almagor (2022) described the 2010 full-face veil law as unjust and unreasonable. Others have explored the consequences of both laws. For example, Abdelgadir and Fouka (2020) found evidence that the 2004 law reduced the secondary educational attainment of Muslim girls, and that this, in turn, had long term effects on the participation of Muslim women in the labour force and on their economic integration. The effects of the 2010 are perhaps less concrete and measurable as they concern the rights and freedoms of the women who choose to wear the full-face veil. Cohen-Almagor (2022: 17-18) argues that the law 'erodes freedom of religion, and it offends the dignity of women who voluntarily opt to wear this garment for religious reasons in order to keep their modesty intact and also to protect themselves from strangers

who might make them feel uncomfortable'. He goes on to add that it also 'undermines the agency of women' (2022: 18).

Scholars have also pointed to both laws being excessive given the scale of the 'problems' that they sought to address. Observers estimated that, in 1995, fewer than one percent of Muslim schoolgirls were likely to wear the headscarf in France. But they also noted that this number was 'being inflated … and the importance of the phenomenon was … being grossly overdramatized' (Winter, 2008: 164). The number of headscarf cases in schools also then dropped significantly between the mid-1990s and the early 2000s (Winter, 2008: 163-4). As Thomas (2012: 184) observed, out of a population of about 5 million Muslims in France, there were only about twenty headscarf cases in schools at the start of the 2003-2004 academic year that were judged to be 'difficult'. On this basis she concluded that the 'French public reaction to the problem of students in headscarves appears strikingly disproportionate' and she called the response 'seemingly overblown'. The 2010 law could be considered similarly 'excessive'. After all, the 'problem' of women wearing full-face veils in public was hardly widespread even before the introduction of the law. A survey conducted by the Ministry of the Interior in 2009 estimated that as few as 1,900 women in France wore the burqa and the niqab (Ismail, 2010). 'This number represented 0.04% of the French Muslim population, and less than 0.003% of the general population of France' (Ahmed, 2017).

Given the accusations of illiberalism, and in view of the small number of girls and women in France who actually wear headscarves and full-face veils, the existence of such strict regulations might seem perplexing, at least to foreign observers. Yet, as had been discussed

in detail in this chapter, there has been wide support for stringent restrictions, and this has come from virtually all political circles, from the media, and from the general public. On the one hand, this level of approval is undoubtedly explained in part by difficult social issues and tensions that exist in France, as well as by what the philosopher Pierre Tevanian has called an underlying 'cultural racism, which targets the descendants of the colonised, and primarily picks upon their Muslim identity'. For him, the bans reaffirm 'a symbolic order … which we can call colonial, where certain people were considered sub-human primarily due to their Muslim identity' (Bouteldja, 2005). Yet on the other hand, the widespread support for the regulations reflects a firm common belief in, and commitment to, republican values, including the principles of laïcité and universalism, and to an understanding of national identity built on these values, as well as a conviction that religion belongs in the private sphere, as discussed in Chapter 2. From this standpoint, it does not matter that the threat to these values might only be small, and nor does it matter that there are likely to be a range of negative consequences, including the curtailment of civil rights, and the increase in alienation or marginalization. These sacrifices are justified.

Chapter 8: Conclusion

This thesis has explored the regulations that govern the display of religious symbols in public spaces in England in the 2000 to 2017 period, and in France in the years between 1989 and 2017. After having set out its understanding of the concept of the public space and explained how religion has traditionally been accommodated within it in the two countries

(in Chapter 2), the thesis proposed and developed two novel analytical frameworks that have allowed the regulations on the display of religious symbols to be examined and explained. As presented in Chapter 3, the first of these made use of the concepts of scope, depth and enforcement to thoroughly map the regulations that exist in the two countries. While scope refers to the object of the regulations and the place of the regulations – i.e. which symbols and garments are subject to regulation, and where this regulation occurs – depth points to the penalties for infringing the regulations, and enforcement concerns the extent to which the regulations are strictly applied, and the penalties imposed. This framework was then deployed in Chapters 4 and 6 to explore how the regulations vary from one space to another, including from (different) institutional public spaces to open public spaces, how the regulations pertain to some symbols more than others, how they have changed over time, and how the regulations have varied across the two countries under investigation.

The second analytical framework presented in Chapter 3 was developed from the policy-making literature, and has enabled the thesis to explain *why* the regulations in the two countries are the way they are. The focus of this framework is squarely on the actors involved in the debates leading up to the introduction of regulations because a foundational argument of the thesis has been that the regulations of religious symbols in public spaces cannot be understood just by reference to historical legacies and institutional and cultural contexts, but can instead only be fully explained by also examining the demands, discourse and behaviour of the central actors involved in shaping these regulations – i.e. by agency. This framework made use of the concepts of expanders and containers to identify who the actors involved in the regulations have been, and focused on how they came to define

religious symbols in the public space as a problem, how they framed their arguments, and how they mobilized their ideas, all in a bid to get these issues onto the policy agenda. The framework was then deployed in Chapters 5 and 7.

Chapters 4 and 6 revealed that the regulations of religious symbols in public spaces in the two countries under study are markedly different. Firstly, the scope of regulations is considerably wider in France than it is in England. This is primarily because England does not regulate against the display of religious symbols in open public spaces, and instead only regulates in institutional public spaces. Here the scope of regulations is moderate in hospitals and schools, though it has increased in both these institutions since 2000, and it is narrow in courts. Furthermore, in England regulations vary across different institutional public spaces, and indeed across individual institutions, something that is largely explained by the fact that there is an absence of national legislation on the matter, and instead the state has chosen to issue only guidelines when institutions have sought advice on how to manage the display of religious symbols, and has relegated decisions on these issues to individual institutions.

In France, by contrast, the scope of regulations is especially wide in institutional public spaces, and particularly so for those who work there. Civil servants working in all public institutions may not display any religious affiliation at all, and while the scope of the regulations for users of public services is less wide, it is still quite considerable when compared to England. From the 1980s but especially since 2004, pupils in state schools have been forbidden from displaying their religious affiliation, and people using other institutional public spaces have been banned from wearing full-face veils in these places

since 2010. The scope of regulations also increased significantly from 2010 when the full-face veil was banned from open public spaces. All this has meant that the scope of the regulations in France is wide, but that at the same time, the regulations very much concern only one religious symbol, namely the full-face veil.

The depth of the regulations (i.e. the penalties imposed for breaching the rules) is also larger in France than it is in England. In England, the depth of regulations is largest in schools, where it has also increased over time. Here penalties have varied and have ranged from mere warnings not to wear certain clothing or display certain symbols, to more severe sanctions such as suspension and expulsion for students, and loss of work for teachers. In hospitals depth is more limited, in large part because sanctions have been avoided by institutions making alternative arrangements for staff who wish to display a religious symbol, for example by transferring them to a different department. Where penalties have been imposed in schools and hospitals, they have been enforced strictly. By contrast, the depth of regulations in courts remains small, and there has been no need to enforce any sanctions.

By contrast, in France, there have been severe sanctions for breaking the regulations, and these have been applied in more places as the scope of the regulations has increased. Civil servants have faced dismissal for breaching the rules, and pupils have been expelled from school for doing so. For other users of public institutions, or for people in open public spaces, the penalties for infringing the regulations have been less severe, and have generally involved fines. In all these places, penalties have been enforced strictly.

Turning to explaining why the regulations are the way they are, Chapters 5 and 7 charted the debates over the presence of religious symbols in the public space in the two countries. The chapters explored the level and nature of the debates and examined which actors took part in these, what arguments they made, how they framed their points, and ultimately how successful they were in shaping any new regulations on the display of religious symbols in the public space. The chapters also paid attention to the ways in which the media in both countries reported on the debates and how it framed the issues, as well as to the impact of the debates and the media on public opinion in each country.

As Chapter 5 explained, in England, there was little debate on regulating religious symbols in the public space before 11 September 2001, and there were no or few regulations in place. Few actors were interested in the issue, and the media provided very little coverage of it. However, there was hostility towards Muslims at this time, and this was reflected in the media too. Muslims were portrayed as a problem, usually for their lack of integration or for not showing enough loyalty to the host nation. This Islamophobia increased substantially following the 9/11 attacks and, helped by sensationalist media coverage, the event also strengthened the link between Islam and terrorism. It was then that the debate over religious symbols in the public space therefore started, although at this time the mainstream political parties still did not advocate the introduction of any regulations.

However, following the 7 July 2005 London bombings, the level and nature of the debate changed considerably. While the political elites tried to stop a backlash against British Muslims in the immediate wake of the attacks, within a year, a number of political actors started questioning the place of the full-face veil in the public space. Labour’s Jack Straw

sparked the debate, but it quickly spread across the political spectrum and also brought input from some civil society organisations and public figures. Media coverage also exacerbated it. Yet in spite of this increased debate, no significant national legislation was introduced to limit the display of religious symbols in the public space.

By contrast, as discussed in Chapter 7, Islamophobia had been prevalent for a longer time in France. Racist attitudes towards Muslims dated back to colonial times, and the surge of immigration in the 1960s and 1970s that followed the Algerian War had led to a rise in anti-Muslim sentiment. Actors from across the political spectrum questioned the compatibility of Islam with western culture, and cast doubt on the ability of the new arrivals to integrate. By the 1980s there was an atmosphere of crisis in France around immigration, focused on integration and national identity. The context was therefore favourable for a debate on the place of religious symbols in the public space to begin and gather pace, and from the mid-1980s this is precisely what happened.

As the thesis explained, this debate in France first centred on schools and on the wearing of Islamic headscarves, and it culminated in the introduction of the 2004 law banning all conspicuous religious signs from schools. It then continued, spurred on by social unrest and by a number of individual incidents, and focused on the wearing of full-face veils, including in open public spaces. The debate eventually led to the introduction of the 2010 law that banned all face coverings in public, but which, given its focus, became more commonly known as the ‘burqa ban’.

The constellation of actors involved in the debates over religious symbols was rather different in the two countries. In the first instance, the debate was fairly balanced in England, where there were as many expanders as there were containers, even if the two sets of actors did not always engage with each other's arguments (see below). The two sets of actors also came from across the political spectrum. That is, while Labour's Jack Straw did much to spark the debate in 2006, a number of Conservative and Liberal Democrat politicians also expressed their concern about the display of religious symbols, as did some from UKIP. Like Straw, some of these expanders were heavyweights in their parties. They included figures like Tony Blair, Gordon Brown, and Harriet Harman (all Labour), as well as David Cameron and David Davis (Conservative), and Nick Clegg (Liberal Democrat). Yet, a similar number of actors opposed any restrictions on the display of religious symbols, and these containers also included some big-hitters such as Theresa May, Oliver Letwin and Dominic Grieve (all Conservative), Simon Hughes (Liberal Democrat), and Ed Balls (Labour). Moreover, like the political actors, actors from civil society organisations, including Muslim groups were also divided in their views on the display of religious symbols. While some of these called for restrictions on religious symbols, others opposed them.

The situation was quite different in France. Here the expanders outnumbered the containers by a very wide margin, and some of the actors that could be considered containers in the early years changed their positions and joined the ranks of the expanders as time went on. What is more, the expanders in France came from across the entire political spectrum and from all areas of public life. Indeed, by the early to mid-2000s all the mainstream parties were in the expander camp, and even the smaller left-wing ones (the Communists and the Greens) could no longer be counted as containers. The only containers to be found came

from a small number of civil society organisations, some fringe left-wing groups, or were individual legal experts or public figures, and as a result of this numerical imbalance, and of the unity of feeling and purpose amongst of the expanders, the containers were weak.

The type of actors involved in the debates also differed in the two countries. In England it was mainly political elites who had voiced their opinions and put forward their arguments, both in favour of further regulations and against any new legislation. By contrast, in France it was not only politicians who were central in the debates. They were, but they were also joined by members of professional associations, unions, civil society organisations, journalists, and public figures. School leaders and regular teachers were particularly active in the debates over the regulation of religious symbols in French schools in the 1990s and early 2000s, and many of these individuals pressed for the introduction of new legislation. Similarly, numerous Muslim groups, civil rights organisations, and feminist groups participated actively in the debates and were supportive of the introduction of new regulations. In this way then, the debates over religious symbols took on a rather 'top-down' character in England, while in France they could be better described as being 'bottom-up'.

In addition to the balance of the debates and the type of actors involved in the debates being different in the two countries, there were also differences in the arguments that the various actors drew on. In England, the expanders mainly made use of the argument that the display of religious symbols, and the wearing of the full-face veil in particular, hindered integration, threatened community cohesion, and encouraged segregation. Some also added that the full-face veil was 'against the British way of life', that it was 'offensive', and that it made people feel uncomfortable. In addition, many expanders argued that the full-

face veil was a barrier to communication especially in schools, but also in hospitals. Others also claimed that the full-face veil was a symbol of the repression and segregation of women who wore it. The argument that religious symbols are signs of the threat that Muslims pose to safety and security through their supposed link to terrorism was used much less often, however. In fact, it was only actors from the far right of the political spectrum who deployed that argument; mainstream politicians did not use it. Likewise, the argument that religious symbols pose a threat to secularism was not drawn on in England, given that it was largely irrelevant.

In some instances, the containers in England met the arguments of the expanders head-on. This was the case with the arguments over women's rights, where a number of containers insisted that it was up to women to decide what they wished to wear, and that introducing regulations that limited that choice would amount to a breach of the right to equality. At other times, however, they failed to present counter-arguments to the expanders, and instead they pursued their own points. In particular, they often argued that banning people from displaying religious symbols or wearing religious clothing would constitute a violation of the right to freedom of religion and to the right to manifest one's religion.

In France, the arguments of the expanders centred on how religious symbols were a threat to French republican values, to the principle of secularism, or laïcité, and to the concept of universalism. In this context, religion is relegated to the private sphere and there is no room for religious or ethnic pluralism, and in fact, any display of such pluralism, or communalism, is considered to represent a threat to the nation and to national identity. Integration therefore means accepting this, and assimilating into mainstream French society and

adopting French secular values. This was the core argument of the majority of the expanders, though it was also frequently accompanied by the claim that the headscarf, and the full-face veil in particular, are detrimental to women's rights because they exclude the women who wear them, represent a symbol of repression because women are forced to wear them by husbands or families, or constitute a sign of gender inequality that is not acceptable in France. By contrast, in the early years, the argument that the full-face veil was a symbol of the threat that Muslim extremism poses to the safety of society was not widely used, and it was only in 2010 that it was drawn upon, once it became obvious that the 2010 law would only be constitutional if symbols or garments could be banned on the basis that they posed a threat to public order. As for the argument that the full-face veil represented a barrier to communication, this was not employed as widely in France as it was in England. Instead, other arguments predominated.

Given that there were so few containers in the French debates, the arguments that they used in response to the expanders did not receive much coverage or have much effect. In 1989 there was some nod by the Conseil d'Etat to the obligation to protect pupils' rights to express their religion and manifest their beliefs, but the body's recommendation also spoke of the need to prohibit proselytizing and the presence of 'ostentatious' religious signs. Likewise, some actors did raise concerns that a ban on religious garments might amplify tensions with Muslim communities, increase discrimination, and further marginalize and isolate Muslim women. Yet, as the arguments of the expanders gained ground, the containers that did exist dropped their opposition, and their counter-points were increasingly ignored. The same was the case with arguments that revolved around the possible unconstitutionality of the 2010 law. Once a way was found to resolve this – by

emphasizing the threat that face coverings posed to public order – these arguments were dropped. The only containers that continued to argue that the regulations would violate religious freedoms were international NGOs, and again, these were largely ignored.

In general, the media in England and France supported the expanders in the debates over the place of religious symbols, and of headscarves and full face-veils in particular, in the public space. It did this in two ways. Firstly, it devoted greater coverage to the arguments of the expanders than to those of the containers. Indeed, in France, in the later years, there was hardly any coverage of actors who opposed the introduction of new regulations. Secondly, the media presented many aspects of the debates in sensationalist ways. From 9/11 onwards, the English media, and the tabloid newspapers in particular, frequently linked Muslims with threats of terrorism and fundamentalist extremism. It also framed issues in a 'us vs. them' manner, emphasizing that Muslims were a problem and a danger to national cohesion and to public safety, and suggesting that the full-face veil embodied this threat. In this way, the tabloid press was actually far more hawkish in its coverage than even the strongest political expanders. In France, the media focused less on public security and more on the dangers that Islamic fundamentalism and communalism posed to national identity and republican values. With shocking images and sensationalist headlines, this coverage reinforced all the arguments that the expanders were making.

The public was also receptive to the arguments of the expanders, especially so in France. As events unfolded and as the debates progressed, the already very high support among the French public for restrictions on the wearing of headscarves and full-face veils in public increased yet further, reflecting growing public concerns about threats to national identity

and increasingly widespread views that Islam was an intolerant and oppressive religion. In England, there was less support among the public for widespread bans, but then the expanders were not proposing these. Instead, the public support for more nuanced regulations – e.g. for teachers in schools, or at airport security checks – reflected what the expanders were suggesting.

To a great extent, therefore, the regulations pertaining to the display of religious symbols in the public space in England and France are the way they are because of the way the debates unfolded, because of the constellation of the actors involved, and because of the arguments that these actors used and the extent to which these resonated in political circles and among the public. All this underlines the importance of agency in explaining the nature of the regulations on the display of religious symbols that exist in the two countries. Yet, the impact of structure should not be dismissed, and it should be remembered that the different approaches to dealing with religious symbols in the public space should also be explained by reference to wider cultural and historical factors.

Firstly, the differences reflect different approaches to policy making in the two states. In France, in general, the preference is for using national legislation to address problems. As Bowen (2007: 243) argues, there seems to be 'a French passion for seeking statutory solutions to social ills'. By contrast, in Britain – and hence England – policy making has long been characterized by a practical, pragmatic and ad-hoc approach, described as 'incremental' or as a 'muddling through' one (Lindblom, 1959; Parsons, 2002). This reflects a British tradition of limiting the reach of the state and of avoiding the imposition of national laws, concerns that do not worry the French. It also means that, unlike in France, issues are

often dealt with on a case-by-case basis. This all helps explain why it was broadly acceptable to politicians and to public institutions in England to merely have guidelines on the display of religious symbols rather than national laws, and why it was therefore also reasonable that there would be variation from institution to institution. Such a 'messy' situation would not be acceptable in France. Here there would be firm, national laws, applied uniformly across all similar spaces.

Secondly, the nature of the debates, and the resulting regulations were very much shaped by the historical traditions that underpin the two countries' approaches to accommodating religious diversity, which were discussed in Chapter 2. With no separation between church and state, and with a tradition of multiculturalism, England continues to fit the plurality model of religious diversity, in which minority ethnic and religious groups are accommodated and can practice their faith and express their religion, including in the public space (Barnett, 2013: 8). This, almost by definition, limits the introduction of severe restrictions on the display of religious symbols. By contrast, the strict separation of church and state is still very much applied in France, and religious matters remain relegated to the private sphere. In other words, France continues to be an example of the neutrality model of religious diversity. Along with the persisting emphasis on universalism, and on warnings about what diversity – especially communalism – would do to the French nation, this all makes the introduction of tough regulations on religious symbols far more possible.

Contribution of thesis

In its approach and analysis, this thesis has made a number of important contributions. The first of these is that it has examined the regulation of religious symbols through a political science lens. As Kettell (2012: 93) has argued, while 'the political impact of religion has been difficult to miss … religious issues have been largely overlooked by political science'. He goes on to note the complaints and concerns expressed by many in the field, including for example Gill (2001: 118) who observed that 'most political scientists "consider religion to be a peripheral subject matter"', and Philpott (2009: 184) who argued that 'the extent of political science engagement with religion remains a case of "genuine neglect" and that "religion's place in political science scholarship is vastly underproportioned to its place in headlines"' and to scholarship in other disciplines. Indeed, most studies of religious affairs have been conducted by sociologists (Kettell, 2012: 96), while it is legal scholars who have dominated the field in the study of the regulation of religion. Political scientists have paid scant attention to either.

Kettell (2012: 99) argues that the neglect of religion by political scientists is in large part explained by the fact that the main themes of the discipline (the state, power, democracy) 'emerged from historical processes bound with the creation of an increasingly secular system of territorially sovereign states' and that therefore, 'from the outset, the intellectual framework for political science was grounded in underlying assumptions about the declining influence of religion in public life'. Yet, he continues by persuasively making the case that, given the increasing debates about the influence of religion in the contemporary period, it is high time that political scientists now turn their attention to the study of religion (Kettell, 2012: 99). The thesis thus responds to this call by exploring the politics behind the

regulations of religious symbols, and by focusing on the political debates and the political actors that have shaped and ultimately enacted these regulations.

The second important contribution of this study lies with the two analytical frameworks that it has developed and deployed. These frameworks, typical of the sort employed within political science, are both novel and have not been used before. By focusing on the scope of regulations, their depth, and the extent to which they have been enforced, the first of these frameworks has allowed for a detailed examination of the nature of the regulations pertaining to the display of religious symbols in the public space, and of how these have developed over time. Clearly, the immediate value of this framework has been to allow the thesis to engage in its empirical analyses and to explore the nature of the regulations of religious symbols that exist in England and France. Yet, this framework has a wider usefulness in that it is exportable, and can be applied to other countries or cases. Furthermore, it is also a framework that, perhaps with some tweaking, can be used to consider and analyse other areas of public policy – policies pertaining to environmental protection, or to anti-social behaviour for example – so as to explore the reach of regulations or legislation, and the extent to which rules are applied and enforced. In this sense then, this first analytical framework not only allows the thesis to make a substantive contribution by detailing the nature of the regulations of religious symbols in the two countries, but it also makes a theoretical and analytical contribution to studies of policy making by proposing a tool with which to explore the nature of regulations and legislation.

The second analytical framework makes a similar contribution. Again, most obviously it has allowed the thesis to explore the reasons for why the regulations of religious symbols in the

two countries are the way they are, and again, it is a framework that can be exported to other cases. However, in addition, by making use of the concepts of expanders and containers rather than those of the Core Executive or policy entrepreneurs, this second framework proposes an alternative way of exploring the actors involved in debates leading up to the introduction of new legislation, how they behave, and how they argue their points so as to influence policy. This approach is particularly appropriate for situations in which the making of policy is not simply the reserve of elite political actors or civil servants, or in which the introduction of new legislation is not mainly explained by the actions of enthusiastic innovators. That is, where a wide range of actors are involved in debates over particular issues and policies, and where these include many societal and grassroots actors as well as political ones, the concepts of expanders and containers are better suited to explaining how policy is, or is not, eventually introduced, and to detailing whether the process can best be described as a bottom-up one or a top-down one. Once again then, by proposing an approach that could be deployed to other instances of policy making or policy change, this second framework makes a theoretical and analytical contribution, as well as a substantive one.

The final major contribution of the thesis is a substantive one. This project has shown that events can play an important role in the development of regulations that pertain to religious symbols in public spaces. The 1989 headscarf affair in Creil is a clear example, as it very much led to the introduction of the 2004 law banning conspicuous religious symbols in French schools. Similarly, the 7/7 2005 London bombings played a significant role in shaping debates over the place of religion in the public space in England. Yet, the thesis has also demonstrated that, while they do matter, these events are not sufficient, on their own, to

account for how debates progressed and how regulations became introduced. Instead, what really mattered was how actors responded to them.

The positions that the different actors took shaped how balanced the debates were, and the arguments that they drew on, along with the persuasiveness of their points, influenced the likelihood and the nature of any new regulations. Indeed, the two cases have shown that where debates were balanced, and where a range of different arguments were deployed, there was less likelihood of new sweeping regulations, and those that were introduced were limited, as in England. By contrast, where debates were one-sided, and where the arguments of one set of actors were not met by any meaningful counter-points, as was the case in France, the likelihood of new, stringent regulations was much greater.

Having said this, the thesis has also shown that while actors can choose how they respond to events, their behaviour is also influenced, and even constrained, by what is possible and reasonable given specific national historical legacies and cultural traditions. Put simply, the arguments that characterized the French debate over the place of religious symbols in the public space, as described above, would not have been made by actors in England, and nor would they have been acceptable. Likewise, the arguments that dominated the debates in England would not have been drawn upon by actors in France, and would most likely have been deemed far too soft. The thesis therefore contributes to a fuller understanding of regulations of religious symbols by underlining the crucial importance of agency and of politics, but by also recognizing the key role of historical and cultural opportunity structures.

Limitations of the study and future avenues for research

For reasons of time and space, this thesis explored the regulations of religious symbols in the public space in two countries only. England and France were selected as cases to examine for good reason. That is, while there are similarities between the two countries – they are both consolidated, advanced industrial democracies; they both have a dominant religion; and they both have sizeable immigrant populations – there are significant differences between them too, with England fitting the plurality model of religious diversity and France corresponding more closely to the neutrality model, and with the regulations of religious symbols in the two countries being substantially different. However, such a focus is necessarily limited, even if it has enabled an early examination of how and why religious symbols have, or have not, been accommodated in the public space.

As such, future work could usefully consider further cases. In particular, it would be valuable to explore cases that fit the dominant religion model of religious diversity, such as Germany and/or Italy, where the state favours and accommodates one denomination over others. Alternatively, future research might engage in a comparative examination of those countries that have instituted full-face veil bans, to explore the different reasons such regulations were introduced.

This project was based exclusively on documentary research, and it made substantial use of media sources. While the use of only one method of research is arguably a limitation, the approach was nonetheless appropriate to the study at hand, and steps were taken to

mitigate the bias of individual documents. However, future work could usefully employ other research methods. It would be particularly worthwhile to undertake interviews with key actors involved in the debates over the regulation of religious symbols and in the drawing-up of any resulting legislation. Such first-hand accounts would offer valuable, additional insights into how and why regulations developed as they did.

This study set out to better understand why individuals may openly display their religious affiliation and belief in some countries but not in others, and in some types of space but not in others. After detailed investigation, the thesis has, of course, pointed to multiple explanations for the existence of different regulations of religious symbols. Yet, what all of these seem to suggest is that regulations are introduced because of perceptions that religious symbols, and their wearers, pose a threat, be it to society, to culture, to national identity, and/or to the state. The likelihood of regulations being introduced thus appears to depend on the size and nature of that perceived threat, as well as on the power and relevance of counter-arguments, including those that underline the need to protect individual rights and freedoms.

These perceptions of threat pose a significant challenge to contemporary societies. Unless they are addressed, they will continue to inhibit social cooperation and undermine social cohesion, and they will continue to leave minority groups, including religious communities, isolated and marginalized. Thus, within the contours of their specific historical and cultural traditions, it is incumbent on political actors and other forces in society to find a way to manage and dampen these perceptions. In addition to improving social relations, this would send a powerful message that minorities are not just merely tolerated but are, instead, an

appreciated part of the national community, and that liberal democratic systems can live up to their name of being open and inclusive societies.

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